**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. 21-595-WW-AIR |

**MEMORANDUM CONTRA AQUA OHIO INC.’S MOTION TO STRIKE OBJECTIONS TO THE PUCO STAFF REPORT**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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 “specific.”[[5]](#footnote-6) OCC’s Objections “frame the issues in the proceeding,” are related to the pending rate proceeding and investigation, and are consistent with Ohio law.[[6]](#footnote-7)

Despite the fact that OCC’s Objections fully conform to the PUCO’s rules, Aqua Ohio, Inc. (“Aqua”) has moved to strike[[7]](#footnote-8) two of OCC’s Objections. Aqua’s motion

should be denied because OCC has a right and a duty to raise issues the agency has identified in the Staff Report to protect Ohio consumers.[[8]](#footnote-9) The two objections that Aqua request stricken specifically relate to Aqua’s land purchase (a rate base item) and the use of Aqua’s call center data identified in the Staff Report. Both of these items are directly related to the “findings, conclusions or recommendations” contained in the PUCO Staff Report and thus the objections are not properly stricken.[[9]](#footnote-10)

Aqua’s motion to strike OCC’s Objections should be denied as more fully explained in the accompanying Memorandum in Support.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Amy Botschner O’Brien*

Amy Botschner O’Brien (0074423)

Counsel of Record

Ambrosia E. Wilson (0096598)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone: [O’Brien] (614) 466-9531

Telephone: [Wilson] (614) 466-1292

[amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)

ambrosia.wilson@occ.ohio.gov

(willing to accept service by e-mail)

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**MEMORANDUM IN SUPPORT**

# I. ARGUMENT

1. **OCC’s Objection to the PUCO Staff Report that includes Aqua’s farmland purchase in rate base is a proper objection because the land is a rate base item at issue in this rate case.**

Aqua moves to strike OCC’s second objection to the Staff Report. Aqua claims that “The Commission should strike the OCC’s second objection because it contravenes Ohio law.”[[10]](#footnote-11) Aqua is wrong. Aqua does not agree with OCC’s second objection. But that is not a ground for striking an objection. Whether the farmland purchased by Aqua is used and useful providing water service to consumers is an issue to be decided in this proceeding. So is the question of OCC’s second objection “contravenes Ohio law.” To the contrary, it is OCC’s position that inclusion of this purchased farmland into rate base contravenes Ohio law. In any event, this is an issue to be decided. Aqua’s motion to strike is just an attempt to prevent the PUCO from even considering this issue. Aqua’s motion to strike should be denied.

Contrary to Aqua’s claim, OCC’s second objection is proper under the PUCO’s rules as it “relate[s] to the findings, conclusions, or recommendations contained in the report, or to the failure of the report to address one or more specific items.”[[11]](#footnote-12) Aqua is free to counter OCC’s argument in hearing. Just because Aqua disagrees with OCC’s position does not mean the objection should be stricken.

OCC’s second objection is specific and relevant to this rate case, and therefore proper under the rules. Despite Aqua’s claim, the lawfulness of OCC’s objection is not relevant at this stage of the proceeding. It should be litigated in the hearing. Whether the EPA requirements (and Aqua’s interpretation of those requirements) as claimed in Aqua’s motion to strike, make the land used and useful and that it should be included in rate base is an issue to be decided in this case by the PUCO, not by Aqua. Aqua’s motion to strike should be denied.

1. **OCC’s Objection to the PUCO Staff Report that assessed Aqua’s customer service and customer contact is a proper objection in response to the report.**

Aqua moves to strike OCC’s seventh objection to the Staff Report. Aqua claims that “The Commission should strike OCC’s seventh objection because it ignores Commission precedent and addresses issues beyond the scope of a rate case.”[[12]](#footnote-13) Aqua is wrong again. Whether the Staff Report should have provided a more thorough analysis of the call center is an issue to be decided in this proceeding. It should not be prematurely discarded simply Aqua does not like it.

OCC’s seventh objection is proper as it addresses “the findings, conclusions or recommendation contained in the report” or the “failure of the report to address one or more specific items.”[[13]](#footnote-14) For example, on pages 11-12 of the Staff Report, the Service Monitoring and Enforcement Division of the PUCO addresses the customer service audit it performed and its customer contact assessment. The Staff Report states that it 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. But there is no analysis regarding consumer contacts to the PUCO call center and the disconnection data that Aqua routinely provides to the Staff,[[14]](#footnote-15) and this was the basis of OCC’s specific objections regarding this part of the Staff Report.

OCC’s objection addresses the failure of the Staff Report to perform an analysis of the consumer information that is collected through its call center or analysis of the disconnection reports that it obtains from Aqua and recommend ways that Aqua consumers can be better protected.[[15]](#footnote-16)

Aqua’s motion to strike this objection should be denied because the objection specifically responds to findings and deficiencies in the Staff Report. OCC’s objection is tied to the PUCO Staff’s inaction regarding the call center data that is indicated in the Staff Report.

# II. CONCLUSION

OCC’s Objections conform to the requirements of O.A.C. 4901-1-28 (B). Therefore, Aqua’s motion to strike OCC’s Objections misapplies the rules, and should be denied for the reasons explained herein.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Amy Botschner O’Brien*

Amy Botschner O’Brien (0074423)

Counsel of Record

Ambrosia E. Wilson (0096598)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone: [O’Brien] (614) 466-9531

Telephone: [Wilson] (614) 466-1292

[amy.botschner.obrien@occ.ohio.gov](mailto:amy.botschner.obrien@occ.ohio.gov)

ambrosia.wilson@occ.ohio.gov

(willing to accept service by e-mail)

**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 18th day of April 2022.

*/s/ Amy Botschner O’Brien*

Amy Botschner O’Brien

Assistant 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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| [Robert.eubanks@ohioAGO.gov](mailto:Robert.eubanks@ohioAGO.gov)  [Chelsea.Fletcher@ohioAGO.gov](mailto:Chelsea.Fletcher@ohioAGO.gov)  Attorney Examiners:  Michael.williams@puco.ohio.gov  [David.Hicks@puco.ohio.gov](mailto:David.Hicks@puco.ohio.gov) | [Christopher.miller@icemiller.com](mailto:Christopher.miller@icemiller.com)  [Nicole.woods@icemiller.com](mailto:Nicole.woods@icemiller.com)  [lawdirectormarion@gmail.com](mailto:lawdirectormarion@gmail.com) |

1. Objections to the PUCO Staff Report by Office of the Ohio Consumers’ Counsel (“OCC Objections”), Case No. 21-595-WW-AIR (March 14, 2022). [↑](#footnote-ref-2)
2. A Report by the Staff of the Public Utilities Commission of Ohio (“Staff Report”) (February 11, 2022) and Audit of the Application to Increase Rates of Aqua Ohio Wastewater, Inc. for the Period January 1, 2021 through December 31, 2021 (“Audit Report”), Case No. 21-595-WW-AIR (February 11, 2022). [↑](#footnote-ref-3)
3. O.A.C. 4901-1-28 (B). [↑](#footnote-ref-4)
4. *Id*. [↑](#footnote-ref-5)
5. *Id*. [↑](#footnote-ref-6)
6. O.A.C. 4901-1-28 (C). [↑](#footnote-ref-7)
7. Aqua Ohio, Inc.’s Motion to Strike Objections to the PUCO Staff Report filed by Office of the Ohio Consumers’ Counsel (April 11, 2022). [↑](#footnote-ref-8)
8. *See* R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11. OCC is the statutory representative of Ohio’s residential consumers. [↑](#footnote-ref-9)
9. *See* O.A.C. 4901-1-28 (B). Under this rule, “any objections that fail to meet this requirement may be stricken upon motion of any party…” [↑](#footnote-ref-10)
10. Aqua Motion at 3. [↑](#footnote-ref-11)
11. O.A.C. 4901-1-28 (B). [↑](#footnote-ref-12)
12. Aqua Motion at 4. [↑](#footnote-ref-13)
13. O.A.C. 4901-1-28 (B). [↑](#footnote-ref-14)
14. Staff Report at 11. [↑](#footnote-ref-15)
15. OCC Objections at 13-16. [↑](#footnote-ref-16)