

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review)	
of Chapter 4901:1-15 of the Ohio)	
Administrative Code, Standards for)	Case No. 11-5605-WS-ORD
Waterworks Companies and Sewage)	
Disposal Companies.)	

**COMMENTS
OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

In this important case the Public Utilities Commission of Ohio (“PUCO” or “Commission”) must fulfill its duty under R.C. 119.032 to review the rules that govern the adequacy of water and sewer service provided to Ohio’s customers of investor-owned waterworks and sewage disposal system companies. The PUCO reviews these rules every five years to determine whether to continue the rules without change, amend the rules, or rescind the rules.¹

In its review the Commission is required to consider the purpose, scope, and intent of the statute, whether changes should be made to permit more flexibility at the local level, where changes should be made to eliminate unnecessary paperwork, and whether the rule duplicates, overlaps or conflicts with other rules.² Additionally, the Commission must consider the continued need for the rule, the nature of any complaints

¹ See R.C. 119.032(C).

² See id.

or comments received concerning the rule, and other relevant factors that may have changed in the subject matter area affected by the rule.³

By Entry dated November 9, 2011, the PUCO requested comments concerning Ohio Admin. Code 4901:1-15, Standards for Waterworks Companies and Sewage Disposal Companies. As the statutory representative of residential consumers in Ohio, the Office of the Ohio Consumers' Counsel ("OCC") welcomes the opportunity to offer these comments on behalf of the approximate 200,000 water and sewage consumers in the state. OCC has proposed two new rules in addition to commenting on suggested rule amendments by the PUCO Staff. To this end, OCC's suggested deletions in text are reflected as strikethroughs. Suggested additions in text are reflected as underlined text.

II. COMMENTS

4901:1-15-01 Definitions

The PUCO Staff proposed the addition of a new term titled a "Major operational event" to the list of definable terms in the rules. According to the proposed PUCO Staff definition, a major operational event is a "significant change to a system's normal operations." OCC supports the inclusion of major operational event to the list of definable terms in the rules; however, the definition proposed by the PUCO Staff could potentially be found to be overly broad, ambiguous and/or discretionary. Given that the purpose of defining a major operational event is to ensure proper reporting to authorities of events that have a potential adverse impact on the water and sewage service being provided to consumers,⁴ the definition should be clarified. In this regard, OCC

³ See id.

⁴ See Ohio Adm. Code 4901:1-15-10(C)(1).

recommends that the Commission adopt the following definition for a “major operational event:”

- (H) “Major operational event” means any significant event that adversely affects the service being provided to consumers.
~~significant change to a system’s normal operations.~~

4901:1-15-12 Emergency operations

In subparagraph (E) of 4901:1-15-12, the PUCO Staff has proposed to change the reporting requirements for unplanned service outages so that a waterworks company would only be required to report outages that are expected to last over four hours, rather than reporting outages that are expected to last longer than two hours. There was no rationale provided for why the PUCO Staff recommends changing the reporting requirement from two hours to four hours. In addition, OCC is unaware of any cost or operational impact studies that were conducted that would support changing the two hour reporting requirement.

Moreover, changing the reporting requirement from two hours to four hours may not meet the intent of Ohio law. Specifically, R.C. 4905.06 provides that the PUCO has the statutory responsibility to provide general supervisory oversight of the public utilities including the authority to be kept informed as to the adequacy of service and the safety and security of the public.⁵ In addition, R.C. 4905.22 states that every public utility “shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable.”

⁵ R.C. 4905.06 General Supervision.

Changing the reporting requirement from outages that are expected to last over two hours to only those outages that are expected to last over four hours **significantly limits** regulatory oversight by the PUCO, and is therefore not in the public interest. Being without water on an unplanned basis for two hours can be disruptive for homes and businesses and can place health and safety burdens on consumers. Thus, OCC does not support the Staff's recommendation to change the reporting requirement from two hours to four hours.

The PUCO's reporting requirements are an important tool for helping ensure effective oversight of public utilities. OCC recommends that the Commission retain the current outage reporting standard of two hours instead of adopting the Staff's proposed changes to the reporting requirement for unplanned outages, for the reasons articulated above.

4901:1-15-14 Records and reports

Ohio Adm. Code 4901:15-14 concerns record-keeping requirements and the reports that waterworks and sewage disposal utilities are required to maintain. The PUCO Staff did not propose any changes to this rule. However, waterworks and sewage utilities are not currently required to submit reports to the PUCO that contain information concerning any difficulties that residential customers have paying their water and sewage bills. Given the general economic conditions in the state and the impact of frequent rate increases being requested by many of the water utilities, readily available credit and collection data would be helpful to better understand the impact that rate increases are having on the communities that these water and sewage disposal utilities serve. High water bills affect all residential consumers; however, the impact on certain vulnerable

populations such as low-income Ohioans can result in a loss of access for these consumers to essential utility services.⁶

OCC recommends that the Commission require waterworks and sewage disposal utilities with more than 15,000 residential customers to file annual service disconnection reports. OCC anticipates that the data in the annual disconnection reports will be valuable for the utilities, the PUCO and OCC in better understanding the magnitude of disconnection issues. The annual service disconnection report should reflect by month, the number of disconnections for non-payment, the average disconnection amount, the number of customers on payment plans, the average arrears for accounts that are more than 60 days past due, and the number of disconnection notices being sent to residential consumers. The utilities already collect this data (or similar data) on an account specific and aggregate basis pursuant to regulatory records requirements.⁷

Data concerning water and sewage disconnections and arrearages are reasonable measures of the overall affordability of utilities and the collection and reporting of such data is in the public interest. Accordingly, OCC suggests that the Commission adopt the following new rule:

4901:1-15-16 (I) Each waterworks company and/or sewage disposal system company with more than 15,000 customers shall annually file a service disconnection report by no later than January 31st of each year. The service disconnection report shall contain by month, the number of service disconnections for non-payment, the average disconnection amount, the total number of customers on payment plans, the average 60-days arrears, and the number of disconnection notices sent to customers.

⁶ See Access to Utility Service, National Consumer Law Center, Fourth Edition, 2008, at 301.

⁷ See Ohio Adm. Code 4901:1-9-06.

4901:1-15-16 Notification of customer rights

Under the existing rules, each waterworks company and/or sewage disposal company is required to provide a copy of the customer rights and obligations to new customers and upon request to existing customers. The customer rights and obligations document includes important information about the services the utility is required to provide and remedies that are available to consumers should they have questions or concerns about their service.

Given that after a period of time customers may not recall the information in the rights and obligations document or the content may have changed (or some customers may have initiated service before the document was created), customers will benefit from being provided a summary of the customer rights and obligations at least biennially as a bill insert or upon request. Additional costs that may be associated with providing customers with this important information can be mitigated to the extent that the utility provides the document concurrent with a customer bill.

Accordingly, OCC recommends that the Commission amend Ohio Adm. Code 4901:1-15-16(A) as follows:

- (A) Each waterworks company and/or sewage disposal company shall provide, at the time service is initiated, to new customers and ~~to upon request of an existing~~ customers at least biennially thereafter or upon request, a summary of their rights and obligations under these rules. The summary may be provided to customers concurrent with their monthly bill. The notice shall include current information, be in plain language, and shall be delivered to customers separately by mail or in person. The notice shall include, but not be limited to, all of the following:

4901:1-15-17 Business offices

The PUCO Staff has proposed changing the limit on the amount of money that an authorized agent of a waterworks company and/or sewage disposal system company can charge a consumer for accepting his or her bill payment. Specifically, the PUCO Staff recommends that the current cap of no more than two times the cost of a first class stamp be changed to allow the agent to charge the customer any amount that is “reasonable.” High charges added to customers’ bills by authorized agents can make utility bills all the more unaffordable for many customers who are already struggling to pay those bills. The consequences for customers being unable to pay their water and/or sewer bills can be severe and can result in health and safety issues if the service is disconnected.

For customers who do not have checking accounts, paying water and sewer bills in cash at an authorized agent may be the most cost-effective method available for paying their bill. Purchasing money orders or similar financial instruments that can be separately mailed to the company can be time consuming and expensive.

By limiting the amount of the fee to no more than two times the cost of a first class stamp, customers who do not have checking accounts will not have to pay more than twice the amount of money that customers pay who mail their payments to the utility. For some consumers, the additional costs for paying utility bills at authorized agents can add to the overall unaffordability of water and sewer utility services. In addition, many of the businesses such as grocery stores who act as authorized agents for the utilities have the opportunity to sell other goods and services when customers pay their water and/or sewer bills.

For these reasons, OCC supports keeping the charge for paying bills at authorized agents to no more than two times the cost of a first class postage stamp as reflected below:

Any charge or fee added to a customer's bill by an authorized agent must be ~~reasonable~~ no greater than two times a first class postage stamp.

In the alternative, if the Commission finds that an increase in the amount that an authorized agent may charge is warranted, OCC submits that the fee or charge should be no more than two dollars. This limit is consistent with two dollar limit that electric and natural gas customers may be charged by authorized agents for processing their utility payments.⁸ Accordingly, if the Commission finds that an increase in the charge by authorized agents to process water/sewer disposal customers' payments is warranted, the charge should be no more than two dollars.

4901:1-15-19 Meter reading, inspecting, testing, and the location of meters

Ohio Adm. Code 4901:1-5-19(C) outlines the requirements concerning the location of meters. In general, a company has the right to determine the location of a customer's meter so that the meter is accessible for reading, maintenance and for protection of the meter from the environment. However, a company's right to determine the location of the meter should not preclude a customer from having the right to access the meter for the purposes of verifying usage. For example, if the company installs the meter in a meter pit, customers may or may not have access to the meter to verify the

⁸ See Ohio Admin. Code 4901:1-10-22 (D) (Electric utility customer billing and payments), and 4901:1-13-11(E)(2) (Gas or natural gas company customer billing and payments) customers **cannot be charged more than two dollars** for processing their payments by cash, check, or money order at authorized agent locations.

usage. OCC suggests that the rules be changed so that all water customers have the right to access the meter for the purposes of verifying their usage. The following change in the rule is proposed:

(C) Location of meters

- (1) The company shall have the right to determine the location of the meter so that it is easily accessible for reading and maintenance, and protection from freezing and mechanical damage. Customers shall have the right to access all meters that are used to determine billed usage.

4901:1-15-20 Quality and adequacy of service

Ohio Adm. Code 4901:1-15-20(C)(1) imposes a requirement on each waterworks company to “furnish potable water that is safe and satisfactory quality for domestic use and that is in compliance with federal and state requirements for drinking water.” Ohio law further requires that utilities provide “necessary and adequate service.”⁹

There has been public dissatisfaction expressed at times about water quality.¹⁰ Water that is discolored, has floating sediment, or foul odors is not necessarily adequate under Ohio law. Water quality issues may also result in customers having to spend additional money to protect their property. In order to address these concerns, the Commission should mandate additional water quality standards as reflected below.

(C) Each waterworks company shall:

- (1) Furnish potable water that is of a safe and satisfactory quality for all domestic use and that is in compliance with federal and state requirements for drinking water-; free

⁹ R.C. 4905.22.

¹⁰ See customer letters: *In the Matter of the Application of Ohio American Water Company to Increase its Rates for Water and Sewer Services Provided to its Entire Service Area*, Case No. 07-1112-WS-AIR and *In the Matter of the Application of Ohio American Water Company to Increase its Rates for Water and Sewer Services Provided to its Entire Service Area*, Case No. 06-0433-WS-AIR.

from objectionable taste, odor, color and sediment; and free from elements that cause harm to customer property.

Ohio Adm. Code 4901:1-15-20(C)(5) is the rule that addresses Unaccounted-for Water (UFW). The measurement of real water loss (physical losses – i.e. main breaks), as opposed to apparent water losses (i.e. meter calibration, meter reading errors, etc.), has been an important issue in past rate cases¹¹ because there are costs related to the treatment and pumping of the water that is lost through the system. Specifically, when water is physically lost through the system, it creates more wear and tear on the treatment plant and the distribution system, increases the cost for chemicals to treat the water and increases the cost of energy needed to pump the water that is ultimately lost through breaches in the system.

The PUCO Staff has proposed several changes to the rule on UFW. In general, as this is a new concept to Ohio regulation, the PUCO Staff's proposed changes in regards to the determination and reporting of water losses appear to be reasonable. The PUCO Staff's proposed changes take a cautious approach to introducing the Infrastructure Leakage Index (ILI) method into the water loss reporting and measuring standards under the current rules. The ILI is the ratio of current annual real losses and unavoidable

¹¹ See *In the Matter of the Application of Ohio-American Water Company to Increase Its Rates for Water Service Provided to Its Entire Service Area*, Case No. 01-626-WW-AIR, Direct Testimony of Steven B. Hines, (November 15, 2001) at 3-7; *In the Matter of the Application of Aqua Ohio, Inc. for Authority to Increase Rates and Charges in the Lake Erie Division*, Case No. 09-1044-WW-AIR, Staff Report, (May 21, 2010) at 30-31; *In the Matter of the Application of Aqua Ohio, Inc. for Authority to Increase its Rates and Charges in the Lake Erie Division*, Case No. 07-564-WW-AIR, Staff Report, (November 16, 2007) at 65; *In the Matter of the Application of Ohio American Water Company for Authority to Increase its Rates For Water and Sewer Service Provided to its Entire Service Area*. Case No. 09-391-WS-AIR, Staff Report, (November 27, 2009) at 52-55; *In the Matter of the Application of Ohio American Water Company to Increase its Rates for Water and Sewer Services Provided to its Entire Service Area*, Case No. 07-1112-WS-AIR, Staff Report, (May 28, 2008) at 49-51; *In the Matter of the Application of Ohio American Water Company to Increase its Rates for Water and Sewer Services Provided to its Entire Service Area*, Case No. 06-433-WS-AIR, Staff Report, (September 25, 2006) at 14 and 77-80; *In the Matter of the Application of Ohio-American Water Company to Increase its Rates for Water and Sewer Services Provided to its Entire Service Area*, Case No. 03-2390-WS-AIR, Staff Report, (September 30, 2004) at 74-75.

annual real losses.¹² The ILI is a performance indicator used to benchmark leakage between water systems.

OCC supports the PUCO Staff's cautious approach to this issue. However, OCC has concerns regarding the PUCO Staff's proposal in paragraph (C)(5)(d) of Ohio Adm. Code 4901:1-15-20 that would allow the Staff to grant a waiver of the cost-benefit analysis under certain circumstances. Accordingly, OCC proposes that the Commission amend paragraph (C)(5)(d) as follows to address OCC's concerns for customers:

- (d) The cost benefit analysis may be waived by staff where the calculated annual infrastructure leak index for a system is equal to or less than 2.0 ~~or as found to be appropriate by historical infrastructure leak index trends.~~ for all waterworks companies subject to paragraph (5)(b) of this section. For all other waterworks companies, the cost benefit analysis may be waived if the historical infrastructure leak index trends are found to be appropriate by staff.

OCC contends that this proposed change is beneficial for the smaller systems and small one-system companies that may have difficulty meeting an ILI of 2.0 over a longer period of time. Larger systems have more resources available to identify and control UFW. Hence, the PUCO Staff's review of the historical ILI trend before issuing a waiver would be appropriate for these smaller systems.

4901:1-15-23 Customer bill format

Ohio Adm. Code 4901:1-15-23(A) requires each waterwork company and/or sewage disposal system company to render bills at regular intervals. The lack of a specific requirement for the frequency of billing may reflect circumstances when the

¹² See *Water Audits and Loss Control Programs (M36)* Third Edition (Copyright 2009) published by the American Water Works Association, page 55.

majority of Ohio water bills were rendered on a bi-monthly or quarterly basis. However, customers have paid for significant investment in metering and billing system changes such that the majority of bills can now be rendered on a monthly basis. Consequently, OCC recommends that the Commission adopt a monthly billing standard for water and sewage disposal bills as reflected below.

- (A) Each customer bill shall be accurate and rendered ~~at regular intervals~~ on a monthly basis and contain the following information:

4901:1-15-26 Past due bills

The Commission's rules do not require large waterworks and/or sewage disposal utilities (companies with more than 15,000 customers) to offer payment plans for residential customers who are delinquent in payments. Payment plans are arrangements between a utility and customer for paying outstanding debts owed to a utility for services. The PUCO has required electric and natural gas utilities to offer payment plans, to encourage payment of bills and avoid disconnection of utility services.¹³

Given that the loss of water and/or sewage disposal services can have a direct and immediate impact on the health and safety of consumers and their families, the Commission should require large waterworks and/or sewage disposal utilities to offer a minimum income-based payment plan to residential customers prior to disconnection of service. To help continue payments and avoid disconnection, the term of the standard payment plan should be no less than three months and not subject to any additional late payment charges or fees.

¹³ See Ohio Admin. Code 4901:1-18-05 which describes extended payment plans to be made available to customers whose accounts are either delinquent or who are trying to avoid a delinquency.

OCC recommends the adoption of a new rule as follows:

Ohio Adm. Code 4901:1-15-26 (D) Each waterworks and/or sewage disposal company that serves 15,000 or more customers will work with individual residential customers who have established an inability to pay their water and/or sewage disposal bill due to their income level. The waterworks and/or sewage disposal company will develop payment terms that are mutually agreeable to the customer and the company. To the extent that mutually agreeable payment terms cannot be established, the company shall offer a payment term of no less than three months for payment of the delinquent account balance plus current charges.

III. CONCLUSION

The OCC submits its comments on the PUCO Staff's proposed changes to the rules that govern waterworks companies and sewage disposal system companies in order to assist the Commission in the review of these rules. OCC's comments are directed at advocating that reasonable service standards be adopted to govern the provision of adequate water and sewage services for residential consumers in Ohio. OCC appreciates this opportunity to provide its comments on the PUCO Staff's proposed changes to these rules and to recommend new rules for the Commission's consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing Comments upon the following parties listed below via electric transmission, this 9th day of December, 2011.

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