BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Water And Sewer LLC to Increase Its Rates for Sewer Service	)))	Case No. 11-4509-ST-AIR

POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

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INTRODUCTION

Water and Sewer LLC ("Company"), through counsel, acknowledges that it generally accepts Staff's recommendations, noting that this "is basically a two-issue case."[1] Those issues relate to ongoing recovery of previously authorized operations and maintenance expense amortizations, and the appropriateness of allocating certain insurance premium expenses to non-regulated businesses.

Even so, Staff's recommended revenue requirement represents an increase of more than 30% over current rates.[2] There is little need to note the enormous hardship that such an increase will work on the 77 customers that Water and Sewer serves. The remaining issues are not insignificant in terms of their additional impact. Neither are they insignificant in terms of their precedential impact. The Company seeks to have this

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1 Tr. page 109, lines 2-5.

2 Staff Ex. 1, page 19.

Commission guarantee, and not merely provide an opportunity for, cost recovery. It also seeks to sanction allowing non-regulated enterprises to lean on ratepayers to insure against potential liability. These are important issues, and the Commission should decline to extend the treatment that the Company seeks.

DISCUSSION

I. The further recovery of extraordinary expense amortizations should be discontinued.

In each of the Company's past two rate cases, the Commission approved the inclusion of certain extraordinary costs in operation and maintenance (O&M) expense to be amortized over a period of years. In Case No. 03-318-WS-AIR, the Commission authorized a ten-year amortization of $7,122 in sludge removal, and a ten-year amortization of $3,700 for the cost of a sludge management plan mandated by the Ohio Environmental Protection Agency.[3] This provided the Company an annual recovery of $712 and $370 for the sludge removal and sludge management plan expense, respectively.[4] These expenses have not been fully recovered by the Company. [5] In Case No. 08-227-WS-AIR, the Commission approved a ten-year amortization of $25,000 in emergency septage hauling expenses, and a four-year amortization of $14,920 in road

[3] *In the Matter of the Application of Water and Sewer LLC for an Increase in Rates and Charges*, Case No. 03-318-WS-AIR (Opinion and Order) (October 6, 2004) at 15.

[4] Applicant Ex. 3, page 7, lines 14-22.

[5] *Id.*

repair expense.[6] The amortization provided the Company with annual recoveries of $2,500 and $3,370 for the hauling and road repair expense, respectively.[7] These expenses likewise have not been fully recovered by the Company.[8]

Staff Witness Crocker testified that ongoing recovery of these amortizations should be discontinued.[9] Ms. Crocker based her recommendation on Commission precedent.[10] Specifically, she testified that, although the Commission previously authorized recovery of these extraordinary expenses, the Company was never guaranteed an absolute right to dollar-for-dollar recovery.[11]

Ms. Crocker also testified that discontinuation of these amortized expenses is appropriate because of the risk of over-recovery.[12] Staff's recommendation would protect customers from over-recovery, which is a legitimate concern in this case. The risk of over-recovery has led the Commission to discontinue recovery of authorized expenses in prior cases, even though those expenses had not been fully recovered. Staff's recommendation is consistent with prior Commission precedent and should be adopted.

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6 *In the Matter of the Application of Water and Sewer LLC for an Increase in Rates and Charges*, Case No. 08-227-WS-AIR (Stipulation) (April 29, 2009) at 3-4, (Opinion and Order) (May 27, 2009) at 3.

7 Applicant Ex. 3, page 8, lines 7-18.

8 *Id.*

9 Staff Ex. 3, page 2, lines 10-21.

10 *Id.*

11 *Id.*

12 Tr. page 121, line 17 – page 122, line 8.

A. The Company does not have a guaranteed right to recover specific past expenses.

Discontinuation of these past expenses is proper and consistent with Commission precedent. The Company disagrees with Staff's position and claims that it is entitled to recover the remaining unrecovered amortized amounts. The Company is, in essence, claiming that the Commission guaranteed recovery of the amortized amounts when it approved of them in prior rate cases. This position is contrary to well-established Commission precedent. The Commission has stated on numerous occasions that it does not "guarantee" the recovery of expenses:

> [I]t is not [the Commission's] function to guarantee the dollar-of-dollar recovery of specific past experiences, but to provide a representative allowance for expenses so as to provide applicant a reasonable future earnings opportunity.[13]

In *In re: Dayton Power & Light Co.*, the Commission reiterated this "no guarantee" principle and denied recovery of "past losses."[14] In *DP&L*, the Commission refused an applicant's request for recovery of certain fuel expenses that occurred in a previous test year. In denying the applicant's request, the Commission stated:

> Applicant is seeking commission approval to recover for past losses through future rates. Such a measure is inconsistent with the whole theory of rate regulation. . . . The function of determining a reasonable allowance for expenses in the rate proceeding is not to guarantee dollar-for-dollar recovery of specific items of expense . . . but rather to set rates which will

[13] *In re: Ohio Edison Company*, 61 P.U.R.4th 241, 261 (P.U.C.O. 1984).

[14] *In re: Dayton Power & Light Co.*, 29 P.U.R.4th 145 (P.U.C.O. 1979).

> afford the company the opportunity to earn the rate of return authorized in a future period.[15]

The *DP&L* decision demonstrates that a utility does not have a guaranteed right to recover expenses.[16] The Commission does not guarantee recovery of normal expenses, let alone extraordinary expenses. Thus, the Company's contention that it is entitled to fully recover the amortized extraordinary expenses is unfounded.

B. Commission precedent regarding discontinuation of past rate case expenses supports Staff's recommendation in this case because of the potential risk of over-recovery

The Company contends that the Commission has only discontinued unrecovered amortized rate case expenses in prior cases, and not other types of amortized expenses. But the same underlying principle that supports the disallowance of unrecovered rate case expenses supports disallowance of non-rate case expenses. More specifically, when disallowing unrecovered rate case expenses, the Commission's primary concern is the risk of over-recovery. The Commission has stated that it is unfair to expose ratepayers to the risk of over-recovery. [17] It has discontinued recovery of amortized expenses to protect ratepayers, even where the utility has not fully recovered those expenses. Staff Witness. Crocker relied upon this Commission precedent when recommending discontinuation of the Company's amortized expenses.[18] The Commission has specifically noted that it is

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15 *Id.* at 165.

16 *Id.*

17 *In re: Columbus & Southern Ohio Electric Co*., 24 P.U.R.4th 261 (P.U.C.O. 1978); *In re: Columbia Gas of Ohio, Inc*., Case No. 76-704-GA-AIR (Opinion and Order) (June 29, 1977)

18 Staff Ex. 3, page 2, lines 10-21.

> far better to adopt an amortization period which will minimize the risk that ratepayers will be subjected to rates which have costs built into them that have already been recovered. . . . [T]his consideration . . . appl[ies] with equal force to expenses associated with prior cases which remain unrecovered.[19]

The risk of over-recovery of amortized expenses is a real concern in this case.[20] The Company wants to include previously authorized annual recovery amounts of $7,312 into the allowance for expenses in this case.[21] This annual recovery amount of $7,312 is the total of four different amortized amounts. The dates when the Company would fully recover its amortized expenses (or amortization "end dates") are different for each amortized expense, except for sludge removal and sludge management plan expenses. The following table summarizes these amounts and the amortization "end dates":

Expense	**End Date**	**Annual Allocation**
Road Repair	5/27/13	$3,730
Major Sludge Removal	12/01/14	$712
Sludge Management Plan	12/01/14	$370
Emergency Septage Hauling	5/27/19	$2,500
		Total: $7,312

If the Commission adopts the Company's proposal, the Company will recover $7,312 in amortized expenses until its next rate case because these expenses would be incorporated into base rates. The Company would recover the full $7,312 even after the

19 *Id.* at 288

20 Tr. page 121, line 17 – page 122, line 8.

21 Applicant Ex. 3, page 9, lines 11-15.

"end dates" for the amortization periods. Thus, the amortization "end dates" are not true "end dates" because the Company would continue to recover the amortized amounts until a new rate case is filed. For example, if the Company's position is adopted, the Company will fully recover its Road Repair Expense by May 27, 2013. The Company, however, will continue its $3,730 annual recovery for the road repair expense amortization after May 27, 2013. This means that the Company would begin to over-recover from ratepayers as soon as next year if the Company does not file another rate case with rates to become effective on or before May 27, 2013. After December 1, 2014, the Company will be over-recovering $4,812 each year until new rates become effective.[22]

Because of this potential for over-recovery, it is appropriate to "minimize the risk that ratepayers will be subjected to rates which have costs built into them that have already been recovered."[23] Staff's position is consistent with Commission precedent regarding disallowing prior amortized rate case expenses and protects ratepayers from the potential risk of over-recovery.

II. Ratepayers should not be required to pay to provide insurance coverage to a related, non-utility entity at no cost to that entity.

The issue regarding the insurance policies is a simple one: should the ratepayers of Water and Sewer Co. LLC be required to pay to provide insurance coverage to a related,

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[22] By December 1, 2014, the Company will have fully recovered for Road Repair Expense, Major Sludge Removal Expense, and Sludge Management Plan Expense. $3,730 (Road Repair Expense) + $712 (Major Sludge Removal Expense) + $370 (Sludge Management Plan Expense) = **$**4,81**2.**

[23] *In re: Columbus & Southern Ohio Electric Co*., 24 P.U.R.4th at 288.

non-utility entity at no cost to that entity. Staff submits that the answer to that question should be "no."

There are two insurance policies at issue in this case – what were referred to as an umbrella, or commercial package, policy, and a pollution policy.[24] The commercial package policy was issued by the Westfield Insurance Company[25]; the pollution policy was issued by the Philadelphia Insurance Company.[26]

As Staff Witness Crocker testified, the policies, to the extent that Staff was able to determine, included coverage both for the former water assets and non-utility businesses, either affiliated or unknown.[27] Both policies name both the utility and Richfield Furnace Run Associates (RFRA) as named insureds. The Company pays all of the premiums of both policies.[28] The members of RFRA are the same as the members of Water and Sewer, LLC.[29] And RFRA owns the real property on which the utility's facilities sit.[30]

A. The Commercial Package Policy

The commercial package policy listed both the utility and RFRA as named insured when the policy was first issued. Company Witness Rosselet testified that this was done

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24 Tr. page 17, lines 4-19.

25 Applicant Exhibit 4.

26 Applicant Exhibit 5.

27 Tr. Page 152, lines 5-17.

28 Tr. page 39, lines 16-20.

29 Tr. page 18, lines 20-22.

30 Tr. page 18, lines 7-9.

to provide RFRA "with liability protection in the event it were [*sic*] also named as a defendant in a lawsuit against Water and Sewer."[31]

Staff recommended that the cost of this policy be allocated between utility and non-utility operations. Specifically, Staff submits that one-half of the premium costs should be allocated to non-utility business interests, and should not be paid by ratepayers.[32]

At the outset, it is worth noting that Staff made reasonable efforts to specifically identify both the parties and the interests to which the policies applied. Staff Witness Crocker specifically testified that, despite data requests, "it was difficult to ascertain what assets, properties, addresses, parcel numbers, acres, et cetera, were included for the insurance policy."[33] Even though Staff had copies of the policies and declaration pages, including a listing of "insured locations," it was impossible to identify specific parcels from the county auditor, and the Company was unresponsive.[34] Indeed, Ms. Crocker testified that information provided by the Company contained "inconsistencies with regards to what assets were included in the insurance policy."[35]

Staff made a judgment based both on information from prior cases and the lack of information provided in this case. Part of Staff's review revealed that the insurance

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31 Applicant Exhibit 3, p. 14, lines 5-6.

32 Tr. page 148, lines 11-15.

33 Tr. page 150, lines 7-11.

34 Tr. page 154, lines 4-13.

35 Tr. page 150, lines 20-22.

expenses sought to be recovered by the Company were double what it had received approval for in the past.[36] Given the magnitude of the overall increase requested, a change of this magnitude necessitated further investigation.

Indeed, at least in part because of the Staff investigation in this case, the Company learned that it had been paying for insurance coverage for assets associated with its former water operations.[37] While those premiums have since been refunded, it is apparent that the Company was unaware of what interests were being protected by the policy.

An allocation is justified in this case because ratepayers are being asked to provide insurance coverage for a non-regulated entity that benefits directly from the coverage. Even Company Witness Rosselet acknowledged that RFRA benefitted from being a named insured on the commercial package policy.[38]

The Company claims that these benefits came at no additional cost to ratepayers, so ratepayers should not be heard to complain. But clearly one of the benefits to RFRA is that it was able to secure insurance coverage without having to pay a premium. It is most certainly true that one undeniable benefit to RFRA is the avoided premium cost of comparable coverage. The record contains no information about how much it would have cost RFRA to secure its own insurance coverage, in its own name, but there can be no doubt that it could not have done so at no cost at all.

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[36] Tr. page 149, lines 10-12.

[37] Tr. page 157, line 23 – Tr. page 158, line 2.

[38] Tr. page 34, lines 1-2, 14-16.

Alternatively, the Company asserts that any allocation of insurance expense to RFRA should be limited to the General Liability Coverage premium of $1,374 (of a total premium for all coverage of $13,157).[39] The Company points to an affidavit attached to Mr. Rosselet's testimony apparently in support of a proposition that the General Liability Coverage is the only coverage in the policy under which RFRA could reasonably be expected to benefit. There is simply no basis for this argument.

There are six coverage "parts" of the commercial package policy, enumerated on the 12th page of Applicant Exhibit 4. Those parts, and the associated premiums, are:

Commercial Property Coverage Part	Included
Commercial General Liability Coverage Part	$1,347.00
Commercial Auto Coverage Part	$111.00
Commercial Inland Marine Coverage Part	$4,191.00
Commercial Umbrella Coverage Part	$7,500.00
Terrorism Insurance Coverage	$8.00
TOTAL	$13,157.00

The affidavit, attached as Exhibit KNR-Reb-2 to Applicant Ex. 3, attested to only by the agent and not by the insurer itself, related *only* to coverage provided for *real property*, and did not apply to all coverage available to RFRA. Specifically, the agent stated that "none of the coverage parts, including the Property Coverage and the Umbrella Coverage, covered any *real property* owned by Richfield Furnace Run Associates ("RFRA")" (emphasis added). The affidavit makes no reference, for example, to the Auto Coverage, even though the Company owns no automobiles. Nor does it refer to the "Inland Marine Coverage," which includes coverage for both personal property and

[39] Applicant Ex. 3, p. 14, lines 8-14.

business income, both of which could apply to RFRA.[40] Nor does the affidavit refer to the Umbrella Coverage, which specifically provided for bodily injury and property damage liability, which could likewise apply to RFRA.[41] The affidavit does not state that the RFRA is not covered, or receives no benefit from, this coverage; only that the General Liability Coverage is the only one that specifically covers RFRA's real property.

B. The Pollution Policy

The pollution policy, as originally issued, listed only the utility as a named insured.[42] The policy was amended to add RFRA as a named insured apparently for the same general liability coverage reasons that RFRA was named in the Commercial Package Policy.[43] The Company added RFRA even though, as Company Witness Rosselet claimed, the pollution policy does not in any fashion affect Richfield Furnace Run.[44]

But Staff had no way to determine the extent to which anyone other than the Company benefitted from this policy. It was clear that RFRA was intended to be a named insured, but Staff couldn't even determine whether the "insured location" included the sewer plant:

> Q: (By Mr. Royer): And this is headed Premises Environmental Coverage Declarations, correct?

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40 Applicant Ex. 4, page 72.

41 *Id*.

42 Tr. page 24, lines 5-10.

43 Tr. page 22, lines 18-23.

44 Tr. page 26, lines 12-16.

A: (By Ms. Crocker): Yes.

Q: And the item No. 3, "Your insured location" refers to 3516 State Route 303, Richfield Township, Ohio, correct?

A: Yes.

Q: Do you know what that is?

A: Well, I tried to identify by doing a property search on the auditor's Web site the addresses listed in this document as well as the general commercial policy that we referenced before, and I was unsuccessful in obtaining an exact parcel number or address from the auditor's Web site, and again, that information was requested to the Company and I never obtained information to identify which parcel of land was covered by this address.[45]

Indeed, the policy gives no guidance that would have allowed Staff to understand that the pollution plant "relates strictly to Water and Sewer's sewer plant"[46], as the Company claims. The policy indemnifies a variety of losses, including those for remediation, bodily injury, property damage, damage to image, reputation, or consumer confidence resulting from "contamination" on, under, or migrating from the insured location, almost regardless of source, including materials that may have been illegally disposed of or abandoned at the insured location by parties other than an insured. Coverage benefits extend to RFRA for any liability arising out of its ownership, use, operation or financing of the insured location.[47] In many respects, the coverage afforded to RFRA under the pollution policy is comparable to those extended by the General

[45] Tr. pg. 153, line 21 – pg. 154, line 13.

[46] Applicant Ex. 3, pg. 14, line 19.

[47] Applicant Ex. 5, unnumbered pages 16 & 17, headed PI-EVP-002, Pages 1 and 2 of 15.

Liability part of the commercial package policy, albeit limited to contamination-related losses.

At the end of the day, it is clear that the policy covers losses for more than just pollution issues caused by or at the sewer plant. RFRA is named as an insured, and clearly receives a benefit. Like the commercial package policy, the record is of any evidence that RFRA could have secured comparable coverage at no cost. The Company simply has not adequately demonstrated that the pollution policy does not cover unregulated entities and assets.

CONCLUSION

Based upon the foregoing, the Staff respectfully requests that the Commission issue an order adopting the Staff recommendations contained in its Report of Investigation and as discussed herein.

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Brief submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following parties of record, this 1st day of June, 2012.

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ON BEHALF OF THE VILLAGE OF RICHFIELD

Summary: Brief electronically filed by Mrs. Tonnetta Y Scott on behalf of PUCO