

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
AQUA OHIO, INC. FOR APPROVAL OF A  
WATER PURCHASE AGREEMENT WITH  
POET BIOREFINING – MARION, LLC.

CASE NO. 18-223-WW-AEC

## FINDING AND ORDER

Entered in the Journal on October 3, 2018

### I. SUMMARY

{¶ 1} The Commission finds that Aqua Ohio, Inc.'s application for approval of a revised water purchase agreement between itself and POET Biorefining – Marion, LLC is reasonable and should be approved.

### II. DISCUSSION

{¶ 2} Aqua Ohio, Inc. (Aqua or Company) is a "public utility" and "waterworks company" as defined in R.C. 4905.02(A) and 4905.03(G). As such, Aqua is subject to the Commission's jurisdiction in accordance with R.C. 4905.04, 4905.05, and 4905.06.

{¶ 3} R.C. 4905.31 authorizes the Commission to approve schedules or reasonable arrangements between a public utility and one or more of its customers. The statute provides that every such schedule or reasonable arrangement shall be under the supervision and regulation of the Commission, and is subject to change, alteration, or modification by the Commission.

{¶ 4} On February 2, 2018, Aqua filed an application (the Application) for approval of a revised water purchase agreement (the Agreement) with POET Biorefining – Marion, LLC (POET), which it submitted to the Commission for approval under R.C. 4905.31(E). Along with the Application, Aqua also filed a motion for protective order to keep certain pricing information confidential that was contained within the Agreement, which Aqua attached as Exhibit A of its Application.

**A. Motion for Protective Order**

{¶ 5} On February 2, 2018, Aqua filed a motion for protective order, seeking to protect pricing information as well as certain terms and conditions of the Agreement. Aqua explains that the pricing information has independent economic value and knowledge of this and other terms and conditions negotiated in the Agreement could place Aqua at a competitive disadvantage in negotiations with other commercial and industrial customers. Aqua states that it has taken reasonable efforts to protect the information and has treated it as sensitive and confidential. Aqua also asserts that non-disclosure of this particular information is not inconsistent with the purposes of Title 49 of the Revised Code.

{¶ 6} No parties filed a memorandum contra to the motion for protective order.

{¶ 7} R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purposes of Title 49 of the Revised Code. R.C. 149.43 specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Supreme Court of Ohio has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St.3d 396, 399, 732 N.E.2d 373 (2000).

{¶ 8} Similarly, Ohio Adm.Code 4901-1-24 allows the Commission to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed \* \* \* to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code."

{¶ 9} Ohio law defines a trade secret as "information \* \* \* that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons

who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." R.C. 1333.61(D).

{¶ 10} The Commission has reviewed the information submitted by Aqua as Exhibit A. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Supreme Court of Ohio,<sup>1</sup> the Commission finds the financial information subject to the motion for protective order constitute trade secrets and, therefore, their release is prohibited under state law.

{¶ 11} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D), automatically expire after 24 months. Therefore, confidential treatment shall be afforded for a period ending 24 months from the date of this Finding and Order. Until that date, the Commission's docketing division should maintain, under seal, all information filed confidentially by Aqua.

{¶ 12} Ohio Adm.Code 4901-1-24(F), requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If Aqua wishes to extend this confidential treatment, it should file an appropriate motion in respect to their protected information within 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to other parties who wish to seek this information.

#### ***B. Summary of the Application***

{¶ 13} In the Application, Aqua explains that the Company, as successor in interest to Ohio American Water Company, and POET are parties to a contract dated August 20, 2007. *See, e.g., In re Ohio American Water Company*, Case No. 07-990-WW-AEC. Aqua states

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<sup>1</sup> See *State ex-rel. the Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997).

that most recently, in Case No. 16-907-WW-AIR, the Commission approved a stipulation on March 22, 2017, between Aqua and the Commission's Staff. The stipulation required Aqua to enter into discussions with POET regarding revisions to the parties' then-existing contract and to file any new, renewed, revised, or extended special contract between itself and POET with the Commission. Alternately, in the absence of a contract, the stipulation directed Aqua to notify Commission Staff and the Ohio Consumers' Counsel that Aqua and POET were unable to negotiate a mutually agreeable new or revised special contract.

{¶ 14} Aqua states that, pursuant to the stipulation, on January 12, 2018, Aqua and POET executed a revised contract, which it has attached as Exhibit A to the Application. Aqua submits that the negotiated rates, terms, and conditions are fair and reasonable. Specifically, Aqua notes that the rates and revenues provided under the Agreement represent an increase over the rates provided for in the prior contract. Furthermore, Aqua states that POET will not receive a subsidy under the Agreement because the revenues Aqua will receive under the Agreement will cover the incremental cost of providing waterworks service to POET. Additionally, Aqua states that POET has funded over \$2.3 million in improvements to the Company's distribution system in the Marion area, a substantial contribution in aid of construction, which further supports providing a discount to POET.

{¶ 15} Aqua explains that, under the terms of the Agreement, the effective date shall be the later of January 1, 2019, or the first day of the month following its approval by the Commission. If the Commission does not approve the Application by January 1, 2019, the Agreement shall be subject to termination upon notice. For this reason, Aqua requests that the Commission review and approve the Application as expediently as possible.

### **C. Staff Recommendation**

{¶ 16} On April 19, 2018, Staff filed its report and recommendation. In the report, Staff indicates that it has reviewed Aqua's application as well as the accompanying Agreement. Staff notes that the Agreement will not impair or reduce the quality of service to other Aqua customers and will not result in other customer classes subsidizing POET.

**D. Commission Conclusion**

{¶ 17} Upon review of the application filed by Aqua, as well as Staff's review and recommendation, the Commission finds that the application does not appear to be unjust or unreasonable and should, therefore, be approved.

**III. ORDER**

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That the motion for protective order filed by Aqua be granted. It is, further,

{¶ 20} ORDERED, That the Commission's docketing division maintain, under seal, all confidential information filed by Aqua for a period ending 24 months from the date of this Finding and Order. It is, further,

{¶ 21} ORDERED, That the Application for a reasonable arrangement between Aqua and POET be approved, as set forth in this Finding and Order. It is, further,

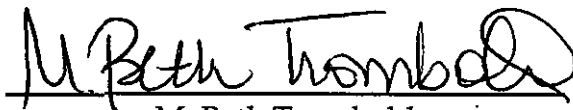
{¶ 22} ORDERED, That nothing in this Finding and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 23} ORDERED, That a copy of this Finding and Order be served upon each party of record.

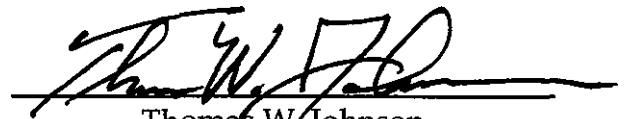
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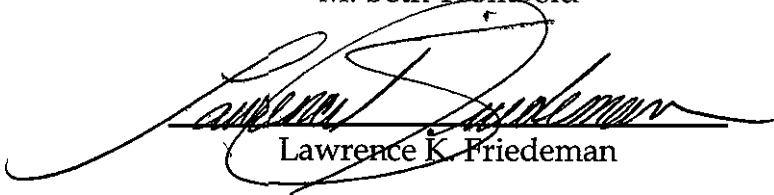
Asim Z. Haque, Chairman



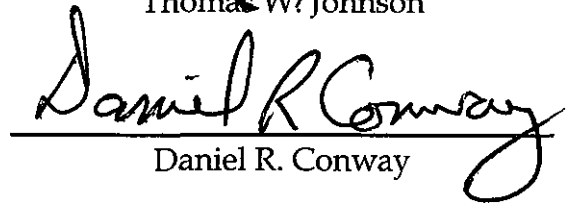
M. Beth Trombold



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Entered in the Journal

**OCT 03 2018**



Barcy F. McNeal  
Secretary