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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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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

PUCO

**POST-HEARING BRIEF IN SUPPORT OF THE SETTLEMENT
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

This case affects the rates and charges paid by the approximately 1,400 residential customers of the Masury Division of Aqua Ohio, Inc. ("Aqua" or "Company"), for water service. The case arose on July 2, 2009, when the Company filed its Notice of Intent to File an Application for an Increase in Rates with the Public Utilities Commission of Ohio ("PUCO" or "Commission"). On August 7, 2009, the Company filed its Application for Authority to Increase Its Rates and Charges in its Masury Division ("Application"). In its Application, the Company sought approval of an 80.8% increase in its rates.

On July 17, 2009, the Office of the Ohio Consumers' Counsel ("OCC"), the state's advocate for residential utility consumers, filed its Motion to Intervene. The Commission granted OCC's intervention in this proceeding on February 26, 2010.

On January 21, 2010, the PUCO Staff's Report of Investigation ("Staff Report") was filed. Among several other recommendations, the Staff Report recommended that the Commission approve a rate increase for Aqua of between 64.81% and 68.6%.

In accordance with R.C. 4909.19, objections to the Staff Report were submitted by OCC and Aqua on February 22, 2010. Subsequently, OCC, Aqua and the Staff ("the

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Parties'') engaged in settlement negotiations, which ultimately resulted in a reasonable resolution of the case that benefits Aqua's customers and is in the public interest.

Accordingly, the Commission should approve the Parties' Stipulation and Recommendation ("Stipulation" or "Settlement") without modification.¹

II. APPLICABLE LAW

Aqua's Application is filed under R.C Title 49 and PUCO rules that implement the statutes. Moreover, there are criteria applicable to PUCO rulings on settlements. In order to be deemed reasonable, a stipulation must meet three criteria: (1) it must be a product of serious bargaining among capable, knowledgeable parties; (2) it must, as a package, benefit customers and the public interest; and (3) it must not violate any important regulatory principle or practice.² The Stipulation, as discussed below, meets all three requirements. In addition, the diversity of the interests represented by the Parties is, of itself, a strong indication of the reasonableness of the settlement package.³ Accordingly, the Commission should approve it without modification.

¹ If the Commission materially modifies the Stipulation, then any signatory party to the Stipulation may render it null and void by withdrawing from the Stipulation under the process described in the Stipulation.

² *Constellation NewEnergy, Inc. v. Pub. Util. Comm'n*, 104 Ohio St. 3d 530, 2004-Ohio-6767, at ¶8.

³ See *In the Matter of the Restatement of the Accounts and Records of The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, and Columbus & Southern Ohio Electric Company*. Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 29, 1985) at 7.

III. ARGUMENT

A. The Stipulation is a Product of Serious Bargaining Among Capable, Knowledgeable Parties with Diverse Interests.

Each of the Parties to the Stipulation has extensive experience and expertise in rate making proceedings. The bargaining conducted by the Parties took place over several weeks and, as demonstrated by the Stipulation, encompassed numerous provisions and attachments. Thus, the bargaining of the Parties was not rushed or superficial.

The Stipulation reached by the Parties was not entered into lightly. As it was being negotiated, considerable review and analysis of the various provisions of the Stipulation were conducted by OCC's personnel, various members of the PUCO Staff and the Company. The Parties' interests are diverse, as they include the consumer advocate OCC, the PUCO's regulatory Staff, and the Company with its stockholder interest. As a result, the Stipulation meets the first criterion set forth by the Supreme Court of Ohio and followed by the Commission.

B. The Stipulation Benefits Customers and the Public Interest.

Under the Stipulation, rates will increase gradually over the first three years and decrease in the fourth year. The Stipulation benefits Aqua's residential customers by phasing-in a rate increase over this four year period, thereby allowing customers to avoid the shock of an immediate rate increase in the range of the 80.8% rate increase sought by the Company or the 64.81% to 68.6% rate increase recommended in the Staff Report.⁴ Customers will also benefit under the Stipulation because the Company will be prohibited

⁴ See OCC Exhibit No. 2, Direct Testimony of Amr A. Ibrahim at pages 11-21.

from filing for another base rate increase before the seventh month of the third year following the order adopting the Stipulation.

The phase-in of rates and the “stay-out” period provided in the Stipulation are beneficial outcomes not available to customers absent the Stipulation.⁵ A stipulation such as the one in the present case can provide such benefits to customers.⁶

The Stipulation further benefits customers by providing that the Company will contribute five thousand dollars to assist low-income customers with the payment of their water bills. For those of Aqua’s Masury customers that are struggling in these economic times, this is an important benefit of the Stipulation. Thus, overall, the Stipulation meets the second criterion of reasonableness because it benefits residential customers.

C. The Stipulation Does Not Violate any Important Regulatory Principle or Practice.

Most of the provisions of the Stipulation in this case are similar to provisions found in stipulations submitted to and approved by the Commission in prior cases. Also, the Stipulation addresses the regulatory principle of gradualism in rate making. Thus, the Stipulation meets the third criterion for reasonableness recognized by the Supreme Court of Ohio and the Commission.

⁵ It has been found that the PUCO, on its own, may not impose a phase-in of a rate increase on an unwilling company. See *Columbus Southern Power Co. v. Pub. Util. Comm.* (1993), 67 Ohio St. 3d 535, 541, 620 N.E.2d 835. See also companion case, *In the Matter of the Application of the Cincinnati Gas and Electric Company for an Increase in its Electric Rates in its Service Area*, 67 Ohio St.3d 517, 620 N.E.2d 821 (Remanded and subsequently settled through a stipulation involving a phased-in rate increase in PUCO Case No. 91-410-EL-AIR, Opinion: Order on Remand.) The agreement to a phase-in is made under the unique circumstances of this case (see Stipulation pages 1-4), and is not precedent for any other case.

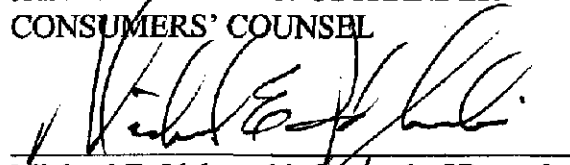
⁶ *Constellation NewEnergy, Inc. v. Pub. Util. Comm’n*, 104 Ohio St. 3d 530, 2004-Ohio-6767, at ¶8. See also *In the Matter of the Application of the Masury Water Company for Authority to Increase its Rates and Charges*, Case No. 97-1544-WW-AIR, Opinion and Order (Nov. 5, 1998) at 5. (“We believe that companies should attempt whenever possible, to mitigate the impact of rate increases through phase-ins or other creative means of lessening the impact of the increase on customers.”)

IV. CONCLUSION

For the reasons set forth herein, the Commission should approve the Stipulation without modification in this case. When approved, the Stipulation will protect customers of Aqua by, among other things, precluding the Company from filing another base rate increase case for two and one-half years.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

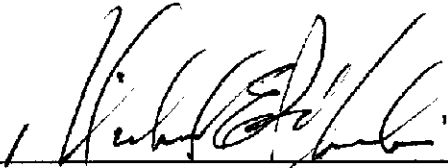


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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Brief* was served electronically and by U.S. mail on all Parties listed below this 19th day of April, 2010.



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