

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of       )  
American Water Works Company, Inc.,       ) Case No. 11-5102-WS-ATR  
Ohio American Water Company and Aqua       )  
Ohio, Inc. for Approval of the Purchase of       )  
Common Stock of Ohio American Water       )  
Company by Aqua Ohio Inc.                       )

In the Matter of the Application of Aqua       ) Case No. 11-5103-WS-AAM  
Ohio, Inc. for Accounting Authority.       )

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**MOTION TO INTERVENE  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where the American Water Works Company, Inc. ("AWW"), Ohio American Water Company ("OAW") and Aqua Ohio, Inc. ("Aqua") (collectively, "Joint Applicants") have filed a joint application ("Application") for approval of the purchase of common stock of OAW.<sup>1</sup> OCC is filing on behalf of over 130,000 residential utility customers of the Joint Applicants. The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

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<sup>1</sup> See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

Respectfully submitted,

BRUCE J. WESTON  
INTERIM CONSUMERS' COUNSEL

/s/ Kyle L. Kern

Kyle L. Kern, Counsel of Record

Melissa R. Yost

Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (Kern Direct) (614) 466-9585

Telephone: (Yost Direct) (614) 466-1291

[kern@occ.state.oh.us](mailto:kern@occ.state.oh.us)

[yost@occ.state.oh.us](mailto:yost@occ.state.oh.us)

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**MEMORANDUM IN SUPPORT**

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On September 13, 2011, the American Water Works Company, Inc. (“AWW”), Ohio American Water Company (“OAW”) and Aqua Ohio, Inc. (“Aqua”) (collectively, “Joint Applicants”) filed an application (“Application”) for approval of Aqua’s purchase of 100% of the common stock of OAW. In the Application, Joint Applicants request the Commission approve the following:

- (i) Aqua’s acquisition of 100% of the common stock of Ohio American; (ii) the waiver of a hearing pursuant to R.C. 4905.48; and (iii) the provision of notices advising affected customers of this proceeding and the approvals requested herein.<sup>2</sup>

OCC has the interest in advocating that Aqua should provide adequate water and wastewater service for a just and reasonable rate in areas currently served by OAW, without detriment to Aqua’s existing customers. OCC has authority under law to represent the interests of over 130,000 residential utility customers of the Joint Applicants, pursuant to R.C. Chapter 4911.

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<sup>2</sup> See *In the Matter of the Joint Application of American Water Works Company, Inc., Ohio American Water Company and Aqua Ohio, Inc. for Approval of the Purchase of Common Stock of Ohio American Water Company by Aqua Ohio Inc.*, Application (September 13, 2011) at 1.

R.C. 4903.221 provides, in part, that any person “who may be adversely affected” by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio’s residential customers may be “adversely affected” by this case, especially if the customers were unrepresented in a proceeding where the Joint Applicants have proposed that Aqua will acquire 100% of the common stock of OAW. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor’s interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC’s interest is representing the residential customers of the Joint Applicants in this case where Aqua has proposed to purchase 100% of the common stock of OAW. OCC’s interest is related to the merits of this case because R.C. 4905.48 specifically states that a public utility must offer its customers “adequate service for a reasonable and just rate.”<sup>3</sup> In addition, OCC’s interest lies in protecting residential customers against any adverse impacts from the Application,<sup>4</sup> and

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<sup>3</sup> See R.C. 4905.48(D).

<sup>4</sup> See *In the Matter of the Application for Approval of Acquisition by The Chillicothe Telephone Company of United Communications, Inc.*, Case No. 94-1385-TP-UNC, 1994 Ohio PUC LEXIS 817 (Oct. 6, 1994), where the Commission determined a “change in ownership [would] not adversely effect the customers of any involved jurisdictional utility” at \*4.

also in ensuring that residential customers are well-served from the acquisition if it is approved.<sup>5</sup> This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for residential customers will include advancing the position that "rates should be no more than what is reasonable and lawful under Ohio law, for service that is adequate under Ohio law." To this end, OCC submits that the Commission must evaluate "the totality of the effect of the disposition of assets on the companies' customers," when reviewing the Application.<sup>6</sup> OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

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<sup>5</sup> See *In the Matter of the Joint Application of Ohio-American Water Company and Ohio Suburban Water Company For Approval of the Sale of Ohio Suburban Water Company Common Stock to Ohio-American Water Company*, Case No. 95-366-WW-UNC, 1993 Ohio PUC LEXIS 656 (July 22, 1993), where the Commission determined that "Section 4905.48, Revised Code provides that the granting or denying of this petition is based on the Commission's conclusion that the public will thereby be furnished adequate service for a reasonable and just rate, rental, toll, or charge. It is clear, based on the pleadings, that **the public is well served** by the granting of this petition,"<sup>5</sup> at \*15 (Emphasis added).

<sup>6</sup> See *In the Matter of the Application of FirstEnergy Corp. on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Continue and Modify Certain Regulatory Accounting Practices and Procedures, to Transfer Jurisdictional Assets, to Establish Fuel Efficiency Procedures, to Freeze and Reduce Electric Rates and to File and Implement Tariffs Not for an Increase in Rates, All in Connection With and Subject to the Merger of Ohio Edison Company and Centerior Energy Corporation; In the Matter of the Commission's Review of the Merger of Ohio Edison Company and Centerior Energy Corporation*, Case Nos. 96-1211-EL-UNC, 96-1322-EL-MER, 1997 Ohio PUC LEXIS 52, 176 P.U.R.4th 481 (Jan. 30, 1997), at \*83; *In the Matter of the Application of Ohio Edison Company for Authority to Continue and Modify Certain Regulatory Accounting Practices and Procedures, to Transfer Jurisdictional Assets, to Establish Fuel Efficiency Procedures, to Freeze and Lower Overall Electric Rates to Customers, and to File Tariffs Not for an Increase in Rates*, Case No. 95-830-EL-UNC, 1995 Ohio PUC LEXIS 764, 165 P.U.R.4th 22 (Oct. 18, 1995), at \*62-63.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest" according to Ohio Adm. Code 4901-1-11(A)(2). As the advocate for residential utility customers, OCC has a very real and substantial interest in this case where Aqua has proposed to purchase of 100% of the common stock of OAW. OCC also has the interest in assuring that Aqua will provide adequate water and wastewater service for a just and reasonable rate in areas currently served by OAW, without detriment to Aqua's existing customers.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the "extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio's residential utility customers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio confirmed OCC's right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed the PUCO erred by

denying its interventions. The Court found that the PUCO abused its discretion in denying OCC's interventions and that OCC should have been granted intervention in both proceedings.<sup>7</sup>

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential customers, the Commission should grant OCC's Motion to Intervene.

Respectfully submitted,

BRUCE J. WESTON  
INTERIM CONSUMERS' COUNSEL

/s/ Kyle L. Kern

Kyle L. Kern, Counsel of Record

Melissa R. Yost

Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (Kern Direct) (614) 466-9585

Telephone: (Yost Direct) (614) 466-1291

[kern@occ.state.oh.us](mailto:kern@occ.state.oh.us)

[yost@occ.state.oh.us](mailto:yost@occ.state.oh.us)

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<sup>7</sup> See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via regular U.S. Mail, postage prepaid this 6<sup>th</sup> day of December 2011.

/s/ Kyle L. Kern \_\_\_\_\_

Kyle L. Kern

Assistant Consumers' Counsel

### **SERVICE LIST**

Thomas Lindgren  
Devin Parram  
Public Utilities Commission of Ohio  
180 E. Broad St., 6<sup>th</sup> Fl.  
Columbus, OH 43215  
[Thomas.lindgren@puc.state.oh.us](mailto:Thomas.lindgren@puc.state.oh.us)  
[Devin.parram@puc.state.oh.us](mailto:Devin.parram@puc.state.oh.us)

John W. Bentine  
Mark S. Yurick  
Chester, Willcox & Saxbe LLP  
65 East State Street, Suite 1000  
Columbus, OH 43215  
[jbentine@cwsllaw.com](mailto:jbentine@cwsllaw.com)  
[myurick@cwsllaw.com](mailto:myurick@cwsllaw.com)

Attorneys for Aqua Ohio, Inc.

Mark A. Whitt  
Melissa L. Thompson  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, OH 43215  
[whitt@carpenterlipps.com](mailto:whitt@carpenterlipps.com)  
[thompson@carpenterlipps.com](mailto:thompson@carpenterlipps.com)

Attorneys for American Water Works  
Company, Inc. and Ohio American Water  
Company



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**12/6/2011 3:35:58 PM**

**in**

**Case No(s). 11-5102-WS-ATR, 11-5103-WS-AAM**

Summary: Motion Motion to Intervene by the Office of the Ohio Consumers' Counsel  
electronically filed by Ms. Deb J. Bingham on behalf of Kyle L. Kern