

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

In the Matter of the Complaint of
Suzanne Clemente

Complainant,

v.

Aqua Ohio, Inc.

Respondent.

Case No. 09-574-WW-CSS

**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

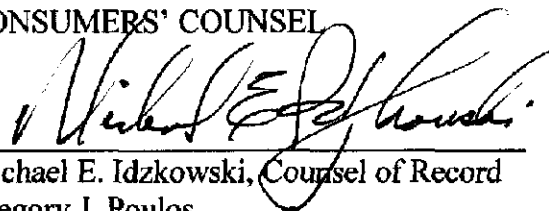
The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility consumers, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to grant OCC's intervention in the above-captioned complaint case where a residential customer has claimed that Aqua Ohio, Inc. ("Aqua" or "Company") assessed charges for water service that were not just and reasonable charges.¹ The reasons for granting OCC's motion are further set forth in the attached Memorandum in Support.

¹ R.C. Chapter 4911, R.C. 4903.221, Ohio Adm. Code 4901-1-11 and 4901-1-12.

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

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Aqua Ohio, Inc.)	
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This complaint case involves a review of the reasonableness, lawfulness and adequacy of Aqua's water services provided to Suzanne Clemente ("Complainant" or "Ms. Clemente"), a residential customer of Aqua, including a review of the reasonableness and lawfulness of the charges and late charges attached to Complainant's bill as a result of Aqua's billing practices and other actions. Complainant filed a formal complaint with the PUCO on July 8, 2009, requesting that the Commission order Aqua to provide Complainant with an accurate bill for actual, confirmed water consumption at her residence. The Complainant also requested that the PUCO review the current billing practices of Aqua and order the Company to comply with accurate billing practices.

In her complaint, Ms. Clemente states that after Aqua replaced her water meter in July 2008, she began receiving inordinately high water bills, reflecting water usage levels she estimates to be six times her normal amount. Complainant states that she made

several attempts to resolve the matter with Aqua, having a service technician check her meter on two occasions and discussing her high water bills with Aqua in August, September and October of 2008. Complainant states that during this period, she was informed by the City of Mentor that the City had received several complaints from Aqua customers regarding the new meters Aqua was installing. Complainant states that she contacted the PUCO regarding the matter on October, 22, 2008, but was ultimately unsuccessful at resolving her billing issues with Aqua. On July 8, 2009, Complainant filed a formal complaint with the PUCO regarding Aqua's billing practices.

The problems that Ms. Clemente has alleged with regard to her water service should be all the more of concern to the PUCO given that its Staff and OCC have attempted to protect Aqua's customers from other Aqua billing problems in two relatively recent cases.² The PUCO has yet to rule on the second settlement resulting from those cases, filed October 6, 2008, that addressed protecting customers from the Aqua billing problems under consideration in that case.

II. INTERVENTION

OCC has authority under law to represent the interests of all residential utility customers pursuant to R.C. Chapter 4911. R.C. 4903.221 provides, in part, that any person "who may be adversely affected" by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of residential consumers may be "adversely affected" by this case which may result in the unavailability of necessary water service to

² See *In the Matter of the Application of Aqua Ohio Inc. for Authority to Increase its Rates and Charges in the Lake Erie Division*, PUCO Case No. 07-564-WW-AIR, and *In the Matter of a Settlement Agreement Between the Staff of the Public Utilities Commission of Ohio, The Office of the Consumers' Counsel and Aqua Ohio, Inc. Relating to Compliance with Customer Service Terms and Conditions in Stipulation and Recommendation in Case No. 07-564-WW-AIR and the Standards for Waterworks Companies and Sewage Disposal System Companies*, PUCO Case No. 08-1125-WW-UNC.

Complainant and her family. If, as Complainant alleges, the City of Mentor has received several reports from customers about billing problems related to new meters, then this situation is likely not unique to Complainant. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest lies in protecting Aqua's consumers from inadequate service and unreasonable and unlawful charges. This interest is different from that of any other party and especially different from that of the Company whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include advancing the position that Aqua's water service must be reasonable, lawful and adequate, i.e., that Aqua's water bills must be based on accurate determinations of customers' actual water usage, and that Aqua's charges for its water service must be just, reasonable and not more than the charges allowed by law or by order of the PUCO.³ OCC's position is, therefore, directly

³ See R.C. 4905.22

related to the merits of this case that is pending before the PUCO — the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case where the Commission's rules governing the relationship between a water utility and its customers are at issue.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the "extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio's

residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC's right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC's intervention and that OCC should have been granted intervention.⁴

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential consumers, the Commission should grant OCC's Motion to Intervene.

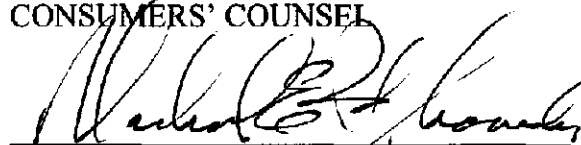
III. CONCLUSION

As set forth herein, OCC satisfies the criteria set forth in R.C. 4903.221 and the Commission's rules for intervention. Therefore, on behalf of residential utility consumers, OCC respectfully requests that the Commission grant this motion to intervene.

⁴ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

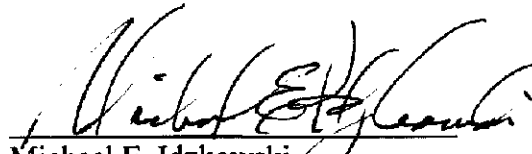
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via regular U.S. mail, postage prepaid, this 21st day of July 2009.


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Assistant Consumers' Counsel

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