

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
AQUA OHIO, INC. FOR AUTHORITY TO  
ASSESS A SYSTEM IMPROVEMENT  
CHARGE.

CASE NO. 18-337-WW-SIC

## FINDING AND ORDER

Entered in the Journal on February 6, 2019

### I. SUMMARY

{¶ 1} The Commission approves the system improvement charge proposed by Aqua Ohio, Inc., subject to certain limitations.

### II. DISCUSSION

#### A. *Applicable Law*

{¶ 2} Aqua Ohio, Inc. (Aqua or Applicant) is a public utility and a waterworks company, as those terms are 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. 4909.172 governs consideration of an application for authority to collect a system improvement charge (SIC). The statute includes several requirements that must be met before the Commission may approve a proposed SIC:

- (a) The costs of infrastructure plant upon which a proposed SIC may be based may only include the costs of certain capital improvements. R.C. 4909.172(C). For a waterworks company like Aqua, allowable capital improvements may include:
  - (i) Replacement of existing plant including chemical feed systems, filters, pumps, motors, plant generators, meters, service lines, hydrants, mains and valves, main extensions that eliminate dead ends to resolve documented water supply problems presenting significant health or safety issues to then existing

customers, and main cleaning or relining. R.C. 4909.172(C)(1).

- (ii) Unreimbursed capital expenditures made by the waterworks company for waterworks facility relocation required by a governmental entity due to a street or highway project. R.C. 4909.172(C)(3).
  - (iii) Minimum land or land rights acquired by the company as necessary for any service line, equipment, or facility previously described. R.C. 4909.172(C)(4).
- (b) The Commission must determine that the covered capital improvements are used and useful in rendering public utility service. R.C. 4909.172(C).
- (c) The cost of those capital improvements may include depreciation expenses. R.C. 4909.172(C).
- (d) The proposed SIC must be just and reasonable and must be sufficient to meet, but not exceed, the revenue requirement to both:
  - (i) Cover such infrastructure plant costs as are described in the statute, incurred after March 1, 2003, and before the date of filing, and not already reflected in schedules filed under R.C. 4905.32; and
  - (ii) Provide a fair and reasonable rate of return on the filing date valuation of that particular infrastructure plant. R.C. 4909.172(B)(1)-(2).
- (e) The SIC may not exceed 4.25 percent of the rates and charges applicable to any affected customer class and, as to the allowed percentage increase, must be uniform for each such class. R.C. 4909.172(B)(2).
- (f) No more than three SICs under this section may be in effect at any given time. R.C. 4909.172(B)(2).
- (g) The Commission is prohibited from authorizing a SIC under this section if it would cause the applicant to earn an excessive rate of return on its rate base. R.C. 4909.172(B)(2).

**B. Procedural History**

{¶ 4} On March 1, 2018, Aqua filed an application for authority to collect a SIC for water service in its Lake Erie Division, Masury Division, and the service areas formerly served by Ohio American Water Company (OAW), Mohawk Utilities, Inc. (Mohawk), and Tomahawk Utilities, Inc. (Tomahawk). In the application, Aqua stated that it made improvements totaling more than \$19.1 million since its last rate case in 2016 to fund the replacement and rehabilitation of infrastructure, including aging water mains and plant that are crucial to service reliability and water quality in its service area. According to Aqua, the SIC would represent a 3.937 percent surcharge on all tariffed customers receiving metered or unmetered water service, including those receiving private fire protection.

{¶ 5} On March 23, 2018, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene in the matter.

{¶ 6} On April 11, 2018, the attorney examiner issued an Entry instructing Aqua to publish legal notice of the pending application and set July 11, 2018, as the deadline for comments from interested parties.

{¶ 7} On June 21, 2018, Aqua filed additional correspondence regarding the application. Along with the correspondence, Aqua filed current, clean, and redlined tariff sheets for the areas formerly served by Mohawk and OAW because they were inadvertently omitted in the March 1, 2018 filing.

{¶ 8} On June 26, 2018, Aqua filed proof of publication of required legal notices provided to affected customers.

{¶ 9} On July 11, 2018, Commission Staff filed its comments.

{¶ 10} On November 8, 2018, Aqua filed a stipulation and recommendation (Stipulation), which it entered into with Staff, for the purpose of resolving all outstanding issues in this matter.

{¶ 11} On November 14, 2018, OCC filed a motion requesting an additional comment period. In the motion, OCC stated that an additional comment period was necessary because the initial comment period was prior to the filing of the Stipulation.

{¶ 12} On November 20, 2018, Aqua filed a response to OCC's motion. Aqua stated that it would not object to a new comment period provided that the comment period would be in lieu of a hearing. Aqua further explained that no purpose would be served by providing OCC two opportunities to make the same arguments about whether Aqua can recover certain items under R.C. 4909.172.

{¶ 13} On November 21, 2018, the attorney examiner issued an Entry granting OCC's motion to intervene but denying its motion requesting an additional comment period. The attorney examiner also scheduled this matter for a hearing on December 17, 2018.

{¶ 14} On December 12, 2018, Aqua filed a motion to approve the parties' waiver of cross-examination of witnesses and set an expedited briefing schedule. Aqua indicated that Staff and OCC did not oppose the motion.

{¶ 15} A hearing in this matter was held on December 17, 2018. During the hearing, the attorney examiner granted Aqua's motion and directed the parties to file their post-hearing briefs by December 21, 2018.

{¶ 16} On December 21, 2018, Aqua, OCC, and Staff filed their post-hearing briefs.

### **C. Staff Review and Recommendation**

{¶ 17} As indicated above, prior to the filing of the Stipulation, Staff had originally filed comments on July 11, 2018. In the comments, Staff indicated that it had examined \$16,699,605 (or approximately 88 percent) of all plant additions. Staff viewed certain items as not recoverable through a SIC and suggested that Aqua could request recovery of those items in a base rate case application. These items included: structural repairs such as tuck pointing, brick restoration, lead abatement, and miscellaneous plant concrete structures;

renovations to the water treatment plant, including wire, electrical, and electric service upgrades; replacement of railings; settling tanks; tank roof; fences; retaining walls; catwalks; and supervisory control and data acquisition equipment. Consequently, Staff recommended the removal of \$2,207,369 of plant additions and the accompanying retirements of \$201,909 and reduced Aqua's requested SIC of 3.937 percent to 3.464 percent. (Staff Comments at 3-4.)

**D. *Summary of Stipulation***

{¶ 18} In the Stipulation filed on November 8, 2018, Aqua and Staff agree that the SIC should be established at 3.66 percent. The parties specify, provided that the cost otherwise qualifies for recovery under R.C. 4909.172, only costs properly classified in the following National Association of Regulatory Utility Commissioners' (NARUC) Uniform System of Accounts (USOA), which have been adopted by the Commission, may be included in and recovered through the SIC:

- 323 – Other Power Production Equipment
- 324 – Steam Pumping Equipment
- 325 – Electric Pumping Equipment
- 326 – Diesel Pumping Equipment
- 327 – Hydraulic Pumping Equipment
- 328 – Other Pumping Equipment
- 332 – Water Treatment Equipment
- 342 – Distribution Reservoirs & Standpipes
- 343 – Transmission & Distribution Mains
- 345 – Services
- 346 – Meters
- 347 – Meter Installation
- 348 – Hydrants

{¶ 19} Aqua and Staff intend to be bound by the provisions of the Stipulation in future SIC proceedings filed by Aqua under R.C. 4909.172, until otherwise ordered by the Commission or ordered upon the proposal of one of the parties. The parties indicate that they will not propose any modifications unless both Aqua and Staff agree to a modification; legislation is enacted that expands, limits, or otherwise substantially modifies the costs

recoverable under a SIC; or the NARUC USOA adopted by the Commission is substantially modified.

{¶ 20} Aqua and Staff indicate that the Stipulation is intended to resolve all issues in this proceeding. The parties state that the Stipulation violates no regulatory principle or precedent; is in the public interest; and is the product of lengthy, serious bargaining among knowledgeable and capable parties who represent the various interests and stakeholders in a cooperative process undertaken by the parties.

**E. Post-Hearing Briefs**

**1. Aqua's Post-Hearing Brief**

{¶ 21} In its post-hearing brief, Aqua distills the issue in this proceeding to one question: when a statute such as R.C. 4909.172(C) states a general category, and then uses the word "including" to list a number of items within that category, is that list partial and illustrative or is it exclusive and exhaustive? Aqua champions the former interpretation, noting that the Supreme Court of Ohio has long held that the word including "implies that that which follows is a partial, not an exhaustive listing of all that is subsumed within the stated category." *In re Hartman*, 2 Ohio St.3d 154, 156, 443 N.E.2d 516 (1983). (Aqua Brief at 1.)

{¶ 22} Aqua states that the only asset being challenged by OCC as being improperly included in the SIC is a tank roof, but OCC's sole argument for excluding this project is that tank roofs are not specifically listed in the statute. According to Aqua, based on the Supreme Court of Ohio's interpretation of the word "including", the inquiry should be whether the tank roof fits within the general category "replacement of existing plant," which Aqua claims it does. (Aqua Brief at 10-11.)

{¶ 23} Aqua states that it is required to use the USOA adopted by NARUC in 1973 per Ohio Adm.Code 4901:1-15-32(B). Under the USOA system, Aqua states that the tank roof is considered personal property and classified under a water utility plant account,

establishing that the tank itself is considered water utility plant. Aqua witness, Mr. Richard Hideg, further explains that the tank in question contains fully treated, drinkable water that is ready for distribution into the system. According to Mr. Hideg, the replacement of the tank roof was a major replacement project because the existing roof was failing and beginning to leak. He further explains that without a roof replacement, the water in the tank would not be protected from unwanted materials and potential contamination. As such, Aqua concludes that the replacement of the tank roof fits within the category of "replacement of existing plant." (Aqua Brief at 11-13; Hideg Supp. Testimony at 4-5.)

{¶ 24} Aqua also distinguishes the statutory structure in question in this case from a Supreme Court of Ohio case interpreting the statutory phrase "include, without limitation." *In re Columbus Southern Power*, 128 Ohio St.3d 512, 2011-Ohio-1788. In *Columbus Southern Power*, Aqua states that the Court interpreted R.C. 4928.143(B)(2), which states that an electric security plan (ESP) "may provide for or include, without limitation, any of the following," and then lists nine categories of cost recovery. In that case, the Court determined that R.C. 4928.143(B)(2) permits ESPs to include only the listed items. *Columbus Southern Power* at ¶ 31-32. (Aqua Brief at 13.)

{¶ 25} Aqua states that the reasoning in *Columbus Southern Power* does not apply in this case. Here, Aqua explains that R.C. 4909.172(C)(1) authorizes recovery for a general category, replacement of existing plant, and then provides a list of items illustrating that category. In contrast, the statute at issue in *Columbus Southern Power* did not provide a general category, but only authorized specifically identified provisions that could be included in an ESP. Consequently, Aqua states that whether or not OCC cites *Columbus Southern Power*, it does not apply. (Aqua Brief at 13-14.)

{¶ 26} Aqua also states that OCC's allegation that the Stipulation contradicts prior Commission practice is incorrect and misleading because R.C. 4909.172(C)(1) was not enacted until 2013 and no consistent Commission practice on this point can be derived from pre-2013 cases. Aqua specifically states that the only example cited by OCC of a prior

Commission practice, Case No. 15-863-WW-SIC, does not support OCC's point as it involved an entirely different issue than this one. In that case, Staff filed comments recognizing that the SIC statute "authorizes cost recovery for replacement of existing plant," but recommending that various costs be excluded on the basis they represented "new plant." Aqua states that even if the 2015 SIC case had involved precisely the same issue as this one, it was not litigated, which means the outcome has no preclusive effect in this matter. (Aqua Brief at 14.)

{¶ 27} Finally, Aqua notes that the Stipulation complies with the Commission's three-part test for stipulations. *Office of Ohio Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123 at 126, 592 N.E.2d 1370 at 1373 (1992). First, Aqua states that there is no dispute that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. Second, Aqua states that the Stipulation, as a package, benefits ratepayers and is in the public interest, because the SIC allows Aqua to recover critical infrastructure investment for the continued provision of safe and reliable water service to its customers. Aqua also states that the Stipulation benefits ratepayers because the SIC reduction from 3.937 percent to 3.66 percent will directly reduce customer bills. Though Aqua believes that the SIC statute could be interpreted to permit the recovery of any "plant replacement" costs, even if associated with real property or sources of water supply, in an effort to reach a compromise with Staff, Aqua agreed to exclude items categorized in real-property and source-of-supply plant accounts, in this and future SIC proceedings. Consequently, Aqua states that the Stipulation will indirectly reduce bill impacts by limiting the scope of investment that may be included in future charges. Third, Aqua states that the Stipulation does not violate any important regulatory principle or practice. In summary, Aqua requests that the Commission find that the Stipulation satisfies the three-part criteria and approve it as filed. (Aqua Brief at 4-6.)

## 2. *OCC's Post Hearing Brief*

{¶ 28} OCC requests the Commission not adopt the Stipulation due to various reasons. First, OCC argues that the Stipulation does not meet the first prong of the Commission's three-part test for stipulations because no customers' representative, such as OCC, signed onto it. Second, OCC states that the Stipulation harms consumers and is not in the public interest. OCC explains that Staff's Comments filed on July 11, 2018, correctly applied R.C. 4909.172 to Aqua's SIC application and are consistent with how Staff has analyzed previous SIC cases, including under R.C. 4909.172, which became effective in 2013. Traditionally, OCC explains, if an item for which a utility sought recovery was not on the list specified in R.C. 4909.17(C), Staff appropriately excluded it. Consequently, OCC states, Aqua and Staff cannot now expand the list through the Stipulation and make consumers pay for unwarranted charges such as an elevated storage tank roof. OCC states that the Stipulation harms customers in at least two ways: it permits Aqua to collect costs from customers for the replacement of an \$832,862 elevated storage tank roof that is not an eligible item included in R.C. 4909.172 and it broadens the R.C. 4909.172 list to include account numbers instead of specific plant items identified for this proceeding and for future SIC cases. (OCC Brief at 3-8.)

{¶ 29} Third, OCC states that the Stipulation violates important regulatory principles and deviates from past Commission practice. OCC again states that the Stipulation would allow Aqua to recover for items that are not specifically listed under R.C. 4909.172. Additionally, it states that the signatory parties are seeking to go beyond what is enumerated in the statute by permitting costs on a going-forward basis that are classified into 13 different account numbers related to water capital improvements. OCC states that because the Stipulation deviates from past Commission practice of what SICs should be allowed; has repercussions beyond this SIC proceeding; and includes additional items not identified; the Commission should reject the Stipulation.

{¶ 30} Finally, OCC, citing to *Columbus Southern Power*, states that the Supreme Court of Ohio has held that when a statute lists specific items or categories for recovery, those items or categories are not illustrative or examples; rather the statute's enumerative list is exhaustive. OCC argues that the SIC statute is constructed similarly as the ESP statute in *Columbus Southern Power*. Consequently, according to OCC, the words in R.C. 4909.172 are not illustrative of items that may be included in a SIC, because the items comprise an exhaustive list. Based on these reasons, OCC requests that the Commission reject the Stipulation, and adopt OCC's recommendation and the Commission Staff's original comments to protect consumers, the public interest, and Commission principles and practices.

### 3. *Staff's Post-Hearing Brief*

{¶ 31} Staff asserts that the Commission should adopt the Stipulation as it meets all the prongs of three-part stipulation test. Staff also asserts that evidence presented in this case justifies a finding that its terms are just and reasonable. Namely, with regard to the third prong of the three-part stipulation test, Staff states that the adoption of NARUC USOA utility plant accounts 323-328, 332, 342, 343, and 345-348 as includable recovery plant is reasonable and violates no regulatory principles because these utility plant accounts are illustrated by the listed plant in R.C. 4909.172(C)(1). Staff explains that neither the Commission nor the Supreme Court of Ohio has interpreted the word "including" in R.C. 4909.172(C)(1). However, Staff states that the Supreme Court of Ohio's interpretation of "including" in other contexts strongly suggests that "including," in this case, means that the listed replacement plant in R.C. 4909.172(C)(1) is illustrative and not restrictive.

{¶ 32} Staff further states Ohio Adm.Code 4901:1-15-32(B) requires waterworks companies to maintain their books and records in accordance with the USOA adopted by the NARUC in 1973. The USOA lists utility plant accounts as subsets of major property groupings. The utility plant accounts chosen by Aqua and Staff for the Stipulation are utility plant accounts that are specifically illustrated by one of more of the listed replacement plant

in R.C. 4909.172(C)(1) - chemical feed systems, filters, pumps, motors, plant generators, meters, service lines, hydrants, mains, and valves. Furthermore, Staff asserts, none of the selected utility plant accounts contain real property, intangible plant, general plant, or source of supply plant, which are not represented in the illustrative plant in R.C. 4909.172(C)(1). Staff concludes that the tank roof, which is categorized under utility plant account 342, is properly included as SIC-eligible recovery plant in the Stipulation. Furthermore, applying the above utility plant accounts as SIC-eligible plant in future SIC cases brought by Aqua is also compliant with R.C. 4909.172(C)(1). Accordingly, Staff requests that the Commission adopt the Stipulation as its order in this case.

#### ***F. Commission Conclusion***

{¶ 33} Upon review, we agree with Aqua that the primary issue the Commission must determine is whether the list following the word “including” in R.C. 4909.172(C)(1) is illustrative, thereby allowing Aqua to recover for an elevated tank roof. As the parties have noted, neither the Commission nor the Supreme Court of Ohio has determined whether a list following the word “including” is illustrative or exhaustive. We now find that the interpretation of the word “including” in *In re Hartman* is instructive in this case. In that case, the Supreme Court of Ohio held that the word “‘including’ implies that which follows is a partial, not an exhaustive listing of all that is subsumed within the stated category.” *In re Hartman*, 2 Ohio St.3d 154, 156, 443 N.E.2d 516 (1983). There, the case involved a statute similar in statutory construct as R.C. 4909.172(C)(1), in that the language provided a list after the word “including” to identify instances when a court of appeals has jurisdiction over a matter:

Upon an appeal upon questions of law to review, affirm, modify, set aside, or reverse judgments or final orders of courts of record inferior to the court of appeals within the district, including the finding, order or judgment of a juvenile court that a child is delinquent, neglected, abused, or dependent, for prejudicial error committed by such lower court.

R.C. 2501.02(A).

{¶ 34} Similarly, here R.C. 4909.172(C)(1) provides a list of plant items that a waterworks company can recover for upon the Commission's determination that they are capital improvements which are used and useful in rendering public utility service. Consequently, the list that follows after the word "including" in R.C. 4909.172(C)(1) serves as an illustrative guide for the Commission when it determines which capital improvements are necessary for rendering public utility service.

{¶ 35} In contrast, the statutory construct of the statute in question in *Columbus Southern Power* is markedly different than R.C. 4909.172(C)(1) and that case is not applicable here. There, the Supreme Court of Ohio interpreted R.C. 4928.143(B)(2), a statute describing the parameters of ESPs, as not allowing ESPs to include items which were not specifically authorized by statute. *In re Columbus Southern Power*, 128 Ohio St.3d 512, 2011-Ohio-1788, at ¶ 31. R.C. 4928.143(B)(2) states that an ESP "may provide for or include, without limitation, any of the following," and then lists nine categories of cost recovery. The Supreme Court of Ohio interpreted the phrase "without limitation, any of the following" as allowing unlimited inclusion of *only* the nine, listed categories into an ESP. Otherwise put, if a given provision does not fit within the nine categories, it cannot be included in an ESP. *Columbus Southern Power* at ¶ 32-33. On the other hand, R.C. 4909.172(C)(1) does not limit the enumerated list which follows the word "including" to limit the recovery of items to only the categories listed. A plain reading of this statute then implies that the legislature intended this list to be illustrative instead of specifically limiting recovery of replacement plant to the enumerated items.

{¶ 36} Furthermore, as Staff points out, the Commission's own rules require waterworks companies to maintain their books and records in accordance with the USOA adopted by NARUC. Ohio Adm.Code 4901:1-15-32(B). It follows that Aqua and Staff would utilize the USOA while negotiating the SIC to provide clarity regarding the scope of recovered items. With regard to the concern raised by OCC that the Stipulation broadens the list contained in R.C. 4909.172(C)(1) to include 13 NARUC utility plant accounts, both

Staff and Aqua agree that only USOA accounts which otherwise qualify for recovery under R.C. 4909.172(C)(1) will be included in the SIC (Stipulation at 2).

{¶ 37} Specifically, the utility plant account at issue in this case, 342, is titled as "Distribution Reservoirs and Standpipes." This account includes the cost of reservoirs, tanks, standpipes, and appurtenances used in storing water for distribution. *Uniform System of Accounts for Class A and B Water Utilities*, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, at 73 (1973). Mr. Hideg testified that the tank in question contains fully treated, drinkable water that is ready for distribution into the system. According to Mr. Hideg, the replacement of the tank roof was necessary because the existing roof was failing and beginning to leak and without a roof replacement, the water in the tank could not be protected from unwanted materials and potential contamination. (Hideg Supp. Testimony at 4-5.) Staff also points out that this account does not contain items which are not represented in the illustrative plant in R.C. 4909.172(C)(1), such as real property, intangible plant, general plant, or source of supply plant (Staff Brief at 7-8). Based on Mr. Hideg's testimony and Staff's determination, the Commission finds that items that are used for storing water for distribution, which would include the tank roof over existing plant, are used and useful for rendering public utility service under the statute. Without the tank roof, Aqua would not be able to provide clean, uncontaminated drinking water for distribution to its customers. Consequently, replacement of the tank roof is a type of capital improvement falling within the category of "replacement of existing plant," as contemplated by the illustrative assets enumerated in R.C. 4909.172(C)(1).

{¶ 38} We also find that no specific Commission practice can be derived from cases decided after R.C. 4909.172(C)(1) was enacted in 2013. In Case No. 15-863-WW-SIC, Staff recommended the exclusion of various costs as they represented new infrastructure costs and did not involve costs related to "replacement of existing plant" pursuant to R.C. 4909.172(C)(1). Consequently, we disallowed costs in that previous case because of an unrelated issue and the outcome of that case is not instructive in this proceeding. Finally, we would note that while Staff initially did not recommend the recovery of certain items

like the tank roof through the SIC, after engaging in settlement negotiations with Aqua, Staff now confirms that all plant allowed under the Stipulation is both includable and replacement (Staff Brief at 1-2).

{¶ 39} Based on the above, the Commission adopts the Stipulation filed by Aqua and Staff, and finds that the projects contained in the proposed SIC are infrastructure improvements upon which a SIC may be based, pursuant to R.C. 4909.172. The Commission also determines that the infrastructure improvements upon which the proposed SIC is based are used and useful in rendering public utility service to Aqua's customers (Hideg Testimony at 5; Supplemental Testimony at 4-5).

{¶ 40} As allowed by R.C. 4909.172, the costs of the capital improvements underlying the proposed SIC include depreciation expenses. In the Stipulation, the parties attached revised Schedules 5 and 6. Schedule 5 shows the annualized depreciation associated with additions. Schedule 6 shows annualized reduction in depreciation for retirements. (Stipulation, Schedules 5 and 6.)

{¶ 41} All of the underlying infrastructure improvement costs were incurred by the Applicant during the period April 1, 2016 to December 31, 2017 (Stipulation, Schedule 2). The following summarizes the costs of the infrastructure improvements underlying the proposed SIC and the fair and reasonable return on the valuation of that infrastructure (Stipulation, Schedule 1):

1	<u>Return on Investment</u>		
2	Plant in Service		
3	Additions	\$17,743,997	Schedule 2
4	Original Cost Retired	<u>\$ 2,366,679</u>	Schedule 3
5	Net Plant in Service (3-4)	\$15,377,318	
6	Less: Accumulation Provision for Depreciation		
7	Depreciation Expense	\$ 256,793	Schedule 4
8	Original Cost Retired	<u>\$ 2,366,679</u>	Schedule 3
9	Total Accumulated Provision for Depreciation (7-8)	\$(2,109,886)	
10	Net Rate Base	\$17,487,204	
11	Pre-Tax Rate of Return	<u>9.28%</u>	Schedule 7
12	Annualized Return on Rate Base (10 x 11)	\$ 1,622,271	

	<u>Operating Expenses</u>		
13	Annualized Provision for Depreciation for Additions	\$ 433,237	Schedule 5
14	Annualized Reduction in Depreciation for Retirements	\$ (74,293)	Schedule 6
15	Annualized Property Taxes for Additions	\$ 377,737	Schedule 5.1
16	Annualized Property Taxes for Retirements	\$ (87,067)	Schedule 6.1
17	Annualized Revenue Requirement (12+13+14+15)	\$ 2,271,885	

{¶ 42} The Commission finds that the annual revenue requirement associated with the underlying infrastructure improvements is \$2,271,885, based on the Stipulation. The Commission finds that the proposed SIC of 3.66 percent will apply to all water services rendered to customers in the Lake Erie Division, Masury Division, and the Ohio service areas formerly served by OAW, Mohawk, and Tomahawk. (Stipulation, Schedule 10.)

{¶ 43} The Commission is required by R.C. 4909.172 to ensure that any authorized SIC will not cause a company to earn an excessive rate of return on its rate base. As calculated by the parties in the Stipulation, the proposed SIC will not exceed the 4.25 percent limitation imposed by R.C. 4909.172(B)(2). In addition, Aqua and Staff agree that the proposed surcharge will recover only the costs that qualifies for recovery under R.C. 4909.172 (Stipulation at 2). The Commission finds that the proposed SIC is just and reasonable. It is sufficient to meet, but not to exceed, the statutorily mandated revenue requirement associated with the cost of, and the fair and reasonable return on, the underlying infrastructure improvements. The Commission is aware that the resulting improvement charge will place an additional financial burden on the affected customers. However, the Commission believes that, on balance, it is in the best interest of customers to fund the replacement of old waterworks equipment on an accelerated basis in order to improve service quality.

{¶ 44} The appendix to Ohio Adm.Code 4901:1-15-35 states that “[i]f a surcharge is granted by the Commission, the company’s actual and pro forma profitability will be reviewed on an annual basis to determine whether a reduction or elimination of such

surcharge or subsequent surcharges is required by this restriction" (appendix at 4). In order to make the required annual review, Aqua is ordered to file its Schedule 8, Calculation of Earned Rate of Return, on an annual basis concurrent with the Applicant's filing of its annual report to the Commission, using the most recent calendar year.

### III. ORDER

{¶ 45} It is, therefore,

{¶ 46} ORDERED, That Stipulation proposed by Aqua and Staff be approved. It is, further,

{¶ 47} ORDERED, That Aqua be authorized to file tariffs, in final form, consistent with this Finding and Order. Aqua shall file one copy in its TRF Docket No. 89-7028-WW-TRF and one copy in this case docket. It is, further,

{¶ 48} ORDERED, That the proposed tariff sheets be effective upon filing in final form, on a services rendered basis. It is, further,

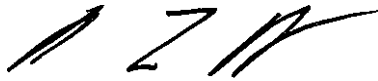
{¶ 49} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 50} That Aqua file, on an annual basis until such time as the surcharge is eliminated, an updated Schedule 8, as attached as part of the Stipulation. Schedule 8 shall be filed under this docket, concurrently with the Applicant's filing of its annual report to the Commission, using information for the most recent calendar year. It is, further,

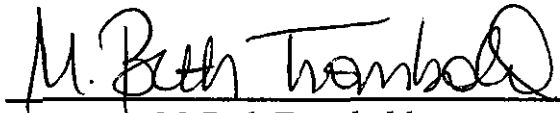
{¶ 51} ORDERED, That the customer notice filed, as modified by the Stipulation, be delivered to each customer affected by the surcharge approved in this Finding and Order with or on each customer's first bill containing the surcharge. It is, further,

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

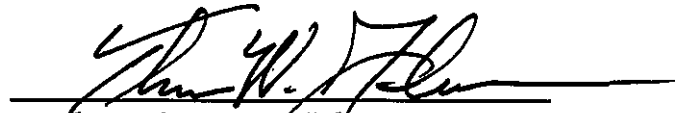
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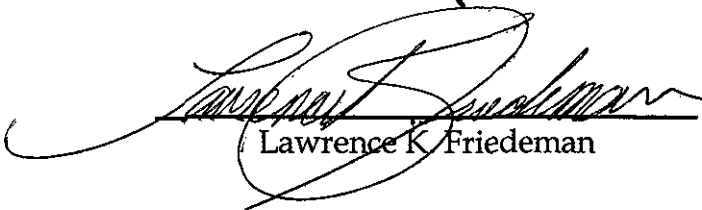
Asim Z. Haque, Chairman



M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway

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Tanowa M. Troupe  
Secretary