**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| 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 |

**OBJECTIONS TO THE PUCO STAFF REPORT**

**BY**

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August 14, 2023

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**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 |

**OBJECTIONS TO THE PUCO STAFF REPORT**

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# INTRODUCTION

Ohio’s residential utility consumers are being squeezed in all directions by inflation, rising energy costs, and increases in electric and natural gas distribution rates. Now, Aqua Ohio, Inc. (“Aqua”) wants to increase the annual amount that it charges consumers by an additional $9,363,601 for water service.[[1]](#footnote-2) This increase would be *in addition to* the rate increase that the PUCO authorized Aqua Ohio to charge consumers *less than a year ago*.[[2]](#footnote-3)

In encouraging news for consumers, the Staff of the Public Utilities Commission of Ohio (“PUCO”) and its auditor recommend that Aqua be allowed to charge consumers no more than an additional $3,425,564 million.[[3]](#footnote-4) However, the PUCO Staff’s recommendations would nonetheless result in unjust and unreasonable rates for Aqua’s consumers in violation of Ohio law, including R.C. 4905.22, 4909.15, 4909.154, 4909.17, and 4909.18.

Larkin & Associates, PLLC (“Larkin”) was selected by the PUCO to conduct the audit of the revenue requirement, rate base, and net operating income proposed by Aqua. Larkin subcontracted with Acadian Consulting Group (“ACG”) to address the cost of service, revenue distribution, and rate design issues. The PUCO Staff performed a rate of return (profit) analysis and service monitoring and enforcement investigation. Larkin’s audit report was filed on July 13, 2023. The combined efforts of Larkin, ACG, and the PUCO Staff form the July 13, 2023 Staff Report.

The Office of the Ohio Consumers’ Counsel (“OCC”) appreciates the Audit Report analysis and the Staff Report’s recommendations that would overcome for consumers some significant unfairness in Aqua’s proposal. However, the Staff Report falls short of protecting residential consumers in several ways, as explained in the Objections below. The PUCO should adopt OCC’s consumer protection recommendations.

# SUMMARY OF FINDINGS AND RECOMMENDATIONS SUPPORTED BY OCC

OCC supports the following findings, conclusions, and recommendations from the Staff Report and Audit Report:

* The PUCO Staff correctly used the capital structure approved in Aqua’s most recent rate case, which is 47.9% debt and 52.1% equity.[[4]](#footnote-5)
* The PUCO Staff correctly used the cost of long-term debt approved in Aqua’s most recent rate case, which is 3.82%.[[5]](#footnote-6)
* The Audit Report correctly recommends that the PUCO apply any revenue requirement adjustment across customer classes on a more equal basis as shown on Tables 8 and 9.[[6]](#footnote-7) While the ultimate revenue distribution is dependent on the PUCO-adopted revenue requirement in this proceeding, OCC finds the Audit Report’s recommended methodology to be reasonable.
* The Audit Report correctly recommends an appropriate rate design as shown in Tables 20 -24.[[7]](#footnote-8) While the ultimate rates are dependent on the PUCO-adopted revenue requirement in this proceeding, OCC finds the Audit Report’s methodology for determining those rates to be reasonable.
* The Audit Report correctly recommends approval of Aqua’s declining rate block structure to set metered rates among the different customer classes.[[8]](#footnote-9)
* The Audit Report correctly recommends no changes to Miscellaneous Charges.[[9]](#footnote-10)
* The Audit Report correctly removes from rates charged to consumers the projected plant additions (along with related impacts to accumulated depreciation, deferred income taxes, depreciation expense and property tax expense) that relate to Aqua’s non-regulated Stark and Struthers divisions.[[10]](#footnote-11)
* The Audit Report correctly removes from rates charged to consumers the plant additions (along with related impacts to accumulated depreciation, deferred income taxes, depreciation expense and property tax expense) that will not be in-service by June 30, 2023, along with updating plant additions for actual costs that are expected to be in-service by June 30, 2023 (along with other related impacts).[[11]](#footnote-12)
* The Audit Report correctly removes projected post-test period non-union wage and salary increases that are not known and measurable.[[12]](#footnote-13)
* The Audit Report correctly removes one-half of incentive expense related to goals that are shareholder oriented (and allowing one-half of incentive expense related to goals that are service oriented) to protect consumers from unfair charges.[[13]](#footnote-14)
* The Audit Report correctly removes all of the stock-based compensation expense (presumably long-term incentive expense), to protect consumers from unfair charges.[[14]](#footnote-15)
* The Audit Report correctly removes payroll tax expense related to prior adjustments for payroll expense and incentive/stock-based compensation expense.[[15]](#footnote-16)
* The Audit Report correctly removes Supplemental Executive Retirement Plan (SERP) expense that is unreasonable to charge to consumers because it provides benefits to certain highly paid executives at a level that exceeds benefit levels of other Company employees.[[16]](#footnote-17)
* The Audit Report correctly reduces uncollectibles expense based on a four-year average of this expense from 2019 to 2022.[[17]](#footnote-18)
* The Audit Report correctly removes the rate case expense related to the prior rate case.[[18]](#footnote-19)

In addition to the above recommendations made by the PUCO Staff and auditor, the Staff Report should have gone further and proposed additional measures to benefit consumers. The Staff Report harms consumers by, among things:

* Recommending a revenue requirement that reflects a rate of return (including profit) that is too high based on a review of current market conditions and Aqua’s business and financial risk;
* Failing to perform an analysis of consumer information collected through the PUCO’s call center or any analysis of the disconnection reports that it obtains from Aqua and to recommend ways that Aqua consumers can be better protected.
* Using a comparable earnings (“CE”) model in calculating the cost of equity, although the PUCO Staff did reasonably use the capital asset pricing model (“CAPM”) and the discounted cash flow (“DCF”) model.

OCC reserves the right to supplement its testimony in this case should any of the Staff Report's findings, conclusions or recommendations noted above that OCC supports are no longer supported by the PUCO Staff.

# III. OBJECTIONS TO THE STAFF REPORT

## Revenue Requirement

OBJECTION 1: OCC objects because, as a result of OCC’s other objections below (including OCC’s proposed changes to the rate of return), the Staff Report’s recommended rate increase of $3,425,564 is too high for consumers and would result in consumers paying unjust, unreasonable, and unlawful rates under R.C. 4905.22, 4909.15, 4909.154, 4909.17 and 4909.18.

The PUCO Staff’s recommended increase to consumers of $3,425,564 (mid-point) is too high and would result in unjust and unreasonable rates.[[19]](#footnote-20) OCC objects to the PUCO Staff-recommended revenue requirement and resulting revenue and rate increase recommended for Aqua. The PUCO Staff’s recommended revenue requirement of $76,117,135 (mid-point) for Aqua is excessive because it utilizes a rate of return that is not just and reasonable. The specific objections from which these overall conclusions are drawn are detailed below in OCC’s objections to the PUCO Staff’s recommendations regarding these matters.

Additionally, OCC objects to each component of the PUCO Staff Report’s recommended revenue requirement and rate increase recommended for Aqua to the extent that OCC objections have an impact on the calculation of the recommended revenue requirement.

OBJECTION 2: OCC objects because, Staff’s recommended rate increase of $3,425,564 is not based entirely on updated actual June 30, 2023, financial data. Without knowing the revenue requirement baseline for both Aqua and Staff that would result from using actual June 30, 2023, financial data, Staff’s recommended rate increase of $3,425,564 is too high for consumers and would result in consumers paying unjust, unreasonable, and unlawful rates under R.C. 4905.22, 4909.15, 4909.154, 4909.17 and 4909.18.

The Audit Report states that Aqua has requested a revenue increase of $9.364 million based on a “test year updated through a date certain of June 30, 2023”,[[20]](#footnote-21) but Aqua’s revenue deficiency calculation has not been updated (to actual amounts) and is clearly not “certain” as of June 30, 2023. Larkin also makes a similar claim that its revenue deficiency calculation is “based on examination of the accounts and records of the Applicant for the test year ending, and data certain of, June 30, 2023.”[[21]](#footnote-22) However, the Staff-proposed revenue deficiency also does not begin or end with actual or certain financial data at June 30, 2023. The OCC believes the only logical reason or incentive for Aqua not providing such actual updated information is that it would produce a reduced revenue deficiency. Aqua bears the burden of proof in this proceeding, and without providing actual updated June 30, 2023, financial data as a baseline or a test of reasonableness for both the Aqua and Staff-proposed revenue deficiency, there is no meaningful independent, objective, and conclusive validation for even the low end of Staff’s proposed revenue deficiency – and Aqua has failed to meet a reasonable burden of proof in this regard.

OBJECTION 3: OCC objects because the Audit Report Staff-adjusted O&M expenses of $24.2M appear excessive. Thus, Staff’s recommended rate increase of $3,425,564 is too high for consumers and would result in consumers paying unjust, unreasonable, and unlawful rates under R.C. 4905.22, 4909.15, 4909.154, 4909.17 and 4909.18.

The Staff-proposed revenue deficiency includes O&M expense levels that appear excessive compared to the historical trend, and this would result in a rate increase of $3,425,564 that is too high for consumers and would result in consumers paying unjust, unreasonable, and unlawful rates under R.C. 4905.22, 4909.15, 4909.154, 4909.17 and 4909.18.

OBJECTION 4: OCC objects because the Audit Report does not adjust the largely estimated affiliate expenses allocated from Essential Utilities to Aqua in this rate case. Thus, the Staff’s recommended rate increase of $3,425,564 is too high for consumers and would result in consumers paying unjust, unreasonable, and unlawful rates under R.C. 4905.22, 4909.15, 4909.154, 4909.17 and 4909.18.

Thus, the Staff-proposed revenue deficiency of $3,425,564 may be too high for consumers and would result in consumers paying unjust, unreasonable, and unlawful rates under R.C. 4905.22, 4909.15, 4909.154, 4909.17 and 4909.18.

Because the Audit Report does not adjust affiliate expenses, it is not possible for OCC to reasonably determine if the level of affiliate expenses is reasonable.

OBJECTION 5: The OCC objects because the Staff Report did not confirm, validate and reconcile that the largely estimated amount of short-term incentive expense and stock-based compensation expense (presumably long-term incentive expense) included in the Aqua revenue deficiency (and adjusted by the Audit Report) is reasonable or is reasonable when compared to the updated actual incentive expenses at June 30, 2023. This could mean the Staff Report’s recommended rate increase of $3,425,564 is too high for consumers and would result in consumers paying unjust, unreasonable, and unlawful rates under R.C. 4905.22, 4909.15, 4909.154, 4909.17 and 4909.18.

The Staff Report did not confirm or validate that Aqua’s incentive and stock-based compensation expense is reasonable. Thus, this could mean that Staff’s recommended increase to consumers of $3,425,564 (mid-point) is too high for consumers and would result in consumers paying unjust, unreasonable, and unlawful rates under R.C. 4905.22, 4909.15, 4909.154, 4909.17 and 4909.18.

OBJECTION 6: OCC Objects because the Staff Report’s adjustments regarding incentive expenses may be understated.

OCC had difficulty reconciling to the amounts included in the revenue deficiency calculations of both Aqua and the Staff Report. Thus, the Staff Report could result in consumers paying unjust, unreasonable, and unlawful rates under R.C. 4905.22, 4909.15, 4909.154, 4909.17 and 4909.18.

## Rate of Return

As described in our Objections below, the PUCO Staff Report’s recommended rate of return range of 6.49% -7.01%[[22]](#footnote-23) is too high based on current market conditions and Aqua’s business and financial risks. It is thus unjust and unreasonable for consumers to pay Aqua a water distribution charge based on this range of rate of return. A more reasonable rate of return would be 6.47%.[[23]](#footnote-24) The Staff Report’s recommended return on equity range of 8.94% - 9.95%[[24]](#footnote-25) is also too high and thus unjust and unreasonable for consumers to pay.

Specifically, the cost of equity and the rate of return proposed in the PUCO Staff Report do not reflect current market conditions or the business and financial risks facing a regulated water utility such as Aqua. Furthermore, the PUCO Staff’s analysis is inconsistent with the analysis and approach used in the Staff Reports of prior rate cases.[[25]](#footnote-26) The PUCO Staff has not provided any explanation for why it changed its approach.

OBJECTION 7: OCC objects because the Staff Report erred by using the historical Gross National Product (“GNP”) growth rate in modeling the long-term growth rate for the multistage discounted cash flow (“DCF”) model. The use of the historical GNP growth rate for the DCF analysis leads to a rate of return that is too high and results in unjust and unreasonable rates to consumers in violation of R.C. 4905.22, 4909.15, 4909.154, 4909.17 and 4909.18.

The PUCO Staff’s use of the historical GNP growth rate in modeling the long-term growth rate for the multistage DCF model overstates the estimated cost of equity of Aqua under the DCF analysis.[[26]](#footnote-27) In the DCF model analysis, a key element is the earnings growth rate as the input into the model. The Staff used a multistage DCF model assuming that the long-term growth rate starting from the 25th year is the average annual percentage change in GNP from the U.S. Department of Commerce for 1929 through 2022.[[27]](#footnote-28) The PUCO Staff is correct in assuming the economic growth rate to be the expected long-term dividend growth rate. However, the cost of capital is the expected market required return on capital for the future investment of the utilities in this case. Therefore, it should be forward looking. Historical GNP or GDP growth rate only reflects what has happened in the past and the past does not necessarily reflect the current or future market and economic conditions. Therefore, it is inappropriate to use historical growth rate in this context.

The historical GNP growth rate during the sample period of the PUCO Staff is 6.31%[[28]](#footnote-29) and it was used as the expected future GNP growth rate, which is too high for the future given the expected economic condition in the U.S. In calculating the 6.31% annual growth rate, the PUCO Staff used the arithmetic growth formula – *i.e.*, calculating the annual growth rate and then averaging the overall annual growth rate. However, this approach has a well-known problem of over-stating the growth rate when growth rate varies quite a bit during the sample period. The correct calculation is to obtain the geometric mean growth rate, which is 6.08% ((25640.1/105.3)^(1/93)-1). However, even 6.08% is still not representative of the future GNP/GDP growth rate.

It is well-known that the U.S. economy experienced a slowdown in economic growth in the last several decades. The U.S. real GDP growth rate has been declining over the years. From 1970 to 2020, the U.S. real GDP grew at a rate of 2.67%, while that rate for the period of 1980-2020 and 1990 to 2020 has declined to 2.55% and 2.29% respectively. The growth rate for the period of 2000 to 2020 dipped to 1.73%.[[29]](#footnote-30) The historical GDP growth rate of 6.41% does not appear to be consistent with the more recent trend in GDP growth. The most recent expected GDP growth rate for the U.S. is around 4.18% (*see* Exhibit OCC-ZZ-5).

### [OBJECTION 8: OCC objects because the Staff Report erred by using the yields of the 20-year U.S. Treasury Bonds as the risk-free rate used in the Capital Asset Pricing Model (“CAPM”). The inclusion of the yields of 20-year U.S. Treasury Bonds in calculating the risk-free rate overstates the estimated cost of equity of Aqua under the CAPM analysis causing a rate of return that is too high and results in unjust and unreasonable rates to consumers in violation of R.C. 4905.22, 4909.15, 4909.154, 4909.17 and 4909.18.](#_Toc98165617)

The PUCO Staff’s use of the yields of 20-year U.S. Treasury Bonds as part of the calculation of the risk-free rate overstates the estimated cost of equity of Aqua under the CAPM analysis.[[30]](#footnote-31) In the CAPM analysis, a risk-free rate is typically based on the current actual yields of long-term U.S. government bonds with ten years or longer maturity. A more reasonable risk-free rate would be the 30-year U.S. Treasury Bond yield. Utility investments are long-term, often more than 30 years, which makes the 20-year horizon too short. In addition, the current 20-year T-bond yield is higher than the 30-year T-bond yield. The inverted yield curve suggests that the market is expecting the interest rate to be lower at the longer horizon, which suggests that the 30-year bond yield is better at reflecting the cost of long-term debt than the 20-year bond yield. [[31]](#footnote-32)

The use of the 20-year T-bond yield by the Staff is inconsistent with the PUCO Staff’s methodology in past cases. For example, the PUCO Staff used the average of 10-year and 30-year T-bond yields as the interest rate for the input to the CAPM model.[[32]](#footnote-33)

As the yields of the 20-year bonds tend to be much higher than the yields of the 30-year bonds, using the yields of 20-year U.S. Treasury Bonds as the risk-free rate overstates the estimated cost of equity of Aqua under the CAPM analysis. OCC objects to the use of 20-year U.S. Treasury Bonds as the risk-free rate for the CAPM analysis.

OBJECTION 9: OCC objects because the Staff Report erred by using the historical return in the calculation of market risk premium in the Capital Asset Pricing Model (“CAPM”). The use of the historical return overstates the estimated cost of equity of Aqua under the CAPM analysis causing a rate of return that is too high and results in unjust and unreasonable rates to consumers in violation of R.C. 4905.22, 4909.15, 4909.154, 4909.17 and 4909.18.

To calculate the market equity risk premium for the CAPM model, the PUCO Staff used the arithmetic average of annual returns from 1926 through 2021 for large-cap stocks of 12.33 percent.[[33]](#footnote-34) The required return on equity is the market expected return for the future investment period, thus requiring the expected market risk premium analysis. The calculation of the market risk premium by the Staff is based on historical performance of the market, which may not reflect what the market expects for the future. As a result, the historical risk premium calculated by the PUCO Staff is inappropriate.

In addition, the PUCO Staff used the arithmetic average of annual returns from 1926 through 2021 to calculate the annual returns. It is well known that the arithmetic average overstates the annual growth for a period especially when the annual returns vary significantly. The correct way is to use the geometric mean. A simple example can be used to illustrate the difference between geometric mean and arithmetic mean. Suppose a stock price at the beginning of the year is $100 and then drops to $50 at the end of the first year before it recovers to $100 at the end of the second year. The geometric mean would be 0% for the stock in the two-year period, but the arithmetic mean would be the average of two annual returns: (-50% +100%)/2 = 25%). The calculation of arithmetic mean shows the variation of the returns each year, but it exaggerates the annual growth rate.

The PUCO Staff’s calculated market risk premium of 7.46% by the historical method overstates the market risk premium. For example, Statista suggested that the average MRP in the U.S. for 2011-2022 is 5.6%.[[34]](#footnote-35) Professor Aswath Damodaran, a well-known expert in the study of Equity Risk Premium at Stern School of Business at New York University, estimated that the market expected return at the start of 2023 is 9.82%. With the use of the T-bond yield, the implied Equity Risk Premium is 5.94%.[[35]](#footnote-36) A survey of risk premiums used by professionals in 2023 by Professors Pablo Fernandez, Diego García, and Javier F. Acin puts the U.S. risk premium at 5.7%.[[36]](#footnote-37) Duff and Phelps (now Kroll), a source that valuation experts frequently rely upon, recommends U.S. market Equity Risk Premium or MRP to be 5.5%, effective June 2023.[[37]](#footnote-38)

In light of this, the PUCO Staff’s market risk premium overestimates the required market risk premium for the current market condition and thus overstates the cost of equity for Aqua Ohio, leading to unjust and unreasonable rates for consumers to pay.

OBJECTION 10: OCC objects because the Staff Report erred by including the results of Comparable Earnings (“CE”) analysis, such as the estimated return on equity of 10.11% earned by companies other than water utilities with different business and financial risks from a water utility in calculating the cost of equity. Including the CE model overstates the cost of equity of Aqua causing a rate of return that is too high and results in unjust and unreasonable rates to consumers in violation of R.C. 4905.22, 4909.15, 4909.154, 4909.17 and 4909.18.

To protect Aqua’s consumers, OCC objects to the PUCO Staff’s use of the results of the Comparable Earnings method (“CE”), such as the estimated return on equity of 10.11% earned by including companies from other utility industries in calculating the cost of equity.[[38]](#footnote-39) These companies are not water utilities but mostly gas and electric utilities, which have different business and financial risks than those associated with a water utility such as Aqua.

The PUCO Staff’s use of the CE method is also inconsistent with its past practice. In the past rate cases, the Staff relied on both DCF and CAPM models to estimate the ROE most of the time with a few exceptions.[[39]](#footnote-40) The PUCO Staff has not explained why it has deviated from its convention on those cases. The PUCO Staff’s inconsistencies in its adaptation of the methodologies and its deviation from past practice cast doubt on the PUCO Staff’s adoption of the CE method in this case.

In addition, the CE method is not a market-value-based approach. The return on equity is a minimum required market return on equity, and it is a market value concept. However, the rate of return as obtained by the PUCO Staff in its CE approach is the rate of return on book value, not market value, equity. This approach is problematic as investors require a fair return on market value of equity, not book value, because investors cannot buy stocks at book value.

For this reason, FERC has rejected CE or Expected Earnings models as a method to estimate the market required return on equity. FERC stated:

*The Commission explained that the return on book value is not indicative of what return an investor requires to invest in the utility’s equity or what return an investor receives on the equity investment, because those returns are determined with respect to the current market price that an investor must pay in order to invest in the equity. Specifically, the Commission found that the Expected Earnings model measures returns on book value, without consideration of what market price an investor would have to pay to invest in the relevant company, so it does not accurately measure the investor’s expected returns on its investment, and, therefore, has been “thoroughly discredited*”[[40]](#footnote-41).

The PUCO Staff’s use of CE model for the Aqua is also inconsistent with the approach of the PUCO Staff in other cases, such as the more recent Columbia Gas rate case,[[41]](#footnote-42) where the PUCO Staff only employed the DCF and CAPM model. The cherry-picking of approaches only serves to raise the return on equity estimates.

### [OBJECTION 11: OCC objects because the Staff Report inappropriately increased the cost of equity by allowing an adjustment for equity issuance and other costs, causing a recommended cost of equity that is too high and thus results in unjust and unreasonable rates for consumers in violation of R.C. 4905.22, 4909.15, 4909.154, 4909.17 and 4909.18.](#_Toc98165619)

To protect Aqua’s consumers, OCC objects to the inclusion of an allowance for generic and hypothetical issuance and other costs proposed in the Staff Report.**[[42]](#footnote-43)** By including this additional allowance and applying a factor of 1.01052 to accommodate issuance cost and other costs, the Staff Report increased the recommended cost of equity from a range of 8.85% to 9.85% to a range of 8.94% to 9.95%. The PUCO Staff did not justify the inclusion of these costs. Even if an adjustment for equity issuance and other costs were allowed, the Staff inappropriately increased the cost of common equity by using a hypothetical and generic issuance cost factor of 3.5%.[[43]](#footnote-44)

The Staff Report has not explained why this generic issuance cost factor is reasonable or why it should be applied in this proceeding. In addition, there is no demonstration in the Staff Report that Aqua Ohio is likely to incur these costs in the near future or the magnitude of these costs. The addition of arbitrary and unproven equity issuance and other costs will unnecessarily and unreasonably increase the cost of water services to Aqua Ohio’s customers.[[44]](#footnote-45)

OBJECTION 12: OCC objects because the Staff Report’s recommended rate of return range of 6.49% to 7.01% is too high based on current market conditions and Aqua’s business and financial risks, resulting in rates that are too high and are unjust and unreasonable for consumers in violation of R.C. 4905.22, 4909.15, 4909.154, 4909.17 and 4909.18. The Staff Report should have recommended a rate of return of 6.47% or lower.

To protect Aqua’s consumers, OCC objects to the recommended rate of return range of 6.49% to 7.01% in the Staff Report. The Staff Report’s recommended rate of return range of 6.49% to 7.01% is too high based on current market conditions and Aqua’s business and financial risks. It is therefore unjust and unreasonable for consumers to pay Aqua a water distribution charge based on this range of rate of return.

The costs of water services to the approximately 150,549 Ohio consumers served by Aqua have steadily increased over the past six years. These consumers have faced frequent and significant rate increases. This rate increase by Aqua, if approved, would be the sixth increase in rates (including the three System Improvement Charges) granted by the PUCO since March 2017.[[45]](#footnote-46)

Aqua’s frequent and significant rate increases in recent years indicate the need to select a lower but reasonable rate of return to lessen the impact of any further rate increase to Aqua’s consumers. At the same time, the frequent use of the System Improvement Charge (two in 2019 and one in 2020) by Aqua has reduced considerably the so-called regulatory lag and the business and financial risks of Aqua. This in turn should lead to a lower authorized rate of return for Aqua.

OCC’s recommended rate of return of 6.47% reflects proper and reasonable modifications to the rate of return analysis included in the Staff Report.[[46]](#footnote-47) This rate of return is also consistent with the well-established regulatory principles that (1) a rate of return should not result in unjust and unreasonable rates; (2) a rate of return should be based on current market conditions and returns available from alternative investments; (3) a rate of return should be based on providing sufficient fund for a regulated utility to continue its normal course of business; and (4) a rate of return is not a guarantee for the regulated utility to receive excessive returns on its invested capital.

## Service Monitoring and Enforcement

OBJECTION 13: OCC objects because the Staff erred when it failed to include a detailed analysis of Aqua’s service disconnections for non-payment, which is needed to protect at-risk consumers.

OCC objects to the failure of the Staff to perform a detailed analysis of Aqua Ohio’s service disconnections for non-payment since January 2019. The Staff Report only addressed the number of service disconnections received through the PUCO Call Center from June 1, 2022, through May 31, 2023.[[47]](#footnote-48) The Staff Report should have conducted an audit and analysis of Aqua’s quarterly disconnection data, contacts to the PUCO call center regarding the disconnection of service, and water assistance data provided (provided to PUCO and OCC). Aqua was required, as part of the PUCO-approved settlement in Case No. 21-595-WW-AIR., to provide such data.[[48]](#footnote-49) The PUCO should have reviewed that data in assessing whether Aqua’s disconnection practices and policies are harming its consumers.

Specifically, consumers are spending more money on basic necessities due to inflation, which includes energy bills. In April 2023, the PUCO stated the average electric standard offer charge would increase from 58% to 88%.[[49]](#footnote-50) Also, the Low-Income Home Water Assistance Program (“LIHWAP”) expires on September 30, 2023.[[50]](#footnote-51) The expiration of the LIHWAP program would be a hardship to Aqua consumers, especially since it has assisted more than 1,100 residential consumers who received eligible pledges totaling more than $350,000 from January 2022 through March 2023.[[51]](#footnote-52)

All of this comes at a time when Aqua’s average monthly service disconnections and disconnection amount has increased from 2022 to 2023.[[52]](#footnote-53) With Aqua consumers experiencing inflation, higher energy prices, and the expiration of the LIHWAP, an in-depth PUCO Staff analysis of service disconnections and water assistance should have been conducted as part of the Staff Report from January 1, 2019 through May 31, 2023, especially to examine disconnections prior to the pandemic and post pandemic.

OBJECTION 14: OCC objects because the Staff Report erred by failing to perform a detailed analysis of the PUCO’s consumer call center contacts regarding Aqua, which is needed for consumer protection.

OCC objects to the failure of the Staff to perform a detailed analysis of Aqua Ohio’s Customer Service Audit and Customer Contact Assessment. Staff relied on an Aqua Customer Service Audit that was conducted in October 2021, which states the Staff found Aqua complied with the rules and regulations set by the Commission.[[53]](#footnote-54)

The Staff should have conducted a more recent Customer Service Audit to analyze and determine if Aqua is complying with Commission rules and regulations. Also, the PUCO Staff reviewed PUCO call center complaints from June 1, 2022, through May 31, 2023, as part of the Customer Contact Assessment.[[54]](#footnote-55) For a more detailed analysis on the Customer Contact Assessment, Staff should have widened their review of PUCO call center complaints from January 1, 2019, through May 31, 2023.

The PUCO Staff erred by not conducting a current Customer Service Audit to confirm Aqua is complying with Commission rules and regulations. When a utility is requesting a rate increase, it is important to review the most current data, especially when the increase will impact consumers finances. In the Staff Report, the Staff relied on an outdated October 2021 Customer Service Audit,[[55]](#footnote-56) which is over one-and-a-half years old from when the Staff filed their Staff Report in the Aqua case. A more recent Customer Service Audit would confirm whether Aqua is complying with Commission rules and regulations.

Also, the PUCO Staff erred by not providing a detailed analysis on the PUCO call center contacts in the Customer Contact Assessment of the Staff Report. As part of the Customer Contact Assessment, the PUCO Staff reviewed Aqua consumer calls from June 1, 2022, through May 31, 2023.[[56]](#footnote-57) In addition, the PUCO Staff was vague on the type of calls received through the call center.

The PUCO Staff should have expanded its review of PUCO call center contacts from January 1, 2019, through May 31, 2023. The data would provide a wider view of the types of calls the PUCO received, along with looking for trends over the years, especially any impacts that occurred pre-and-post pandemic.

The PUCO Staff should also provide more details on the number and types of calls received through the PUCO call center. For example, the Staff Report states sixty Aqua Ohio consumers contacted the PUCO call center concerning billing issues.[[57]](#footnote-58) However, the Staff Report does not explain what type of billing concerns the PUCO call center received. It is unclear whether consumers were concerned about affordability and keeping water service connected, billing errors, water usage disputes, or some other billing issues. More detail and analysis would provide a clearer picture on why Aqua consumers are contacting the PUCO regarding an Aqua matter.

OBJECTION 15: The PUCO Staff erred by not recommending that annual shareholder funding of $20,000 or more be provided as part of its application in this case for a bill payment assistance program to assist low-income customers throughout its Ohio service territory to prevent disconnection of water service.

OBJECTION 16: The PUCO Staff erred by not requiring Aqua to provide in the public domain quarterly reports reflecting certain nonconfidential reporting of information such as : (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.

OBJECTION 17: The PUCO Staff erred by failing to recommend, for the public convenience, that there be virtual local hearings scheduled for Aqua consumers in this case and in future Aqua rate cases as consumers are greatly affected by outcomes in rate cases.

# IV. CONCLUSION

To protect consumers from Aqua charging them rates that are unjust, unreasonable and unlawful, the PUCO should adopt OCC’s recommendations set forth in these objections, which are further developed in OCC’s testimony.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing Objections to the PUCO Staff Report by Office of the Ohio Consumers' Counsel was served upon the persons listed below by electronic transmission this 14th day of August, 2023.

*/s/ Angela D. O’Brien*

Counsel of Record

Deputy Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. *See* Application of Aqua Ohio, Inc. to Increase its Rates and Charges for its Water Service ("Application") Schedule A-1, Case No. 22-1094-WW-AIR (December 20, 2022). [↑](#footnote-ref-2)
2. *See In the Matter of the Application of Aqua Ohio, Inc. to Increase its Rates and Charges for its Waterworks Services*, Case No. 21-595-WW-AIR, Opinion and Order (September 21, 2022). [↑](#footnote-ref-3)
3. A Report by the Staff of the Public Utilities Commission of Ohio, Case No. 22-1094-WW-AIR (July 13, 2023) (“Staff Report”), and Audit of the Application to Increase Rates of Aqua Ohio Wastewater, Inc. for the Period July 1, 2022 through June 30, 2023 (“Audit Report”), Exhibit LA-1, Case No. 22-1094-WW-AIR (July 13, 2023). [↑](#footnote-ref-4)
4. PUCO Staff Report, at 8. [↑](#footnote-ref-5)
5. PUCO Staff Report, at 8. [↑](#footnote-ref-6)
6. Larkin Audit Report, Case No. 22-1094-WW-AIR, dated July 13, 2023, 2022, pages 5-16 through 5-18. [↑](#footnote-ref-7)
7. Larkin Audit Report, Case No. 22-1094-WW-AIR, dated July 13, 2023, pages 5-29 through 5-33. [↑](#footnote-ref-8)
8. Larkin Audit Report, Case No. 22-1094-WW-AIR, dated July 13, 2023, page 5-23. [↑](#footnote-ref-9)
9. Larkin Audit Report, Case No. 22-1094-WW-AIR, dated July 13, 2023, page 5-26. [↑](#footnote-ref-10)
10. Larkin Audit Report, Case No. 22-1094-WW-AIR, dated July 13, 2023, pages 3-6 through 3-7, and 3-22, related to Adjustment Nos. B-1 through B-3 to rate base, and C-1 through C-2 to operating income. [↑](#footnote-ref-11)
11. Larkin Audit Report, Case No. 22-1094-WW-AIR, dated July 13, 2023, pages 3-7 through 3-8, and 3-22, related to Adjustment Nos. B-4 through B-7 to rate base, and C-3 through C-4 to operating income. [↑](#footnote-ref-12)
12. Larkin Audit Report, Case No. 22-1094-WW-AIR, dated July 13, 2023, page 3-23 related to Adjustment No. C-5 to operating income. [↑](#footnote-ref-13)
13. Larkin Audit Report, Case No. 22-1094-WW-AIR, dated July 13, 2023, page 3-23 through 3-24 related to Adjustment No. C-6 to operating income. [↑](#footnote-ref-14)
14. Larkin Audit Report, Case No. 22-1094-WW-AIR, dated July 13, 2023, page 3-25 related to Adjustment No. C-7 to operating income. [↑](#footnote-ref-15)
15. Larkin Audit Report, Case No. 22-1094-WW-AIR, dated July 13, 2023, page 3-26 related to Adjustment No. C-8 to operating income. [↑](#footnote-ref-16)
16. Larkin Audit Report, Case No. 22-1094-WW-AIR, dated July 13, 2023, page 3-26 through 3-27 related to Adjustment No. C-9 to operating income. [↑](#footnote-ref-17)
17. Larkin Audit Report, Case No. 22-1094-WW-AIR, dated July 13, 2023, page 3-27 related to Adjustment No. C-10 to operating income. [↑](#footnote-ref-18)
18. Larkin Audit Report, Case No. 22-1094-WW-AIR, dated July 13, 2023, page 3-28 related to Adjustment No. C-15 to operating income. [↑](#footnote-ref-19)
19. Staff Report at 6, referencing Larkin Audit Report, Exhibit LA-1, at 1. [↑](#footnote-ref-20)
20. Larkin Audit Report at page 1-1. [↑](#footnote-ref-21)
21. Larkin Audit Report at page 3-1. [↑](#footnote-ref-22)
22. Staff Report at 8. [↑](#footnote-ref-23)
23. Direct Testimony of Zhen Zhu, Case No. No 22-1094-WW-AIR, 22-1096-ST-AIR (August 16, 2023). (Zhu Direct Testimony). [↑](#footnote-ref-24)
24. Staff Report at 11. [↑](#footnote-ref-25)
25. *See*, Zhu Testimony at 53, and Exhibit 10. [↑](#footnote-ref-26)
26. Staff Report at 10. [↑](#footnote-ref-27)
27. Staff Report at 10. [↑](#footnote-ref-28)
28. *Ibid*, Staff Schedule D-1.11. [↑](#footnote-ref-29)
29. Zhu Testimony, at 50. [↑](#footnote-ref-30)
30. Staff Report at 10. [↑](#footnote-ref-31)
31. Zhu Direct Testimony at 51. [↑](#footnote-ref-32)
32. *See* Case Nos. 21-0637-GA-AIR, *et al.*, Staff Report (April 6, 2022), at p. 26. [↑](#footnote-ref-33)
33. Staff Report at 10. [↑](#footnote-ref-34)
34. https://www.statista.com/statistics/664840/average-market-risk-premium-usa/. [↑](#footnote-ref-35)
35. https://seekingalpha.com/article/4571595-data-update-2-for-2023-rocky-year-equities. [↑](#footnote-ref-36)
36. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=4407839. [↑](#footnote-ref-37)
37. https://www.kroll.com/en/insights/publications/cost-of-capital. [↑](#footnote-ref-38)
38. *See* Staff Report at 11. [↑](#footnote-ref-39)
39. Zhu Direct Testimony, Exhibit 10. [↑](#footnote-ref-40)
40. FERC Opinion No. 569-A, Order on Rehearing, (Issued May 21, 2020). Para 117, page 51. [↑](#footnote-ref-41)
41. PUCO Case Nos. 21-0637-GA-AIR, *et al.* [↑](#footnote-ref-42)
42. Staff Report at 11. [↑](#footnote-ref-43)
43. The Staff Report, Staff Schedule D-1.2. [↑](#footnote-ref-44)
44. Zhu Direct Testimony, at 56. [↑](#footnote-ref-45)
45. *See*, *In re Application of Aqua Ohio, Inc. for Authority to Assess a System Improvement Charge*, Case No. 18-0337-WW-SIC, 3.66% increase approved (February 6, 2019); *In re Application of Aqua Ohio, Inc. for Authority to Assess a System Improvement Charge*, Case No. 19-0567-WW-SIC, 3.733% increase approved (October 23, 2019); *In re Application of Aqua Ohio, Inc. for Authority to Assess a System Improvement Charge*, Case No. 20-0532-WW-SIC, 3.498% increase approved (September 23, 2020); *In re the Matter of the Application of Aqua Ohio, Inc. to Increase its Rates and Charges for Its Waterworks Service,* Case No. 21-595-WW-AIR (June 28, 2021). [↑](#footnote-ref-46)
46. Staff Report at 11. [↑](#footnote-ref-47)
47. Staff Report at 13. [↑](#footnote-ref-48)
48. 21-595-WW-AIR, *Stipulation and Recommendation at ¶5-6* (6/16/22). [↑](#footnote-ref-49)
49. PUCO, Rising energy prices in 2023 (Accessed 8/7/23), <https://puco.ohio.gov/news/rising-energy-prices-2023>. [↑](#footnote-ref-50)
50. Office of Community Services. [Fact Sheet]. (n.d.). *LIHWAP Fact Sheet* [Fact Sheet]. Office of the Administration for Children & Families. <https://www.acf.hhs.gov/ocs/fact-sheet/lihwap-fact-sheet>. [↑](#footnote-ref-51)
51. Aqua LIHWAP Monthly and YTD (2022 and 2023). [↑](#footnote-ref-52)
52. Aqua Ohio’s 2023 Residential Customer Service Disconnection Data (Accessed 8/7/23), <https://www.aquawater.com/_assets/doc/stipulaton-summary-spreadsheet-through-q2-2023.pdf>. [↑](#footnote-ref-53)
53. Staff Report at 13. [↑](#footnote-ref-54)
54. Staff Report at 13. [↑](#footnote-ref-55)
55. Staff Report at 13. [↑](#footnote-ref-56)
56. Staff Report at 13. [↑](#footnote-ref-57)
57. Staff Report at 13. [↑](#footnote-ref-58)