

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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.)

Case No. 11-5102-WS-ATK

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SUPPLEMENT TO JOINT APPLICATION
FOR APPROVAL OF THE PURCHASE OF THE COMMON STOCK OF
OHIO-AMERICAN WATER COMPANY BY AQUA OHIO, INC.

On September 13, 2011, American Water Works Company, Inc. ("American"), Ohio-American Water Company ("Ohio-American") and Aqua Ohio, Inc. ("Aqua") (collectively "Joint Applicants") filed a Joint Application requesting Commission approval of (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; (iii) the provision of notices advising affected customers of this proceeding and the approvals requested herein; and (iv) accounting authority for Aqua to defer certain costs associated with the proposed transaction.

The purpose of this filing is to supplement and clarify the Joint Application and requested relief. The proposed transaction is structured slightly differently than most transactions the Commission has reviewed involving waterworks or sewage disposal systems. Such transactions usually involve the acquisition of water and/or sewer assets by the purchaser and dissolution of the seller. Structuring a transaction in this manner generally requires approval of: (a) the transfer of assets from seller to purchaser, (b) the transfer of seller's certificate of public convenience to purchaser or, alternatively, expansion of purchaser's certificate to encompass areas formerly served by seller; (c) the removal of seller from the rolls of Commission-regulated public utilities

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and (d) changes to purchaser's tariffs to reflect the foregoing and provide that seller will provide service to purchaser's former customers at existing rates, terms and conditions of service.

Although not required to do so, the Commission has also typically required applicants to publish notice of the transaction. See, e.g., Ohio-American Water Company and Citizens Utilities Company of Ohio, Case No. 00-938-WS-ATR (Sept. 7, 2000 Opinion and Order); Peninsula Water Works, Inc. and Water Works LLC, Case No. 00-12-WS-ATC (June 2, 2000 Opinion and Order); Ohio-American Water Company and Lake White Water Company, Case No. 99-978-WW-ATR (Sept. 30, 1999).

Although Aqua contemplates an end result similar to that sought by the purchasers in the foregoing cases, the relief requested in the Joint Application is more limited. At this time the Joint Applicants seek approval only for the acquisition of Ohio-American's common stock by Aqua. Ohio-American will continue to render water and sewer service under its existing certificates of public convenience, using existing assets and charging Commission-approved rates. Regulatory approval of the stock purchase sought herein shall, in itself, have no impact on customers.

In further support and clarification of the Joint Application, the Joint Applicants state:

1. As stated in paragraph 5 of the Joint Application, American, Ohio-American and Aqua have entered into a Stock Purchase Agreement (the "Agreement"), attached to the Joint Application as Exhibit A. Pursuant to the Agreement, Aqua will purchase 100% of the outstanding Ohio-American capital stock from American. Because Aqua, a public utility, is purchasing the stock of Ohio-American, another public utility, the transaction is subject to Commission approval under R.C. 4905.48(D).

2. R.C. 4905.48(D) provides, "Any such public utility may purchase the stock of any other such public utility." The Joint Application constitutes the required "petition, joint or otherwise, signed and verified by the president and the secretary of the respective companies, clearly setting forth the object and purposes desired, and stating whether or not it is for the purchase, sale, lease, or making of contracts, or for any other purpose provided in this section, and also the terms and conditions of the same." Id. A hearing is necessary on the Joint Application only "[i]f the commission deems it necessary." Id. R.C. 4905.48(D) does not require notice of the Joint Application to be provided to customers. The Commission may approve the Joint Application if it finds that "the public will thereby be furnished adequate service for a reasonable and just rate, rental, toll, or charge." Id.

3. The material terms of the Agreement as applicable to the Joint Application and relief requested therein are as follows:

a. Under the proposed transaction, Aqua will buy, and American will sell, 100% of the outstanding common stock of Ohio-American. (Section 2.1.)

b. The "Closing" of the transaction will occur not later than the third business day following satisfaction or waiver of the "Closing Conditions" set forth in Sections 6.1, 6.2 and 6.3 of the Agreement. (Section 2.4.) The date the closing actually occurs is the "Closing Date." (Id.) Section 2.5 of the Agreement lists the "Closing Deliveries" to be exchanged at Closing. The common stock of Ohio-American will transfer from American to Aqua on the Closing Date. (Section 2.4.)

c. The Agreement itself does not result in the dissolution of Ohio-American as a corporate entity. Among the Closing Deliveries that American and Ohio-American must provide at Closing are copies of Ohio-American's certificate of good standing and

articles of incorporation, issued by the Ohio Secretary of State within ten days prior to the Closing Date. (Sections 2.5(a)(v)-(viii).) Prior to the Closing, Ohio-American is required to operate its business only in the ordinary course of business, use commercially reasonable efforts to preserve the business and satisfy its liabilities in accordance with their terms. (Section 5.2)

d. The current officers and directors of Ohio-American will resign from the company at Closing. (Section 2.5(a)(iv).) Also, as of the Closing Date, American will terminate, sever or assign all contracts between American and Ohio-American, including contracts for the provision of tax services, treasury and finance services, legal services and banking services. (Section 5.8(a).)

e. American and Aqua have assembled a joint transition team responsible for executing transition activities that the parties will cause to occur before the Closing, including the extraction of data from Ohio-American's systems. (Section 5.10.)

f. The Closing Date will not necessarily coincide with the date the Commission issues an Opinion and Order approving the Joint Application. All Closing Conditions set forth in Sections 6.1, 6.2 and 6.3 of the Agreement must be satisfied (or waived) before the transaction may close. Regulatory approval is but one of many Closing Conditions.

4. Thus, pursuant to the foregoing terms and conditions, on and after the Closing Date, Ohio-American will remain an Ohio corporation, a "waterworks company," "sewage disposal system company" and "public utility" subject to the Commission's jurisdiction. The Agreement will not have the effect of, and is not intended to, modify Ohio-American's duty to

provide adequate service at just and reasonable rates, and otherwise comply with all applicable statutes, rules and orders of the Commission.

5. As set forth in Paragraph 7 of the Joint Application, on and after the Closing Date, Ohio-American customers will continue to receive service under the rates, rules and terms of service provided in Ohio-American's tariffs in effect at Closing. As discussed in more detail below, the Agreement has no effect on Ohio-American's existing certificates of public convenience and necessity. It is contemplated that a separate application to transfer Ohio-American's certificates shall be filed prior to closing, to be effective upon the Closing Date.

6. R.C. 4933.25 provides that no sewage disposal system company or water-works company "shall construct, install, or operate sewage disposal system facilities or water distribution facilities until it has been issued a certificate of public convenience and necessity by the public utilities commission. The commission shall adopt rules prescribing requirements and the manner and form in which sewage disposal system companies and water-works companies shall apply for such a certificate." The commission "may" hold a public hearing concerning the issuance of a certificate. Id. When such a public hearing is held, notice must be provided to "the board of county commissioners of any county and the chief executive authority of any municipal corporation to be served by a sewage disposal system company or water-works company." Id. The statute does not require that notice be provided to customers.

7. Rule 4901:1-15-05, Ohio Admin. Code, sets forth the filing requirements for issuance of a certificate of public convenience and necessity. The rule applies to "Any person, firm, or corporation desiring to obtain a certificate of public convenience and necessity authorizing such person, firm, or corporation to construct and/or operate a waterworks system and/or a sewage disposal system or to expand the area in which such a system is operated"

O.A.C. 4901:1-15-05(A) (emphasis added.) As set forth above, neither Ohio-American nor Aqua seek to "obtain" a new certificate or "expand" an existing certificate. Thus, the filing requirements in Rule 4901:1-15-05 do not apply to the Joint Application.

8. Rule 4901:1-15-04, Ohio Admin. Code, sets forth notice and hearing requirements (where the Commission exercises its discretion to hold a hearing) "in cases involving an application by a waterworks company and/or sewage disposal system company for a certificate of public convenience and necessity, an application to amend a certificate, an application to transfer a certificate, or an application for abandonment of a certificate." O.A.C. 4901:1-15-04(A) (emphasis added). As set forth above, neither Ohio-American nor Aqua seek to obtain, amend, transfer or abandon any existing certificate within this Application. A separate application to transfer Ohio-American's certificate upon the Closing Date shall be filed.

9. Rule 4901:1-15-07(A), Ohio Admin. Code, provides that "[b]efore extending a waterworks system and/or a sewage disposal system beyond the boundaries of the area for which a certificate of public convenience and necessity has previously been granted, the holder of the certificate shall apply to the commission for an amendment to the certificate for the proposed expansion area." As set forth above, neither Ohio-American nor Aqua seek to extend any waterworks system and/or sewage disposal system beyond the boundaries of an existing certificate.

10. Pursuant to Rule 4901:1-15-09(A), Ohio Admin. Code, "No certificate of public convenience and necessity to construct and/or operate a waterworks company and/or sewage disposal system company may be transferred or assigned unless the transaction is first approved by the commission." (Emphasis added.) As set forth above, neither Ohio-American nor Aqua

seek to transfer or assign any existing certificate. Ohio-American and Aqua will continue to hold their existing certificates in their respective corporate names, just as they do currently.

11. Subdivision (F) of O.A.C. 4901:1-15-09 also provides, "If the acquiring entity is the holder of a certificate of public convenience and necessity issued by this commission . . . and the entity being acquired is also the holder of a certificate of public convenience and necessity . . ., an application to transfer the certificate for the area to be acquired shall be filed." As evidenced by the title of Rule 4901:1-15-09, "Transfer of Certificate with Property Transfer," this rule applies to transactions involving the purchase or sale of assets, where such assets include a certificate of public convenience and necessity. Rule 4901:1-15-09 does not apply to the Joint Application because the Agreement provides for the transfer of common stock rather than the direct transfer of assets.

12. Aqua anticipates that it will eventually consolidate the operations of Ohio-American and Aqua. Approval of such consolidation is not being sought within this Application. Any proposed changes to tariff provisions, bill formats, finance applications, or other operational changes requiring Commission approval will be requested in one or more separate applications.

13. The Joint Applicants have also requested waiver of any hearing authorized by R.C. 4905.48. Such a hearing is not required under the statute and would serve no useful purpose here, given the limited relief requested in the Joint Application.

14. The Commission also should not require the Joint Applicants to publish notice of this proceeding. R.C. 4905.48 does not require notice. The notice provisions of Chapter 4901:1-15 do not apply because no issuance, amendment, transfer or abandonment of any certificate is being requested. However, if the Commission decides that notice should be provided, the Joint Applicants respectfully request that the Commission waive the notice due to the fact the stock

transfer will have no effect on customers. The Commission has the power to waive any notice pursuant to O.A.C. 4901:1-15-02(B)(3).

15. The statutory requirement for approval of the Joint Application has been satisfied. As set forth in the Joint Application, Aqua and its predecessors have operated water systems in Ohio for decades. Aqua has the financial, managerial and technical capability to provide safe, adequate and reliable water and wastewater service in areas currently served by Ohio-American, without detriment to Aqua's existing customers. In addition, because Aqua will continue its operations with respect to Ohio-American customers under the same rate structure that the Commission approved in Case No. 09-391-WS-AIR (Ohio-American's last rate case), the determination that Ohio-American customers will be served at a just and reasonable rate has already been made. Following any rate change pursuant to Ohio-American's pending application in Case No. 11-4161-WS-AIR, Aqua will charge the rates ordered by the Commission, which would be the rates charged regardless of the ownership of Ohio-American's stock. Accordingly, as a result of the transaction, the public will be furnished adequate service for a reasonable and just rate.

16. The Joint Applicant's wish to clarify or modify certain provisions of the Joint Application:

- a. The word "Forest" in the list of counties on page 2, paragraph 3 is a typo. Forest County is in Pennsylvania.
- b. The second sentence in paragraph 6, page 3, states: "Upon Closing as defined in and set forth in the Agreement, Aqua will provide service to Ohio-American's existing customers as 'Aqua Ohio, Inc.'" For simplicity's sake, Aqua has determined that

it will address any proposed change to Ohio-American's service name in a Joint Application to Change Name (ACN) filing or other appropriate filing.

c. Similarly, the second sentence in paragraph 7, page 3, states: "Aqua will file any and all tariff revisions reflecting those rates, rules and terms of service for customers and to reflect that service will be provided under the Aqua Ohio name." Any name change or tariff changes will be addressed in a separate filing (or filings.)


d. Page 5, paragraph 11 states, "To advise its customers of the filing of this Joint Application, Ohio-American proposes to mail or publish the notice attached hereto as Exhibit B." Although there is no legal requirement for this notice, the Joint Applicants proposed to furnish notice anyway under the assumption that service would be provided under the "Aqua Ohio" name post-Closing. Because Aqua has since determined to address any name change in a separate filing, the notice is not necessary. The Joint Applicants hereby withdraw their request for approval of the notice attached to the Joint Application as Exhibit B. As discussed above in Paragraph 15, no other notice is necessary.

e. Likewise, the notice from Aqua to affected customers, referenced on page 5, paragraph 12, is unnecessary and hereby withdrawn.

WHEREFORE, the Joint Applicants respectfully renew their request for issuance of a Final Order, on or before February 15, 2012, approving the transaction described in the Joint Application and supplemental description provided herein, and granting all other necessary and proper relief.

Dated: January 23rd, 2012


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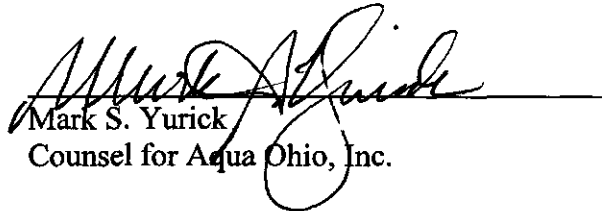
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplement to Joint Application was served by regular U.S. mail, postage prepaid, to the following on this 13th day of January, 2012.

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