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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Aqua Ohio, Inc. for Authority to Increase)
Its Rates and Charges in its Masury Service)
Division)

Case No. 09-0560-WW-AIR

REPLY TO MEMORANDUM CONTRA
MOTION FOR APPROVAL OF WAIVERS
BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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I. INTRODUCTION

On July 17, 2009, The Office of the Ohio Consumers' Counsel ("OCC") filed a Memorandum Contra Aqua Ohio Inc.'s ("Aqua Ohio" or "Company") Motion for Approval of Waivers of Various Application Filing Requirements and for Test Year and Date Certain ("Motion for Waivers") filed July 2, 2009 with Public Utilities Commission of Ohio ("Commission"). Aqua Ohio replies to OCC's memo contra and urges the Commission to grant its Motion for Waivers as requested.

As a preliminary matter, OCC's Memorandum Contra does not object to the establishment of the test year and date certain. The Commission should therefore grant Aqua Ohio's motion to establish the test year as January 1, 2008 through December 31, 2008 and the date certain as June 1, 2008. Further, OCC does not appear to object to requested waivers from filing Schedules B-2.3, B-5.1, C-9, C-9.1, C-11.1, C-11.2, C-11.3, C-12.1, C-12.3D-5.1, Chapter 2C, Items 3-6, Item 13 and Item 35. Those waivers should also be granted.

Further, Aqua Ohio 's Masury Division consists of a small, largely self-contained distribution system serving approximately 1500 customers. If the Masury Division were a "stand-alone" water system, as opposed to a division of Aqua Ohio, which is itself part

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of Aqua America, none of these waiver requests would be necessary, since the Masury Division could file as a small water system. As noted in the request for waivers, Masury has no full time employees and no water treatment plant. Of course, Aqua Ohio employees do devote time to the Masury Division, and those employees have to be paid. Likewise, while the Masury Division has no water treatment plant, it does have considerable infrastructure in the form of a distribution system to serve water to its customers.

Finally, as also noted in Aqua Ohio's request for waivers, Aqua Ohio is willing to provide any and all properly requested information to Staff and/or OCC. What Aqua Ohio would like to avoid is an extremely costly "fishing expedition" by OCC, undertaken without any reasonable basis and paid for by the customers of Aqua Ohio's Masury Division. The accumulation and production of a large volume of completely irrelevant information serves no lawful or reasonable purpose in the context of this rate request.

As the OCC correctly observes, waiver requests merit Commission approval if the Company shows "good cause." A good cause determination requires the Commission to analyze three factors:

- 1.) Whether the information, which the utility would provide if the waiver request is granted is sufficient so that the Commission staff can effectively and efficiently review the rate application;
- 2.) Whether the information, which is the subject of the waiver request, is normally maintained by the utility or reasonably available to it from information it maintains; and
- 3.) The expense to the utility in providing the requested information which is the subject of the waiver request.

As set forth in Aqua Ohio's Motion for Waivers, and explained in greater detail below, each of these requirements has been satisfied and thus justifies the Commission's granting

Aqua Ohio's requested waivers. (See, Ohio Administrative Code ("OAC") Rule 4901-7-01, Appendix A, Chapter II, Paragraph A, Subparagraph 4(c).)

II. IN THE PRESENT CASE, AQUA OHIO IS REQUESTING AUTHORITY TO INCREASE RATES IN THE MASURY DIVISION ONLY.

OCC states that: "the Applicant in this case is Aqua Ohio, Inc., not the Masury Division of Aqua Ohio. Therefore, adequate information on Aqua Ohio, not its Masury Division, is the necessary component of Aqua's application." This misses the rather obvious point that an increase in rates is requested herein for the Masury Division only. If Aqua Ohio were requesting a rate increase for all Aqua Ohio divisions, Aqua Ohio would concede that information relating to all of Aqua Ohio's divisions would be necessary and should be provided. However, since only Masury rates can be conceivably affected by this filing, Masury information is sufficient to evaluate this rate request.

As noted above, Masury has infrastructure in the form of a distribution system, and Aqua Ohio employees do bill time to Masury. This is conceded here, and will be abundantly clear from information provided to Staff and OCC in support of Masury's rate request. Information from other service divisions is unlikely to be helpful in determining whether these costs are appropriate, fair or reasonable in the context of this rate filing. Put simply: the information from other divisions is irrelevant here. Aqua Ohio is not seeking to increase rates in other divisions at this time.

Also, should OCC have some legitimate concerns that Masury customers are subsidizing customers in other districts, OCC is quite capable of crafting appropriate discovery requests to obtain the necessary information to address these concerns. Though it would seem completely irrational for a company with approximately 80,000

Ohio customers to attempt to shift expenses to a division with only 1500 customers, to the extent the OCC's discovery requests are legitimate, information will be provided. OCC routinely requests massive amounts of discovery in rate requests, no matter how small the increase or service territory involved with no apparent concern for the impact on rate case expense and customer rates.

III. SCHEDULE B-8, WATER DATA

OCC makes no discernable argument why any water data OCC may require may not be provided through the discovery process, which Aqua Ohio will supply upon proper request.

IV. AQUA OHIO'S REQUEST FOR WAIVERS FROM FILING SCHEDULE D CONSOLIDATED CAPITAL STRUCTURE INFORMATION SHOULD BE GRANTED.

Aqua Ohio requested that the Commission grant it permission to file capital structure information presented on Schedules D on a stand-alone basis. OCC objects to this long standing practice of providing stand alone capital structure by arguing that Staff could more effectively and efficiently review Aqua Ohio's application, that the information is maintained by Aqua Ohio or is reasonably available, and that Aqua Ohio failed to show there would be an added expense.

A. Stand-alone Information Regarding Aqua Ohio's Capital Structure is Sufficient for Commission Staff to Effectively and Efficiently Review Aqua Ohio's 2009 Rate Application.

Aqua Ohio acknowledges that it is a wholly owned subsidiary of Aqua America, Inc. ("Aqua America"). There are several operating companies in the Aqua America system. For over a decade, this Commission has had no difficulty reviewing Aqua Ohio's rate case applications based upon the stand-alone capital structure of Aqua Ohio. In fact,

and as noted in Aqua Ohio's Motion for Waiver, the Commission has granted Aqua Ohio's waiver request to provide stand-alone (rather than consolidated) capital information for several years.

OCC now claims, after a more than a decade of rates having been established (by Stipulations signed by OCC) that Aqua America's consolidated capital structure is somehow necessary. In support, OCC merely poses a question that can be quickly answered in the negative: are Aqua Ohio's customers subsidizing the costs of the other operating companies? Aqua Ohio's rate of return is based solely on Aqua Ohio's debt which this Commission has approved – just as it has been in each of Aqua Ohio's prior rate cases. It is not (and has not) been based on the debts of any of the other distribution companies. OCC's argument is a red herring that seeks to distract the Commission from the true facts - namely that Aqua Ohio currently is not making an appropriate rate of return in Masury and has accounted for all the revenues that the Commission has permitted it to earn.

Perhaps even more importantly, OCC was a party to each of the prior Aqua Ohio rate case proceedings. OCC did not oppose the use of stand-alone (rather than consolidated) capital structure information in any of those rate cases. Now, at a time when OCC criticizes Aqua Ohio's filing of a new rate case, OCC challenges routine waivers granted in nearly each rate case filed by Aqua Ohio for many years. The denial of Aqua Ohio's waiver requests (as sought by OCC) not only would run contrary to Commission-precedent in Aqua Ohio's prior rate case proceedings, but would greatly and needlessly increase the rate case expense incurred by Aqua Ohio's Masury customers.

Moreover, it appears likely that OCC is attempting to place Aqua Ohio in a "Catch 22" position by deliberately causing rate case expense to increase for no legitimate purpose. OCC will undoubtedly question the amount the Company needs to spend for processing its rate case for a Division that serves only 1500 customers.

Also, as noted in Aqua's original waiver request, any and all information relevant to processing the rate request will be provided through data requests or discovery. If OCC has some legitimate concern that Aqua Ohio's Masury customers are subsidizing customers in other Aqua America divisions, Aqua Ohio will provide properly requested information to demonstrate that no such subsidies exist.

B. Consolidated Capital Structure Information for Aqua Ohio's Parent Company, Aqua America Is Not Readily Available to Aqua Ohio.

None of the data required for the Schedule D is readily available to Aqua Ohio, just as none of Aqua Ohio's information (other than that which is public) can be gathered by others not employed by Aqua Ohio. The information required on Schedule D would require Aqua Ohio to request that data be analyzed, specially compiled and specially developed for each of Aqua America's other operating companies.

OCC contends that Aqua America could easily compile consolidated capital-structure Information. However, the present rate request was filed by Aqua Ohio, not Aqua America.

C. The High Costs Incurred by Aqua Ohio in Compiling Consolidated Capital Structure Information Would Result in Higher Costs for Masury Customers.

There would be considerable work and expense required to retrieve and present the consolidated capital structure data associated with the various operating companies of Aqua America. To retrieve the information, considerable time and expense would be

involved to investigate each of the other operating companies' many outstanding mortgage bonds, and each mortgage issuance would require further investigation and calculation to determine the appropriate financial information attributable to each operating company.

Furthermore, none of the data required for Schedule D is readily available. In order to provide the information required on Schedule D, Aqua Ohio must request that data be analyzed, compiled and developed for each of the other operating companies. Aqua Ohio conservatively estimates that more than an hour is required to prepare the information from each financial manager responsible for each of the operating companies.

Also, though Aqua Ohio requests that the managers of each of the other companies give its project priority when making requests to them, it is foreseeable that the conduct of business in their own companies would compel the financial managers to allocate their time among all the priorities confronting them at a given time. Thus, not only would the process of developing the data be a lengthy one, but there would also be additional time and cost to Aqua Ohio's personnel, who must make numerous follow-up calls to remind the managers of the need to provide the information for Aqua Ohio's rate case.

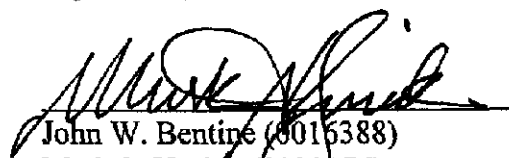
This unwarranted expense would not only be incurred by Aqua Ohio, but would become part of the rate case expense paid for by Aqua Ohio's Masury customers. Significantly, nearly all of this information would be wholly useless in evaluating the present rate request. Avoiding this unnecessary expense achieves two important goals:

following the Commission's own precedent established during the last fifteen years; and, saving Aqua Ohio's Masury customers' significant money.

IV. CONCLUSION

The Commission should grant Aqua Ohio, Inc.'s Motion for Waivers as requested.

Respectfully submitted on behalf of
Aqua Ohio, Inc.,

A handwritten signature in black ink, appearing to read "John W. Bentine", is written over a horizontal line.

John W. Bentine (0016388)

Mark S. Yurick (0039176)

CHESTER, WILLCOX & SAXBE

65 East State Street, Suite 1000

Columbus, Ohio 43215

Telephone (614) 221-4000

Facsimile (614) 221-4012

Email: jbentine@cwsllaw.com

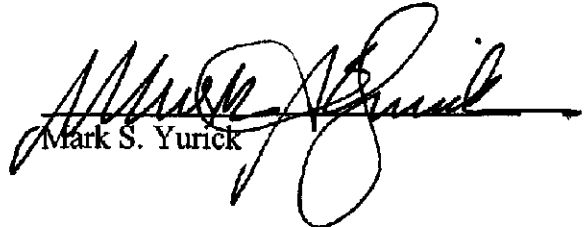
myurick@cwsllaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing *Reply to Memorandum Contra Motion for Approval of Waivers By the Office of the Ohio Consumers' Counsel* was served by regular U.S. Mail this 27th day of July 2009 upon the following:

Michael E. Idzkowski
Melissa R. Yost
Assistant Consumers' Counsel
Office of the Ohio Consumers' counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
edzkowski@occ.state.oh.us
yost@occ.state.oh.us

John Jones
Sarah Parrot
Attorney General's Office
Public Utilities Commission of Ohio
180 East Broad Street, 9th Floor
Columbus, Ohio 43215


Mark S. Yurick