**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Aqua Ohio, Inc. to Increase its Rates and  Charges for Its Waterworks Service. | )  )  ) | Case No. 22-1094-WW-AIR |

**MEMORANDUM CONTRA AQUA OHIO’S MOTION TO STRIKE**

**OCC’S OBJECTIONS TO THE PUCO STAFF REPORT**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

1. **INTRODUCTION**

The Office of the Ohio Consumers’ Counsel’s Objections (“OCC Objections”)[[1]](#footnote-2) to the Public Utilities Commission of Ohio (“PUCO”) Staff Report[[2]](#footnote-3) are proper and conform to the requirements in the PUCO’s rules.[[3]](#footnote-4) OCC’s Objections relate to the “findings, conclusions, or recommendations contained in the report, or to the failure to address” specific items in the report.[[4]](#footnote-5) OCC’s Objections are also “specific” and “frame the issues” OCC plans to litigate at hearing.[[5]](#footnote-6)

Despite OCC’s Objections fully conforming to the PUCO’s rules, Aqua Ohio, Inc. (“Aqua”) has moved to strike[[6]](#footnote-7) three of OCC’s Objections. Aqua’s motion should be denied. The three objections[[7]](#footnote-8) that Aqua requests to strike concern bill payment assistance for consumers, Aqua’s publication of disconnection data, and public hearings in this rate case proceeding. These items are directly related to the “findings, conclusions or recommendations” contained in the PUCO Staff Report and are specific. Thus, Aqua’s motion to strike OCC’s Objections should be denied.

# II. ARGUMENT

1. **OCC’s objections to the Staff Report are specific and should not be stricken. OCC’s objections provide Aqua unambiguous notice of the issues OCC intends to litigate at hearing.**

Aqua moves to strike OCC’s 15th, 16th, and 17th objections to the Staff Report.[[8]](#footnote-9) Aqua claims that these objections “were not made with specificity” because OCC did not provide “support” or “legal basis.”[[9]](#footnote-10) That argument should be rejected.

O.A.C. 4901-1-28(B) governs objections, stating that “objections may relate to the findings, conclusions, or recommendations contained in the report, or to the failure of the report to address one or more specific items. All objections must be specific, and objections which fail to meet this requirement may be stricken.” Objections also “shall frame the issues in the proceeding,”[[10]](#footnote-11) meaning their purpose is to afford parties and the PUCO notice of what issues the objector intends to litigate at hearing. The intrinsic merit, or lack of merit, of any particular objection, must be dealt with following the evidentiary hearing on the matter, not by striking it prior to that time.[[11]](#footnote-12)

OCC’s objections are specific because they provide Aqua unambiguous notice of issues OCC will pursue at hearing. OCC’s 15th objection states that the “PUCO Staff erred by not recommending that annual shareholder funding of $20,000 or more be provided…for a bill payment assistance program.”[[12]](#footnote-13) This puts Aqua on notice of OCC’s intent to recommend shareholder funding for bill payment assistance at hearing in the amount of $20,000. OCC’s objection need not provide support or legal basis for this recommendation at the objection stage to be specific, as Aqua mistakenly argues. That will be provided at hearing, through testimony, and through briefs. Aqua will have the opportunity to address the merits of OCC’s objections during the evidentiary hearing and on brief. Consistent with PUCO precedent, it is not proper to strike OCCC’s objection prior to that time.

OCC’s 16th objection is specific too. It states that the PUCO Staff erred by not requiring Aqua to provide quarterly reports providing information related to six pieces of disconnection data.[[13]](#footnote-14) OCC’s objection lists six pieces of disconnection data Aqua should make public, including: “(1) the number of final notices along with dollar amounts; (ii) the number of disconnections by service area along with dollar amounts; (iii) the number of accounts in 60-days arrears along with dollar amounts; (iv) the number of Aqua customers on payment plans along with dollar amounts; (v) the number of reconnections by service area, and (vi) the number of Aqua residential consumers by service area.”[[14]](#footnote-15)

OCC’s objection is specific because it gives Aqua notice of every disconnection metric it will request at hearing that Aqua make public. OCC has thus provided Aqua notice that it will litigate Aqua’s failure to publish disconnection data at hearing. OCC need not provide support or legal basis in its objections.

Lastly, OCC’s 17th objection states that the PUCO Staff erred by failing to recommend “that there be virtual local hearings” “scheduled for Aqua consumers in this case….”[[15]](#footnote-16) There is no ambiguity in this request; the PUCO itself acknowledged in a previous entry in this rate case that it has “previously provided the opportunity for remote testimony relative to local public hearings.”[[16]](#footnote-17) Thus, OCC’s objection makes clear OCC’s position on this matter: there should be virtual local public hearings in this case.

Aqua requests support and legal basis for OCC’s request for local public hearings, but none is required at this stage. OCC’s 17th objection provides Aqua adequate notice of OCC’s position on virtual local public hearings and that OCC contests this issue. Thus, this objection is proper and should not be stricken for lack of specificity. Arguments on the merits or the legal basis for an objection simply are not required, contrary to Aqua’s assertion. The intrinsic merit, or lack of merit, of any particular objection, must be dealt with following the evidentiary hearing on the matter, not by striking it prior to that time.[[17]](#footnote-18)

Further, Aqua itself objected to the Staff Report on several grounds with no explanation or support. For example, Aqua’s 13th Objection baldly states that Aqua “objects to the extent that the Audit Report’s adjustments described in these objections affect the calculation of federal income and excise tax included in rates.”[[18]](#footnote-19) Aqua’s 14th Objection claims that “Aqua objects to the extent the Audit Report’s adjustments described in these objections affect the calculation of interest synchronization included in rates.”[[19]](#footnote-20) The same is true for Aqua’s 8th and 26th objections. None of these Aqua objections provide the support or legal basis that Aqua demands from OCC. Aqua’s claims that OCC’s objections should be stricken should be rejected.

1. **OCC’s objections are not “outside the scope of this case” because they concern findings or deficiencies in the Staff Report or prior PUCO rulings in this rate case.**

Aqua argues that OCC’s objections should be stricken because they “contravene Commission precedent.”[[20]](#footnote-21) Again, Aqua mistakenly focuses on the merits of the objection. The intrinsic merit, or lack of merit, of any particular objection, must be dealt with following the evidentiary hearing on the matter, not by striking it prior to that time.[[21]](#footnote-22)

The PUCO has explained that “the *only* requirements as to objections are that they must *relate* to findings, conclusions, or recommendation in a staff report, or must relate to the failure of the staff report to address as items, and must be specific.”[[22]](#footnote-23) The merits of objections are appropriately considered, if at all, through testimony, hearing (cross-examination), and briefing.[[23]](#footnote-24)

Aqua’s request to strike OCC’s 16th and 17th objections for violating PUCO precedent clearly concerns the merits of this case. Where an objection is specific and relates to a finding, conclusion, or recommendation in the Staff Report, or failure of the Staff Report to address an issue, that objection is proper.[[24]](#footnote-25) Whether OCC’s objections correctly state the law is an issue for hearing and legal briefs. The PUCO should reject Aqua’s motion to strike OCC’s objections on the basis that they purportedly contradict precedent.

Aqua’s motion also asks the PUCO to strike OCC’s 16th and 17th objections because in Aqua’s view they “address issues beyond the scope of a rate case.”[[25]](#footnote-26) Again, this is not a proper basis for striking objections. An objection is proper if it is specific and related to either a finding, conclusion or recommendation in the Staff Report or to Staff’s failure to address an item in the Staff Report.[[26]](#footnote-27) OCC’s objections satisfy these requirements and should not be prematurely stricken.

OCC’s 16th objection properly relates to Staff’s failure to address an item in the Staff Report. OCC’s 16th objection addresses the failure of the Staff Report to perform an analysis of disconnection reports that it obtains from Aqua and recommends ways that Aqua consumers can be better protected.[[27]](#footnote-28) The Staff Report states that Staff reviewed the customer contacts to the PUCO’s call center for a one-year period and notes the number of contacts concerning billing matters or payment arrangements. [[28]](#footnote-29) But there is no analysis regarding consumer contacts to the PUCO call center and the disconnection data that Aqua routinely provides to the Staff, and this was the basis of OCC’s specific objections regarding this part of the Staff Report.

Notably, Aqua moved to strike a similar OCC objection in its last rate case for this same reason - “ignor[ing] Commission precedent and address[ing] issues beyond the scope of a rate case.”[[29]](#footnote-30) In that case, OCC objected that the Staff Report erred because it did not “require Aqua to expand the data in its disconnection reporting and publicly file the data.”[[30]](#footnote-31) The PUCO did not grant Aqua’s motion to strike in that case. The PUCO should not grant Aqua’s motion to strike OCC’s objections here either.

Aqua also argues OCC’s 17th objection – that the PUCO Staff report erred by not recommending virtual local public hearings in this proceeding – is outside the scope of this rate case.[[31]](#footnote-32) Not so. Aqua’s motion to strike itself demonstrates this by discussing a PUCO ruling *in this very rate case* on a previous OCC request for virtual local public hearings.[[32]](#footnote-33) An issue the PUCO has already ruled on in this case is not “outside the scope” of this case. And the PUCO itself acknowledged in a previous entry in this rate case that it has “previously provided the opportunity for remote testimony relative to local public hearings.”[[33]](#footnote-34) Virtual local public hearings are not outside the scope of a rate case because the PUCO has ruled on this topic in previous rate cases, including this one. OCC’s objection on this issue should not be stricken.

Aqua’s motion to strike OCC’s 16th and 17th objections should be denied because they specifically respond to findings and deficiencies in the Staff Report.

# II. CONCLUSION

OCC’s objections conform to the requirements of O.A.C. 4901-1-28(B). Aqua’s motion to strike OCC’s objections is improper and should be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Memorandum Contra Motion to Strike was served on the persons stated below via electronic transmission, this 28th day of August 2023.

*/s/ Angela D. O’Brien*

Angela D. O’Brien

Assistant Consumers’ Counsel

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1. Objections to the PUCO Staff Report by Office of the Ohio Consumers’ Counsel (“OCC Objections”), Case No. 22-1094-WW-AIR (August 14, 2023). [↑](#footnote-ref-2)
2. A Report by the Staff of the Public Utilities Commission of Ohio (“Staff Report”) (July l3, 2023). [↑](#footnote-ref-3)
3. O.A.C. 4901-1-28 (B) and (C). [↑](#footnote-ref-4)
4. *Id*. [↑](#footnote-ref-5)
5. *Id*. [↑](#footnote-ref-6)
6. Aqua Ohio, Inc.’s Motion to Strike Objections to the PUCO Staff Report filed by Office of the Ohio Consumers’ Counsel (“Aqua Motion”) (August 21, 2022). [↑](#footnote-ref-7)
7. *See* OCC Objections at 21 (Objections 15, 16, and 17). [↑](#footnote-ref-8)
8. Aqua Motion at 3. [↑](#footnote-ref-9)
9. *Id.*  [↑](#footnote-ref-10)
10. O.A.C. 4901-1-28(C). [↑](#footnote-ref-11)
11. *In the Matter of the Application of Water and Sewer LLC for an Increase in Rates and Charges*, Case No. 08-227-WS-AIR, Entry (April 14, 2009). [↑](#footnote-ref-12)
12. Objections at 21. [↑](#footnote-ref-13)
13. *Id.*  [↑](#footnote-ref-14)
14. *Id.* [↑](#footnote-ref-15)
15. *Id.*  [↑](#footnote-ref-16)
16. Entry (August 11, 2023) at ¶ 9. [↑](#footnote-ref-17)
17. *In the Matter of the Application of Water and Sewer LLC for an Increase in Rates and Charges*, Case No. 08-227-WS-AIR, Entry (April 14, 2009), at ¶ 6. [↑](#footnote-ref-18)
18. Objections to the Staff Report of Investigation and Audit of the Application to Increase Rates by Aqua Ohio, Inc. (August 14, 2023) at 11. [↑](#footnote-ref-19)
19. *Id. See also* Aqua Objection Nos. 8 and 26. [↑](#footnote-ref-20)
20. Aqua Motion at 4. [↑](#footnote-ref-21)
21. *In the Matter of the Application of Water and Sewer LLC for an increase in rates and charges*, Case No. 08-227-WS-AIR, Entry (April 14, 2009). [↑](#footnote-ref-22)
22. *In the Matter of the Application of Water and Sewer LLC for an Increase in its Rates and Charges*, Case No. 08-227-WS-AIR, Entry at ¶ 6 (April 14, 2009) (emphasis added). [↑](#footnote-ref-23)
23. *Id.* [↑](#footnote-ref-24)
24. O.A.C. 4901-1-28(B). [↑](#footnote-ref-25)
25. Aqua Motion at 4. [↑](#footnote-ref-26)
26. O.A.C. 4901-1-28(B). [↑](#footnote-ref-27)
27. OCC Objections at 8. [↑](#footnote-ref-28)
28. Staff Report at 13. [↑](#footnote-ref-29)
29. Case No. 21-0595-WW-AIR, Aqua Ohio, Inc.’s Motion to Strike Objections to the PUCO Staff Report filed by Office of The Ohio Consumers’ Counsel (April 11, 2022) at 4. [↑](#footnote-ref-30)
30. Case No. 21-0595-WW-AIR, Objections to the PUCO Staff Report by Office of the Ohio Consumers’ Counsel (March 14, 2022) at 13. [↑](#footnote-ref-31)
31. Aqua Motion at 5. [↑](#footnote-ref-32)
32. *Id.*, *See* Entry (August 11, 2023) at ¶ 9. [↑](#footnote-ref-33)
33. *Id.*  [↑](#footnote-ref-34)