

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Aqua Ohio,     )  
Inc. for Authority to Assess a System             )     Case No. 18-337-WW-SIC  
Improvement Charge.                                     )

**AQUA OHIO, INC.’S  
MEMORANDUM CONTRA APPLICATION FOR REHEARING OF  
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

**I. INTRODUCTION**

On March 8, 2019, the Office of the Ohio Consumers’ Counsel (OCC) filed an application for rehearing in this case. In accordance with Ohio Admin. Code 4901-1-35(B), Aqua Ohio, Inc. (Aqua or the Company) files its memorandum contra OCC’s application for rehearing.

**II. ARGUMENT**

OCC presents a single argument against the Commission’s February 6, 2019 Finding and Order (Order). This argument is one the Commission has already rejected: that approval of the Stipulation will allow for recovery of costs not specifically enumerated in R.C. 4909.172. As the Commission correctly found, the statute contains a non-exhaustive list of items for which Aqua may recover costs through its System Improvement Charge (SIC); OCC’s argument that the Stipulation somehow “goes well beyond what is permitted under the statute” is incorrect. The Commission should deny OCC’s application for rehearing.

**A. The Order does not expand the list of plant items eligible for recovery.**

OCC claims that by approving the provision in the Stipulation that lists specific accounts within the NARUC Uniform System of Accounts (USOA), the Order somehow allows “many more items” than are listed within R.C. 4909.172 for cost recovery in a SIC. (OCC App. at 3.) This argument clearly misrepresents the intention of the Order and the Stipulation. As the Order

noted, “only USOA accounts which otherwise qualify for recovery under R.C.4909.172(C)(1) will be included in the SIC.” Order ¶ 36.

OCC attempts to obfuscate the issue by suggesting that simply by listing the USOA accounts within which certain costs are classified, potentially dozens of costs not specifically listed within the statute may be unlawfully included in the SIC for recovery. (OCC App. at 4.) Whether intentionally or not, OCC completely ignores the distinctly *limiting* language in the Stipulation; first, that the costs must otherwise qualify for recovery under R.C. 4909.172; second, that “only costs classified” in those accounts may be included in a SIC; and finally, that this provision intended to bind Aqua and Staff in future SIC proceedings. Order ¶¶ 18, 19. The intention of the Stipulation, as the Order astutely noted, was to “provide clarity regarding the scope of recovered items.” *Id.* ¶ 36. Contrary to OCC’s claim that the Commission “allowed Aqua to accomplish . . . a rewrite of the law” (OCC App. at 5), there is nothing in the language of either the Stipulation or the Order to suggest that this provision is meant to broaden the scope of the statute, and it is disingenuous for OCC to say otherwise.

**B. The Order correctly found that the list of items in R.C. 4909.172 was illustrative.**

OCC further attempts to misrepresent the issue by stating as though it is uncontroverted fact that R.C. 4909.172 only allows recovery through a SIC of the enumerated items. (OCC App. at 3.) This is not the case, however, and OCC’s argument that it should be was considered and rejected in the Order.

OCC relies on the fact that in 2013, the legislature expanded the list of enumerated items in R.C. 4909.172 to include certain additional items but not others. (*Id.* at 4.) Based on this, OCC argues that the allowance of recovery of any item not specifically listed in the statute is unlawful. This argument was made on brief and rejected in the Order. The Order correctly found that the list 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.” Order ¶ 34 (emphasis added). OCC’s application for rehearing contains no new arguments that were not already made on brief, and should be denied.

### **III. CONCLUSION**

For the foregoing reasons, Aqua respectfully requests that the Commission deny OCC’s application for rehearing.

Dated: March 18, 2019

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by electronic mail this 18th day  
of March, 2019 to the following:

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One of the Attorneys for Aqua Ohio, Inc.

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Summary: Memorandum Contra Ohio Consumers' Counsel's Application for Rehearing electronically filed by Ms. Rebekah J. Glover on behalf of Aqua Ohio, Inc.