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

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 31,000 residential customers of the Lake Erie Division of Aqua Ohio, Inc. ("Aqua" or "Company"), for water service. The case arose on November 3, 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"). In its Application for a rate increase, filed on December 11, 2009, the Company sought Commission approval to increase revenues by 19.04%.

On November 16, 2009, the Office of the Ohio Consumers' Counsel ("OCC"), the state's advocate for residential utility consumers, filed its Motion to Intervene for purposes of participating in this case. The Commission granted OCC's intervention in this proceeding on June 25, 2010.

On May 21, 2010, the PUCO Staff issued its Report of Investigation ("Staff Report"). Among several other recommendations, the Staff Report recommended that the Commission grant the Company authority to increase its base rate revenues within a range

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of between \$1,352,711 and \$1,696,491, which represents an increase for Aqua of between 9.14% and 11.46% over total current revenues.

In accordance with R.C. 4909.19, objections to the Staff Report were filed by OCC and Aqua on June 21, 2010. Subsequently, OCC, Aqua and the Staff ("the Parties") engaged in settlement negotiations. The negotiations 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 that represent diverse interests²; (2) it must, as a package, benefit customers and the public interest; and (3) it must not violate any important regulatory principle or practice.³ The Stipulation, as discussed below, meets all three requirements.

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 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.

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

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.

Throughout the two public hearings residential customers stated that the economy is bad and that their income is not increasing and as a result a 19.04% increase for Aqua Ohio would result in a customer rate increase that was unfair.⁴ Residential customers at the July 20, 2010 public hearing also raised concern about the quality of service they

⁴ Lake County Public Hearing at Tr. 11-17, Case No. 09-1044-WW-AIR (July 13, 2010) (e.g. Ms. Mahoning stated that the economy is bad and that many senior citizens in the service territory did not receive a raise in their fixed incomes and thus allowing an extremely high increase for Aqua Ohio -- 19.04% -- would cause a hardship for many customers. Tr. 11-12); Williams County Public Hearing, Case No. 09-1044-WW-AIR at Tr. 10-41 (July 20, 2010) (e.g. Ms. Bilton stated that the 19 percent increase was too high, that the customers in this area could not pay that much more and that she could not understand why such a large increase was needed. Tr. 23-25).

were receiving from Aqua Ohio⁵ and the “availability for use” charge that Lake Seneca customers were required to pay.⁶ Under the Stipulation, Aqua’s revenues will increase by 9.71% as opposed to the 19.04% increase requested by the Company. The Stipulation also benefits Aqua’s residential customers by requiring Aqua Ohio to take additional measures to monitor, and investigate all consumer water quality and service complaints. In particular, for the Lake Seneca Community where water quality concerns have been an issue in the past, the Company has agreed to investigate any complaints received by residential customers within twenty-one days. The Stipulation also addresses concerns about the “availability for use” charge that consumers were obligated to pay to have the right to connect to the Lake Seneca water supply system – the availability for use charge has been eliminated.⁷ 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 where these parties reached settlements. Thus, the Stipulation meets the third criterion for reasonableness recognized by the Supreme Court of Ohio and the Commission.

⁵ Williams County Public Hearing, Case No. 09-1044-WW-AIR at Tr. 10-41(July 20, 2010) (e.g. Mr. Torkelson, Tr. 15-17; Ms. Schmunk, Tr. 26-29; Ms. Cheisa, Tr. 35-36; and Ms. Belau, Tr. 36-39).

⁶ Williams County Public Hearing, Case No. 09-1044-WW-AIR at Tr. 10-41(July 20, 2010) (e.g. Ms. Torkelson, Tr. 14-17).

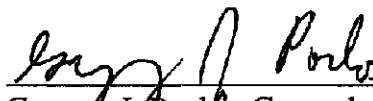
⁷ Stipulation (July 28, 2010) at 6, paragraph 7.

IV. CONCLUSION

For the reasons set forth herein, the Commission should approve the Stipulation without modification in this case. The Stipulation contains appropriate improvements for customers as compared to Aqua's original Application, including with regard to the rates for water service and with regard to the quality of service (where Aqua will be required to take additional measures to monitor and investigate all consumer water quality and service complaints).

Respectfully submitted,

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CONSUMERS' COUNSEL

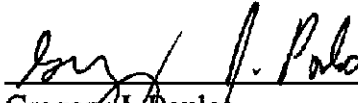


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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Brief* was served via regular U.S. Mail service, postage prepaid, and via electronic transmission upon the parties listed below this 4th day of August, 2010.



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