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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 Lake Erie) Case No. 09-1044-WW-AIR
Division.)

**MEMORANDUM CONTRA AQUA OHIO, INC.'S
MOTION FOR APPROVAL OF WAIVERS
OF VARIOUS APPLICATION FILING REQUIREMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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November 20, 2009

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TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| I. INTRODUCTION | 1 |
| II. STANDARD OF REVIEW | 2 |
| III. LAW AND ARGUMENT | 2 |
| A. OCC's Memorandum Contra Is Filed On Behalf of Aqua's Lake Erie Division Customers and In Accordance With The Ohio Administrative Code, The Commission's Rules Of Procedure and PUCO Precedent..... | 2 |
| B. Aqua's Motion For Waivers From Filing SFRs Should Be Denied Because Aqua Has Failed To Show Good Cause Why A Waiver Should Be Granted..... | 3 |
| 1. The PUCO Staff can more effectively and efficiently review the rate application as it affects Aqua's customers if Aqua is not granted waivers from the SFRs. | 3 |
| 2. Aqua's Motion fails to demonstrate that the information required by the SFRs is unavailable. | 7 |
| 3. Aqua fails to demonstrate that there would be added expense in providing the information required by the SFRs. | 8 |
| IV. CONCLUSION | 8 |

I. INTRODUCTION

On November 3, 2009, Aqua Ohio, Inc., (“Aqua” or “Company”) filed its Notice of Intent to File an Application for an Increase in Rates (amounting to an increase of 19%) regarding Aqua’s sale of water to its approximately 28,800 customers in its Lake Erie Division. Also on November 3, 2009, Aqua filed its Motion for Approval of Waivers of Various Application Filing Requirements (“Motion”). On November 16, 2009, the Office of the Ohio Consumers’ Counsel (“OCC”) moved to intervene on behalf of the residential consumers of Aqua, to protect their interest in reasonable rates (among other issues in the case).

As outlined below, OCC recommends that the Public Utilities Commission of Ohio (“Commission” or “PUCO”) deny certain requests of Aqua for waivers of the Standard Filing Requirements (“SFRs”) set forth in Aqua’s Motion regarding information related to the rate increase Aqua is proposing consumers pay for water. Aqua seeks a waiver from the PUCO’s requirement to file all or parts of Schedules B, C, D and F. In particular, relative to Schedules B-2.3, C-9, C-12.1, C-12.3, F-1, F-1a, F-4 and F-4a, Aqua also seeks the Commission’s permission to not provide any information on Aqua’s parent corporation, stating in its Motion, “Data on a total company basis, to the extent that it relates to other Aqua divisions, is not relevant to this case.”¹

The information required by the SFRs would well serve the PUCO Staff’s interest in a full investigation of this Aqua proposal to substantially increase customers’ rates. The required information would also serve the needs of interested parties who will review this request by Aqua for a significant rate increase during a time when Aqua’s customers

¹ Motion at Paragraph 4.

struggle in a dire economic situation. Accordingly, the Commission should deny Aqua's waiver requests, in part, as discussed herein.

II. STANDARD OF REVIEW

All applications requesting an increase in rates filed under R.C. 4909.18 must conform to the Standard Filing Requirements.² A waiver of the standard filing requirements shall only be granted upon a showing of good cause.³ In determining whether good cause has been demonstrated by the utility, the Commission shall consider the following:

- (i) Whether other information, which the utility would provide if the waiver is granted, is sufficient so that the commission staff can effectively and efficiently review the rate application.
- (ii) Whether the information, which is the subject of the waiver request, is normally maintained by the utility or reasonably available to it from the information which it maintains.
- (iii) The expense to the utility in providing the information, which is the subject of the waiver request.⁴

III. LAW AND ARGUMENT

A. OCC's Memorandum Contra Is Filed On Behalf of Aqua's Lake Erie Division Customers and In Accordance With The Ohio Administrative Code, The Commission's Rules Of Procedure and PUCO Precedent.

Ohio Adm. Code 4901-7-01 provides that, upon a showing of good cause, the Commission may grant a motion to waive specific provisions of the Standard Filing Requirements ("SFRs") if the motion is timely (filed before the application is filed).

² See Ohio Adm. Code 4901-7-01.

³ See Ohio Adm. Code 4901-7-01, Appendix A, Chapter II, Paragraph A, Subparagraph 4 (c).

⁴ See *Id.*

Ohio Adm. Code 4901-7-01 does not prohibit the filing of a memorandum contra to the motion for waiver.⁵

This Memorandum Contra by OCC is filed pursuant to the Commission's procedural rules, specifically, Ohio Adm. Code 4901-1-12(B)(1), which provides for any party to file a memorandum contra within 15 days of the service of a motion.⁶ OCC filed its Motion to Intervene in this proceeding on November 16, 2009. OCC's Motion to Intervene is, at the time of the filing of this Memorandum Contra, pending with the Commission, but as set forth in that Motion to Intervene, OCC meets the criteria in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. Further, OCC has been a party to prior rate cases filed by Aqua⁷ and has a keen interest in access to Aqua information related to this most recent proposal to yet again increase consumers' rates.

B. Aqua's Motion For Waivers From Filing SFRs Should Be Denied Because Aqua Has Failed To Show Good Cause Why A Waiver Should Be Granted.

- 1. The PUCO Staff can more effectively and efficiently review the rate application as it affects Aqua's customers if Aqua is not granted waivers from the SFRs.**

A limitation of information specified in the SFRs to only information regarding Aqua's Lake Erie Division will not allow the Staff and intervening parties such as OCC how to effectively and efficiently review the Company's application. For example,

⁵ See Ohio Adm. Code 4901-7-01.

⁶ See Ohio Adm. Code 4901-1-12(B)(1).

⁷ *In the Matter of the Application of Aqua Ohio, Inc. for Authority to Increase its Rates and Charges in the Lake Erie Division*, Case No. 07-564-WW-AIR; *In the Matter of the Application of Aqua Ohio, Inc. for Authority to Increase its Rates and Charges in its Masury Division*, Case No. 09-560-WW-AIR.

information on the capital structure of Aqua Ohio, and not just its Lake Erie Division, is necessary for a prudent review of the application in this case.

Other information on an Aqua Ohio basis is also necessary for a proper review of the application. For instance, the Company's Notice of Intent to File an Application For An Increase In Rates includes as attachments sample letters sent to public officials in Lake, Ashtabula, Williams, Geauga and Summit Counties that announce the Company's proposal to increase its overall rates by up to 19%. In the Company's letter to officials in Lake and Summit Counties, as justification for the proposed rate increase of 19%, the letter states, "A primary reason for the rate request is to support Aqua's infrastructure improvements which enhance capacity, reliability, fire protection and water quality."⁸ Aqua also notes substantially increased operational costs such as power, employee benefits and chemicals.⁹ These costs for infrastructure improvements, employee benefits and chemicals are not solely attributable to the Lake Erie Division of Aqua Ohio, but they are being used to justify a significant rate increase to that specific subset of Aqua Ohio's customers. Accordingly, the PUCO should deny any waiver request to provide information only on the Lake Erie Division of Aqua Ohio in lieu of providing information regarding Aqua Ohio, Inc.

Further, Aqua's motion contends that the information provided in the application will allow the Commission Staff to effectively and *efficiently* review the rate application.¹⁰ However, Aqua Ohio filed a separate application for a rate increase in its

⁸ Aqua Ohio Water Company's PFN Exhibit 2, Page 4 of 7.

⁹ Id.

¹⁰ Motion for Waiver at Part A (See heading).

Masury division on July 2 of this year,¹¹ and according to materials presented in connection with Aqua America's September 29, 2009 "Analyst Day," Aqua intends to file a third rate case application with the PUCO during the fourth quarter of 2009 in connection with its Stark Division. Thus, instead of allowing the Commission to effectively and efficiently review these various applications for rate increases by Aqua Ohio, Inc., the Company is attempting to substitute an inefficient, piecemeal process of review by the Commission.

It is or should be a matter of interest for those reviewing Aqua's significant rate increase proposal to investigate whether the financial burden on Aqua's Lake Erie Division customers is appropriate, given its small size in the overall Aqua corporate structure, to ensure that Aqua's Lake Erie Division customers are not in any way subsidizing other Aqua Ohio divisions or the parent company, Aqua America. Although the Commission has granted Aqua waivers of certain SFRs in the past, the Commission has also denied certain waiver requests by Aqua.¹² Most importantly, past practices should not stand in the way of PUCO Staff, OCC and other interested parties in their analysis of the application, especially with regard to a water utility that is seeking to significantly increase its water rates.

Aqua's customers, including the residential consumers that OCC represents, have the right to investigate and understand that the rates that will result from this application are fair, just and reasonable, and that Aqua's Lake Erie Division customers are not paying to support other affiliates of Aqua Ohio, Inc. The PUCO Staff, OCC and other interested

¹¹ *In the Matter of the Application of Aqua Ohio, Inc., for Authority to Increase its Rates and Charges in Its Masury Division*. Case No. 09-560-WW-AIR.

¹² See, for example, *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, June 6, 2007 Entry.

parties should have all of the total company information and data, including consolidated rate of return information, necessary to making a basic ratemaking determination as to whether Aqua's customers are being fairly charged or being asked to subsidize other affiliates of Aqua Ohio, Inc. or Aqua America.

In addition to its objection, generally, to the waiver of necessary SFR information from Aqua, OCC lists the following specific objections to the waiver requests of Aqua regarding the following schedules:

Schedules D-1.1 (Rate of Return Summary/Parent-Consolidated), D-2.1 (Embedded Cost of Short Term Debt/Parent-Consolidated), D-3.1 (Embedded Cost of Long Term Debt/Parent-Consolidated), D-4.1 and D-4.2 (Embedded Cost of Preferred Stock/Parent-Consolidated), and D-5.1 (Comparative Financial Data/Parent-Consolidated):

As further explained above, the parent-consolidated (Aqua America) cost of capital data should be provided. Because there is no market-based cost of capital (equity) data for Aqua Ohio, the cost of capital analysis of this application will rely on other water companies comparable to the parent-consolidated Aqua America, rather than Lake Erie or Aqua Ohio, Inc. In addition, there should be no cost associated with providing this important financial data because the data should be readily available to Aqua America.

Schedules F-1 (Projected Jurisdictional Income Statement – Current Rates), F-1A (Projected Jurisdictional Income Statement – Proposed Rates), F-4 (Projected Statement of Changes in Financial Position – Current Rates) & F-4A (Projected Statement of Changes in Financial Position – Proposed Rates):

Aqua admits that Schedules F-1 and F-1A are “an important tool in illustrating the effect of the proposed rate increase.”¹³ Nevertheless, Aqua urges the Commission to require the current and proposed rates only for the Lake Erie Division, rather than the

¹³ Motion at Paragraph 6.

total company, in Schedules F-1, F-1A, F-4, and F-4A.¹⁴ Information regarding projected net earnings, jurisdictional rate base, capital structure, and changes in financial position on a total company basis, i.e., an Aqua Ohio, Inc., basis, would likely be more reliable than the same information for one service territory (Lake Erie). Information in the above schedules is essential to determine the impact of the proposed rates on the financial position of the Lake Erie Division and Aqua Ohio, Inc. If this information is not made available with the application, Staff and intervening parties will ultimately request it through data and discovery requests. Therefore, Aqua should file the information with its application as required by the Ohio Administrative Code.

2. Aqua's Motion fails to demonstrate that the information required by the SFRs is unavailable.

While claiming that "the Lake Erie Division data should be sufficient,"¹⁵ Aqua fails to allege or demonstrate that the information required by the SFRs is not "normally maintained by the utility or reasonably available to it from the information which it maintains."¹⁶ In fact, as to Schedules C-12.1 and C-12.3, Aqua offers that the information will be provided in response to data requests.¹⁷ Other information required by Schedules B-2.3, B-5.1, C-9, F-1, and F-1A is apparently available, but objected to by Aqua as "not relevant"¹⁸ or not necessary, because division data is "sufficient."¹⁹ Aqua offers no argument or evidence that the information required by the SFRs is unavailable.

¹⁴ *Id.* at Paragraphs 6-7.

¹⁵ Motion for Waiver at Part A(1).

¹⁶ See Ohio Adm. Code 4901-7-01, Appendix A, Chapter II, Paragraph A, Subparagraph 4(c).

¹⁷ See Motion for Waiver, Part A, Paragraphs 4,.

¹⁸ *Id.* at Paragraphs 2 & 10.

¹⁹ *Id.*

It makes little sense to require Staff and intervening parties to request the information in data requests or discovery, if the information is available. Rather, Aqua should file the information with its application, as the Ohio Administrative Code prescribes.

3. Aqua fails to demonstrate that there would be added expense in providing the information required by the SFRs.

Aqua's Motion claims, "The expense to provide the information subject to the waiver request is unreasonable."²⁰ However, after raising this claim, Aqua's Motion subsequently fails to identify *any* amount of time or expense that will be necessary to produce *any* of the information required by the SFRs. Aqua's Motion contains no discussion of the matter of added expense at all. Thus, Aqua's Motion fails to support the third criterion for waiver of SFRs.

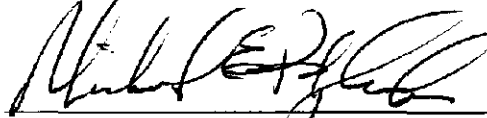
IV. CONCLUSION

In a case in which the Applicant, Aqua Ohio, Inc. is asking the Commission to approve a significant increase in the current water rates of the customers in Aqua's Lake Erie Division service territory, and at a time when customers are faced with a dire economy, all relevant information should be available for a full investigation of Aqua's proposed rate increase. Aqua's Motion fails to show good cause why the Commission should grant a waiver from nearly all of the SFRs at issue. Accordingly, the Commission should deny Aqua's request, in part, as discussed above.

²⁰ Motion for Waiver at Part A (See heading).

Respectfully submitted,

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CONSUMERS' COUNSEL

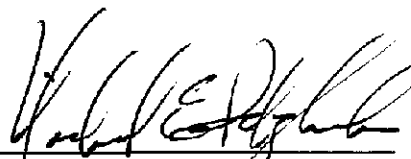
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra Aqua Ohio, Inc.'s Motion for Approval of Waivers of Various Application Filing Requirements by the Office of the Ohio Consumers' Counsel was served on the persons stated below via regular U.S. Mail Service, postage prepaid, this 20th day of November, 2009.



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