

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
American Water Company to Increase Its) Case No. 11-4161-WS-AIR
Rates for Water and Sewer Service.)

OPINION AND ORDER

The Commission, considering the above-entitled application, the Stipulation and Recommendation, and the record in this proceeding, hereby issues its Opinion and Order in these matters.

APPEARANCES:

Whitt Sturtevant LLP, by Mark A. Whitt and Melissa L. Thompson, PNC Plaza, 20th Floor, 155 East Broad Street, Columbus, Ohio 43215, on behalf of Aqua Ohio Water Company, Inc.

Mike DeWine, Attorney General of the State of Ohio, by Thomas G. Lindgren and Devin D. Parram, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215-3793, on behalf of the Staff of the Public Utilities Commission of Ohio.

Bruce J. Weston, Ohio Consumers' Counsel, by Melissa R. Yost and Kyle L. Kern, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215-3485, on behalf of the residential utility consumers of Aqua Ohio Water Company, Inc.

Mark D. Russell, Law Director, 233 West Center Street, Marion, Ohio 43302, on behalf of the city of Marion, Ohio.

Loveland & Brosius, LLC, by Peter N. Griggs, 50 West Broad Street, Suite 3300, Columbus, Ohio 43215, on behalf of Perry Township, Franklin County, Ohio.

Loveland & Brosius, LLC, by Peter N. Griggs, 50 West Broad Street, Suite 3300, Columbus, Ohio 43215, on behalf of Prairie Township, Franklin County, Ohio.

OPINION:I. HISTORY OF THE PROCEEDINGS

Aqua Ohio Water Company, Inc. (Aqua), formerly known as Ohio American Water Company (Ohio American),¹ 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. Although Aqua has operations in other service territories, the subject of this application is Aqua's operation in the territories formerly owned by Ohio American. Aqua provides water and wastewater service, in the former Ohio American territory, to eight districts in Ohio: Ashtabula District, Lawrence County District, Marion District, Tiffin District, Franklin County District, Mansfield District, Lake White District, and Portage County District. For purposes of this proceeding, Aqua refers to its divisions as follows: Water A consists of operations in Ashtabula, Lake White, Lawrence County, Mansfield, Marion, and Tiffin Districts. Water C refers to the water operations in the Franklin County District and Portage County District. Wastewater refers to the sewer operations of the Franklin County District. (Aqua Ex. 10 at 2-3; Staff Ex. 2 at 1.)

On July 1, 2011, Aqua filed a notice of intent to file an application to increase its water rates in its entire service area, and its sewer service rates in the Franklin County District. In its notice of intent, the company also requested a waiver of certain standard filing requirements relating to financial and informational data. By entry issued on July 27, 2011, the Commission approved the requested waivers, date certain of April 30, 2011, and test-year period of January 1, 2011 through December 31, 2011.

Aqua filed its application to increase rates with standard filing requirements on August 1, 2011. On August 15, 2011, Aqua filed its supporting testimony. By entry issued September 20, 2011, the Commission accepted the application for filing as of August 1, 2011, and ordered the applicant to publish a notice of the application,

¹ By finding and order issued on February 14, 2012, the Commission approved the purchase of 100 percent of Ohio American's outstanding capital stock by Aqua. Ownership of all of the assets held by Ohio American remained under the control of Ohio American and Ohio American continued to provide service until such time as the closing date of the stock purchase was executed. On April 27, 2012, Aqua and Ohio American notified the Commission that the closing date on the stock purchase was May 1, 2012. 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.*, Case Nos. 11-5102-WS-ATR, et al. By entry issued on March 28, 2012, the Commission approved the name change from Ohio American to Aqua upon completion of the stock purchase. See *In the Matter of the Application of Aqua Ohio Inc. for Authority to Change the Name of Ohio American Water Company to Aqua Ohio Water Company.*, Case Nos. 12-720-WS-ACN, et al. For consistency, the company will be referred to as Aqua throughout this proceeding, regardless of the date ownership was transferred.

pursuant to Section 4909.19, Revised Code. The city of Marion (Marion), Ohio Consumers' Counsel (OCC), Perry Township, Franklin County, Ohio (Perry), and Prairie Township, Franklin County, Ohio (Prairie) filed motions to intervene in the case on September 14, 2011, September 23, 2011, October 27, 2011, and December 5, 2011, respectively. By entry issued on February 13, 2012, the motions to intervene filed by OCC, Marion, Perry, and Prairie were granted.

Pursuant to Section 4909.19, Revised Code, Staff conducted an investigation of the application and filed its report (Staff Report) on January 31, 2012 (Staff Ex. 2). Objections to the Staff Report were filed by Aqua and jointly by OCC and Marion on March 1, 2012.

Aqua's current rates and charges were established by opinion and order issued on May 5, 2010, in Case No. 09-391-WS-AIR. The following table shows the approximate amount and percentage increase of additional revenue generated using the applicant's proposed rates versus those recommended in the staff report, when applied to the total adjusted test year sales volume.

<u>Service Area</u>	<u>Application</u>	<u>Staff Report</u>
Water A		
Revenue Increase	\$6,491,606	\$3,902,913 to \$4,503,686
Percentage Increase	22.12%	13.28-15.33%
Water C		
Revenue Increase	\$1,274,308	\$573,738 to \$676,555
Percentage Increase	23.03%	10.34-12.20%
Wastewater		
Revenue Increase	\$506,256	\$290,434 to \$368,449
Percentage Increase	12.33%	7.07-8.97%

(Aqua Ex. 10 at Sch. A-1; Staff Ex. 2 at 2-3.)

By entry issued on February 1, 2012, the evidentiary hearing was scheduled to commence on March 26, 2012. By entry issued on February 13, 2012, local public hearings were scheduled for March 5, 2012, in Galloway, Ohio; on March 7, 2012, in Ashtabula, Ohio; on March 12, 2012, in Tiffin, Ohio; on March 19, 2012, in Groveport, Ohio; and on March 21, 2012, in Marion, Ohio. Notice of the local public hearings was published in accordance with Section 4903.083, Revised Code, and proof of such publication was filed on March 22, 2012.

The evidentiary hearing commenced, as scheduled, on March 26, 2012, and was recessed until May 1, 2012, at the request of the parties. The hearing reconvened on May 1, 2012, and was again recessed. On May 8, 2012, a Stipulation and Recommendation (Stipulation) was filed, signed by Aqua and Staff (Jt. Ex. 1), along with the supporting testimony of William Ross Willis (Staff Ex. 1). On June 6, 2012, the signatory parties filed a notice of substitution of Schedule E-1 and E-2.1 to the Stipulation. The hearing reconvened on May 9, 2012. At the hearing, OCC represented that although it did not sign the Stipulation, it did not oppose the Stipulation (Tr. at 18-19).

II. CONSIDERATION OF THE STIPULATION AND EVIDENCE

A. Local Public Hearing Testimony

The Commission received significant public correspondence related to this case. Generally, the correspondence expressed opposition to any proposed rate increase and expressed displeasure with the frequency of rate increases requested by Aqua. Moreover, some of the correspondence expressed displeasure with the quality of the water received and the effects of the water on appliances and fixtures.

Each of the local public hearings was well attended. At the Galloway hearing, two witnesses testified and explained their concern with the rising prices of water service provided by Aqua. Specifically, they explained that Aqua has received frequent increases in the past, and that residents in the service territory cannot afford to pay more for water than they currently pay. Residents also expressed some displeasure regarding water hardness and the quality of water pressure they received, particularly in light of the rates that are paid by Aqua customers.

Over ten witnesses testified at each of the hearings in Ashtabula, Ohio, and Tiffin, Ohio, and six testified at the hearing in Marion, Ohio, where witnesses generally expressed concern over the potential effect of a price increase on their community, where economic conditions are already poor. Witnesses stated that many people in the community could not afford an increase of the magnitude requested by Aqua, when unemployment is generally high, and many consumers have not received wage increases in years.

Seventeen witnesses testified at the local public hearing in Groveport, Ohio. Witnesses who live in the Blacklick subdivision explained that they have significant problems with the water quality. Many residents explained that they do not feel comfortable drinking the water that they receive from Aqua, and therefore, in addition to high water rates, they also incur expenses for bottled water. Moreover, residents explained that they have had to replace appliances more frequently than expected, due to the effects of the hardness of the water, which creates significant build-up on

appliances and fixtures. Numerous residents also explained that the cost of service is exorbitant, causes economic hardship, and drives down property values in the area. Customers also expressed frustration with the need to pay for private water softening and reverse osmosis systems to make their water drinkable.

Three witnesses appeared at the various evidentiary hearings held at the Commission offices. These witnesses also expressed concerns over the cost of water service as well as over the quality of water provided by Aqua.

B. Stipulation

As previously stated, a Stipulation signed by Staff and Aqua was filed on May 8, 2012, with substitute Schedules E-1 and E-2.1 filed by the signatory parties on June 6, 2012. The Stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The following is a summary of the provisions agreed to by the stipulating parties and is not intended to replace or supersede the Stipulation:

- (1) Aqua will receive a net base rate increase of \$4,234,279. The rates and charges set forth in Aqua's tariffs shall be amended to increase annual operating revenue accordingly, effective with service rendered on and after the filing of such tariffs with the Commission. Aqua's current rates are no longer sufficient to yield a reasonable compensation for the services rendered and are, therefore, unreasonable. The total net base rate revenue increase of \$4,234,279 provides reasonable compensation for the services rendered. This total revenue requirement reflects 7.81 percent as a reasonable rate-of-return on rate base.
- (2) Aqua will proceed with its initiated review of the water quality issues in the Blacklick service territory. Aqua will work with Staff and OCC as the process moves forward. The report of the investigation shall be completed and provided to Staff and OCC within 180 days of the issuance of this opinion and order.
- (3) Unless otherwise provided in the Stipulation, all rates, terms, conditions, and any other items shall be treated in accordance with the Staff Report. If any proposed rates, terms, conditions, or other items set forth in Aqua's application are not addressed in the Staff Report, the proposed, rate, term, condition, or

other item shall be treated in accordance with the application filed in this proceeding.

- (4) New tariff pages reflecting the changes proposed in Aqua's application and recommended in the Staff Report are reflected in Schedule E-1, attached to the Stipulation. These pages reflect appropriate recovery of the revenue requirement.

(Jt. Ex. 1 at 2-4.)

C. Evaluation of the Stipulation

Rule 4901-1-30, Ohio Administrative Code, 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. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *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, 1994); *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.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Id.* at 563.

Staff witness William Ross Willis testified that the Stipulation is a product of serious bargaining among capable, knowledgeable parties. Specifically, Mr. Willis explained that the settlement is the result of consensus building on the part of the signatory parties, who were represented by experienced counsel who regularly participate in regulatory proceedings before the Commission and are familiar with Commission practice and procedure. Moreover, Mr. Willis opined that the Stipulation is the result of good faith negotiations and serious bargaining. (Staff Ex. 1 at 3.) 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, Mr. Willis asserts that the Stipulation benefits ratepayers and the public interest because the Stipulation results in a just and reasonable revenue requirement that benefits ratepayers by recognizing some of the objections to the Staff Report, rejecting some objections, and considering appropriate alternatives. Further, the signatories to the Stipulation represent diverse interests. The Stipulation also avoids the costs of litigation. (Staff Ex. 1 at 3-4.) 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.

Staff witness Willis also testified that the Stipulation does not violate any important regulatory principle or practice. Moreover, he explains that the recommended revenue requirement is consistent with sound regulatory rate setting practices. (Staff Ex. 1 at 4.) The Commission finds that there is no evidence that the Stipulation violates any important regulatory principle or practice and, therefore, the Stipulation meets the third criterion.

Accordingly, we find that the Stipulation entered into by the parties is reasonable and should be adopted.

III. RATE BASE

The following information presents the value of Aqua's property used and useful in the rendition of water services as of the April 30, 2011, date certain, as stipulated by the parties (Jt Ex. 1 at Sched. B-1):

	<u>Water A</u>	<u>Water C</u>	<u>Wastewater</u>
Plant in Service	\$121,842,842	\$19,901,457	\$17,658,730
Depreciation Reserve	(\$39,756,680)	(\$6,028,929)	(\$6,208,039)
Net Plant in Service	\$82,087,162	13,872,528	\$11,450,691
Construction Work in Progress	0	0	0
Working Capital Allowance	0	0	0
Other Rate Base Items	(\$12,100,419)	(\$1,930,811)	(\$2,383,341)
Rate Base	\$69,986,743	\$11,941,717	\$9,067,350

The Commission finds the rate base stipulated by the parties to be reasonable and proper and adopts the valuation of \$69,986,743 for Water A, \$11,941,717 for Water C, and \$9,067,350 for Wastewater as the rate base for the purposes of this proceeding.

IV. OPERATING INCOME

The following information reflects Aqua's operating revenue, operating expenses, and net operating income for the 12 months ended December 31, 2011 (Jt. Ex. 1 at Sched. C-2):

	<u>Water A</u>	<u>Water C</u>	<u>Wastewater</u>
<u>Operating Revenue</u>			
Water Sales	\$28,658,413	\$5,360,638	\$4,079,502
Other Operating Revenues	\$725,651	\$186,140	\$27,284
Total Operating Revenue	\$29,384,064	\$5,546,778	\$4,106,786
<u>Operating Expenses</u>			
Operation and Maintenance	\$15,738,143	\$2,978,064	\$1,738,291
Depreciation	\$3,133,050	\$464,539	\$435,790
Taxes, Other Than Income	\$6,320,498	\$1,409,591	\$1,168,899
Federal Income Taxes	\$878,382	\$112,703	\$165,927
Total Operating Expenses	\$26,070,073	\$4,964,897	\$3,508,907
<u>Net Operating Income</u>	\$3,313,991	\$581,881	\$597,879

The Commission finds Aqua's operating revenue, operating expenses, and net operating income as stipulated to be reasonable and proper. The Commission will, therefore, adopt these figures for purposes of this proceeding.

V. RATE OF RETURN AND AUTHORIZED INCREASE

As stipulated, under its present rates, Aqua would have operating incomes of \$3,313,991, \$581,881, and \$597,879, for Water A, Water C, and Wastewater, respectively. Applying these figures to Aqua's respective rate bases of \$69,986,743, \$11,941,717, and \$9,067,350, for Water A, Water C, and Wastewater, yields respective rates of return of 4.74 percent, 4.87 percent, and 6.59 percent. Such rates of return are insufficient to provide Aqua with reasonable compensation for water and wastewater service rendered to its customers. (Joint Ex. 1 at Sched A-1.)

The parties have recommended rates of return of 7.81 percent for Water A, Water C, and Wastewater on the stipulated base rates of \$69,986,743, \$11,941,717, and \$9,067,350, for Water A, Water C, and Wastewater, respectively. Consequently, the parties have stipulated, the required operating incomes for Aqua is \$5,465,965 for Water A, \$932,648 for Water C, and \$708,160, for Wastewater, respectively. Additionally, the parties have stipulated that just and reasonable increases in the revenue requirement are \$3,485,421, \$569,829, \$179,029, for Water A, Water C, and Wastewater, respectively. (Jt. Ex. 1 at Sched. A-1.)

VI. EFFECTIVE DATE AND TARIFFS

As part of its investigation in this matter, the Staff reviewed the various rates, charges, and provisions governing terms and conditions of service contained in Aqua's proposed tariffs. Proposed revised tariffs in compliance with the Stipulation were submitted by the signatory parties (Jt. Ex. 1). Upon review, the Commission finds the proposed revised tariffs to be reasonable. Consequently, Aqua shall file final tariffs reflecting the revision. The new tariffs will become effective on a bills rendered basis after the effective date of the tariffs.

FINDINGS OF FACT:

- (1) On July 1, 2011, Aqua filed a notice of intent to file an application for an increase in rates. In that application, the Company requested a test year of January 1, 2011, to December 31, 2011, and a date certain of April 30, 2011. By Commission entry issued July 27, 2011, the test year and date certain were approved and certain waivers from the standard filing requirements were granted. Aqua's application was filed on August 1, 2011.
- (2) On September 20, 2011, the Commission issued an entry that accepted the application for filing as of August 1, 2011.

- (3) On January 31, 2012, Staff filed its written report of investigation with the Commission.
- (4) By entry issued on February 1, 2012, persons wishing to file objections to the Staff Report were directed to file appropriate pleadings by March 1, 2012. This entry also scheduled a prehearing conference for March 7, 2012, and the hearing to commence on March 26, 2012.
- (5) Intervention was granted to the OCC, Marion, Prairie, and Perry.
- (6) On March 1, 2012, objections to the Staff Report were filed by Aqua and jointly by OCC and Marion.
- (7) Local public hearings were scheduled for March 5, 2012, in Galloway, Ohio; on March 7, 2012, in Ashtabula, Ohio; on March 12, 2012, in Tiffin, Ohio; on March 19, 2012, in Groveport, Ohio; and on March 21, 2012, in Marion, Ohio. Notice of the local public hearings was published in accordance with Section 4903.083, Revised Code, and proof of such publication was filed on March 22, 2012.
- (8) The evidentiary hearing commenced, as scheduled, on March 26, 2012, and was recessed until May 1, 2012, at the request of the parties. The hearing reconvened on May 1, 2012, and was again recessed. The hearing reconvened and concluded on May 9, 2012.
- (9) On May 8, 2012, as supplemented June 6, 2012, a Stipulation and Recommendation was filed, signed by Aqua and Staff. At the hearing, OCC represented that although it did not sign the Stipulation, it did not oppose the Stipulation.
- (10) The value of all of Aqua's property used and useful for the rendition of water and wastewater services to customers affected by these applications, determined in accordance with Section 4909.15, Revised Code, is not less than \$90,995,810.
- (11) The current net annual compensation of \$4,493,751 represents a rate of return of 4.94 percent on the jurisdictional rate base of \$90,995,810.

- (12) A rate of return of 4.94 percent is insufficient to provide Aqua with reasonable compensation for the water and wastewater services rendered to its customers.
- (13) A rate of return of 7.81 percent is fair and reasonable under the circumstances presented by this case and is sufficient to provide Aqua just compensation and return on the value of Aqua's property used and useful in furnishing water and wastewater services to its customers.
- (14) An authorized revenue increase of \$4,234,279 will result in a return of \$7,106,773 which, when applied to the rate base of \$90,995,810, yields a rate of return of approximately 7.81 percent.
- (15) The allowable gross annual revenue to which Aqua is entitled for purposes of these proceedings is \$43,271,907.

CONCLUSIONS OF LAW:

- (1) Aqua's application was filed pursuant to, and this Commission has jurisdiction of the application under, the provisions of Sections 4909.17, 4909.18, and 4909.19, Revised Code, and the application complies with the requirements of these statutes.
- (2) A Staff investigation was conducted and a report duly filed and mailed, and public hearings held herein, the written notice of which complied with the requirements of Sections 4909.19 and 4903.083, Revised Code.
- (3) The ultimate issue for the Commission's consideration is whether the Stipulation, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of the Stipulation, the Commission has used the following criteria:
 - (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
 - (b) Does the settlement, as a package, benefit ratepayers and the public interest?

- (c) Does the settlement package violate any important regulatory principle or practice?
- (4) The Stipulation was the product of serious bargaining among capable, knowledgeable parties, advances the public interest, and does not violate any important regulatory principles or practices. The unopposed Stipulation submitted by the signatory parties is reasonable and should be adopted in its entirety.
- (5) The existing rates and charges for water service are insufficient to provide Aqua with adequate net annual compensation and return on its property used and useful in the provision of water and wastewater services.
- (6) A rate of return of not more than 7.81 percent is fair and reasonable under the circumstances of this case and is sufficient to provide Aqua just compensation and return on its property used and useful in the provision of water and wastewater services to its customers.
- (7) Aqua is authorized to withdraw its current tariffs and should file final revised tariffs.

ORDER:

It is, therefore,

ORDERED, That the Stipulation filed on May 8, 2012, as supplemented June 6, 2012, is approved in accordance with this Opinion and Order. It is, further,

ORDERED, That the application of Aqua for authority to increase its rates and charges for water service is granted to the extent provided in this Opinion and Order. It is, further,

ORDERED, That Aqua be authorized to file, in final form, four, complete copies of its tariffs in final form consistent with this order. Aqua shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR) and one copy in these case dockets. The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division, of the Commission's Utilities Department. It is, further,

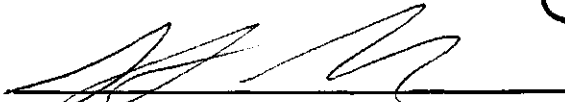
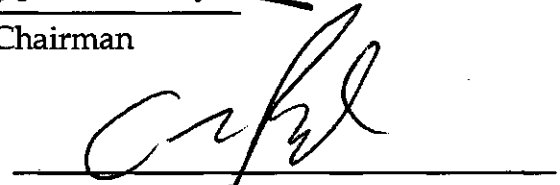
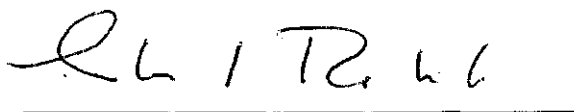
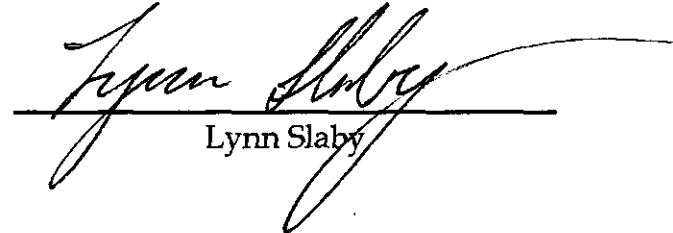
ORDERED, That the effective date of the revised tariffs shall be a date not earlier than the date upon which four, complete, printed copies of the final tariff page are filed with the Commission. It is, further,

ORDERED, That Aqua shall notify its customers of the changes to the tariff via bill message or bill insert, or separate mailing within 30 days of the effective date of the revised tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this Opinion and Order be served on all parties of record.

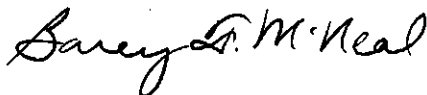
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman
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JUN 13 2012



Barcy F. McNeal
Secretary