

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

The Commission finds:

- (1) On November 13, 2007, Ohio American Water Company (Ohio American) filed an application to increase rates throughout the company's service territory.
- (2) By entry issued January 9, 2008, the Commission accepted Ohio American's application for filing as of November 13, 2007. Additionally, the Commission found that Ohio American's proposed notice for publication complied with the requirements of Section 4909.19(E), Revised Code, with one modification. That modification involved a change to the last paragraph of the proposed notice in order to enhance interested persons' ability to access Ohio American's application and its content. Ohio American was directed to begin publication of the newspaper notice, pursuant to Section 4909.19, Revised Code, within 30 days of the date of the January 9, 2008 entry.

The January 9, 2008, entry also denied a motion filed by the Office of the Ohio Consumers' Counsel (OCC) seeking to amend Ohio American's proposed notice and to substitute Ohio American's notice with a notice preferred by OCC. Lastly, the January 9, 2008, entry denied the request to have OCC contact information included as part of the notice.

- (3) Section 4903.10, Revised Code, among other things, provides that any affected person, firm, or corporation may make an application for rehearing within 30 days following the journalization of the order. The Commission may grant and hold a rehearing on the matters specified in the application if, in its judgment, sufficient reason appears.

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- (4) On January 23, 2008, OCC filed an application for rehearing of the Commission's January 9, 2008 entry. In its rehearing application, OCC claims that the Commission erred in four respects. Ohio American filed a memorandum contra OCC's application for rehearing on February 1, 2008. OCC's assignments of error will be addressed in turn below.
- (5) In its first and second assignments of error, OCC claims that the Commission erred by accepting Ohio American's application for filing and ordering publication of notice in parts of Franklin and Portage counties (also known as the Water C service territory) since Ohio American is currently prohibited by the terms of a prior rate case stipulation and Commission order, Case No. 06-433-WS-AIR (06-433), *In the Matter of the Application of Ohio American Water Company for Authority to Increase its Rates for Water and Sewer Service Provided to its Entire Service Area*, from seeking to increase rates for customers in those areas at this time. OCC notes that one of the significant issues from the last rate case that was addressed by the company, OCC, and Commission staff in the 06-433 stipulation was a discoloration problem in the Huber Ridge water system (Franklin County). OCC opines that the 06-433 stipulation is clear that, pursuant to paragraph seven and the introduction to paragraph 12, all of paragraph 12 pertains to the discoloration issue and thus must be resolved prior to Ohio American applying for a rate increase for the Water C service territory. Pointing to letters from both Commission staff and OCC from July 2007 in the Ohio American compliance docket, Case No. 07-252-WS-UNC (07-252), OCC states that both agencies agreed that the discoloration issue could not be resolved until at least May 1, 2008. Therefore, it was error for the Commission to accept the application for filing and publishing notice of a rate increase involving customers in parts of Franklin and Portage counties until at least May 2008.

In its memorandum contra, Ohio American claims that OCC has mischaracterized the July 2007 letter setting forth staff's position on the discoloration issue as well as the 06-433 stipulation that settled the last rate case. Ohio American avers that the July 13, 2007, staff letter merely argued against the company's inference that Ohio American had fully met the criteria of paragraph 12G of the 06-433 stipulation involving the reverse osmosis charge. The staff letter further notes, according

to Ohio American, that staff could not ascertain if the samples from the water treatment plant complied with the agreed to standards set forth in other subparts of paragraph 12 of the 06-433 stipulation. The final issue addressed by the staff letter, Ohio American alleges, is that, under the 06-433 stipulation, the company had a continuing duty to make various reports. Ohio American opines that there were many activities that the company was required to undertake to address the Huber Ridge discoloration problem and to assure that discoloration did not return. The entire program of activities to improve the Huber Ridge system, both the water plant and the distribution plant, each had separate criteria. According to Ohio American, OCC would have the Commission ignore the separate measurements and separate requirements of the 06-433 stipulation and construe those separate criteria as a single all or nothing set of requirements that had to be met before filing another rate application affecting customers in the Water C service territory. This is contrary to the 06-433 stipulation, Ohio American claims.

OCC's first and second assignments of error are denied. We find nothing in the 06-433 stipulation or in the July 13, 2007, letter from staff that supports OCC's contention that Ohio American is prohibited from seeking rate relief in the Water C service territory until after May 1, 2008. Rather, paragraph seven of the 06-433 stipulation merely states that Ohio American will not seek rate relief, in the form of an increase in rates, "until the discoloration issue has been resolved as set forth in paragraph 12 of this Stipulation" (06-433 stipulation at page 4). Paragraph 12, on the other hand, sets forth a detailed program to address discoloration in both the Huber Ridge water treatment facility and in the Huber Ridge distribution plant. Some aspects of the program have self-executing provisions that prohibit the company from charging for certain items should testing reveal that the company did not meet a certain threshold. Other aspects of the program call for periodic reports to be filed with the Commission outlining the company's efforts to address discoloration in the Huber Ridge system. Importantly, OCC does not allege that Ohio American has not implemented the agreed-to program to address discoloration in the Huber Ridge area or that the company has not resolved the discoloration issue. Rather, OCC argues that some date certain must pass before the company can again file

for a rate increase. A review of the 06-433 stipulation and of the Commission's March 7, 2007, opinion and order adopting the stipulation does not support OCC's position. Moreover, since the company is not prohibited from filing for rate relief in the Water C service territory, it was not error for the Commission to have ordered publication of notice of the current application to customers in Franklin and Portage counties.

- (6) The Commission next erred, according to OCC, by failing to establish consequences in the event Ohio American failed to comply with the Commission's entry to publish the notice specified in the January 9, 2008 entry. OCC requests that the Commission bar Ohio American from recovering all costs associated with the publication of public notice that fails to comply with the Commission's January 9, 2008 entry.

In response to this assignment of error, Ohio American submits that the Commission has no obligation to specify consequences for non-compliance in an entry directing publication of notice. Nevertheless, as explained in a motion filed on January 28, 2008, and discussed in more detail below, Ohio American asserts that when it learned of an error involving the public notice, the company took immediate efforts to correct the remaining publications.

OCC's assignment of error is denied. There is no statute or case law that requires the Commission to specify consequences for failing to comply with an entry directing publication of notice concerning a rate increase application under Sections 4909.18(E) and 4909.19, Revised Code. Nonetheless, as pointed out by both OCC and Ohio American, the Commission does have the statutory authority, without specifying it in a publication entry, to enforce compliance with a Commission order, including authority pursuant to Section 4905.54, Revised Code, to order forfeitures.

- (7) OCC's final assignment of error claims that the Commission erred by ordering Ohio American to publish a notice that did not meet the requirements of Sections 4909.18(E) and 4909.19, Revised Code. OCC claims that the Commission erred by failing to require Ohio American to create a public notice that is clear and concise after finding that the notice proposed by Ohio

American could be more clear and concise. According to OCC, the Ohio Supreme Court has established two components that a company must meet to establish that a newspaper notice complies with Sections 4909.18(E) and 4909.19, Revised Code. First, the company must demonstrate that the notice fully discloses the substance of the application and second the notice must be understandable. OCC claims that the Commission only opined on the first component. To facilitate customer understanding, the OCC submits that the Commission should have ordered Ohio American to publish the shorter more concise notice recommended by OCC. The Commission also erred, OCC avers, by failing to require that OCC and Commission contact information be included in Ohio American's public notice.

In its memorandum contra, Ohio American argues that the notice approved by the Commission for use in this case is identical in format to the notices approved for use by the Commission in the last five Ohio American rate cases without objection from OCC. Further, Ohio American submits that the language is clear, contains no legalese, and the sentences are in simple declarative form. As for the OCC and Commission contact information, Ohio American offers that there is no statutory or case law support for OCC's position, therefore, the Commission could not have erred in directing publication without this information.

OCC's last assignment of error is denied. Section 4909.18(E), Revised Code, requires that a proposed newspaper notice of a rate increase: (a) fully disclose the substance of the application, (b) notify interested persons how they may file an objection to such increase, and (c) provide information concerning the average percentage increase in rates that a representative industrial, commercial, and residential customer will incur if the increase is granted in full. OCC does not allege that any of these statutory requirements are missing from the proposed public notice. Moreover, the mere fact that the Commission noted in the January 9, 2008, entry that the proposed notice could be clearer and more concise does not equate to a determination that the notice failed to provide the substance of the complaint in an understandable manner. In fact, we noted that the OCC proposed notice, by tailoring separate notices to customers in different service territories, may well violate the

requirement that the notice fully disclose the "substance of the application." Additionally, OCC's argument concerning the understandability of the notice is offset by the number of customers who participated in the last rate case where the published notice was substantially identical to the present notice.

Regarding the contact information, the Commission fully addressed this issue in the January 9, 2008 entry. In that entry, the Commission determined that there is no statutory requirement for including contact information for OCC or for the Commission. In fact, the Commission specifically noted that contact information for the Commission was not being provided. Rather, information regarding the location of the Commission, the Commission's web site, and the company's business location was merely intended to inform the company's customers where they may view the filed application so that they may determine whether to object to the proposed increase. Rehearing on this assignment of error is denied.

- (8) On January 28, 2008, Ohio American filed a motion seeking to correct a publication error by ordering the company to provide customers with a bill insert and to find that the corrected notice substantially complied with the publication requirements of Section 4909.19, Revised Code, and the Commission's January 9, 2008 entry. In support of its motion, Ohio American submits that, due to a word processing error, the newspaper notice electronically sent to the various newspaper publishers as directed by the January 9, 2008, entry contained a paragraph from the last Ohio American rate case. The paragraph in error did explain to customers how to obtain copies of the filings in the case and did contain the Commission's website but did not contain the more detailed instructions as directed in the January 9, 2008 entry. Once the error was discovered, the nine affected newspapers were contacted and all agreed to publish the correct version in remaining publications.

Although Ohio American argues that substantial compliance with the publication requirement has already been achieved, nevertheless, the company proposes to include a bill insert to all customers, with the exception of the Ashtabula customers who already received the correct notice, providing those

customers with the correct information for customers to obtain copies or to examine the application. In addition, Ohio American proposes that the insert notify customers that the entire corrected public notice can be viewed on the company's website. Lastly, the company proposes that the expenses associated with the correction not be borne by the company's ratepayers.

- (9) OCC filed a memorandum contra the Ohio American motion on February 4, 2008. In its memorandum contra, OCC again argues that the company is prohibited by the 06-433 stipulation and opinion and order from seeking a rate increase for customers in the Water C service territory. OCC next disagrees with the company that the steps taken by Ohio American to correct the published notices substantially comply with the Commission's January 9, 2008 entry. OCC also contends that Ohio American should be required to implement additional measures to correct the public notice. Such additional measures would include barring the company from recovering any expenses associated with the non-complying notices from its customers, requiring the company to put the entire public notice in the bill insert to customers, posting the entire public notice on the company's website until after the public hearings, and requiring the company to include the OCC and Commission contact information in the bill insert to address any confusion raised by Ohio American's error.
- (10) Ohio American filed a reply to OCC's memorandum contra on February 6, 2008. Ohio American again argues that the newspaper notice substantially complied with the statutory requirements of Section 4909.18(E), Revised Code, and with the Commission's entry of January 9, 2008. The erroneous paragraph, according to the company, had nothing to do with the substance or prayer of the application and, in fact, earlier paragraphs in the notice did list the correct, current Commission case number. Additionally, Ohio American submits that without any statutory obligation to do so, the company gave its customers actual notice of the rate case prior to filing the case with the Commission through letters sent to each of its customers. Though these letters did not give full details of the application, the letters did provide the average increase per month for a residential customer Ohio American avers.

- (11) Having fully reviewed the arguments of OCC and Ohio American concerning the issue of additional notice, the Commission finds that Ohio American's January 28, 2008, motion should be granted. As determined above, the Commission has already found that the notice the company published satisfied the substantial compliance provisions of Sections 4909.18(E) and 4909.19, Revised Code, as well as the requirements of the January 9, 2008 Commission entry. The additional steps being proposed by the company in the January 28, 2008, motion will provide the company's customers with information on how to review the entire application if the customers are so inclined. The company is, however, instructed to modify its proposed bill insert by making the language modifications proposed by OCC in its memorandum contra at the top of page 8. In addition, we agree with OCC that Ohio American should post and maintain the entire notice on the company's website until after the public hearings. Finally, we agree with both Ohio American and with OCC that the expenses associated with the correction not be borne by the company's customers.

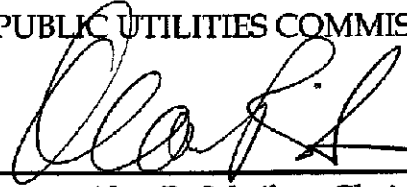
It is, therefore,

ORDERED, That the application for rehearing filed by the Office of the Ohio Consumers' Counsel on January 23, 2008, be denied. It is, further,

ORDERED, That Ohio American's January 28, 2008, motion be granted as modified in finding 11. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all parties of record.

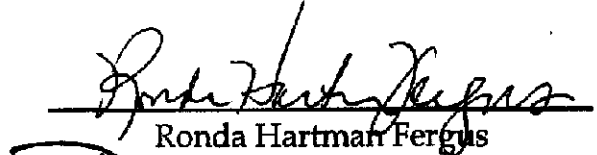
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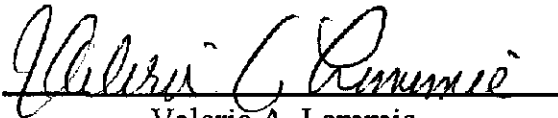
Alan R. Schriber, Chairman



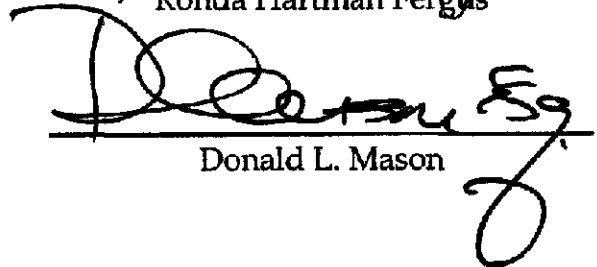
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