

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Compliance of the)
Ohio American Water Company with the)
Stipulation Approved in Case No. 07-) Case No. 08-1233-WS-UNC
1112-WS-AIR.)

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**MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where compliance with the Opinion and Order in Case No. 07-1112-WS-AIR is at issue.¹ OCC is filing on behalf of all the approximately 53,000 residential utility consumers of Ohio American Water ("OAW"). The reasons the Public Utilities Commission of Ohio ("Commission" or "PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

Melissa R. Yost

Melissa Yost, Counsel of Record
Ann Hotz
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
yost@occ.state.oh.us
hotz@occ.state.oh.us

¹ See R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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MEMORANDUM IN SUPPORT

This case was initiated to ensure OAW's compliance with the Stipulation and Recommendation filed in Case No. 07-1112-WS-AIR ("Stipulation.") The Stipulation affects all of the residential customers of OAW in the state of Ohio. OCC has authority under law to represent the interests of all the approximately 53,000 residential utility customers of OAW, pursuant to R.C. Chapter 4911.

R.C. 4903.221 provides, in part, that any person "who may be adversely affected" by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio's residential consumers may be "adversely affected" by this case, especially if the consumers were unrepresented in a proceeding concerning their water quality. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the Commission to consider the following criteria in ruling on motions to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and

- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of OCC's interest is based on the protection of OAW's residential customers. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's advocacy for consumers will include ensuring OAW's compliance with the Stipulation. A major reason why OCC agreed to the Stipulation was in order to improve the water quality that OAW provides to its residential customers in Ohio. OCC's position is therefore directly related to the merits of this case that is pending before the PUCO, the authority with regulatory control of public utilities' rates and service quality in Ohio. The Commission has previously granted OCC intervention in a case very similar to this one (Case No. 07-252-WS-UNC) where OAW was monitored for compliance with commitments it had made in the Stipulation in Case No. 06-433-WS-AIR.

Third, OCC's intervention will not unduly prolong or delay the proceedings. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the case with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the case in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To

intervene, a party should have a “real and substantial interest” according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate, OCC has a very real and substantial interest in this case where water quality is at issue.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4). These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the “extent to which the person’s interest is represented by existing parties.” While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio’s residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

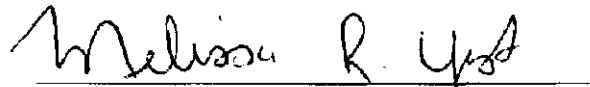
Moreover, the Supreme Court of Ohio confirmed OCC’s right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in denying OCC’s intervention and that OCC should have been granted intervention.²

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Supreme Court of Ohio for intervention. On behalf of Ohio residential consumers, the Commission should grant OCC’s Motion to Intervene.

² See *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20 (2006).

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

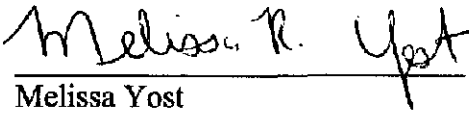
A handwritten signature in dark ink, appearing to read "Melissa R. Yost", is written over a horizontal line.

Melissa Yost, Counsel of Record
Ann Hotz
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
yost@occ.state.oh.us
hotz@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via regular U.S. Mail Service, postage prepaid, this 22nd day of January, 2009.



Melissa Yost
Assistant Consumers' Counsel

SERVICE LIST

Duane Luckey
Assistant Attorney General
Public Utilities Commission of Ohio
180 E. Broad St., 9th Fl.
Columbus, OH 43215

Sally Bloomfield
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215