

FILE

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 ) Case No. 09-560-WW-AIR  
Division. )

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**MEMORANDUM IN RESPONSE TO AQUA OHIO, INC.'S MOTION FOR  
APPROVAL OF A WAIVER IN THE TIMING FOR FILING EXPERT  
TESTIMONY ON RATE OF RETURN  
AND  
MOTION FOR EXTENSION OF TIME TO CONDUCT DISCOVERY AND FILE  
EXPERT TESTIMONY IN RESPONSE TO AQUA OHIO, INC.'S FILING OF  
EXPERT TESTIMONY ON RATE OF RETURN  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") submits this response to Aqua Ohio, Inc.'s "Motion for Approval of a Waiver In the Timing for Filing Expert Testimony on Rate of Return" and moves, pursuant to Ohio Adm. Code 4901-1-12 and 4901-1-13, for an extension of time to conduct discovery and file expert testimony in response to any expert witness testimony regarding rate of return filed by Aqua Ohio, Inc. The reasons for granting OCC's Motion are further set forth in the attached Memorandum in Support.

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Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Michael E. Idzkowski", written over a horizontal line.

Michael E. Idzkowski, Counsel of Record  
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**MEMORANDUM IN SUPPORT**

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On August 7, 2009, Aqua Ohio, Inc. ("Aqua," "Applicant" or "Company") filed its Motion for Approval of a Waiver in the Timing for Filing Expert Testimony on Rate of Return ("Motion"). Aqua's Motion seeks a waiver of Aqua's requirement of filing expert witness testimony on the issue of rate of return within fourteen days of the application. Aqua cites as grounds for its Motion the expense of providing expert testimony on the issue of rate of return and expresses its hope that the parties can resolve Aqua's application for a rate increase by a stipulation of the parties, which apparently would result in the testimony not being filed.

OCC is cognizant of the potential impact of expert witness fees on Aqua's rate case expense and ultimately, on Aqua's residential customers. OCC does not oppose Aqua's request for waiver of the timing of filing expert witness testimony; however, such a waiver should not be permitted to hinder OCC's advocacy on behalf of Aqua's customers.

If the Commission grants Aqua's Motion, thereby allowing Aqua to file expert testimony regarding rate of return after the deadline set forth in the rules, the timing of Aqua's new testimony and the Commission's rules governing OCC's discovery process

and expert testimony deadline could collectively work to allow OCC little or no time to respond.

Accordingly, OCC moves that if the Commission grants a waiver of the timing of the filing of Aqua's expert witness testimony regarding rate of return, OCC be granted adequate time and opportunity to conduct proper discovery related to Aqua's rate of return testimony, and adequate time and opportunity to prepare and submit OCC's expert testimony and evidence in response (and that due process for OCC not be otherwise impaired by the delay). The granting of OCC's motion would serve the interests of administrative and procedural fairness, as well as the purpose of the Commission's discovery rules set forth in Ohio Adm. Code 4901-1-16 to 4901-1-24, which is "to encourage the prompt and expeditious use of prehearing discovery in order to **facilitate thorough and adequate preparation for participation in [C]ommission proceedings . . . .**"<sup>1</sup> (Emphasis added.) Both Staff and Aqua have indicated to OCC, through counsel, that they have no objection to OCC's request for an extension of time so that OCC can conduct discovery and file testimony in response.

For the reasons set forth above, the Commission should incorporate protections for OCC into any ruling that grants Aqua's waiver request. Those protections should include an extension of time for OCC to conduct discovery and file expert testimony in response to any expert witness testimony regarding rate of return later filed by Aqua

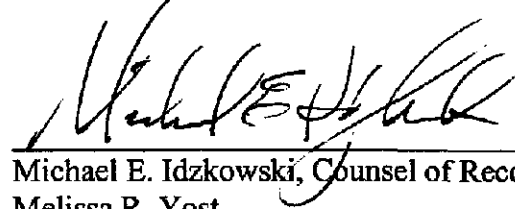
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<sup>1</sup> Ohio Adm. Code 4901-1-16(A); *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify and Amend its Existing Electric Rates to Phase In Rates Reflecting the Costs of Zimmer Station*, PUCO Case No. 88-1047-EL-UNC, September 7, 1988 Entry. (This case involved a discovery dispute between the parties leading to a reminder by the the Commission about the purpose of the Commission's discovery rules and the rules' intention of minimizing Commission intervention in the discovery process.)

Ohio, Inc. beyond the deadline set forth in the Commission's Standard Filing Requirements.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Michael E. Idzkowski", is written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Memorandum in Response to Aqua Ohio, Inc.'s Motion for Approval of a Waiver in the Timing for Filing Expert Testimony on Rate of Return and Motion for Extension of Time to Conduct Discovery and File Expert Testimony in Response to Aqua Ohio, Inc.'s Filing of Expert Testimony on Rate of Return by The Office of the Ohio Consumers' Counsel was served on the persons stated below via regular U.S. Mail Service, postage prepaid, this 21<sup>st</sup> day of August, 2009.



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