

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. 19-567-WW-SIC

FINDING AND ORDER

Entered in the Journal on October 23, 2019

I. SUMMARY

{¶ 1} The Commission approves the system improvement charge jointly proposed by Aqua Ohio, Inc. and Staff under a stipulation.

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 4, 2019, 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 has made improvements totaling more than \$18 million since its last rate case or SIC 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 3.767 percent surcharge on all tariffed customers receiving metered or unmetered water service, including those receiving private fire protection.

{¶ 5} On March 21, 2019, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene in the matter. Upon review, the Commission grants the OCC's motion for intervention.

{¶ 6} On March 25, 2019, the attorney examiner issued an Entry instructing Aqua to publish legal notice of the pending application and set May 24, 2019, as the deadline for comments from interested parties.

{¶ 7} On May 22, 2019, Staff filed a motion requesting an extension of the filing deadline for comments.

{¶ 8} By Entry issued May 22, 2019, the attorney examiner gave Aqua the opportunity to file a response to Staff's motion to extend the filing deadline for comments. Subsequently, on May 23, 2019, Aqua filed a memorandum contra Staff's motion for extension of the comment period.

{¶ 9} By Entry issued May 24, 2019, in accordance with Ohio Adm.Code 4901-1-12(C) and in order to provide Staff additional time to thoroughly complete its investigation, the attorney examiner granted in part and denied in part Staff's motion for an extension of

the filing deadline. The attorney examiner directed all interested stakeholders to file comments regarding Aqua's application by June 24, 2019.

{¶ 10} On May 30, 2019, Aqua filed proof of publication of required legal notices in accordance with the attorney examiner's March 25, 2019 Entry.

{¶ 11} On June 24, 2019, Staff filed its comments. No other parties filed comments.

{¶ 12} On August 20, 2019, Aqua filed a stipulation and recommendation (Stipulation), which it entered with Staff, for the purpose of resolving all outstanding issues in this matter.

{¶ 13} On August 30, 2019, Aqua filed the supplemental direct testimony of Elaine J. Martin in support of the Stipulation.

C. Staff Review and Recommendation

{¶ 14} As indicated above, prior to the filing of the Stipulation, Staff had originally filed comments on June 24, 2019. In the comments, Staff indicated that it had examined \$12,539,687.39 (or approximately 70 percent) of all plant additions. Overall, Staff recommended the removal of \$188,427 of plant additions and the accompanying retirements of \$24,824 from Aqua's SIC calculation. In addition, Staff indicated that Aqua had expanded and upgraded chemical feed systems at the Mentor and Ashtabula Water Treatment Plants (WTP). At the Ashtabula WTP, Aqua installed a new potassium permanganate feed system to control organics, taste, and odor. However, Staff argued that the upgraded chemical feed systems and new potassium permanganate feed system are not eligible for recovery under R.C. 4909.172(C)(1) because these items are not "replacements" under the statute. For these items, Staff recommended an additional removal of \$1,660,586 in plant additions and the accompanying retirements of \$54,678 from Aqua's SIC calculation, noting that Aqua could request recovery in its next base rate case. (Staff Ex. 1 at 3-5, 7.)

D. *Summary of Stipulation*

{¶ 15} In the Stipulation filed on August 20, 2019, Aqua and Staff agree that the SIC should be established at 3.733 percent. Aqua agrees to the Staff adjustments in Attachment A, lines 1-16 and 19-35 of the Staff Comments, to exclude from the SIC \$188,427 of plant additions and \$24,824 of plant retirements. The Stipulation indicates that Aqua provided documentation to Staff regarding the Mentor and Ashtabula WTPs concerning the replacement costs of chemical feed systems, and, as a result, Staff withdrew its adjustments in Attachment A, lines 17 and 18 of the Staff Comments. The parties indicate that the stipulated SIC does not include the costs to install the new potassium permanganate feed system at the Ashtabula WTP. (Joint Ex. 1 at 2-3; Joint Ex. 2 and 3.)

{¶ 16} Aqua and Staff indicate that the Stipulation represents a reasonable compromise of varying interests. 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. The parties indicate that the Stipulation is expressly conditioned upon adoption in its entirety by the Commission without material modification by the Commission. The parties state that this Stipulation is not intended to be binding in any future proceeding, nor cited as precedent in any future proceeding for or against either party or the Commission itself, except as necessary to enforce the terms of this Stipulation. The parties also indicate that OCC is not opposing the Stipulation, but it is not a signatory party. Finally, the parties request that the Commission approve final tariffs, as contained in Joint Exhibit 3. (Joint Ex. 1 at 1-2; 4-5; Joint Ex. 3.)

E. *Commission Conclusion*

{¶ 17} Upon review of the Stipulation filed in this matter, we find that it should be adopted because the projects contained in the proposed SIC represent replacement of existing plant, upon which a SIC may be based pursuant to R.C. 4909.172(C)(1). We note

that while initially Staff indicated that the upgraded chemical feed systems at the Mentor and Ashtabula WTPs were not eligible for recovery, Staff subsequently withdrew its adjustments after reviewing the documentation provided by Aqua concerning the replacement costs of the chemical feed systems. Furthermore, all costs related to the new potassium permanganate feed system at the Ashtabula WTP have not been included in the SIC proposed under this Stipulation. As such, we find that, under the Stipulation, Aqua is only recovering the cost of eligible infrastructure improvements. (Joint Ex. 1 at 3; Martin Supp. Testimony at 2-3.)

{¶ 18} 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 the annualized reduction in depreciation for retirements. (Joint Ex. 2, Schedules 5 and 6.)

{¶ 19} All of the underlying infrastructure improvement costs were incurred by the Applicant during the period January 1, 2018, through December 31, 2018 (Joint Ex. 2, 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 (Joint Ex. 2, Schedule 1):

1	<u>Return on Investment</u>		
2	Plant in Service		
3	Additions	\$17,800,749	Schedule 2
4	Original Cost Retired	<u>\$ 1,308,744</u>	Schedule 3
5	Net Plant in Service (3-4)	\$16,492,005	
6	Less: Accumulation Provision for Depreciation		
7	Depreciation Expense	\$ 111,714	Schedule 4
8	Original Cost Retired	<u>\$ 1,308,744</u>	Schedule 3
9	Total Accumulated Provision for Depreciation (7-8)	\$(1,197,030)	
10	Net Rate Base	\$17,689,035	
11	Pre-Tax Rate of Return	<u>9.28%</u>	Schedule 7
12	Annualized Return on Rate Base (10 x 11)	\$ 1,640,995	

{¶ 20} The Commission finds that the annual revenue requirement associated with the underlying infrastructure improvements is \$2,313,201, based on the Stipulation. The Commission finds that the proposed SIC of 3.733 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, Schedules 1, 10.)

{¶ 21} The Commission also finds that under R.C. 4909.172, the SIC proposed under the Stipulation will not cause Aqua 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, pursuant to R.C. 4909.172(A), it has been at least 12 months since the filing date of its most recent SIC application. Aqua previously filed its last SIC application on March 1, 2018. The Commission approved a SIC in the amount of 3.66 percent in that case. *In re Aqua Ohio, Inc.*, Case No. 18-337-WW-SIC, Finding and Order (Feb. 6, 2019). Under R.C. 4909.172(B)(2), a company may not have more than three SICs in effect at the same time. Here, Aqua will only have two SICs in effect at the same time.

{¶ 22} Finally, the Commission finds that the proposed SIC is just and reasonable and meets the three-part test utilized by the Commission to evaluate settlements. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Based on the evidence, we agree with Aqua and Staff 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 (Joint Ex. 1-2). Specifically, as explained above, the record indicates that the SIC 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 which are necessary to serve Aqua's customers. The Commission is aware that the resulting improvement charge will place an additional financial burden on the affected customers because a SIC of 3.66 percent was previously approved in Case No. 18-337-WW-SIC. However, Aqua is taking

preventative measures to protect public health by upgrading the capacity of the Powdered Activated Carbon (PAC) feed system at the Ashtabula WTP to protect against harmful algae blooms and upgrading the capacity of the PAC feed system at the Mentor WTP to control zebra mussel accumulation and oxidize dissolved organic compounds (Staff Comments at 4). Moreover, no parties filed comments in opposition to Aqua's application or opposed the Stipulation in this matter. As such, 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 and safeguard public health, and accordingly, that the tariffs identified in Joint Exhibit 3 should be approved. Consequently, the Stipulation submitted by Aqua and Staff is reasonable and should be adopted in its entirety.

{¶ 23} 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

{¶ 24} It is, therefore,

{¶ 25} ORDERED, That the OCC's motion to intervene be granted. It is, further,

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

{¶ 27} ORDERED, That the tariffs identified in Joint Exhibit 3 be approved. Aqua should file a copy of these finalized tariffs in its TRF Docket, Case No. 89-7028-WW-TRF. It is, further,

{¶ 28} 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,

{¶ 29} ORDERED, 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,

{¶ 30} 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,

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

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Daniel R. Conway

Dennis P. Deters

AS/hac

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Case No(s). 19-0567-WW-SIC

Summary: Finding & Order that the Commission approves the system improvement charge jointly proposed by Aqua Ohio, Inc. and Staff under a stipulation electronically filed by Docketing Staff on behalf of Docketing