

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 ) Case No. 11-5102-WS-ATR  
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. )

FINDING AND ORDER

The Commission finds:

- (1) On September 13, 2011, as amended on October 20, 2011, January 27, 2012, and February 13, 2012, a joint petition (Joint Petition) was filed in Case No. 11-5102-WS-ATR (11-5102) by American Water Works Company, Inc. (American), Ohio American Water Company (Ohio American), and Aqua Ohio, Inc. (Aqua) (collectively, Joint Applicants) seeking Commission approval, pursuant to Section 4905.48(D), Revised Code, of a Stock Purchase Agreement (Purchase Agreement) entered into by American, Ohio American and Aqua. In accordance with the stock purchase agreement, 100 percent of Ohio American's outstanding capital stock, which is currently held by American, will be purchased by Aqua. Ownership of all of the assets currently held by Ohio American will remain under the control of Ohio American and Ohio American will continue to provide service under its existing Certificates of Public Convenience and Necessity. Joint Applicants submit that Aqua has the financial, managerial, and technical capability to provide safe, adequate, and reliable water and wastewater service in the areas currently served by Ohio American without detriment to Aqua's existing customers.
- (2) Included with the Joint Application was a request (Case No. 11-5103-WS-AAM) for accounting authority to defer certain costs associated with the proposed transaction for potential recovery in future proceedings. These estimated transaction costs include the following: (a) Legal and expert consultants to assist with contract negotiations, employee benefit analysis and miscellaneous related issues (\$200,000) and (b) Legal assistance with the Joint Application

(\$25,000). Joint Applicants note that the estimated costs do not include any financing fees. Additionally, Joint Applicants point out that the transaction does not include any request for goodwill.

- (3) Ohio American is a public utility and a water-works company and sewage disposal company as defined in Sections 4905.02 4905.03(A)(7), and 4905.03(A)(13), Revised Code. Ohio American is, therefore, subject to the Commission's jurisdiction. Ohio American is the holder of Amended Certificate of Public Convenience and Necessity No. 12 that authorizes it to furnish water service to the following seven districts: Ashtabula, Franklin County, Lawrence County, Mansfield, Marion, Portage County and Tiffin. These districts are located in Ashtabula, Franklin, Lawrence, Marion, Morrow, Pike, Portage, Preble, Richland, and Seneca counties, respectively. Ohio American also provides sewer service to portions of Franklin County pursuant to Case No. 00-938-WS-AIR. In total, Ohio American provides water service to approximately 50,903 customers and sewer service to approximately 6,554 customers in the state of Ohio.
- (4) American is a holding company of various water and sewer companies providing both regulated and unregulated service in 30 states. American is a publicly traded company on the New York Stock Exchange and is not regulated by the Commission. American is a party to the Joint Application for the limited purpose of requesting approval of the transfer of Ohio American stock to Aqua.
- (5) Aqua is a public utility and water-works company as defined in Sections 4905.02 and 4905.03(A)(7), Revised Code. Aqua is, therefore, subject to the Commission's jurisdiction. Aqua is the holder of Certificate of Public Convenience and Necessity Nos. 30, 32, and 35 relative to specific portions of its service area. Other portions of its service territory were grandfathered as an existing water company prior to the provisions of Section 4933.25, Revised Code, governing water company certificates becoming effective on October 2, 1969. Aqua is a wholly-owned subsidiary of Aqua America, which is not a party to this proceeding.
- (6) The Commission's file in this proceeding reveals the following information regarding the proposed stock purchase:

- (a) American, Ohio American, and Aqua executed the Purchase Agreement dated July 8, 2011. As a result of this Purchase Agreement, Aqua will purchase all of the issued and outstanding stock of Ohio American. According to the Purchase Agreement, the purchase price is \$88,551,000 subject to certain pre-closing and post closing adjustments.
- (b) The closing of the transaction will occur no later than the third business day following the satisfaction or waiver of the closing conditions set forth in the Purchase Agreement. The closing will not occur prior to the Commission's approval of the proposed stock purchase.
- (c) Joint Applicants assert that the proposed stock purchase will have no impact on the existing customers of Ohio American or Aqua. Ohio American will continue to exist as a corporate entity and will continue to have the duty to provide adequate service at just and reasonable rates and comply with all applicable statutes, rules, and orders. After the proposed transaction is closed, Ohio American customers will, at least initially, continue to receive service pursuant to the rates, rules, and terms of service provided under Ohio American's tariffs in effect as of the closing date. Therefore, Joint Applicants assert that the transaction will result in the public being furnished with adequate service for a reasonable and just rate.
- (d) Joint Applicants recognize that Ohio American is currently pursuing an application in Case No. 11-4161-WS-AIR (11-4161), *In the Matter of the Application of Ohio American Water Company to Increase its Rates for Water and Sewer Services*, for approval to increase rates. Joint Applicants represent that the Joint Application in this case has no immediate bearing or effect on Ohio American's rate application in 11-4161, which will continue to be pursued and controlled by Ohio American prior to the closing date of the proposed stock purchase.

- (e) While it is anticipated that Aqua will eventually consolidate the operations of Ohio American and Aqua, such consolidation is not being sought at this time. Joint Applicants commit that following approval of the current stock purchase, Aqua will file a separate application(s) related to any tariff revisions proposing changes to rates, rules, terms of service to customers, changes to bill formats, changes to company name under which service is provided, or any other operational change requiring Commission approval.
  - (f) Upon the closing of the proposed transaction, the current officers and directors of Ohio American will resign from the company. Joint Applicants represent that there will be an orderly transfer of management and that service will not be interrupted during the transition process.
  - (g) 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.
  - (h) Pursuant to the Purchase Agreement, this transaction is contingent upon approval by the New York Public Service Commission of the sale of Aqua America's New York operations to American.
  - (i) Verification affidavits were filed by both a representative of Ohio American and Aqua.
- (7) Pursuant to its filing of January 23, 2012, Joint Applicants seek a waiver of Rules 4901:1-15-04 and 4901:1-15-09, Ohio Administrative Code (O.A.C.). In support of their requests, Joint Applicants note that the proposed transaction is structured slightly different than most transactions that the Commission has reviewed involving water-works or sewage disposal systems.

In particular, Joint Applicants highlight that most purchase transactions usually involve the acquisition of water or sewer assets by the purchaser and the dissolution of the seller. The typical

scenario involves approval of (a) the transfer of assets from seller to purchaser, (b) the transfer of the seller's Certificate of Public Convenience and Necessity or, alternatively, the expansion of the purchaser's certificate to encompass areas formerly served by the seller, (c) the removal of the seller from the rolls of the Commission's regulated public utilities, and (d) changes to the purchaser's tariffs to reflect the foregoing and provide that the seller will provide service to purchaser's former customers at existing rates, terms, and conditions of service. Joint Applicants distinguish the current case inasmuch as the relief requested is more limited since the only approval sought is relative to the acquisition of Ohio American's common stock by Aqua. Additionally, Joint Applicants point out that the requested approval will have no impact on customers.

Therefore, Joint Applicants request that the Commission approve the Joint Application without a hearing or notice. Joint Applicants believe that a waiver of a hearing for this transaction is appropriate inasmuch as a hearing is not required under Section 4905.48, Revised Code, or any applicable rule and would serve no useful purpose given the limited relief requested in the Joint Application.

- (8) The requested waivers of Rules 4901:1-15-04 and 4901:1-15-09, O.A.C., are reasonable and should be granted.
- (9) On January 27, 2012, American, Ohio American, the office of the Ohio Consumers' Counsel (OCC), and the Commission Staff (Staff) (collectively, "signatories") filed a "Stipulation and Recommendation" (Stipulation) for the purpose of resolving all of the issues raised by the signatories in this proceeding regarding Aqua's purchase of the common stock of Ohio American.

Pursuant to the Stipulation, the signatories support Aqua's purchase of 100 percent of Ohio American's outstanding common stock and recommend that the Commission find that Aqua has the financial, managerial, and technical capability to provide safe, adequate, and reliable water and waste water service in areas currently served by Ohio American without detriment to existing customers of Aqua or Ohio American.

According to the Stipulation, prior to the closing date of the transaction, Aqua and Ohio American shall coordinate such actions

as are necessary to provide for the orderly transfer of customer accounts from Ohio-American to Aqua.

The Stipulation reflects that American Water Works Service Company currently provides a number of services to support Ohio American's operations including: (a) the Customer Service Sector, (b) Central Water Testing Laboratory, (c) Information Technology Service Center, and (d) Shared Service Center. According to the Stipulation, Aqua has made provision to supply such services following the closing date in an adequate and reliable manner without any interruption or diminution of service.

The Stipulation notes that, pursuant to 11-4161, Ohio American has a pending request for a rate increase based on the test year ending December 31, 2011, and a date certain of April 30, 2011. The Stipulation provides that, in light of the fact that any change in Operation and Maintenance expense that may occur under the ownership and management of Aqua during the rate effective period cannot be entirely known, the signatories recommend that the pro forma operation and maintenance expense in the pending rate case remain at the level approved as being just and reasonable in Case No. 09-391-WS-AIR, *In the Matter of the Application of Ohio American Water Company for Authority to Increase its Rates for Water and Sewer Services Provided to its Entire Service Area*. Accordingly, pursuant to the Stipulation, Ohio American shall file supplemental testimony in 11-4161, sponsoring a revised Schedule C-3.2 that reflects an adjustment to reduce the Total Company Adjusted Operation and Maintenance Expense requested in 11-4161 from \$22,627,794 to \$20,454,498.

The signatories agree that the Stipulation is an overall compromise and resolution of all issues presented in this proceeding and does not necessarily represent the position that any signatory would have taken had these issues been fully litigated. The Stipulation reflects that it is a reasonable compromise of varying interests and is expressly conditioned upon adoption by the Commission in its entirety without any material modification.

Finally, Aqua agrees to begin providing OCC with copies of the quarterly disconnection reports that Aqua currently provides to Staff.

- (10) Section 4905.48(D), Revised Code, states, in relevant part, that:

[I]f, after such hearing or in the case of no hearing is required, the commission is satisfied that the prayer of such petition should be granted and the public will thereby be furnished adequate service for a reasonable and just rate, rental, toll, or charge, it shall make such order as it deems proper and the circumstances require. . . .

- (11) After a thorough review of the Commission's file in this matter, including the Joint Petition, the Purchase Agreement, and the Joint Stipulation, the Commission determines that the Joint Petition to transfer all of the issued and outstanding stock of Ohio American to Aqua should be approved pursuant to Section 4905.48(D), Revised Code. In making this determination, the Commission is convinced that approval of the Joint Petition will result in the furnishing of adequate service to Ohio American customers for a reasonable and just rate.

In support of this determination, the Commission notes that the proposed transaction will be transparent inasmuch as Ohio American will continue to operate under its existing certificate, name, and tariff including the continuation of all existing rates, terms, and conditions. Therefore, as a result of the approval of the asset transfer, Ohio American customers will experience no increase in rates. The Commission emphasizes that this approval will have no effect on Ohio American's rate application in 11-4161, which will continue to be pursued and controlled by Ohio American prior to the closing date of the proposed stock purchase.

- (12) Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into a stipulation. 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, 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. 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, 1004); *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 559 (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.*)

Upon examination of the Stipulation, the Commission determines that the Stipulation is a product of serious bargaining among capable, knowledgeable parties, represented by experienced counsel, who regularly participate in regulatory proceedings before the Commission. Therefore, upon review of the terms of the Stipulation, 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.

With regard to the second criterion, the Stipulation demonstrates that stakeholders representing different interests have examined information relevant to this transaction. The Stipulation represents that the public interest is served when parties intervene and represent diverse interests in examining the record and ensuring that it meets regulatory requirements. Upon review of the



Stipulation, we find that, as a package, it satisfies the second criterion as it benefits ratepayers by avoiding the cost of litigation and is in the public interest.

As a final matter, the Stipulation does not appear to violate any important regulatory principle or practice. After reviewing this matter, the Commission is satisfied that there is no evidence that the Stipulation violates any important regulatory principle or practice and, therefore, the Stipulation meets the third criterion. Additionally, the Commission highlights that pursuant to the Stipulation Ohio American, in 11-4161, will file a revised Schedule C-3.2 for the purpose of lowering the test year Pro Forma Operation and Maintenance Expense in order that it remain at the level approved as just and reasonable in Case No. 09-391-WS-AIR. Accordingly, we find that the Stipulation entered into by the parties is reasonable and should be adopted.

- (13) In regard to Joint Applicant's motion for a waiver of Rule 4901:1-15-04, O.A.C., the Commission finds that the request is reasonable and should be granted in light of the fact that the current application is limited in scope to a change in stock ownership and, in all other respects, there will be no change to the company's operations. In particular, the Commission notes that Ohio American's existing certificate will remain unchanged. Due to the fact that the transaction will be transparent to Ohio American's end users, the holding of a hearing and the corresponding notice is not required.

To the extent that Aqua eventually seeks to consolidate the operations of Ohio American and Aqua, Joint Applicants must file a separate application(s) related to any tariff revisions proposing changes to rates, rules, terms of service to customers, changes to bill formats, changes to company name under which service is provided, or any other operational change requiring Commission approval.

- (14) On December 6, 2011, the office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene in this matter. OCC avers that, pursuant to Chapter 4911, Revised Code, it has authority to represent the interests of over 130,000 residential customers of the Joint Applicants. OCC opines that, as an advocate for residential utility customers, it has a real and substantial interest in this case.

Similarly, OCC believes that it is uniquely situated as the designated state representative of the interests of Ohio's residential utility customers and that this interest is different and not represented by any other entity in Ohio.

Specifically, OCC advocates that Aqua should provide adequate water and wastewater service for a just and reasonable rate in the areas currently served by Ohio American without detriment to Aqua's existing customers.

Consistent with Section 4903.221(B), Revised Code, OCC submits that the interests of Ohio's residential customers may be adversely affected by this case if they are unrepresented. OCC represents that its interest in this case is related to the merits of this case in order to protect residential customers against any adverse impacts from the Joint Application and in ensuring that residential customers are well served by the acquisition if it is approved.

Further, OCC states that its intervention will not unduly prolong or delay the proceedings, and that its intervention will significantly contribute to the full development and equitable resolution of the factual issues.

- (15) OCC's motion for intervention is reasonable and should be granted.
- (16) On January 25, 2012, Aqua filed a motion to dismiss its application for accounting authority filed in 11-5103. In its motion, Aqua explains that it no longer seeks accounting authority for it to defer certain costs associated with the proposed transaction as set forth in the Joint Application filed in 11-5102.
- (17) Aqua's motion to dismiss is reasonable and should be granted.
- (18) On November 7, 2012, American, Ohio American, and Aqua filed a joint motion for referral mediation in order to facilitate the clarification and possible settlement of certain issues.
- (19) On February 10, 2012, American, Ohio American, and Aqua filed a notice of withdrawal of their motion of November 7, 2011.

It is, therefore,

ORDERED, That the Joint Petition for approval of the purchase of common stock and the Stipulation be granted in accordance with Finding (11). It is, further,

ORDERED, That Ohio American and Aqua comply with the terms of the Stipulation set forth in Finding (9). It is, further,

ORDERED, That the requested waiver of Rule 4901:1-15-04 of O.A.C., is granted in accordance with Finding (13). It is, further,

ORDERED, That Joint Applicants notify the Commission of the date that the proposed transaction actually closes. It is, further,

ORDERED, That Ohio American must identify its new officers and directors upon their appointment. It is, further,

ORDERED, That OCC's motion to intervene be granted in accordance with Finding (15). It is, further,

ORDERED, That Aqua's motion to dismiss be granted in accordance with Finding (17). It is, further,

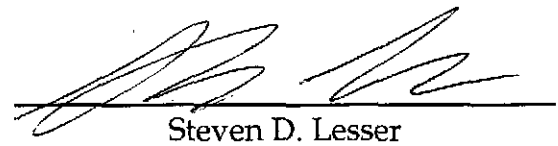
ORDERED, That the Joint Applicants notify the Commission when the New York Public Service Commission rules upon the sale of Aqua America's New York operations to American. It is, further,

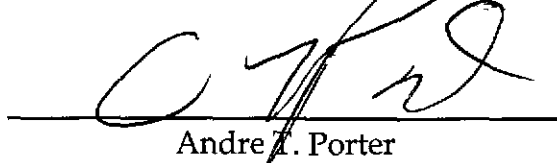
ORDERED, That a copy of this Finding and Order be served upon all parties of record.

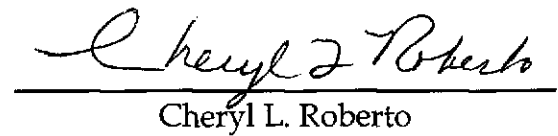
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
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Entered in the Journal

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