

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE APPLICATION OF
AQUA OHIO, INC., TO INCREASE ITS RATES
FOR WATER SERVICE.**

CASE NO. 16-907-WW-AIR

OPINION AND ORDER

Entered in the Journal on March 22, 2017

I. SUMMARY

{¶ 1} The Commission grants, in part, Aqua Ohio Inc.'s application to increase its water rates and approves the Stipulation between Staff and Aqua Ohio Inc. filed in this proceeding, allowing a return of 7.47 percent for water service rendered in Aqua Ohio Inc.'s Lake Erie and Masury service divisions, as well as the service divisions consisting of all areas formerly served by Mohawk Utilities, Inc., Tomahawk Utilities, Inc., and Ohio American Water Company.

II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} Aqua Ohio, Inc. (Aqua or the Company) is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of the Commission.

{¶ 3} On April 28, 2016, Aqua filed a notice of intent to file an application to increase its water rates in its Lake Erie and Masury service divisions, as well as the service divisions consisting of all areas formerly served by Mohawk Utilities, Inc., Tomahawk Utilities, Inc., and Ohio American Water Company, pursuant to R.C. 4909.43(B), and in compliance with Ohio Adm.Code 4901-7-01, Appendix A, Chapter I of the Commission's Standard Filing Requirements (SFRs). In its notice of intent, the Company also requested waivers from various financial and informational data required by the Commission's SFRs. By Entry issued May 25, 2016, the Commission approved the requested waivers, date certain of December 31, 2016, and test-year period of January 1, 2016, through December 31, 2016.

{¶ 4} On May 31, 2016, Aqua filed an application pursuant to R.C. 4909.18 to increase its rates for water service in the aforementioned service areas. By its application, Aqua requested a rate increase which would generate additional base revenues of approximately \$5,604,094 or 9.21 percent over current revenues for those service areas. On June 14, 2016, Aqua filed its supporting testimony.¹ By Entry issued July 20, 2016, the Commission accepted the application for filing as of May 31, 2016, and ordered the Company to publish a notice of the application, pursuant to R.C. 4909.19. Ohio Consumers' Counsel (OCC) and the city of Marion (Marion) filed motions to intervene in this case on June 1, 2016 and August 24, 2016, respectively. By Entry issued on December 1, 2016, the motions to intervene filed by OCC and Marion were granted.

{¶ 5} Pursuant to R.C. 4909.19, Staff conducted an investigation of the facts, exhibits, and matters relating to the Company's application, and filed its report on November 17, 2016 (Staff Report or Staff Ex. 1). Objections to the Staff Report were filed on December 19, 2016, by Aqua, OCC, and Marion.

{¶ 6} By Entry issued December 21, 2016, local public hearings were scheduled for Columbus, Ohio on January 10, 2017; Marion, Ohio on January 11, 2017; and Ashtabula, Ohio on January 12, 2017. Notice of the local public hearings was published in accordance with R.C. 4903.083 and proof of such publication was filed on February 3, 2017.

{¶ 7} By Entry issued on December 1, 2016, the evidentiary hearing was scheduled for January 19, 2017. The hearing commenced, as scheduled, and one member of the public provided additional testimony. The attorney examiner also granted the joint motion to continue the hearing until January 27, 2017, in order to allow additional time for parties to engage in additional settlement negotiations.

¹ Aqua filed supplemental direct testimony on December 19, 2016.

{¶ 8} On January 26, 2017, a Stipulation and Recommendation was filed, signed by Aqua and Staff (Joint Ex. 1 or Stipulation), along with the supporting testimony of Ms. Dorothy Bremer (Staff Ex. 2).

{¶ 9} The evidentiary hearing resumed on January 27, 2017, as directed by the attorney examiner, and the Stipulation and supporting exhibits, including the testimony of Ms. Bremer, were admitted into the record.²

{¶ 10} Subsequent to the conclusion of the evidentiary hearing, OCC and Marion jointly filed correspondence on January 27, 2017, indicating that they were not opposed to the Stipulation.

III. DISCUSSION

A. *Applicable Law*

{¶ 11} Ohio Adm.Code 4901-1-30 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, 1992-Ohio-122, 592 N.E.2d 1370, 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.

{¶ 12} 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 & Elec. Co.*, Case No. 91-410-EL-AIR (Apr. 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (Mar. 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (Dec. 30, 1993). The ultimate issue for our consideration is whether the agreement, which

² Staff stated on the record that OCC and Marion, who were not present at the hearing, were planning to file correspondence indicating that they were not opposed to the contents of the Stipulation, despite the fact neither party signed the Stipulation (January 27 Tr. at 5-6).

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?

{¶ 13} The Supreme Court of Ohio 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, 1994-Ohio-435, 629 N.E.2d 423, citing *Consumers' Counsel* 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.

B. Local Public Hearing Testimony

{¶ 14} At the local public hearing held in Columbus, Ohio, five individuals provided testimony. Mr. John Kershner, a township trustee residing in Blacklick Estates, testified that he is familiar with the high level of dissatisfaction with the water service and the associated rates in that area. In fact, Mr. Kershner argued that the high water rates continue to drive down property values, which causes neighbors to leave the community and drives potential new homeowners to other neighborhoods. He requests the Commission seriously consider the proposed rate increase, especially considering that Aqua received a significant property tax reduction in 2016 and there is a large population of Section 8 residents residing in Blacklick Estates. (Columbus Tr. at 10-15.) Ms. Debbie Miller, also a resident of Blacklick Estates, testified that many of the homeowners cannot use the water for everyday use and resort to using bottled water, despite the continually increasing costs. Ms. Miller also stated that there are no budget or payment plans available to these customers, which often exacerbates the problem for many in the community, especially senior citizens. Additionally, Ms. Miller explained

that many residents have to replace hot water heaters, faucets, toilets, shower heads and other items due to the residue build up from the water, further noting that the water continues to be very hard even though Aqua has attempted to implement steps to soften the water. (Columbus Tr. at 15-26.) Mr. Andrew Hawley, a resident of the Prairie Township service area, expressed his concern that Aqua is requesting a flat rate increase and justifying the request by stating it is experiencing low water sales. Mr. Hawley notes that many consumers have simply reduced their water usage due to high rate increases over the past years and granting this request will have a significant impact on fixed-income residents. (Columbus Tr. at 26-29.) Ms. Susan Brobst and Mr. Victor Paini, both representing Madison Township, also provided testimony, stating that, while they acknowledge certain improvements have been made by Aqua to improve the quality of the water, as well as communication efforts with residents, there are many areas where Aqua could improve its service. In addition to expanding water softening efforts system wide and offering opportunities for payment plans for fixed-income individuals, Ms. Brobst and Mr. Paini urge the Commission to consider the amount of the rate increase and the effect that the increase will have on individuals residing in Madison Township, specifically Blacklick Estates. (Columbus Tr. at 29-39.)

{¶ 15} At the local public hearing held in Marion, Ohio, four individuals provided testimony. Ms. Heather Thompson, a representative of Ohio Heartland Community Action Commission (OHCAC), testified that many of their clients are experiencing difficulty paying their water bills without the possibility of a rate increase. Additionally, Ms. Thompson stated that her agency used to receive funds from Aqua's predecessor to help alleviate the cost burden on OHCAC clients; however, she notes that Aqua has not provided any such support since it began servicing those areas. Further, Ms. Thompson argues that other gas and electric utilities in the area offer OHCAC clients opportunities throughout the year to obtain assistance with their bills in the form of payment plans. Ms. Thompson contends that Aqua is already charging much more for its water service than other regional companies. As Aqua has reported increased earnings in 2016,

Ms. Thompson requests that Aqua utilize those earnings by offering payment plans or financial grants, rather than request a rate increase that will be further detrimental to OHCAC clients. (Marion Tr. at 10-15.) Ms. Joelle DeFranks also provided testimony, stating that Aqua Pennsylvania, Inc., another subsidiary of Aqua's parent company, was able to continue its infrastructure improvement plan without increasing rates in 2012 due to a tax accounting change. Ms. DeFranks requests that similar alternative solutions be considered in this proceeding. Ms. DeFranks also agreed with the comments of Ms. Thompson, stating that the reported 2016 earnings should be considered by the Commission when evaluating the rate increase proposal. (Marion Tr. at 16-20.) Mr. Josh Daniels, a Marion city councilman, also provided testimony in which he agreed that Aqua has reported record earnings and share prices over the past decade, indicating the actual cost of providing water service must be much lower than what Aqua is charging. Furthermore, Mr. Daniels argued that, due to the price disparity between Aqua and other regional water companies, Marion continues to lose out on economic opportunities when companies consider the cost of water in their decision to locate or expand operations in the county. (Marion Tr. at 20-27.) Lastly, Mr. Jeff Gerritsen testified that he feels compelled to use bottled water in his home due to the quality of water currently provided by Aqua, and notes that he is willing to pay a higher cost if Aqua provides him a safe and useable water source for him and his family. Mr. Gerritsen also questioned why Aqua was requesting such a large increase when OCC has calculated that Aqua customers should be receiving a decrease of one to two dollars. (Marion Tr. at 28-30.)

{¶ 16} At the local hearing in Ashtabula, Ohio, Ms. Anne Reese, a resident of Ashtabula County, provided testimony. Ms. Reese testified that she believes the requested rate increase is unreasonable, especially when considering that a majority of the recent increase for Ohioans earning a minimum wage will be consumed by the proposed rate increase (Ashtabula Tr. at 9-10).

{¶ 17} Finally, Ms. Kimberly Jordan offered testimony at the beginning of the evidentiary hearing on January 19, 2017, stating that, as an involved member of the community, she is discouraged to see so many neighbors moving due to the high water rates. Ms. Jordan also explained that she has attempted to work with Aqua on several maintenance issues, but has had little success (January 19 Tr. at 7-16.)

C. Summary of the Stipulation

{¶ 18} As previously stated, a Stipulation signed by Staff and Aqua was filed on January 26, 2017. The Stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. Below is a summary of the provisions agreed to by the stipulating parties and is not intended to replace or supersede the Stipulation.

{¶ 19} Per the terms of the Stipulation, Aqua will receive a net base rate increase of \$4,242,381, of which the residential class will be allocated no more than \$2,813,919. The rates and charges set forth in Aqua's tariffs shall be amended to increase annual operating revenue accordingly, effective with bills 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 \$4,242,381 provides reasonable compensation for the services rendered. This total revenue requirement reflects 7.47 percent as a reasonable rate-of-return. (Stipulation at 2.)

{¶ 20} The following information presents the value of Aqua's property used and useful in the rendition of water services as of the December 31, 2016 date certain, as stipulated by the parties (Stipulation at Sched. B-1):

Plant in Service	\$325,927,936
Depreciation Reserve	(\$92,236,337)
Net Plant in Service	\$233,691,600

Construction Work in Progress	\$0
Working Capital Allowance	\$0
Contributions in Aids of Construction	(\$32,893,077)
Advances for Construction	(\$4,834,975)
Customers' Advances-Related Facilities	(\$420)
Other Rate Base Items	(\$26,809,844)
Rate Base	\$169,153,285

{¶ 21} The following information reflects Aqua's adjusted operating revenue, adjusted operating expenses, and adjusted net operating income for the 12 months ended December 31, 2016, as stipulated by the parties (Stipulation at Sched. C-2):

Operating Revenue

Metered Water Sales Revenues	\$57,793,596
Unmetered Water Sales Revenues	\$2,169,309
Other Operating Revenues	\$1,124,193
Total Operating Revenue	\$61,087,098

Operating Expenses

Operation and Maintenance	\$24,393,518
Depreciation	\$8,217,734
Taxes, Other than Income Taxes	\$15,198,230
Total Operating Expenses	\$51,051,120
Net Operating Income	\$10,035,978

{¶ 22} As stipulated, under its present rates, Aqua would have operating income of \$10,035,978. Applying these figures to Aqua's respective rate base of \$169,153,285, yields a rate of return of 5.93 percent, which the signatory parties contend is insufficient to provide Aqua with reasonable compensation for water service rendered to its customers. The signatory parties have recommended a rate of return of 7.47 percent on the stipulated base rate of \$169,153,285. Consequently, the parties have stipulated that the required operating income for Aqua is \$12,635,750. Additionally, the signatory parties have stipulated that a just and reasonable increase in the revenue requirement is \$4,242,381. (Stipulation at Sched. A-1.) The signatory parties request that the Commission approve their proposed final tariffs, which will go into effect on a bills-rendered basis immediately after the Commission approves the Stipulation (Stipulation at 5).

{¶ 23} Additionally, the Stipulation requires Aqua to initiate discussions with Whirlpool Corporation and Marion Ethanol, LLC, d/b/a POET Biorefining-Marion in order to either: (1) file an appropriate application with the Commission, in a separate docket, for approval of any new, renewed, revised, or extended special contract with these companies; or (2) notify Staff and OCC that Aqua and the companies have failed to negotiate such a contract (Stipulation at 3-4). Furthermore, the signatory parties agree that the tank-painting reserve should be treated as a regulatory liability and that Aqua will not apply funds in that reserve to offset the tank-painting costs associated with water tanks that are capitalized (Stipulation at 4). Aqua will also be required to provide or arrange for the provision of reasonable access to Aqua and Aqua Services, Inc.'s (Aqua Services) books, records, and personnel associated with the allocation of shared-services costs and IT projects as may be necessary to permit Staff to determine whether Aqua Services has satisfactorily addressed the issues identified in the Staff Report (Stipulation at 4-5). Finally, Aqua will be required to provide annual shareholder funding of \$15,000 for a bill-payment assistance pilot program to assist low-income customers throughout its service territory to prevent the disconnection of water service (Stipulation at 5).

D. *Consideration of the Stipulation*

{¶ 24} Staff witness Dorothy Bremer provided testimony indicating that the Stipulation is a product of serious bargaining among capable, knowledgeable parties. Specifically, Ms. Bremer 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, Ms. Bremer opined that the Stipulation is the result of extensive negotiations among the parties and the Stipulation represents a comprehensive compromise of the issues raised in this proceeding. (Staff Ex. 2 at 2.) 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.

{¶ 25} With regard to the second criterion, Ms. Bremer 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 and considering appropriate alternatives. Further, Ms. Bremer contends that the Stipulation avoids the costs of litigation. (Staff Ex. 2 at 3.) Additionally, as noted by Ms. Bremer, the Stipulation also reduces the requested \$5,604,094 revenue increase to a stipulated increase of \$4,242,381 and maintains a rate of return of 7.47 percent. Ms. Bremer also explains that the Stipulation will establish processes to address special contracts, shared-services allocation practices and policies, and IT projects and policies, and will also establish a shareholder-funded pilot program to provide bill payment assistance to low-income customers throughout Aqua's service territory. (Staff Ex. 2 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.

{¶ 26} Staff witness Bremer also testified that the Stipulation does not violate any important regulatory principle or practice (Staff Ex. 2 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.

{¶ 27} Accordingly, we find that the Stipulation entered into by the parties is reasonable and should be adopted. As such, the Commission finds the rate base, operating revenue, operating expenses, and net operating income as stipulated to by the parties to be reasonable and proper and adopts these valuations for the purposes of this proceeding.

{¶ 28} The Commission notes that significant improvements have been implemented throughout Aqua's service territory regarding water quality and communications with customers, as evidenced by the local public testimony and Staff's own investigation in this proceeding. Moreover, we find that the Stipulation will continue to provide additional improvements, notably the shareholder-funded pilot program that will provide bill payment assistance to low-income customers. Aqua should continue to actively work with its customers and Staff to find resolutions to water quality issues, as recommended by Staff (Staff Ex. 1 at 34-35).

{¶ 29} As part of its investigation in this matter, Staff reviewed the various rates, charges, and provisions governing terms and conditions of service contained in Aqua's proposed tariffs. Proposed tariffs in compliance with the Stipulation were submitted by the signatory parties for the Commission's consideration. Upon review, the Commission finds the proposed revised tariffs to be reasonable. Consequently, Aqua shall file final tariffs reflecting the revisions. The new tariffs will become effective on a bills rendered basis on or after March 22, 2017. Moreover, the Company is instructed to modify its notice accordingly (Joint Ex. 4).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 30} On April 28, 2016, 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, 2016, to December 31, 2016, and a date certain of December 31, 2016. By Commission Entry issued May 25, 2016, the test year and date certain were approved and certain waivers from the SFRs were granted. Aqua's application was filed on May 31, 2016.

{¶ 31} On July 20, 2016, the Commission issued an Entry that accepted the application for filing as of May 31, 2016.

{¶ 32} On November 17, 2016, Staff filed its written report of investigation with the Commission.

{¶ 33} By Entry issued on December 1, 2016, persons wishing to file objections to the Staff Report were directed to file appropriate pleadings by December 19, 2016. This Entry also scheduled a prehearing conference for December 19, 2016, and the hearing to commence on January 19, 2017. By subsequent Entry issued December 13, 2016, the prehearing conference was rescheduled for December 21, 2016.

{¶ 34} Intervention was granted to OCC and Marion by Entry issued December 1, 2016.

{¶ 35} On December 19, 2016, objections to the Staff Report were filed by Aqua, OCC, and Marion.

{¶ 36} Local public hearings were scheduled for January 10, 2017, in Columbus, Ohio; January 11, 2017, in Marion, Ohio; and July 12, 2017, in Ashtabula, Ohio. Notice of the local public hearings was published in accordance with R.C. 4903.083, and proof of such publication was filed on February 3, 2017.

{¶ 37} The evidentiary hearing commenced, as scheduled, on January 19, 2017. At the hearing, a member of the public provided testimony. Additionally, the attorney examiner granted a motion to continue the evidentiary hearing in order to allow parties additional time to engage in further settlement negotiations. The hearing was continued until January 27, 2017.

{¶ 38} On January 26, 2017, a Stipulation was filed by Aqua and Staff. By joint correspondence filed on January 27, 2017, OCC and Marion represented that, although they did not sign the Stipulation, they did not oppose the Stipulation.

{¶ 39} The evidentiary hearing resumed on January 27, 2017, as directed by the attorney examiner, and the Stipulation and supporting exhibits, including the testimony of Ms. Bremer, was admitted into the record.

{¶ 40} The value of all of Aqua's property used and useful for the rendition of water services to customers affected by this application, determined in accordance with R.C. 4909.15, is not less than \$169,153,285.

{¶ 41} The current net annual compensation of \$10,035,978 represents a rate of return of 5.93 percent on the jurisdictional rate base of \$169,153,285.

{¶ 42} A rate of return of 5.93 percent is insufficient to provide Aqua with reasonable compensation for the water services rendered to its customers.

{¶ 43} A rate of return of not more than 7.47 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 services to its customers.

{¶ 44} An authorized revenue increase of \$4,242,381 will result in a return of \$12,635,750 which, when applied to the rate base of \$169,153,285, yields a rate of return of approximately 7.47 percent.

{¶ 45} The allowable gross annual revenue to which Aqua is entitled for purposes of this proceeding is \$65,329,479.

{¶ 46} Aqua's application was filed pursuant to, and this Commission has jurisdiction of the application under the provisions of R.C. 4909.17, 4909.18, and 4909.19, and the application complies with the requirements of these statutes.

{¶ 47} 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 R.C. 4909.19 and 4903.083.

{¶ 48} 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 Aqua and Staff is reasonable and should be adopted in its entirety.

{¶ 49} Aqua is authorized to withdraw its current tariffs and should file final revised tariffs.

V. ORDER

{¶ 50} It is, therefore,

{¶ 51} ORDERED, That the Stipulation filed on January 26, 2017, be approved in accordance with this Opinion and Order. It is, further,

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

{¶ 53} ORDERED, That Aqua be authorized to file, in final form, completed copies of its revised tariffs in its respective TRF docket, as well as in this case docket. It is, further,


{¶ 54} ORDERED, That the final revised tariffs shall become effective on a bills rendered basis on or after March 22, 2017. It is, further,

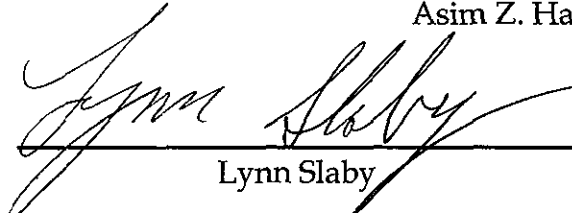
{¶ 55} ORDERED, That Aqua shall immediately commence notifying its customers of the changes to the tariff via bill message or bill insert, or separate mailing. The notification should occur on or before the receipt of the first bill reflecting the new rates. It is, further,


{¶ 56} 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,

{¶ 57} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman


Lynn Slaby


M. Beth Trombold



Thomas W. Johnson


Lawrence K. Friedeman

MJA/sc

Entered in the Journal

MAR 22 2017


Barcy F. McNeal
Secretary