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

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**MEMORANDUM CONTRA AQUA OHIO, INC.'S
MOTION TO CORRECT DATE CERTAIN
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

On December 10, 2009, Aqua filed a Motion to Correct Date Certain and Request for an Expedited Ruling ("Motion"). In its Motion, Aqua Ohio, Inc. ("Aqua" or "Company") seeks to establish a new date certain of June 30, 2008, to replace the June 1, 2008 Date Certain the Company sought in its Notice of Intent to File an Application for an Increase in Rates filed on July 2, 2008, and in several other Aqua filings.¹ The requested June 1, 2008 Date Certain was approved by the Commission in its July 29, 2009 Entry.

In discussions with OCC, Aqua stated that the Company's request for a June 1, 2008 Date Certain was due to a typographical error and that Aqua's intent in seeking to change the Date Certain is to make it consistent with the Company's designation of a June 30, 2008 Date Certain in the schedules and work-papers submitted with its Application. Further, Aqua informed OCC that the Company will seek to address and

¹ Aqua also requested or referenced the June 1, 2008 Date Certain in its July 2, 2009 Motion for Approval of Waivers of Various Filing Requirements and for the Test Year and Date Certain, July 14, 2009 letter filed with the Commission, and July 27, 2009 Reply to Memorandum Contra Motion for Approval of Waivers by the Office of the Ohio Consumers' Counsel.

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alleviate any adverse affects the proposed change in the Date Certain may have on discovery matters between the Company and OCC.

This OCC Memorandum Contra cannot (and is not intended to) function as a waiver of any jurisdictional defects or other issues that may be present due to Aqua's error, and OCC reserves all its rights in this regard. OCC does request that the Commission, in the event it grants Aqua's Motion, adopt the following conditions:

- 1) That any expense incurred by Aqua that is associated with its Motion to Correct the Date Certain or related to ameliorating the effects of its error be borne by the Company and not its customers.²
- 2) That any unforeseen and prejudicial effect to other Parties occurring as a result of the requested modification of the Date Certain should be ameliorated fully and expeditiously by Aqua. For example, Aqua should be responsive to reconciling any issues between the new date certain and references to the original date certain in prior OCC discovery. As noted above, in its discussions with OCC regarding the Date Certain matter, Aqua has indicated that it will be responsive to OCC in this regard.

² See *In the Matter of the Application of Ohio American Water Company to Increase Its Rates for Water and Sewer Service Provided to its Entire Service Area*, PUCO Case No. 09-391-WS-AIR, September 30, 2009 Entry at page 3, part 6 (where the PUCO, in directing OAW to make an additional publication of newspaper notice after an apparent error by the newspaper in a prior publication attempt, barred OAW from recovering the associated expense from the Company's customers).

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in black ink, appearing to read "Michael E. Idzkowski". The signature is fluid and cursive, with a horizontal line drawn underneath it.

Michael E. Idzkowski, Counsel of Record
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra to Aqua Ohio, Inc.'s Motion to Correct Date Certain by the Office of the Ohio Consumers' Counsel was served on the persons stated below via regular U.S. Mail Service, postage prepaid, this 17th day of December, 2009.



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