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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of)
Ohio American Water Company) Case No. 07-1112-WS-AIR
To Increase its Rates in Its Entire Service)
Area for Water Service and Sewer)
Service.)

PUCO

APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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January 23, 2008

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**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") applies for rehearing of the January 9, 2008 Entry of the Public Utilities Commission of Ohio ("Commission" or "PUCO"), to protect residential customers in parts of Franklin and Portage counties ("Water C service territory") against OAW's application for a rate increase that is currently prohibited by a settlement and to aid residential consumers by requiring that the public notice of OAW's proposed rate increase is understandable and helpful for them to participate in this proceeding.¹ The Commission's Entry denied OCC's Motion to Amend OAW's proposed public notice. Also, the Commission's Entry accepted OAW's application "as of its filing date of November 13, 2007."²

The Commission's Entry triggers OCC's right to file an Application for Rehearing in this proceeding. The Commission's Entry was unjust, unreasonable and unlawful in the following particulars:

¹ R.C. 4903.10 and Ohio Adm. Code 4901-1-35.

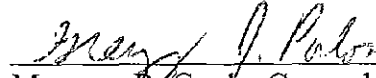
² In re Application of Ohio American Water, Case No. 07-1112-WS-AIR, Entry ¶6. (January 9, 2008).

- A. The Commission Erred When it Accepted the Filing of OAW's Application, Since OAW is Currently Prohibited by the Terms of a Case Settlement and Order from Seeking to Increase Rates for Customers in parts of Franklin and Portage Counties ("Water C Service Territory.")
- B. The Commission Erred When it Ordered OAW to Publish the Public Notice for the Customers in parts of Franklin and Portage Counties ("Water C Service Territory,") Since OAW is Currently Prohibited by the Terms of a Case Settlement and Order from Seeking to Increase Rates for the Water C Service Territory.
- C. The Commission Erred When it Failed to Establish What Would be the Consequences in the Event that OAW Failed to Comply with the Commission's Entry to Publish the Notice of the Application with the "Modification Specified."
- D. The Commission Erred When it Ordered OAW to Publish Notice that Did Not Meet the Requirements of R.C. 4909.18(E) and R.C. 4909.19.
 - 1. The Commission Erred by Failing to Require OAW to Create a Public Notice that is Clear and Concise After Finding that OAW's Proposed Public Notice Could be More Clear and Concise.
 - 2. The Commission Erred When it Failed to Require OAW to Include the OCC and PUCO Contact Information in the Public Notice in Order to Provide Information Regarding the Contents of the Application to Increase Rates.

The reasons for granting this Application for Rehearing are set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

A handwritten signature in cursive script, appearing to read "Gregory J. Poulos", is written over a horizontal line.

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MEMORANDUM IN SUPPORT

I. PROCEDURAL HISTORY

On November 13, 2007, OAW filed an application (“Application”) to increase rates applicable to all of its approximately 51,000 residential customers in Ohio. When OAW filed its Application, OAW disregarded the Stipulation that OAW entered into with OCC, Dragoo Management Company, and the PUCO Staff on January 10, 2007, to resolve OAW’s previous rate case, Case No. 06-433-WS-AIR (“Stipulation” or “settlement”). A key component of the Stipulation was that OAW agreed not to apply for an increase in rates for its customers in the Water C service territory,³ who are located in parts of Franklin and Portage counties, until OAW resolved the discolored water service quality issue in the Huber Ridge area of the Water C service territory. The water discoloration issue for the Huber Ridge customers was a heated issue throughout OAW’s

³ In re Ohio American Water Company, Case No. 06-433-WS-AIR, Stipulation ¶7 at 4. (January 10, 2007). (The Franklin and Portage county customers are referred to as the Water C service territory in the settlement agreement. The Water C service territory refers to the former Citizens Utilities Company customers).

2006 rate case.⁴ The Stipulation was approved by the Commission on March 7, 2007.⁵

On November 20, 2007, the Office of the Ohio Consumers' Counsel ("OCC") filed a motion to intervene. OCC represents OAW's residential customers who will be faced with a substantial increase in their water rates. In its Motion to Intervene, OCC stated, in part, that OAW could not apply for a rate increase for residents of the Water C service territory at this time because provisions in the Stipulation and in the PUCO Order adopting the Stipulation, currently prohibit the filing of the Application.⁶

On December 13, 2007, OCC filed its Motion to Dismiss that part of the Application that affects residential customers located in the Water C service territory. The Motion to Dismiss described the three core issues of the Stipulation as it related to the Huber Ridge discoloration issue.⁷ In addition, the Motion to Dismiss asserted that the discoloration issue could not be resolved until at least May 2008.⁸ The Attorney General's Office, on behalf of the PUCO Staff, and OCC wrote separate letters in July 2007 cautioning OAW that the discoloration issue would not be resolved until at least May 2008. OAW chose to breach the terms of the Stipulation that prohibit the filing of an application to increase rates before resolution of the discoloration issue, by filing a request for a rate increase on November 13, 2007, for all of its customers, including

⁴Id.

⁵ In re Ohio American Water Company, Case No. 06-433-WS-AIR, Finding and Order at 17. (March 7, 2007).

⁶ In re Application of Ohio American Water, Case No. 07-1112-WS-AIR, OCC Motion to Intervene at 3-4 (November 11, 2007).

⁷ In re Application of Ohio American Water, Case No. 07-1112-WS-AIR, OCC Motion to Dismiss at 1-2. (December 13, 2007).

⁸ Id. at 9.

customers located in the Water C service territory.⁹ On January 4, 2008, OAW submitted a Memorandum in Response (“Memo Contra”) in which it presented arguments against the legal positions in OCC’s Motion to Dismiss.

In mid-November, OCC advised OAW that OCC had concerns with the proposed public notice and that OCC would be working on developing a more understandable notice, from a customer perspective. OCC also advised the PUCO Staff of OCC’s concerns and advised the Staff that OCC would attempt to create a proposed notice in conjunction with OAW. On December 18, 2007, OCC submitted to OAW a proposed notice to seek OAW’s comments on the notice, and sent a copy also to the PUCO Staff. OAW responded without substantive commentary on December 27 that the notice must be Staff-approved and that OCC should run it by the PUCO Staff. The circumstances thus necessitated the filing of OCC’s Motion to Amend OAW’s proposed public notice on January 7, 2008. In its Motion, OCC proposed a public notice format that would benefit customers by being more understandable, while also providing customers with contact information for both the PUCO and OCC.¹⁰ The proposed public notice was also based in large part upon the format and information OAW itself maintains on its official web site.¹¹

By Entry on January 9, 2008, the Commission accepted OAW’s Application for filing, thus allowing the requested rate increase for the customers in parts of Franklin and Portage counties to proceed despite OCC’s Motion to Dismiss which the PUCO did not

⁹ Id. at 7-8.

¹⁰ In re Application of Ohio American Water, Case No. 07-1112-WS-AIR, OCC Motion to Amend Ohio American Water Company’s Proposed Public Notice at 4. (January 7, 2008).

¹¹ Id. at 11.

even address. The Commission also approved the Company's proposed public notice with the addition of a paragraph detailing how a customer can get access to the Application.¹² OCC's Motion to Amend the Public Notice was denied in its entirety, including OCC's request to stop the publishing of the public notice for customers in parts of Franklin and Portage counties where the increase is currently barred by Stipulation and Order.¹³ In accordance with the Hearing Examiner's December 20, 2007 Entry, OCC filed its reply to OAW's Memo Contra OCC's Motion to Dismiss on January 11, 2008.

Finally, at least on January 16, 2008, OAW published the public notice. The public notice OAW published did not include the required substituted language to "enhance interested persons' ability to access Ohio American's application and its content" as required by the Commission.¹⁴ (See Attachment A.) Accordingly, OAW's public notice did not comply with the Commission's Entry of January 9, 2008.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. This statute provides that, within thirty (30) days after issuance of an order from the Commission, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." Furthermore, the

¹² In re Application of Ohio American Water, Case No. 07-1112-WS-AIR, Entry ¶9 at 3. (January 9, 2008).

¹³ Id.

¹⁴ In re Application of Ohio American Water, Case No. 07-1112-WS-AIR, Entry ¶7 at 2. (January 9, 2008).

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.”¹⁵

In considering an application for rehearing, Ohio law provides that the Commission “may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefore is made to appear.”¹⁶

Furthermore, if the Commission grants a rehearing and determines 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”¹⁷

OCC meets the statutory conditions applicable to an applicant for rehearing pursuant to R.C. 4903.10. Accordingly, OCC respectfully requests that the Commission hold a rehearing on the matters specified below and abrogate or modify the Entry as requested herein.

III. ARGUMENT

A. The Commission Erred When it Accepted the Filing of OAW’s Application, Since OAW is Currently Prohibited by the Terms of a Case Settlement and Order from Seeking to Increase Rates for Customers in parts of Franklin and Portage Counties (“Water C Service Territory.”)

By Entry on January 9, 2008, the Commission accepted OAW’s Application for filing, thus allowing the requested rate increase for the customers in parts of Franklin and Portage counties to proceed despite the prohibition still in effect in the settlement and Order in the last rate case. The Commission’s Entry acknowledged OCC’s position that

¹⁵ R.C. 4903.10.

¹⁶ Id.

¹⁷ Id.

OAW cannot file an application to increase rates for customers in the Water C service territory until OAW demonstrates that the water discoloration issue is eliminated for twelve consecutive months. This is evident by the Commission's statement that "OCC's proposal addresses only the concerns of residential customers and does not address portions of the application which OCC believes to be barred by the terms of a prior stipulation."¹⁸

The Commission's ruling to accept the Application acquiesces to OAW's refusal to comply with the agreed terms of the Stipulation regarding the resolution of the discoloration issue at Huber Ridge. The terms of the Stipulation were bargained for among stipulating parties. Stipulations have the effect of judicial admissions which are binding on all parties when not in derogation of the law.¹⁹ Absent fraud, mutual error, or bad faith, OAW should not be permitted to contradict its filed Stipulation.²⁰ Moreover, the Commission's January 9, 2008 Entry acts as a denial of OCC's Motion to Dismiss²¹ because the Commission's Entry accepts OAW's Application for filing, including the part of the Application relating to the customers of the Water C service territory.²²

As outlined in OCC's Motion to Dismiss, OAW's Application fails to acknowledge the plain language of Paragraphs 7 and 12 of the Stipulation in Case No. 06-433-WS-AIR, which currently bars OAW from including the Water C service territory

¹⁸ In re Ohio American Water Company, Case No. 07-1112-WS-AIR, Entry ¶9 at 3. (January 9, 2008).

¹⁹ See for example *Buquoi v. Allstate Ins. Co.*, 556 So. 2d 163, 166 (La. App. 5th Cir. 1990).

²⁰ See for example *Energy Gulf States, Inc.*, 2000 La. PUC LEXIS 46, 58 (La. Pub. Serv. Comm. 2000), citing *Calhoun v. Louisiana Materials Co.*, 206 So. 2d 147, 150 (La. App. 4th Cir. 1968).

²¹ OCC's Reply Memorandum regarding OCC's Motion to Dismiss was due on January 11 and thus, was not considered by the Commission in its decision to accept OAW's Application for filing.

²² *Id.* at 3.

customers in its Application to increase rates until the discoloration issue is resolved.

OAW has asserted that the Company has resolved the discoloration issue because there is only one condition precedent to resolving the discoloration issue -- Paragraph 12(G):

“Only Paragraph 12G squarely defines the resolution of the discoloration issue and it is only Paragraph 12G that Paragraph 7 is contingent upon.”²³ Accordingly, OAW asserts that the remaining nine sections or steps of Paragraph 12 are not relevant to resolving the discoloration issue.²⁴

However, a review of the terms agreed to by OCC, OAW and the PUCO staff in Paragraphs 7 and 12 of the Stipulation substantiates OCC’s position that OAW cannot seek an increase in rates for the customers of the Water C service territory until the discoloration issue is resolved sometime after May 2008. Pursuant to Paragraph 7, and the introduction to Paragraph 12, all of Paragraph 12 pertains to the discoloration issue and thus, must be resolved prior to OAW applying for a rate increase for the Water C service territory. The terms of the Stipulation addressing the resolution of the discolored water issue are clear. As titled, Paragraph 12 of the Stipulation addresses the Huber Ridge Discoloration Program.²⁵ Without full compliance with the terms of Paragraph 12, OAW cannot demonstrate resolution of the discoloration issue and therefore is not allowed to now file for the rate increase in the Water C service territory.

²³ In re Ohio American Water Company, Case No. 07-1112-WS-AIR, Memo Contra at 3. (January 4, 2008).

²⁴ Id. at 4.

²⁵ In re Application of Ohio American Water Company, Case No. 06-433-WS-AIR, Stipulation ¶12 at 12. (January 10, 2007).

If the Commission concluded that the language of the Stipulation is somehow unclear, which it is not, then the Commission must review extrinsic evidence to determine the intent of the parties. In this case, the extrinsic evidence demonstrates that OCC, PUCO staff and OAW have all filed documents with the Commission demonstrating their intent that all of Paragraph 12 of the Stipulation be completed prior to declaring the discoloration issue resolved.

In addition, OCC and the PUCO staff have made their positions clear that all of Paragraph 12, including Paragraph 12(B), must be completed for the discoloration issue to be resolved. As discussed in OCC's Motion to Dismiss, OAW stated in its June 2007 filing that it had completed the requirements of Paragraph 12(G) and thus had resolved the discoloration issue.²⁶ At that time, in July 2007, both the PUCO staff and OCC made it clear to OAW that resolving the discoloration required compliance with all of Paragraph 12.²⁷ The July 2007 letters filed by PUCO staff and OCC regarding this issue and discussed in OCC's Motion to Dismiss, demonstrate the clear perspective of the two agencies that the discoloration issue was not resolved and could not be resolved until, at least, May 2008.

Prior to June 2007, OAW's stated position was that resolution of the discoloration issue included more than the first sentence of Paragraph 12(G). In

²⁶ In re Ohio American Water Company, Case No 07-252-WS-UNC, Huber Ridge Water Treatment Plant and Water Distribution System Monitoring Plan at 4. (June 29, 2007).

²⁷ In re Ohio American Water Company, Case No 07-252-WS-UNC, letter from Thomas Lindgren at 2. (July 13, 2007) ("In summary, the Staff cannot conclude and does not agree that the Huber Ridge Discoloration issue has been resolved at this time."); In re Ohio American Water Company, Case No 07-252-WS-UNC, letter from Maureen R. Grady at 1 (July 20, 2007) ("Contrary to the statements in the Report filed on June 29, 2007, OAW has not "resolved" the discolored water problem in the Huber Ridge areas because it has not met all of the standards mandated by the settlement agreement. . . OAW will not be able to meet all of those requirements until at least May 1, 2008."

fact, in March 2007, OAW filed a pleading that suggested it also considered compliance with Paragraph 12(B) a part of the resolution of the discoloration issue. On March 19, 2007, OAW submitted an updated Huber Ridge Water Treatment Plant and Water Distribution System Monitoring Plan (“Plan”) as part of the requirement under Paragraph 12(B).²⁸ The purpose of the plan was to “develop data on the characteristics of the water quality being produced at and pumped from the Huber Ridge water treatment plant [SIC] into the Huber Ridge water distribution system”²⁹ As part of the Plan’s summary OAW states “The purpose of this [P]lan is to define a program with the goal of **resolving the [discoloration] problem** in the Huber Ridge water service area.”³⁰

The Commission erred when it accepted the Application for filing as of November 13, 2007, because OAW seeks a rate increase in the Application which is currently barred by the language of the Stipulation. Accordingly, the Commission should grant OCC’s Application for Rehearing and grant OCC’s Motion to Dismiss.

B. The Commission Erred When it Ordered OAW to Publish the Public Notice for the Customers in parts of Franklin and Portage Counties (“Water C Service Territory,”) Since OAW is Currently Prohibited by the Terms of a Case Settlement and Order from Seeking to Increase Rates for the Water C Service Territory.

²⁸ In re Ohio American Water Company, Case No 07-252-WS-UNC, letter from Sally W. Bloomfield at 1. (March 19, 2007).

²⁹ In re Ohio American Water Company, Case No. 07-252-WS-UNC, Huber Ridge Water Treatment Plant and Water Distribution System Monitoring Plan Proposal (revised) at 1. (March 12, 2007).

³⁰ Id. at 5 (Emphasis added).

For the same grounds outlined above in paragraph III(A), the Commission erred when it ordered OAW, within thirty days of the Entry, to begin publication of the public notice for the Water C service territory. Since the Stipulation currently prohibits any rate increase for OAW's customers in parts of Franklin and Portage Counties, it was error for the Commission to order the publication of the public notice at this time. Accordingly, the Commission should grant OCC's Application for Rehearing and order OAW to cease publication of a proposed rate increase for the Water C service territory until the discolored water issue has been resolved in accordance with the Stipulation.

C. The Commission Erred When it Failed to Establish What Would be the Consequences in the Event that OAW Failed to Comply with the Commission's Entry to Publish the Notice of the Application with the "Modification Specified."

As outlined above, the Commission's January 9, 2008 Entry approved the Company's proposed public notice with the addition of a paragraph detailing how a customer can get access to the application.³¹ But the Commission failed to establish consequences if OAW failed to comply with the Commission's order to publish the public notice with the Commission's substitute language.

As discussed above, OAW published a public notice that did not include the required substitute language ordered by the Commission to "enhance interested persons' ability to access Ohio American's application and its content."³² (See Attachment A.) Accordingly, OAW's public notice did not comply with the Commission's January 9,

³¹ In re Application of Ohio American Water, Case No. 07-1112-WS-AIR, Entry ¶9 at 3. (January 9, 2008).

³² Id. at ¶7 at 2. (January 9, 2008).

2008 Entry.

The Commission erred when it failed to order consequences that would result from a failure by OAW to publish notice in compliance with the Commission's Entry. These consequences should include that OAW is barred from recovering the costs associated with the public notice from its customers.³³ The Commission has other remedies available to it, as well.³⁴

On the subject of OAW's failure to accept even the required modification to the notice as ordered by the Commission, it should be noted that OCC did share with OAW (and the PUCO staff) a copy of OCC's proposed amended notice before OCC filed its Motion to Amend. The Commission noted that, in the next rate case, OCC could "work[] with the company and staff to improve the notice prior to the filing...."³⁵ OCC already tried this approach of joint effort, without success, and success seems all the more unlikely in the future when the utility does not even effectuate what the regulatory agency orders for the notice.

Accordingly, OCC requests that its Application for Rehearing be granted and the Commission modify its Entry by ordering that OAW is barred from recovering all costs associated with the publication of public notice that fails to comply with the Commission's Entry. Furthermore, OCC requests that the

³³ E.g. R.C. 4909.154 (providing that the "commission shall not allow such operating and maintenance expenses of a public utility ... that the commission considers imprudent).

³⁴ R.C. 4905.54 et seq.

³⁵ In re Application of Ohio American Water, Case No. 07-1112-WS-AIR, Entry ¶9 at 3. (January 9, 2008).

Commission impose any other penalty or remedy that it deems appropriate for OAW's violation of the Commission's Entry.

D. The Commission Erred When it Ordered OAW to Publish Notice that Did Not Meet the Requirements of R.C. 4909.18(E) and R.C. 4909.19.

1. The Commission Erred by Failing to Require OAW to Create a Public Notice that is Clear and Concise After Finding that OAW's Proposed Public Notice Could be More Clear and Concise.

The public notice published by OAW must meet the requirements of R.C. 4909.18(E) and R.C. 4909.19. R.C. 4909.18(E) sets forth requirements relating to "fully disclosing the substance of the application." R.C. 4909.19 establishes the method of publication, "in a form approved by the public utilities commission." Obviously, the statutory requirement for "disclosing the substance of the application" is intended to provide customers with information about the utility's filing that customers can actually understand and use. This statutory imperative is not accomplished by the notice approved by the Commission. The PUCO has the authority to determine the form of the publication of notice, and should exercise that authority here in the interests of OAW customers.

Under R.C. 4909.18(E):

If the commission determines that said application is for an increase in any rate, joint rate, toll, classification, charge, or rental there shall also, unless otherwise ordered by the commission, be filed with the application in duplicate the following exhibits:

(E) A proposed notice for newspaper publication fully disclosing the substance of the application. The notice shall prominently state that any person, firm corporation, or association may file, pursuant to section 4909.19 of the Revised Code, an objection to such

increase which may allege that such application contains proposals that are unjust and discriminatory or unreasonable. The *notice shall* further include the average percentage increase in rate that a representative industrial, commercial, and residential customer *will bear* should the increase be granted in full. (Emphasis added.)

R.C. 4909.19 requires that the “substance and prayer” of the application must be approved by the PUCO and published once a week for three consecutive weeks in “newspapers published and in general circulation throughout the territory in which such utility operates.”

The Ohio Supreme Court has stated the purpose of R.C. 4909.18(E) is “to provide **any person, firm, corporation, or association, an opportunity to file an objection to the increase under R.C. 4909.19.**”³⁶ The Supreme Court has established two components that a company must meet to establish that the newspaper notice complies with R.C. 4909.18(E) and R.C. 4909.19.

First, the company must demonstrate that the notice fully discloses the “essential nature or quality” of the application.³⁷ In addition, the notice must be understandable and the proposal must be in a format “that consumers can determine whether to inquire further as the proposal or intervene in the rate case.”³⁸ Meeting both prongs is essential to providing an opportunity for every person to understand the full context of the proposal and be able to file an objection.

The Commission, in the Entry, reviewed and approved OAW’s notice after only considering the first requirement, the substance of the application. The Commission’s

³⁶ *Committee against MRT v. Public Utilities Com.* (1977), 52 Ohio St. 2d 231, 234. (Emphasis added.)

³⁷ *Ohio Assoc. of Realtors v. Public Utilities Com.* (1979) 60 Ohio St. 2d 172, 176 175.

³⁸ *Id.* at 176.

Entry acknowledged the second component required by the Ohio Supreme Court when approving public notices, but failed to give the second component its due consideration.

The Commission's Entry acknowledged OCC's concerns about the notice's clarity:

"While the Commission agrees with OCC that the company's proposed newspaper notice could be more clear and concise"³⁹ The Commission's recognition that the document could be more understandable is an acknowledgment by the Commission that the notice may not provide a person an opportunity to understand the notice or file an objection.

Notice must be sufficient to give customers the opportunity to present evidence at the hearings, before the Commission, opposing the rates or any other aspect of the Application.⁴⁰ If the public notice is not clear and therefore, customers cannot understand the substance of the document, then the customers do not have an opportunity to properly determine if they should inquire further as to the proposal, object, or intervene.⁴¹ Accordingly, the notice does not meet the second requirement -- that the notice be understandable.

Creating a public notice that is understandable is even more imperative in this case where the residential customers historically have been subjected to water quality problems and have demonstrated a keen interest in the price and quality of their water. As the Commission is well aware, OAW's 2006 rate case provoked a very strong and understandable outcry from its residential customers. The public hearings in OAW's

³⁹ Id.

⁴⁰ *Committee against MRT v. Public Utilities Comm.* (1977), 52 Ohio St. 2d 231, 234.

⁴¹ *Ohio Assoc. of Realtors v. Public Utilities Comm.* (1979) 60 Ohio St. 2d. 172, 178.

2006 rate case were marked by high attendance and intense criticism.⁴² Specifically, the Commission stated that “[o]f all the issues raised by Ohio American customers at the public hearings, the Commission was struck by the intensity of testimony from the public hearing in Galloway, Ohio in the Lake Darby service areas involving the level of hardness of the water and the public hearing in Westerville, Ohio in the Huber Ridge service area involving the discoloration of water.”⁴³ Already, consumers have filed 17 letters to comment on the Application in this case.

To facilitate customer understanding, OCC recommended that the Company instead simplify its notice by tailoring separate, shorter and more concise notices for the Water A customers and the Water C service territory customers. By splitting up Water A and Water C service territory the result is a much shorter notice -- only three pages long -- half the size of OAW’s current proposed notice -- though OCC does not concede that any notice to the Water C service territory is yet permissible. Moreover, the larger Water C service territory’s public notice would only be published in two of the nine counties in OAW’s service territory.⁴⁴ Thus, OCC’s recommended format shortens the public notice into a more concise form that alerts customers to the proposal that is entirely germane to them, and should also result in less publication expense.

⁴² In re Application of Ohio American Water Company, Case No. 06-433-WS-AIR, Entry at 13-14. (March 7, 2007).

⁴³ In re Ohio American Water Company, Case No. 06-433-WS-AIR, Finding and Order at 13-14. (March 7, 2007).

⁴⁴ The Water C service territory public notice is longer than the Water A service territory public notice because the Water C service territory public notice still includes separate information about sewer services.

2. The Commission Erred When it Failed to Require OAW to Include the OCC and PUCO Contact Information in the Public Notice in Order to Provide Information Regarding the Contents of the Application to Increase Rates.

The contact information for the PUCO and OCC is an important subset of the information, described in the preceding section that should be published in the notice to customers. Publishing notice of the contact information is the bare minimum the PUCO should order for purposes of notice to customers, for the following reasons.

The Commission states in its Entry that “the intent of the newspaper notice required by Section 4909.19, Revised Code, **is to give information to customers regarding the contents of the filed application.**”⁴⁵ The Commission’s Entry then proceeds to categorize the types of information that can be included in the newspaper notice as “giving information to customers regarding the contents of the filed application” and what types of information do not meet the stated criteria.

The Commission’s Entry states that information intended to inform customers where they can view the application meets the intent component of the statute.⁴⁶ The Commission ordered the Company to incorporate a specific paragraph in the public notice that would give customers better information about accessing the document.⁴⁷ The Company then disobeyed this ruling and failed to incorporate the Commission’s required language into the notice.

⁴⁵ In re Ohio American Water Company, Case No. 07-1112-WS-AIR, Entry ¶9 at 3. (January 9, 2008) (Emphasis added).

⁴⁶ Id. (“Information regarding the location of the Commission, the Commission’s web site, and the company’s business address is merely intended to inform the company’s customers where they can view the filed application”)

⁴⁷ In re Application of Ohio American Water, Case No. 07-1112-WS-AIR, Entry ¶7 at 2. (January 9, 2008).

The Commission Entry also notes the types of material that do not give information to customers regarding the contents of the filed application. The Commission's Entry identifies the contact information for both the PUCO and OCC as information that will not given to customers regarding the contents of the Application:

OCC seeks to have its contact information included in the notice. The Commission notes that it has not required its own contact information to be included in the published notices of the filing of rate case applications because there is no statutory requirement for that information.⁴⁸

Although the Commission states that it has not required its own contact information to be included in the public notices, the Commission did require the public notices to include the PUCO's street address and web address—which are contact information.⁴⁹ The Commission's distinction about what constitutes "contact information" is a fine line. Wherever that line is drawn and whatever it is called, the fact is the Commission did order OAW to publish in the notice the PUCO's street address and web address, and that protocol should be followed with respect to listing OCC's information.

Furthermore, the Commission appears to be attempting a distinction between a notice that ensures people can access the Application versus a notice that also helps consumers understand the Application. OCC's disagrees that there is such a distinction. Both the PUCO and OCC assist customers with information about the Application and its effect on them. As addressed in OCC's Motion to Amend OAW's Public Notice, the PUCO states on its website the 5 Ways the PUCO Works for You: Way #4 "Provides

⁴⁸Id. at ¶9 at 3.

⁴⁹ See id at ¶7 at 2.

you with information about your rights and responsibilities as a utility customer⁵⁰

Both agencies can provide information to the consumer regarding the substance of the Application.

It is expected that some customers will want information about the Application that explains the rates in a simplified matter or even how the proposal directly affects them. In addition, some customers will want to know what rights they have in regards to the Application. In summary, providing the OCC's and PUCO's contact information to customers in the public notice contributes to a clear and concise way to ensure that customers get information regarding the contents of the Application. For many customers, access to information from the PUCO and OCC will be as important as access to the Application. Furthermore, adding contact information for OCC (and the PUCO) is consistent with provisions of the Ohio Administrative Code that require the OCC and PUCO contact information to be conveyed in various communications with customers.⁵¹

Finally, as described above, OAW published public notice of the proposed rate increase that did not comply with the Commission's Entry. Therefore, the public notice will have to be republished. Given the republishing, the granting of OCC's Application for Rehearing and ordering OAW to modify its public notice will not increase expenses that are collected from customers by ratemaking.

IV. CONCLUSION

For the reasons set forth herein, the Commission should grant OCC's Application for Rehearing. The Commission should issue an Entry on Rehearing that rescinds the

⁵⁰ www.puco.ohio.gov/PUCO/Consumer/information.cfm?id=5706.

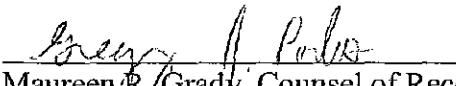
⁵¹ E.g. Ohio Adm. Code 4901:1-5-06(B)(h)(i).

acceptance of the Application for filing. The Commission should dismiss the Application as it relates to the Water C service territory or grant other relief as specified in OCC's Motion.

In addition, the Commission should order OAW to republish the public notice in accordance with: 1) Paragraph 7 of the January 9, 2008 Entry where the Commission ordered OAW to substitute language into its notice regarding access to the Application; 2) the format proposed by OCC, which should expressly exclude the Water C service territory from the rate increase, among other modifications, and 3) the presence of the OCC's and PUCO's contact information. The Commission should also order OAW to publish separate notices for Water A and Water C service territory customers. Finally, the Commission should find that OAW is prohibited from seeking recovery of the costs associated with any public notice that failed to comply with the Commission's Entry and should impose any other penalty that the Commission finds appropriate.

Respectfully submitted,

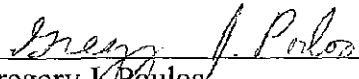
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's forgoing *Application for Rehearing* was provided to the persons listed below via first class U.S. Mail, postage prepaid, this 23rd day of January, 2008.



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PUBLIC NOTICE

Attachment A

Notice is hereby given that Ohio-American Water Company has filed an Application with the Public Utilities Commission of Ohio (Case No. 07-1112-WS-AIR) seeking increases in, and adjustments to, its rates and charges for sewer customers in Franklin County and water service customers in its entire service area that includes its seven districts located in the Ohio counties of: Ashtabula, Franklin, Lawrence, Marion (which administers the Preble County and Pike County service areas), Morrow, Portage, Richland, and Seneca, Ohio.

The rates proposed by Ohio-American Water Company, given below, are for general water service in all districts, except Franklin and Portage, to RESIDENTIAL, COMMERCIAL, INDUSTRIAL and PUBLIC SERVICE CUSTOMERS. Note: Most of Ohio-American's customers are billed bi-monthly; however, some customers are billed monthly.

METER RATES

Under the proposal of the Ohio-American Water Company, the increased rates for consumption would be:

	100 Cubic Feet	Rate Per 100 Cubic Feet	1,000 Gallons	Rate Per 1,000 Gallons
For the first	Bi-Monthly 20	\$5.0422	Bi-Monthly 15	\$6.7229
For the next	1,980	3.6898	1,485	4.9197
For all over	2,000	1.5850	1,500	2.1133

	100 Cubic Feet	Rate Per 100 Cubic Feet	1,000 Gallons	Rate Per 1,000 Gallons
For the first	Bi-Monthly 40	\$5.0422	Bi-Monthly 30	\$6.7229
For the next	3,960	3.6898	2,970	4.9197
For all over	4,000	1.5850	3,000	2.1133

UNMETERED RATES

\$79.66 Per BI-MONTHLY

SERVICE CHARGES

Upon approval of the proposed increase in rates, all metered general water service customers would pay a service charge monthly or bi-monthly, at the option of the Company, based on the size of each meter installed, according to the bi-monthly rates set forth below:

Size of Meter	Monthly	Bi-Monthly
5/8"	\$10.59	\$21.18
3/4"	13.51	27.02
1"	19.34	38.68
1-1/2"	33.90	67.80
2"	51.38	102.76
3"	92.17	184.34
4"	150.43	300.86
6"	296.11	592.22

SURCHARGE

All metered general water service Customers served by the Marion District-Marion County and Morrow County shall pay a surcharge for water softening costs. This surcharge shall be at the rate set forth below:

Surcharge per 100 cubic feet	\$0.36090
or per 1,000 gallons	\$0.48120

REPRESENTATIVE CUSTOMERS

Under the Ohio-American Water Company proposal, a representative customer in each of the following classes would experience rate changes as shown below:

Representative	Consumption	Bi-Monthly	Percent
Bi-Monthly	Cubic Feet	Increase	Increase
Residential 5/8" meter			
-w/o softening surcharge	1,180	\$9.92	13.61%
-with softening surcharge	1,180	\$10.41	14.06%
Commercial 5/8" meter			
-w/o softening surcharge	4,650	\$48.80	13.25%
-with softening surcharge	4,650	\$55.02	13.93%
Representative			
Monthly			
Industrial 2" meter			
-w/o softening surcharge	57,810	\$495.86	12.63%
-with softening surcharge	57,810	\$573.20	13.46%

The rates proposed by Ohio-American Water Company, given below, are for general water service for districts in Franklin and Portage Counties, to RESIDENTIAL, COMMERCIAL, INDUSTRIAL, and PUBLIC SERVICE CUSTOMERS. Note: Most of Ohio-American's customers are billed bi-monthly; however, some customers are billed monthly.

DOMESTIC SERVICE

Water Customer Charge

For 5/8" meter	\$10.59	per Month
For 3/4" meter	\$13.51	per Month
For 1" meter	\$19.34	per Month
For 1 1/2" meter	\$33.90	per Month
For 2" meter	\$51.38	per Month
For 3" meter	\$92.17	per Month
For 4" meter	\$150.43	per Month
For 6" meter	\$296.11	per Month

Water Consumption Charge - Basic Water Service (applies to all customers):
 First 13.33 Ccf \$4.7470 per Ccf*
 Next 586.67 Ccf \$2.9136 per Ccf*
 Over 600 Ccf \$1.5850 per Ccf*

Softening Surcharge (only applies to the Lake Darby and Worthington F&B Service Area)
 \$0.60070 per Ccf*

Reverse Osmosis Surcharge (applies to Bloomsburg Township Only)
 \$1.19220 per Ccf*

Purchase Water Adjustment Surcharge (applies to Portage County Districts Only)
 \$1.61048 per Ccf*

NON-DOMESTIC SERVICE

Water Customer Charge

For 5/8" meter	\$10.59	per Month
For 3/4" meter	\$13.51	per Month
For 1" meter	\$19.34	per Month
For 1 1/2" meter	\$33.90	per Month
For 2" meter	\$51.38	per Month
For 3" meter	\$92.17	per Month
For 4" meter	\$150.43	per Month
For 6" meter	\$296.11	per Month

Water Consumption Charge - Basic Water Service (applies to all customers):
 First 13.33 Ccf \$4.7470 per Ccf*
 Next 586.67 Ccf \$2.9136 per Ccf*
 Over 600 Ccf \$1.5850 per Ccf*

Softening Surcharge (only applies to the Lake Darby and Worthington F&B Service Area)
 \$0.60070 per Ccf*

Reverse Osmosis Surcharge (applies to Bloomsburg Township Only)
 \$1.19220 per Ccf*

Purchase Water Adjustment Surcharge (applies to Portage County Districts Only)
 \$1.61048 per Ccf*

Charges for water service will be comprised of the applicable Water Customer Charge plus the Water Consumption Charge calculated on the number of metered or estimated units at the appropriate rate block for non softened water (basic water service), plus any surcharges for softened water, reverse osmosis treated water or purchased water in Portage County.

*1 Ccf = 100 cubic feet

REPRESENTATIVE CUSTOMERS

Under the Ohio-American Water Company proposal, a representative customer in each of the following classes would experience rate changes as shown below, for Franklin and Portage water customers only:

Monthly	Consumption	Monthly	Percent
Residential-5/8" meter	Cubic Feet	Increase	Increases
-w/o softening surcharge	590	\$10.26	36.22%
-with softening surcharge	590	\$10.20	31.92%
-with rev osmosis surch	590	\$9.48	26.22%
-with purch water surch	590	\$11.17	30.24%
Commercial-5/8" Meter			
-w/o softening surcharge	2,325	\$31.08	43.35%
-with softening surcharge	2,325	\$30.81	35.86%
-with rev osmosis surch	2,325	\$27.99	27.31%
-with purch water surch	2,325	\$34.64	32.81%
Industrial-2" meter			
-w/o softening surcharge	57,810	\$559.97	46.66%
-with softening surcharge	57,810	\$553.32	35.60%
-with rev osmosis surch	57,810	\$483.20	24.58%
-with purch water surch	57,810	\$648.52	31.75%

The rates proposed by Ohio-American Water Company, given below, are for general sewer service for districts in Franklin County and Portage County, to RESIDENTIAL, COMMERCIAL, INDUSTRIAL, and PUBLIC SERVICE CUSTOMERS.

Note: Most of Ohio-American's customers are billed bi-monthly; however, some customers are billed monthly.

DOMESTIC SERVICE

Sewer Customer Charge (Applicable to customers who only receive sewer service):

For 5/8" meter	\$10.59	per Month
For 3/4" meter	\$13.51	per Month
For 1" meter	\$19.34	per Month
For 1 1/2" meter	\$33.90	per Month
For 2" meter	\$51.38	per Month
For 3" meter	\$92.17	per Month
For 4" meter	\$150.43	per Month

Charges for sewer service will be comprised of the applicable Sewer Customer Charge and the Sewer Consumption Charge calculated on the number of metered or estimated units at the appropriate rate block in dance with the summer/winter usage formula.

REPRESENTATIVE CUSTOMERS

Under the Ohio-American Water Company proposal, a representative customer in each of the following classes would experience rate changes as shown below, for Franklin and Portage water customers only:

Monthly	Consumption	Monthly	Percent
Domestic	Cubic Feet	Increase	Increases
Domestic	590	\$13.67	36.80%
Non-Domestic-Small	2,325	\$45.04	36.80%
Non-Domestic-Large	57,810	\$912.93	36.73%

In its Application, the Company requested the Public Utilities Commission of Ohio to approve its proposed rates and charges and to grant Ohio-American Water Company such other and further relief to which it may be entitled.

ANY PERSON, FIRM, CORPORATION OR ASSOCIATION MAY FILE, PURSUANT TO SECTION 4909.19 OF THE REVISED CODE, AN OBJECTION TO SUCH INCREASE WHICH MAY ALLEGE THAT THE APPLICATION CONTAINS PROPOSALS THAT ARE UNJUST AND DISCRIMINATORY OR UNREASONABLE.

Recommendations that differ from the Application may be made by the Staff of the Public Utilities Commission of Ohio or by intervening parties and may be adopted by the Commission.

Copies of Ohio-American Water Company's Application, Exhibits, and Standard Filing Requirements Schedules filed in this case and from Case No. 06-433-WS-AIR, which are incorporated by reference in this case, may be inspected by any interested party at the offices of the Public Utilities Commission of Ohio ("PUCO"), 180 East Broad Street, Docketing Section, Columbus, Ohio 43266-0573, or at the PUCO web site www.puc.state.oh.us (use the case number to access the filings in the case) or at the Company's office, located at 365 East Center Street, Marion, Ohio 43301-0506.