**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Aqua Ohio, Inc. for Approval of a Revised Water Purchase Agreement with Whirlpool Corp. | )  )  ) | Case No. 17-2193-WW-AEC |

**APPLICATION FOR REHEARING**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers’ Counsel (“OCC”) files this application for rehearing to protect the residential consumers of Aqua Ohio, Inc. (“Aqua”) from paying increased rates due to the subsidy created by the water purchase unique arrangement (“Agreement”) between Aqua and the Whirlpool Corporation (“Whirlpool” or “Mercantile Customer”). Even if revenues provided by the agreement cover the incremental cost of providing waterworks service to the Mercantile Customer, a subsidy is created because the remaining customers pick up the shortfall between full return on investment and incremental costs.

The PUCO’s Finding and Order of April 18, 2018 approving the agreement between Aqua and the Mercantile Customer was unreasonable and unlawful in the following respects:

1. **The PUCO erred when it found that the unique arrangement between Aqua and Whirlpool will not result in other customer classes subsidizing this Mercantile Customer and that OCC’s other related concerns accordingly need not be addressed.**
2. **The PUCO erred in finding that the amount of the discount for the Mercantile Customer’s rate should be kept non-public as a trade secret instead of being publicly transparent.**

The reasons in support of this application for rehearing are set forth in the accompanying Memorandum in Support. The PUCO should grant rehearing and abrogate or modify its Finding and Order as requested by OCC.

Respectfully submitted,

BRUCE WESTON (0016973)

OHIO CONSUMERS' COUNSEL

*/s/ Kevin F. Moore\_\_\_\_*

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**MEMORANDUM IN SUPPORT**

**I. INTRODUCTION**

The Public Utilities Commission of Ohio (“PUCO”) still has an opportunity to protect Ohioans from paying higher water service rates premised upon an agreement that allows Aqua to offer discount rates to the Mercantile Customer with the discount being subsidized by other customers, including residential consumers. To protect consumers and the public interest, the PUCO should address the concerns raised by OCC in its comments and implement OCC's recommendations.

# II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute permits “any party who has entered an appearance in person or by counsel in the proceeding" to apply for rehearing in respect to "any matters determined in the proceeding.” Applications for rehearing must be filed within 30 days of the PUCO's orders. OCC filed a motion to intervene in this proceeding on October 27, 2017, which was granted by Entry and Order dated April 18, 2018.

OCC also filed comments arguing for modifications to the agreement as presented between Aqua and the Mercantile Customer.[[1]](#footnote-2) OCC has been an active participant in the evidentiary phase of this docket.

R.C. 4903.10 requires that an application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” Additionally, Ohio Adm. Code 4901-1-35(A) states: “An application for rehearing must be accompanied by a memorandum in support…which shall be filed no later than the application for rehearing.”

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “[i]f, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.”[[2]](#footnote-3)

The statutory standard for abrogating some portions of the Finding and Order are met here. The PUCO should grant and hold rehearing on the issue specified in this Application for Rehearing, and subsequently abrogate or modify its Finding and Order of April 18, 2018.

# III. CLAIMS OF ERROR

1. **The PUCO erred when it found that the unique arrangement between Aqua and Whirlpool will not result in other customer classes subsidizing this Mercantile Customer and that OCC’s other related concerns accordingly need not be addressed.**
2. **The PUCO erred in finding that the amount of the discount for the Mercantile Customer’s rate should be kept non-public as a trade secret instead of being publicly transparent.**

In the PUCO's April 18, 2018, Finding and Order it approved a revised water purchase agreement between Aqua and the Mercantile Customer as a reasonable arrangement under R.C. 4903.31(E). Under that Agreement, the Mercantile Customer is receiving a discount off the tariff rates that it would otherwise pay. OCC filed comments on the Agreement, raising concerns, inter alia, that Aqua publicly disclose the proposed discount so that there is transparency for customers and others in the state government’s regulatory process.

The PUCO found that OCC's concerns are "not valid with regard to the Agreement."[[3]](#footnote-4) In support of this conclusion the PUCO states:

…the Commission notes that Aqua has explicitly stated that Whirlpool will not receive a subsidy under the Agreement. Aqua further explains that any revenues provided by the Agreement will cover the incremental cost of providing waterworks service to Whirlpool. Additionally, Commission Staff avers 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 Whirlpool.[[4]](#footnote-5)

The PUCO appears to find no subsidy based on two grounds: 1) there is no explicit delta revenue collection through a rider and 2) the revenues under the agreement purport to cover the incremental cost of providing waterworks service to the Mercantile Customer.[[5]](#footnote-6)

The PUCO however, is wrong. First, while the discount may not be collected through a rider, it can and is being collected through base rates. Second, the fact that incremental costs are being recovered does not mean there is no subsidy. The allowable revenue requirement formula for base rates (Revenue Requirement = Expenses + Depreciation + Taxes + (Rate of Return \* Rate Base)) mandates that customers pay a return of costs and a return on rate base. While Aqua has not defined the term “incremental costs,” the term incremental generally refers only to the expense of providing one additional unit of production. Thus, the Mercantile Customer appears to be providing no (or little) contribution to Aqua’s return on its investment. Because in a rate case a utility is given the opportunity to earn a reasonable return on its investment, the other customers (including all of Aqua’s residential customers) must be providing the revenue to allow Aqua the opportunity to earn its approved rate of return. The Mercantile Customer is thus being subsidized by the other Aqua customers, including residential customers, contrary to the Aqua, Mercantile Customer, and PUCO Staff assertions otherwise.

In Case No. 16-907-WW-AIR, the PUCO awarded Aqua a revenue increase of $4,242,381 that was to be collected from all tariff customers except special contract customers such as the Mercantile Customer.[[6]](#footnote-7) If the Mercantile Customer paid tariffed rates, like all of Aqua's other tariff customers, then all other tariff customers’ rates would have been lower. As such, all other customers are subsidizing the Mercantile Customer.

The PUCO should reverse its finding that there is no subsidy being provided under the Agreement. And the PUCO should order some consumer protections as OCC recommended in the case, such as requiring Aqua to share in paying for the forgone revenue resulting from the discount. At a minimum, the PUCO could find that it will address this issue for consumers in the next rate case.

Because a subsidy is present in this case, the PUCO's conclusion that OCC's other concerns were not valid is also in error. The PUCO should address OCC's valid concerns. Those concerns included that the amount of the Mercantile Customer’s discount should be disclosed on the public record. There are statutes favoring transparency of government in the PUCO’s regulation of utilities and their rates. Revised Code section 4901.12 states that “all proceedings of the public utilities commission and all documents and records in its possession are public records.” Revised Code section 4905.07 states that “all facts and information in the possession of the public utilities commission shall be public, and all reports, records, files, books, accounts, papers, and memorandums of every nature in its possession shall be open to inspection by interested parties or their attorneys.” While exemptions are allowed for trade secrets, the mere disclosure of a customer’s discount, that other customers in essence will fund, is not a trade secret that discloses the internal finances of the Mercantile Customer. The PUCO’s own precedent favors transparency of its proceedings.[[7]](#footnote-8)

**IV. CONCLUSION**

The PUCO erred in its findingthat no subsidy is being provided if the Mercantile Customer’s rates are set at the minimum level allowing Aqua to collect incremental costs only. And the PUCO erred in not disclosing the amount of the Mercantile Customer’s discount as a matter of transparency. The PUCO should grant rehearing on OCC’s claims of error and modify or abrogate its April 18, 2018 Finding and Order for the protection of consumers.

Respectfully submitted,

BRUCE WESTON (0016973)

OHIO CONSUMERS’ COUNSEL

*/s/ Kevin F. Moore*

Kevin F. Moore (0089228)

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission, this 18th day of May 2018.

*/s/ Kevin F. Moore*

Kevin F. Moore

Assistant Consumers’ Counsel

**SERVICE LIST**

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1. *In the Matter of the Application of Aqua Ohio, Inc. for Approval of a Revised Water Purchase Agreement with Whirlpool Corporation*, Case No. 17-2193-WW-AEC, OCC Comments (November 22, 2017). [↑](#footnote-ref-2)
2. R.C. 4903.10. [↑](#footnote-ref-3)
3. *In the Matter of the Application of Aqua Ohio, Inc. for Approval of a Revised Water Purchase Agreement with Whirlpool Corporation*, Case No. 17-2193-WW-AEC, Finding and Order at ¶21 (Apr. 18, 2018). [↑](#footnote-ref-4)
4. *Id.* [↑](#footnote-ref-5)
5. *Id.* [↑](#footnote-ref-6)
6. See *In the Matter of the Application of Aqua Ohio, Inc., to Increase its Rate for Water Service,* Case No. 16-907-WW-AIR, Opinion and Order at 7, 9, 13 (March 22, 2018). [↑](#footnote-ref-7)
7. *In re Joint Application of the Ohio Bell Tel. Co. & Ameritech Mobile Servs., Inc. for Approval of the Transfer of Certain Assets,* Case No. 89-365-RC-ATR, 1990 Ohio PUC LEXIS 1138, at \*5 (Oct. 18, 1990). [↑](#footnote-ref-8)