

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

ENTRY ON REHEARING

Entered in the Journal on April 3, 2019

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by the Office of the Ohio Consumers' Counsel.

II. DISCUSSION

A. *Procedural History*

{¶ 2} On March 1, 2018, Aqua Ohio, Inc. (Aqua) filed an application for authority to collect a system improvement charge (SIC) for water service in its Lake Erie Division, Masury Division, and the service areas formerly served by Ohio American Water Company, Mohawk Utilities, Inc., and Tomahawk Utilities, Inc.

{¶ 3} 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.

{¶ 4} On December 17, 2018, a hearing was held in this matter and on December 21, 2018, Aqua, the Office of the Ohio Consumers' Counsel (OCC), and Staff filed their post-hearing briefs.

{¶ 5} On February 6, 2019, the Commission issued a Finding and Order, approving the Stipulation.

{¶ 6} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined

in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 7} On March 8, 2019, OCC filed an application for rehearing.

{¶ 8} On March 18, 2019, Aqua filed a memorandum contra to OCC's application for rehearing.

B. Consideration of the Application for Rehearing

{¶ 9} In its application for rehearing, OCC raises a single assignment of error: The Commission's February 6, 2019 Finding and Order is unlawful and unreasonable because, as a creature of statute, the Commission must follow Ohio law, but failed to do so in this case. OCC elaborates that the Stipulation in this matter allowed Aqua to recover the replacement cost of \$832,862 for an elevated storage tank roof, which is not an eligible item recoverable under R.C. 4909.172, the SIC statute.

{¶ 10} OCC further argues that the Stipulation adopted by the Commission in this matter goes beyond what is enumerated in the statute because it allows Aqua to recover costs, through the approved SIC, for items contained within 13 National Association of Regulatory Utility Commissioners' (NARUC) Uniform System of Accounts (USOA). According to OCC, this will allow Aqua to recover for items not contemplated by R.C. 4909.172 in the future. Consequently, because the Stipulation allows recovery for items that are beyond what is permitted under Ohio statute, OCC requests that the Commission grant its application for rehearing.

C. Commission Conclusion

{¶ 11} Upon review, the Commission finds that OCC's sole assignment of error should be denied, as we have already thoroughly addressed OCC's argument in the Finding and Order. In the Finding and Order, we determined that the list of recoverable items following 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. Based on prior Supreme Court of Ohio precedent and a plain reading of the statute, we determined that the legislature intended the list of SIC-eligible items to be illustrative instead of specifically limiting recovery of replacement plant to the enumerated items in the list. Finding and Order, ¶¶33-34.

{¶ 12} Turning to the elevated tank roof in question, we determined that without the tank roof, Aqua would not be able to provide clean, uncontaminated drinking water for distribution to its customers. Consequently, we held that 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). Finding and Order at ¶37.

{¶ 13} We further noted that pursuant to Ohio Adm.Code 4901:1-15-32(B), waterworks companies are required to maintain their books and records in accordance with the USOA adopted by NARUC. Consequently, Aqua and Staff utilized the USOA while negotiating the SIC to provide clarity regarding the scope of recoverable 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 USOA accounts, we noted that the Stipulation explicitly mentioned that only accounts *which otherwise qualify* for recovery under R.C. 4909.172(C)(1) would be included in the SIC. Finding and Order at ¶36.

{¶ 14} To the extent that the OCC now states that we deviated from prior Commission practice, we also specifically noted that no specific Commission practice can be derived from cases decided after R.C. 4909.172(C)(1) was enacted in 2013. Finding and Order at ¶38. Therefore, we find that OCC raises no new issues for our consideration in its application for rehearing, and its sole assignment of error should be denied as we have previously addressed arguments related to it in the Finding and Order.

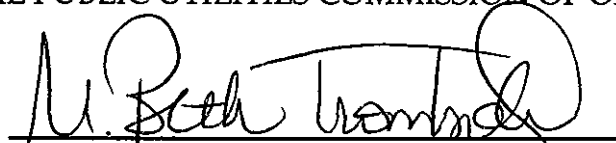
III. ORDER

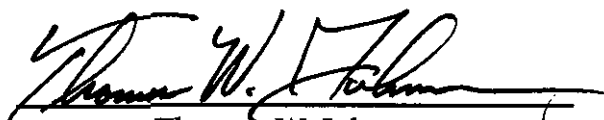
{¶ 15} It is, therefore,

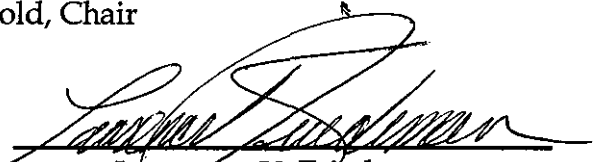
{¶ 16} ORDERED, That OCC's application for rehearing be denied. It is, further,

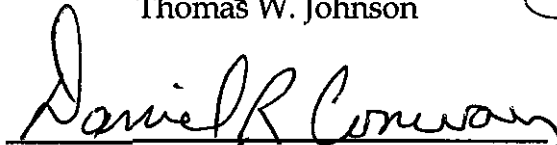
{¶ 17} ORDERED, That a copy of this Entry on Rehearing be served upon all parties of records.


THE PUBLIC UTILITIES COMMISSION OF OHIO


M. Beth Trombold, Chair


Thomas W. Johnson


Lawrence K. Friedeman


Daniel R. Conway


Dennis P. Deters

AS/mef

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APR 03 2019



Tanowa M. Troupe
Secretary