

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Aqua Ohio, Inc. for Authority to ) Case No. 09-1044-WW-AIR  
Increase Rates and Charges in the Lake )  
Erie Division. )

OPINION AND ORDER

The Commission, considering the above entitled application, hereby issues its Opinion and Order in this matter.

APPEARANCES:

Chester, Willcox & Saxbe, LLP, by Mark S. Yurick, 65 East State Street, Suite 1000, Columbus, Ohio 43215, on behalf of Aqua Ohio, Inc.

Richard Cordray, Ohio Attorney General, by John H. Jones and Sarah Parrot, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215-3793, on behalf of the Staff of the Public Utilities Commission of Ohio.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, and Gregory J. Poulos, Michael E. Idzkowski, and Kyle L. Verrett, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215-3485, on behalf of the residential customers of the Lake Erie Division of Aqua Ohio, Inc.

HISTORY OF THE PROCEEDING:

The applicant is Aqua Ohio, Inc. (Aqua Ohio, Company, or applicant), an Ohio corporation and a public utility supplying water service to consumers within the State of Ohio. The Lake Erie Division of Aqua Ohio serves 31,423 customers and consists of the City of Mentor and surrounding communities, the former Lake Erie East Division of Aqua Ohio, the former Norlick Place Water Company, and the former Seneca Utilities, Inc. Water Company. The former Lake Erie East Division purchases its water from the Ohio-American Water Company; the remainder of applicant's Lake Erie Division has its own water treatment plant (Staff Ex. 1 at 1).

On November 3, 2009, the applicant filed a notice of intent to file an application for an increase in rates to be charged and collected for water service to customers in its Lake Erie Division. By entry issued December 2, 2009, the Commission approved the requested test period of January 1, 2009, through December 31, 2009, and the requested

date certain of March 31, 2009. The application for an increase in rates, along with the standard filing requirements, was filed by the applicant on December 11, 2009. By entry issued January 20, 2010, the Commission ordered that the application be accepted for filing as of December 11, 2009.

In accordance with Section 4909.19, Revised Code, the Commission's staff (Staff) conducted an investigation of the matters set forth in the application and attached exhibits. On May 21, 2010, Staff filed its Staff Report of Investigation (Staff Ex. 1). Copies of the report were served as required by Section 4909.19, Revised Code.

By entry issued June 25, 2010, intervention was granted to the Ohio Consumers' Counsel (OCC). Objections to the Staff report were timely filed by Aqua Ohio and OCC on June 21, 2010.

Aqua Ohio's current rates and charges for its Lake Erie Division were established in 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 Lake Erie Division*, by Opinion and Order issued May 14, 2008. The applicant's proposed rates in this proceeding, when applied to the total adjusted test year sales volume, would generate additional revenue of \$2,811,133, an increase of approximately 19.04 percent over current revenues (Joint Ex. 1, Ex. 1 Schedule A-1).

The local public hearings in this case were conducted on July 13 and 20, 2010, at the Mentor Senior Center, Mentor, Ohio, and the Lake Seneca Arrowhead Lodge, Montpelier, Ohio, respectively. Three individuals testified at the public hearing in Mentor and ten individuals testified at the public hearing in Montpelier. Witnesses expressed concerns regarding the proposed increase and the quality of the provisioned water.

#### COMMISSION REVIEW AND DISCUSSION:

The evidentiary hearing was scheduled for July 22, 2010. At the hearing, the parties requested that the evidentiary hearing be continued until July 29, 2010, for the stated purpose of reaching a stipulation in this matter. The continuance was granted to July 29, 2010.

On July 28, 2010, a joint stipulation and recommendation was filed by the applicant, Staff, and OCC and later introduced as Joint Ex. 1 at the evidentiary hearing conducted on July 29, 2010. Additionally, at the evidentiary hearing, the applicant introduced Aqua Ohio Exs. 1 (Aqua Ohio's application, updates, supplements and modifications thereto), 2 (prefiled testimony of Louis S. Krieder), 3 (prefiled testimony of Richard A. Hideg), 4 (prefiled testimony of Robert A. Kopas), 5 (prefiled testimony of Robert G. Liptak), 6 (prefiled testimony of Theodore C. Russell), 7 (prefiled testimony of David R. Monie), and 8 (prefiled testimony of John J. Spanos). OCC introduced OCC Exs. 1 (prefiled testimony of Amr A. Ibrahim), 2 (prefiled testimony of Daniel J. Duann),

3 (prefiled testimony of James D. Williams), and 4 (prefiled testimony of Steven B. Hines). Staff introduced Staff Exs. 1 (Staff Report filed on May 21, 2010), 2 (prefiled testimony of Stephen R. Chaney), 3 (prefiled testimony of William Ross Willis), 4 (prefiled testimony of Mary Vance), 5 (prefiled testimony of Peter Baker), 6 (prefiled testimony of Clifford Evans), 7 (prefiled testimony of Chuck Goins), and 8 (prefiled testimony of Marchia Rutherford). On August 4, 2010, OCC filed a brief in support of the proposed stipulation. Finally, on June 7, 2010, and August 10, 2010, Aqua Ohio filed the proofs of publication for the hearings in Mentor, Ohio and Montpelier, Ohio, respectively.

#### SUMMARY OF STIPULATION:

The stipulation provides that:

- (1) The parties agree that a just and reasonable increase in the revenue requirement for Aqua Ohio's Lake Erie Division is \$1,437,094, which brings total revenues resulting from this case to \$16,236,090 (Joint Ex. 1, Ex. 1 Schedule A-1). The parties further agree that the total adjusted operating revenues for the Lake Erie Division for the test year are \$14,798,996; its total adjusted operating expenses are \$12,426,082, and its net operating income is \$2,372,914 (Joint Ex. 1, Ex. 1 Schedule C-1). The parties conclude that a net operating income of \$2,372,914 is insufficient to provide Aqua Ohio with reasonable compensation for water service rendered to its Lake Erie Division customers (Joint Ex. 1 at 5).
- (2) The parties agree that the rates are based on the parties' settlement of the issues raised by Aqua Ohio's application predicated on a Test Year of January 1, 2009, to December 31, 2009, a date certain of March 31, 2009, the Staff Report of Investigation, the parties' objections to the Staff Report of Investigation, and direct testimony.
- (3) The parties agree that the stipulated rates will be effective with services rendered after Commission approval of the stipulation and Aqua Ohio's filing of the final compliance tariffs.
- (4) Aqua Ohio agrees to the following changes to its tariff:
  - (a) Reconnection charge of \$48.28 for regular hours;
  - (b) Reconnection charge of \$135.60 for "other than regular hours";
  - (c) Account activation charge of \$25.57; and

(d) Dishonored payment charge of \$21.37.

(Joint Ex. 1, Ex. 3)

- (5) Within 30 days of this Opinion and Order, Aqua Ohio, in conjunction with Staff and OCC, will develop and mail a customer notice to those customers or responsible parties who are affected by the decision to eliminate the available for use (AFU) charge in the Lake Seneca Community. The customer notice shall include an explanation of why the charge is being eliminated.
- (6) Aqua Ohio will seriously consider merging the Lake Erie Division with the Masury Division under the stipulated terms in Case No. 09-560-WW-AIR.
- (7) To resolve customer service issues, Aqua Ohio has agreed to undertake the following measures:
  - (a) Aqua Ohio shall investigate the underlying causes of water quality and service complaints that were included in the quarterly reports provided by Aqua Ohio from April 2009 through the second quarter of 2010 and file the results in a written report within 60 days of the Opinion and Order.
  - (b) Aqua Ohio shall file a quarterly operating report, beginning with the quarter ending September 2010 and each quarter thereafter. The quarterly operating reports shall include all information required under Rule 4901:1-15-14(H), Ohio Administrative Code (O.A.C.).
  - (c) All quarterly operating reports shall be filed with the Commission within 30 days of the end of that quarter.
- (8) Noting water discoloration complaints from Lake Seneca customers, Aqua Ohio agrees to investigate within 21 days a complaint raised by a customer, the Commission, or by the OCC on behalf of Aqua's customers by members of the Lake Seneca community. If the discolored water is being caused by conditions related to the customers' lines and internal plumbing, then Aqua Ohio shall inform the customer of its finding and offer guidance on how to remedy the discolorations.

- (9) Aqua Ohio agrees to meet with Staff and OCC within 60 days of this Opinion and Order to discuss the Infrastructure Leakage Index (ILI) calculations and to develop a format with Staff for reporting the ILI. Aqua Ohio further agrees to file the first report including 2009 and 2010 data for the Lake Erie Division only by February 28, 2011, and subsequent reports of ILI data for all Aqua Ohio divisions with customer counts exceeding 3,000 are to be submitted by February 28 of the year following the reporting year.
- (10) Pursuant to recommendations set forth in the Staff Report of Investigation, Aqua Ohio will not seek recovery of incremental pension expense in this proceeding. Aqua Ohio will defer annual pension expense incremental to the amount currently included in base rates and shall record the deferral in either a unique sub-account of account 182.3, "Other Regulatory Assets" or Account 254, "Other Regulatory Liabilities." Aqua Ohio will not seek recovery of this pension deferral in a base rate proceeding for a period of five years. Aqua Ohio also agrees that the deferred balance will not accrue carrying charges. Aqua Ohio will file, under this docket, annual updates on the deferral balance, and Staff and OCC will review these updates and the regulatory asset. The Commission may determine whether the five-year deferral continues to be appropriate. The update should be filed annually by February 14, starting in 2011.
- (11) Under the stipulation, OCC and Staff retain all their rights under the Ohio Administrative Code and the Ohio Revised Code with regard to service quality, rates, and other matters, including the right to seek remedies for any failures of Aqua Ohio to comply with the Ohio Administrative Code, the Ohio Revised Code, or other regulatory standards.
- (12) The parties agree that Staff's Report of Investigation resolves any and all remaining issues not addressed in the stipulation.
- (13) All notices required by law or by order of the Commission or its attorney examiner to be made and published, up until the date the parties signed this stipulation, have been properly made and published.

(Joint Ex. 1).

REVIEW OF THE STIPULATION:

The stipulation submitted on July 28, 2010, is unopposed. Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See, *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St. 3d 123, at 25, citing *Akron V. Pub. Util. Comm.*, 55 Ohio St. 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 2004); *Ohio Edison Co.*, Case No. 91-698-EL-FOR *et al.* (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St. 3d 547 (citing *Consumers' Counsel, supra*, at 126). The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission (*Id.*).

Based on our three-prong standard of review, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met. Counsel for the applicant, Staff, and OCC have been involved in many cases before the Commission, including a number of prior cases involving rate issues. Further, a review of the terms of the stipulation and the schedules and tariffs attached thereto show that the parties engaged in comprehensive negotiations prior to signing the agreement.

The stipulation also meets the second criterion. As a package, it advances the public interest by resolving all issues raised in this proceeding without incurring the time and expense of extensive litigation.

Finally, the stipulation meets the third criterion because it does not violate any important regulatory principle or practice. Indeed, the Commission finds that the application, as modified by the stipulation, complies with the procedural requirements for these types of cases and, in fact, no party has argued that the company has violated any statutory or rule requirements concerning these types of applications.

Our review of the stipulation indicates that it is in the public interest and represents a reasonable disposition of this proceeding. We will, therefore, adopt the stipulation in its entirety.

#### RATE BASE

The following information presents the value of Aqua Ohio's property used and useful in the rendition of water service as of the March 31, 2009, date certain, as stipulated by the parties (Joint Ex. 1, Ex. 1 Schedule B-1):

Plant in Service	\$	90,551,106
Less: Depreciation Reserve	\$	(19,261,665)
Net Plant in Service		<u>71,289,441</u>
Less: Contributions in Aid of Construction		26,052,151
Less: Advances for Construction		146,698
Less: Customers' Advances		6,865
Less: Other Items		<u>3,399,825</u>
Rate Base	\$	<u>41,683,902</u>

The Commission finds the rate base stipulated by the parties to be reasonable and proper and adopts the valuation of \$41,683,902 as the rate base for purposes of this proceeding.

#### OPERATING INCOME

The following information reflects Aqua Ohio's operating revenue, operating expenses, and net operating income for the 12 months ended December 31, 2009 (Joint Ex. 1, Ex. 1 Schedule C-1):

<u>Operating Revenue</u>	
Metered Sales	\$ 13,655,923
Unmetered Sales	\$ 509,167
Other Operating Revenue	\$ 633,906
Total Operating Revenue	\$ 14,798,996
<u>Operating Expenses</u>	
Operation and Maintenance	\$ 6,281,625
Depreciation and Amortization	\$ 1,734,742
Taxes, Other Than Income	\$ 3,849,494
Federal Income Taxes	\$ 560,221
Total Operating Expenses	\$ 12,426,082
<u>Net Operating Income</u>	\$ 2,372,914

The Commission finds Aqua Ohio's operating revenue, operating expenses, and net operating income as stipulated to be reasonable and proper. The Commission will, therefore, adopt these figures for purposes of this proceeding.

#### RATE OF RETURN AND AUTHORIZED INCREASE

A comparison of test year operating revenue of \$14,798,996 with allowable test year expenses of \$12,426,082 indicates that the applicant, under its present rates, had a net operating income of \$2,372,914. Applying this figure to the rate base of 41,683,902 results in a rate of return of 5.69 percent during the test year. A rate of return of 5.69 percent is insufficient to provide the applicant with reasonable compensation for the water service it renders to its customers. The parties have stipulated that a fair and reasonable rate of return in this case is 7.85 percent, which is Staff's recommended rate of return (Joint Ex. 1, Ex. 1 Schedules A-1, C-1). The Commission believes that the stipulated rate of return is reasonable and will adopt it.

The parties have agreed that the company should be authorized to increase its revenues by \$1,437,094, an increase of 9.71 percent in revenues over the current adjusted annual revenues. Adding the stipulated increase of increase of \$1,437,094 to the current adjusted test year revenues of \$14,798,996 produces a new pro forma revenues total of \$16,236,090. After making the necessary adjustments to operations and maintenance expense, taxes other than income, and income taxes, the total allowable expenses would be increased by \$537,816 to \$12,963,898. A comparison of the pro forma revenue of \$16,236,090 with the total allowable expenses of \$12,963,898 indicates that the company would realize net operating income of \$3,272,192. The application of net operating



income to the rate base of \$41,683,902 results in a rate of return of 7.85 percent (Joint Ex. 1, Ex. 1 Schedules A-1, C-1).

The Commission finds the stipulated increase of \$1,437,094 in revenues, which results in a rate of return of 7.85 percent, to be fair, reasonable, and supported by the record and will, therefore, adopt it for purposes of this proceeding. The company is entitled to place tariffs in effect which will generate \$1,437,094 in additional revenues resulting in total operating revenue of \$16,236,090. This represents an increase in revenue of 9.71 percent.

### RATES AND TARIFFS

As part of its investigation in this matter, staff reviewed the company's various rates and charges and the provisions governing terms and conditions of service. By way of the stipulation, the parties have resolved all outstanding issues resulting in tariff changes being filed as Joint Ex. 1, Ex. 2. These proposed replacement tariff pages would produce revenues authorized by this order and which are in conformance with the changes agreed to by the parties. The Commission finds that the filed replacement tariff sheets are reasonable and are approved as part of the stipulation.

### CUSTOMER NOTICE AND EFFECTIVE DATE

The parties have also prepared and submitted proposed customer notices (Joint Ex.1, Ex. 3). The Commission directs that Aqua Ohio send the notices to its customers after the issuance of this Opinion and Order and prior to the issuance of bills containing the rates set forth in the stipulation.

Aqua Ohio should be aware that, before tariffs can become effective, four complete final copies of the approved tariffs must be filed. The new tariffs shall become effective for all service rendered on or after the effective date of the tariffs.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On December 11, 2009, Aqua Ohio, Inc. filed an application for an increase in rates in its Lake Erie Division.
- (2) The company's application was filed pursuant to, and this Commission has jurisdiction of the application under, the provisions of Sections 4909.17, 4909.18, and 4909.19, Revised Code, and the application complies with the requirements of these statutes.
- (3) A Staff investigation was conducted and a report duly filed and mailed, and public hearings held herein, the written notice of

which complied with the requirements of Sections 4909.19 and 4903.083, Revised Code.

- (4) Local public hearings were held in this case on July 13, 2010, in Mentor, Ohio, and July 20, 2010, in Montpelier, Ohio.
- (5) On July 28, 2010, a stipulation and recommendation was filed in this case by Aqua Ohio, Staff, and OCC.
- (6) The stipulation is the product of serious bargaining between knowledgeable parties, benefits ratepayers, advances the public interest, and does not violate any important regulatory principles.
- (7) The stipulation submitted by the signatory parties is reasonable and, as indicated herein, shall be adopted in its entirety.
- (8) The value of all of the company's property used and useful for the rendition of water customers affected by this application, determined in accordance with Section 4909.15, Revised Code, as of the date certain of March 31, 2009, is \$41,683,902.
- (9) For the 12-month period ending December 31, 2009, the test period in this proceeding, the revenues, expenses, and income available for fixed charges realized by the company under its present rate schedules were \$14,798,996, \$12,426,082, and \$2,372,914, respectively.
- (10) The net annual compensation of \$2,372,914 represents a rate of return of 5.69 percent on the jurisdictional rate base of \$41,683,902.
- (11) A rate of return of 5.69 percent is insufficient to provide the applicant with reasonable compensation for the water service rendered to its customers.
- (12) A stipulated revenue increase of \$1,437,094 will result in a return of \$3,272,192. The total resulting operating revenue, when applied to the rate base of \$41,683,902 yields a rate of return of approximately 7.85 percent.
- (13) The allowable expenses of the applicant for purposes of this proceeding are \$12,963,898.
- (14) The allowable gross annual revenue to which the company is entitled for purposes of this proceeding is the sum of the return stated in Finding 12 and the expense figure set forth in Finding 13, or \$16,236,090.

- (15) A rate of return of 7.85 percent is fair and reasonable under the circumstances of this case and is sufficient to provide the applicant just compensation and return on its property used and useful in the rendition of water service to its customers.
- (16) The applicant's proposed tariffs and notice to customers are consistent with the discussion and findings set forth in this Opinion and Order and shall be approved. The applicable existing tariff pages governing water service to its customers should be withdrawn and canceled, and the applicant is authorized to file in final form the replacement tariff pages that the Commission has approved herein.

ORDER:

It is, therefore,

ORDERED, That the joint stipulation and recommendation, filed on July 28, 2010, by Aqua Ohio, Staff, and OCC be approved in accordance with this Opinion and Order. It is, further,

ORDERED, That Aqua Ohio comply with the terms and provisions of the joint stipulation and recommendation. It is, further,

ORDERED, That the application of Aqua Ohio for authority to increase its rates and charges for water service in its Lake Erie Division is granted to the extent provided in this Opinion and Order. It is, further,

ORDERED, That the proposed revised tariff sheets and customer notices are approved and the company is authorized to cancel and withdraw its current applicable tariff sheets and substitute them with the approved tariff sheets. The effective date of the new tariff sheets shall be the date the company files, in final form, four complete, printed copies of its revised tariff sheets in accordance with this Opinion and Order. The new tariff sheets shall be effective on a services-rendered basis. It is, further,

ORDERED, That the company send its customer notices prior to the issuance of bills containing the rates set forth in the stipulation. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Alan R. Schriber, Chairman

  
Paul A. Centolella

  
Valerie A. Lemmie


  
Steven D. Lesser

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Cheryl L. Roberto

JML/LDJ/dah

Entered in the Journal

**SEP 01 2010**  


Renee J. Jenkins  
Secretary