

OCC EXHIBIT NO. _____

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Aqua)
Ohio, Inc. to Increase Its Rates and) Case No. 13-2124-WW-AIR
Charges for Its Waterworks Service.)

**TESTIMONY
OF
MICHAEL J. MAJOROS, Jr.
IN OPPOSITION TO THE STIPULATION AND RECOMMENDATION**

**On Behalf of
The Office of the Ohio Consumers' Counsel**
*10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485*

August 4, 2014

1 **I. INTRODUCTION**

2

3 ***Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION.***

4 ***A1.*** My name is Michael J. Majoros, Jr. I am an employee and owner of Snively King
5 Majoros & Associates, Inc. My business address is 4351 Garden City Drive,
6 Suite 350C, Landover, MD 20785.

7

8 ***Q2. ARE YOU THE SAME MICHAEL J. MAJOROS WHO PREVIOUSLY FILED***
9 ***DIRECT TESTIMONY IN THIS PROCEEDING?***

10 ***A2.*** Yes.

11

12 ***Q3. WHAT IS THE PURPOSE OF YOUR TESTIMONY?***

13 ***A3.*** My testimony, in addition to other OCC witness testimony, explains one reason
14 why the Public Utilities Commission of Ohio (“PUCO”) should reject the
15 Stipulation and Recommendation filed in this proceeding on July 21, 2014
16 (“Stipulation” or “Settlement”). Specifically, I am focusing on one aspect of this
17 proceeding – the federal income tax expense that will be charged to Aqua Ohio,
18 Inc.’s (“Aqua” or “the Utility”) customers. The proposed Stipulation overcharges
19 customers for federal income tax expenses that will not be paid to the Federal
20 government. As a result, it does not benefit the customers and public interest, and
21 violates important regulatory principles and practices. Therefore, the proposed
22 Stipulation should be rejected.

II. FEDERAL INCOME TAX

***Q4. IN ITS APPLICATION, HOW MUCH FEDERAL INCOME TAX DOES
AQUA OHIO, INC. SEEK TO CHARGE ITS CUSTOMERS?***

A4. Aqua Ohio, Inc. (“Aqua” or “the Utility”) proposes to include \$4,351,044 of federal income tax in the rates that it seeks to annually charge customers during the time period that the rates from this case are in effect.¹

***Q5. WHAT WERE THE FINDINGS OF THE PUCO STAFF’S REPORT OF
INVESTIGATION REGARDING THE TREATMENT OF FEDERAL
INCOME TAX EXPENSES?***

A5. The Staff of the Public Utilities Commission of Ohio (“PUCO Staff”) proposes to include \$5,109,637 of federal income tax in the rates that customers will pay for water service.²

***Q6. HOW ARE THE FEDERAL INCOME TAX EXPENSES TREATED IN THE
STIPULATION AND RECOMMENDATION IN THIS CASE?***

A6. The Stipulation and Recommendation includes \$4,202,711 of federal income taxes in the rates that Aqua Ohio would be permitted to annually charge customers during the time period that the rates from this case are in effect.³

¹ Aqua Ohio, Inc. Case No. 13-2124-WW-AIR, Application, Schedule C-4, page 2 of 2, line 22, Column (F).

² PUCO Staff Report, Schedule C-4, page 2 of 2, line 22, Column (F).

³ Stipulation and Recommendation, Schedule C4, page 2 of 2, line 22, Column (F).

1 **III. THE PUCO'S THREE-PRONG TEST FOR EVALUATING**
2 **SETTLEMENTS**

3
4 ***Q7. WHY DO YOU RECOMMEND THAT THE PUCO REJECT THE***
5 ***STIPULATION AND RECOMMENDATION?***

6 ***A7.*** The PUCO relies upon a three-prong test when evaluating whether to approve a
7 Stipulation. The proposed Stipulation fails this test.

8
9 ***Q8. WHAT IS YOUR UNDERSTANDING OF THE THREE-PRONG TEST THAT***
10 ***THE PUCO USES TO EVALUATE SETTLEMENTS?***

11 ***A8.*** It is my understanding that the PUCO applies a three-prong test when evaluating
12 whether a settlement (the Stipulation and Recommendation) should be approved.

13 The PUCO must analyze the Stipulation and decide the following:

- 14 1. Is the settlement a product of serious bargaining among
15 capable, knowledgeable parties representing diverse
16 interests?
- 17 2. Does the settlement, as a package, benefit customers and
18 the public interest?
- 19 3. Does the settlement package violate any important
20 regulatory principle or practice?

Q9. WHY DOES THE STIPULATION FAIL THE THREE-PRONG TEST?

A9. Permitting Aqua to collect federal income tax expense from customers would provide a windfall cash transfer from its customers to itself, which would not benefit customers or the public interest. Moreover, permitting Aqua to collect federal income tax expense would result in unjust and unreasonable charges to customers, which would violate the important regulatory practices and principles set forth in the Ohio Revised Code.⁴ The Stipulation should be rejected for these reasons.

Q10. WHY DOES THE PROPOSED STIPULATION, WHICH GRANTS AQUA THE ABILITY TO CHARGE CUSTOMERS FOR FEDERAL INCOME TAXES, NOT BENEFIT CUSTOMERS OR THE PUBLIC INTEREST?

A10. Aqua will send to its corporate parent, Aqua America, Inc., (“Aqua America”) the amounts that it annually collects from its customers for federal income taxes. However, Aqua America will not pay that federal tax money to the federal government. Instead, Aqua America will keep the money and use it for whatever purpose it chooses. For example, Aqua America could distribute the additional monies as dividends to its investors. In any event, it is not in the public interest to charge customers for federal taxes that ultimately end up in the pockets of Aqua America’s shareholders. To approve rates that reflect \$4,202,711 in federal income taxes expenses would create a windfall for the Utility, which harms Aqua’s customers.

⁴ See, R.C. 4909.15 and R.C. 4909.18.

1 ***Q11. WHAT IS THE REASON FOR YOUR OPINION THAT THE PROPOSED***
2 ***STIPULATION WILL PERMIT AQUA AMERICA TO KEEP THE***
3 ***FEDERAL INCOME TAX EXPENSES IT COLLECTS FROM AQUA'S***
4 ***OHIO CUSTOMERS?***

5 ***A11.*** In their calculation of the Federal Tax Liability at 35 percent for Federal Income
6 Taxes on Schedule C-4 of the Stipulation, the Signatory Parties failed to consider
7 the current net operating losses of the parent company, Aqua America, Inc.⁵ As
8 of the end of 2013, Aqua America had a negative current federal tax provision of
9 \$9,891,000.⁶ That means Aqua America does not owe current federal income
10 taxes. Aqua America offsets the negative current amount with \$30.2 million of
11 positive deferred federal income taxes, thus resulting in a net positive amount.
12 But the simple fact is that the federal government owes income taxes to Aqua
13 America rather than the other way around.

14
15 ***Q12. WHY DOES THE PROPOSED STIPULATION, WHICH GRANTS AQUA***
16 ***THE ABILITY TO CHARGE CUSTOMERS FOR FEDERAL INCOME***
17 ***TAXES, VIOLATE IMPORTANT REGULATORY PRINCIPLES?***

18 ***A12.*** Requiring customers to pay federal income tax expenses that Aqua does not end
19 up paying to the federal government violates the important regulatory standards of

⁵ See Aqua America, Inc. and Subsidiaries, 2013 Consolidated Financial Statements, Note 7, (p.51). "At December 31, 2013, the Company has a cumulative Federal net operating loss ("NOL") of \$258,094[000]. The Company believes the Federal NOLs are more likely than not to be recovered and require no valuation allowance. The Company's Federal NOLs do not begin to expire until 2013. ... At December 31, 2013 the Company has a cumulative state NOL of \$531,160[000], a portion of which is offset by a valuation allowance because the Company does not believe the NOLs are more likely than not to be realized. The state NOLs do not begin to expire until 2023."

⁶ Id, page 48.

1 the state of Ohio set forth in R.C. 4909.15 and R.C. 4909.18. Those statutes
2 provide, in part, that the rates and charges paid for utility service must be just and
3 reasonable.

4

5 ***Q13. WHAT AMOUNT SHOULD AQUA COLLECT FOR FEDERAL INCOME***
6 ***TAX EXPENSES?***

7 ***A13.*** I propose zero (0) Federal income tax for ratemaking purposes to protect Ohio
8 customers from paying for non-existent income taxes.

9

10 ***Q14. WHY SHOULD NO FEDERAL INCOME TAX EXPENSES BE COLLECTED***
11 ***FROM AQUA'S CUSTOMERS?***

12 ***A14.*** As previously stated, Aqua's parent company (Aqua America) has not paid any
13 federal income taxes in the recent past (and will not pay in the foreseeable future)
14 due to millions of dollars of net operating loss carryovers. Thus, the corporation
15 as a whole is not going to pay any federal income taxes due to prior losses. The
16 Stipulation -- which requires Aqua's customers to pay taxes that will never be
17 paid to the federal government -- amounts to an unreasonable and unjust increase
18 in rates. The imposition and collection of these unreasonable and unjust rates not
19 only fails to benefit consumers, but also runs contrary to the long standing electric
20 service policies and regulatory principles of the state of Ohio.

1 **IV. CONCLUSION**

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3 ***Q15. DOES THIS CONCLUDE YOUR TESTIMONY?***

4 ***A15.*** Yes. However, I reserve the right to supplement my testimony in the event that
5 Aqua, the PUCO Staff, or other parties submit additional testimony, or if new
6 information or data in connection with this proceeding becomes available.

CERTIFICATE OF SERVICE

I hereby certify that a copy of *Testimony of Michael J. Majoros in Opposition to the Stipulation and Recommendation* was provided to the persons listed below via electronic transmission this 4th day of August 2014.

/s/ Melissa R. Yost

Melissa R. Yost

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This foregoing document was electronically filed with the Public Utilities

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8/4/2014 4:28:01 PM

in

Case No(s). 13-2124-WW-AIR

Summary: Testimony Testimony of Michael J. Majoros, Jr. in Opposition to the Stipulation and Recommendation on Behalf of the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Yost, Melissa R. Ms.