

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Water                     )  
and Sewer LLC for an Increase in Rates                     )   Case No. 08-227-WS-AIR  
and Charges.   )

OPINION AND ORDER

The Commission, considering the above-entitled application, hereby issues its opinion and order in this matter.

APPEARANCES:

Bell, Royer Co., LPA, by Barth E. Royer, 33 South Grant Avenue, Columbus, Ohio 43215, on behalf of Water and Sewer LLC.

Richard Cordray, Attorney General of the State of Ohio, by Duane W. Luckey, Senior Deputy Attorney General, and by Werner L. Margard, III and Sarah Parrot, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Gregory J. Poulos and Anne M. Hotz, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of residential utility consumers of Water and Sewer LLC.

Walter & Haverfield LLP, by Charles T. Riehl and Janet Alter, The Tower at Erieview, 1301 East Ninth Street, Suite 3500, Cleveland, Ohio 44114, on behalf of the village of Richfield, Ohio.

HISTORY OF THE PROCEEDINGS:

Water and Sewer LLC (Water and Sewer) is engaged in the business of supplying water and sewage disposal services to approximately 75 customers in the Richfield subdivision, village of Richfield and in Richfield Township, Summit County, Ohio. Water and Sewer is a public utility under the terms of Section 4905.02, Revised Code, a water-works company under the terms of Section 4905.03(A)(8), Revised Code, and a sewage disposal company under the terms of Section 4905.03(A)(14), Revised Code, and, as such, is subject to the jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code. The applicant's present rates and charges for water and sewer services were established by order of the Commission in *In the Matter of the Application of*

*Water and Sewer LLC for an Increase in Rates and Charges*, Case No. 03-318-WS-AIR, Opinion and Order (October 6, 2004).

On April 7, 2008, Water and Sewer filed an abbreviated application for authority to increase its rates and charges for supplying water and sewage disposal services within its service area, pursuant to Section 4909.18, Revised Code, and Rule 4901-7-01, Ohio Administrative Code (O.A.C.). Water and Sewer requested that the Commission establish December 31, 2007, as the date certain and the 12 months ending December 31, 2007, as the test period. By entry dated May 28, 2008, the Commission accepted the application for filing as of April 7, 2008, and ordered the applicant to publish notice of the application. On April 27, 2009, Water and Sewer filed proof of publication of the application.

On December 11, 2008, Water and Sewer filed a motion to bifurcate its application and to hold in abeyance that portion of the application requesting an increase in its rates for water service. As explained in its motion, Water and Sewer had entered into an agreement that is expected ultimately to result in the city of Cleveland supplying water service to customers currently served by the applicant and to permit Water and Sewer to terminate operations as a water-works company. The Commission granted the applicant's motion on December 19, 2008, and instructed the staff to conduct an investigation solely on the applicant's request for an increase in sewer rates.

Pursuant to Section 4909.19, Revised Code, Commission staff conducted an investigation of the matters set forth in Water and Sewer's application as bifurcated. On February 4, 2009, the staff filed its written report of investigation with the Commission. Copies of the staff report were served as required by statute. Objections to the staff report were filed by Water and Sewer and by intervenors the Office of the Ohio Consumers' Counsel (OCC) and the village of Richfield (Richfield) on March 6, 2009. The applicant filed a motion to strike the objections of Richfield on March 16, 2009, and Richfield filed a memorandum contra the applicant's motion to strike on March 23, 2009. By entry dated April 14, 2009, the motion to strike was denied.

By entry issued on March 17, 2009, OCC and Richfield were granted intervention in this proceeding. The March 17, 2009, entry also scheduled a local public hearing on April 13, 2009, in Richfield, Ohio, and a public evidentiary hearing on April 15, 2009. Additionally, the March 17, 2009, entry ordered the applicant to publish notice of the local public hearing. The local hearing was held as scheduled. Twenty-one witnesses gave sworn testimony in opposition to Water and Sewer's application while another 36 customers acknowledged agreeing with the sworn testimony provided on the record. The public hearing witnesses were unanimously opposed to the rate increase, discussing at length the dramatic effect the proposed increase would have on their ability to live in their houses or to sell their property. Several witnesses discussed billing and metering problems, as well as water quality issues. Many of the witnesses pointed to the

overcapacity of the water and sewer facilities. Finally, several witnesses testified that, in their view, the purpose behind Water and Sewer's application for a rate increase relates to the owners' attempts to develop adjacent real property into additional housing (Local public hearing transcript dated April 13, 2009).

#### COMMISSION REVIEW AND DISCUSSION:

The April 15, 2009, evidentiary hearing in this proceeding was held in abeyance so that the parties could continue negotiations in effort to reach resolution on the disputed issues. By entry issued April 27, 2009, this matter was scheduled to reconvene on April 28, 2009, at the offices of the Commission. At the April 28, 2009 hearing, the parties represented that a settlement of the issues had been reached between the applicant and the staff but that additional time was needed to draft the settlement document. The parties' request to hold this matter in abeyance until April 29, 2009, was granted from the bench. On April 29, 2009, the hearing reconvened at which time a stipulation was presented as Joint Exhibit 1. Testifying in support of the stipulation was staff witness Edrick J. Richardson. No party opposed or objected to the admission of the stipulation on the record of this matter.

#### SUMMARY OF STIPULATION

The stipulation provides that:

- (1) The stipulating parties stipulated to an adjusted net operating income, as of the test year ending December 31, 2007, of (\$33,913), and a rate base of \$66,483, resulting in a rate of return of (51.01) percent as reflected on updated stipulation exhibit, Schedule A-1, Exhibit A.
- (2) A negative rate of return of 51.01 percent is insufficient to provide Water and Sewer reasonable compensation for the sewer service the applicant renders to its customers.
- (3) The parties stipulated to a recommended rate of return of 10 percent, which would require a net operating income of \$6,648. At current rates, there would be a net deficiency of \$40,561. The stipulated total revenue requirement of \$102,573 would result in a revenue increase of \$48,003 as reflected on updated stipulation Schedule A-1, Exhibit A. The stipulating parties agree that the new rates for sewer service shall be effective on a bills-rendered basis for the first billing following the filing of the revised tariff sheets after Commission approval of the stipulation.

- (4) The stipulating parties recognize that all steps necessary for Water and Sewer to terminate operations as a water-works company have not yet been completed and that, as a result, the applicant must continue to provide service to its customers pursuant to a combined water and sewer tariff until such time as the Commission authorizes the removal of Water and Sewer from the rolls of regulated water-works companies. Thus, revised combined water and sewer tariff sheets were filed as stipulation Exhibit B. The revised tariff sheets shall be filed in final form by Water and Sewer following the issuance of an order adopting the stipulation, without the need for additional approval by subsequent entry.
- (5) In conjunction with its application to the Commission for authority to terminate operations as a water-works company, Water and Sewer will submit a sewer-only tariff in the form set forth as stipulation Exhibit C and will cancel and withdraw its combined water and sewer tariff upon approval of that application. The parties stipulate that the sewer-only tariff set forth as stipulation Exhibit C is also consistent with the terms of the stipulation and should be approved by the Commission in the order adopting the stipulation.
- (6) The stipulating parties agree that the proposed tariffs set forth as stipulation Exhibits B and C incorporate, and are consistent with, the recommendations set forth in the Rates and Tariffs section of the staff report, subject to the following exceptions:
  - (a) Based upon the likelihood that there will be a limited number of billings for both water and sewer service before the applicant becomes a sewer-only utility, the stipulating parties agree that the provision of Rule 4901:1-15-23(N), O.A.C., requiring that the OCC contact information be included on the bill should be temporarily waived and that Water and Sewer should be permitted to utilize its existing bill stock until the time it becomes a sewer-only utility or exhausts its current bill stock, whichever first occurs, at which time the OCC contact information will be included.

- (b) Water and Sewer has included language in both the dual tariff sheets and the sewer-only tariff sheets to include grounds for 24-hour notice disconnections as a second exception to the 14-day notice grounds for disconnection. The parties are aware that this additional exception is not identified in Rule 4901:1-15-27(B)(3)(b), O.A.C., but recognize that the rule itself is internally inconsistent in this regard. Thus, the parties recommend that a waiver of this rule be granted to permit this change to be effectuated.
- (7) Water and Sewer will establish and maintain its accounting records in accordance with the Uniform System of Accounts, establish and maintain continuing property records, utilize the staff-recommended depreciation accrual rates, and restate plant-in-service and book depreciation reserve.
- (8) Water and Sewer will comply with the recommendation at page 13 of the staff report and include the name of the company on the photo identification.
- (9) Water and Sewer will fulfill the recommendations at page 23 of the staff report including restoration of the comminutor to service, replacement of the ultrasonic flow meter, and replacement of the roof on the treatment facility as soon as weather permits.
- (10) The parties recognize that changing from the current volumetric rate for sewer service based on the customer's water usage to a flat sewer rate applicable to all customers will benefit some customers and disadvantage other customers. Staff believes that a concern about disadvantaging some customers is outweighed by the real potential for over-recovery by Water and Sewer that could result under volumetric sewer rates once the city of Cleveland becomes the supplier of water service because the city of Cleveland's rate for water service will be substantially lower than the current Water and Sewer water rate thereby stimulating usage. Accordingly, the parties recommend that a Rate Structure Collaborative comprised of representatives of staff, Water and Sewer, OCC, and the village of Richfield be convened on or about a date one-year from the date the city of Cleveland becomes the provider of water

service to applicant's customers to consider the desirability of reinstating a volumetric rate for sewer service.

- (11) Should the Collaborative recommend that a volumetric sewer rate be reinstated, a methodology intended to produce a revenue neutral result for Water and Sewer was outlined in the stipulation and a filing for approval of the volumetric rate and restated customer charge would be made in this docket.

### REVIEW OF THE STIPULATION

The stipulation submitted on April 29, 2009, is unopposed. Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See, *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, at 125, citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 2004); *Ohio Edison Co.*, Case No. 91-698-EL-FOR *et al.* (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 547 (citing *Consumers' Counsel, supra*, at 126). The court stated in that case that the Commission may

place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission (*Id.*).

Based on our three-prong standard of review, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met. Counsel for the applicant and the staff have been involved in many cases before the Commission, including a number of prior cases involving rate issues. Further, a review of the terms of the stipulation and the schedules and tariffs attached thereto shows that the parties engaged in comprehensive negotiations prior to signing the agreement.

The stipulation also meets the second criterion. As a package, it benefits the public interest by providing the company the opportunity to recover expenses and earn a reasonable return on equity while maintaining sewer service for consumers without incurring the time and additional expense associated with extensive litigation.

Finally, the stipulation meets the third criterion because it does not violate any important regulatory principle or practice. Indeed, the Commission finds that the application, as modified by the stipulation, complies with the procedural requirements for these types of cases and, in fact, no party has argued that the company has violated any statutory or rule requirements concerning these types of applications.

Our review of the stipulation indicates that it is in the public interest and represents a reasonable disposition of this proceeding. We will, therefore, adopt the stipulation in its entirety, except as noted below.

#### RATE BASE

The following information presents the value of Water and Sewer's property used and useful in the rendition of sewer services as of the December 31, 2007, date certain, as stipulated by the parties (stipulation Ex. A, Sched. B-1):

Plant in Service	\$58,017
Less: Depreciation Reserve	<u>6,870</u>
Net Plant in Service	\$51,147
Less: Construction Work in Progress	0
Working Capital Allowance	15,336
Less: Other Rate Base Items	<u>0</u>
Rate Base	66,483

The Commission finds the rate base stipulated by the parties to be reasonable and proper and adopts the valuation of \$66,483 as the rate base for purposes of this proceeding.

#### OPERATING INCOME

The following information reflects Water and Sewer's operating revenue, operating expenses, and net operating income for the 12 months ended December 31, 2007 (stipulation Ex. A, Sched. C-1):

<u>Operating Revenue</u>	
Sewer Sales	\$54,466
Late Fee Revenue	<u>104</u>
Total Operating Revenue	\$54,570
 <u>Operating Expenses</u>	
Operation and Maintenance	\$92,867
Depreciation	1,040
Taxes, Other Than Income	569
Federal Income Taxes	<u>(5,993)</u>
Total Operating Expenses	\$88,483
 <u>Net Operating Income</u>	
	(\$33,913)

The Commission finds Water and Sewer's operating revenue, operating expenses, and net operating income as stipulated to be reasonable and proper. The Commission will, therefore, adopt these figures for purposes of this proceeding.

#### RATE OF RETURN AND AUTHORIZED INCREASE

A comparison of Water and Sewer's total operating revenue of \$54,570 with total operating expenses of \$88,483 indicates that, under its present rates, Water and Sewer would have net operating income of (\$33,913). Applying this figure to the rate base of \$66,483 results in a negative rate of return of 51.01 percent. A negative rate of return of 51.01 percent is insufficient to provide the applicant with reasonable compensation for the sewer service it renders to its customers.

The stipulation recommends that rates be approved that would enable Water and Sewer to earn a rate of return of 10 percent. The Commission believes that 10 percent is fair and reasonable for the applicant. We will, therefore, authorize a rate of return of 10 percent for purposes of this case.



Applying a rate of return of 10 percent to the rate base of \$66,483 results in net operating income of \$6,648. Allowing for adjustments for certain taxes, we find that the applicant is entitled to place tariffs in effect which will generate \$102,573 in total operating revenue. This represents an increase of \$48,003 in revenue over the revenue that would be realized under Water and Sewer's current rate schedules, an increase of 87.97 percent.

### RATES AND TARIFFS

As part of its investigation in this matter, the staff reviewed the applicant's various rates and charges, and the provisions governing terms and conditions of service. By way of the stipulation, the stipulating parties have resolved all outstanding issues resulting in tariff changes being filed as Joint Exhibit 1, Exhibit B (water and sewer tariff) and Joint Exhibit 1, Exhibit C (sewer-only tariff). These proposed tariffs will produce revenues authorized by this order and are in conformance with the changes agreed to by the stipulating parties. The Commission finds the tariff sheets filed as Joint Exhibit 1, Exhibit B (dual water and sewer tariff) are reasonable and are approved as part of the stipulation. Likewise, the Commission has reviewed the sewer-only tariff submitted as Joint Exhibit 1, Exhibit C (sewer-only tariff) and we find that Joint Exhibit 1, Exhibit C (sewer-only tariff) is consistent with the terms of this stipulation. Water and Sewer is instructed to file the sewer-only tariff for approval as part of the application to the Commission for authority to terminate operations as a waterworks company.

Additionally, the stipulating parties recommend that the applicant be granted a waiver of Rule 4901:1-15-27(B)(3)(b), O.A.C., in order to include grounds for 24-hour notice disconnections as a second exception to the 14-day notice grounds for disconnection. As the rule is internally inconsistent, the Commission finds good cause to grant a waiver of the affected rule as recommended by the stipulating parties.

### CUSTOMER NOTICE AND EFFECTIVE DATE

The stipulating parties have also prepared and submitted a proposed customer notice (Joint Ex. 1, Ex. D). The stipulating parties agree that the rates will go into effect with bills rendered after Commission approval of the stipulation and Water and Sewer filing the final compliance tariffs.

The recommendations of the stipulating parties relative to the customer notice and the effective date of the increase are reasonable and shall be approved. Water and Sewer should be aware that, before the tariffs can become effective, four complete final copies of the approved tariffs must be filed. The new tariffs will become effective for all bills rendered on or after the effective date of the tariffs.

FINDINGS OF FACT:

- (1) On April 7, 2008, Water and Sewer filed an abbreviated application for an increase in rates. In that application, the company requested a test year beginning January 1, 2007, and ending December 31, 2007, with a date certain of December 31, 2007. By Commission entry issued May 28, 2008, the test year and date certain were approved.
- (2) On February 4, 2009, staff filed its written report of investigation on the application as bifurcated on December 19, 2008.
- (3) On April 28 and May 21, 2008, Richfield and OCC filed motions to intervene in this matter which were granted by attorney examiner's entry issued March 17, 2009.
- (4) The local hearing was held on April 13, 2009, in Richfield, Ohio. A total of 21 public witnesses gave testimony at the local public hearing while 36 customers acknowledged agreeing with the sworn testimony provided on the record.
- (5) On April 29, 2009, an unopposed stipulation was filed on behalf of the applicant and the staff in order to resolve all issues.
- (6) The stipulation is the product of serious bargaining between knowledgeable parties, benefits ratepayers, advances the public interest, and does not violate any important regulatory principles or practices.
- (7) The value of all of the applicant's property used and useful for the rendition of sewer service to customers affected by this application, determined in accordance with Section 4909.15, Revised Code, is not less than \$66,483.
- (8) A comparison of Water and Sewer's total operating revenue \$54,570 with total operating expenses of \$88,483 indicates that, under its present rates, Water and Sewer would have net operating income of (\$33,913).
- (9) This net annual revenue of (\$33,913) represents a negative rate of return of 51.01 percent on the jurisdictional rate base of \$66,483.

- (10) A negative rate of return of 51.01 percent is insufficient to provide the applicant with reasonable compensation for the sewer service rendered to its customers.
- (11) A stipulated revenue increase of \$48,003 will result in a return of \$6,648. This dollar return of \$6,648 when applied to the rate base of \$66,483 yields a rate of return of approximately 10 percent.
- (12) The allowable gross annual revenue to which the applicant is entitled for purposes of this proceeding is \$102,573.
- (13) The proposed revised tariffs, filed as Joint Exhibit 1, Exhibit B, and notice to customers are consistent with the discussion and findings set forth in this opinion and order and shall be approved. The applicant's present tariffs governing water and sewer service to its customers affected by this opinion and order should be withdrawn and canceled.

#### CONCLUSIONS OF LAW:

- (1) Water and Sewer's application was filed pursuant to, and this Commission has jurisdiction of the application under, the provisions of Sections 4909.17, 4909.18, and 4909.19, Revised Code, and the application complies with the requirements of these statutes.
- (2) A staff investigation was conducted and a report duly filed and mailed, and a public hearing held herein, the written notice of which complied with the requirements of Sections 4909.19 and 4903.083, Revised Code.
- (3) The stipulation submitted by the parties is reasonable and, as indicated herein, shall be adopted.
- (4) The existing rates and charges for sewer service are insufficient to provide the applicant with adequate net annual compensation and return on its property used and useful in the provision of sewer service.
- (5) A rate of return of 10 percent is fair and reasonable under the circumstances of this case and is sufficient to provide the applicant just compensation and return on its property used and useful in the provision of sewer service to its customers.

- (6) The applicant is authorized to withdraw its current tariffs and to file, in final form, revised tariffs which the Commission has approved herein.

ORDER:

It is, therefore,

ORDERED, That the stipulation and recommendation filed on April 29, 2009, is approved in accordance with this opinion and order. It is, further,

ORDERED, That the application of Water and Sewer LLC for authority to increase its rates and charges for sewer service is granted to the extent provided in this opinion and order. It is, further,

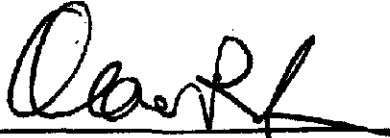
ORDERED, That a waiver of Rule 4901:1-15-27(B)(3)(b), O.A.C., be granted as discussed herein. It is, further,

ORDERED, That the customer notice is approved and the applicant is authorized to file in final form four complete, printed copies of tariffs consistent with this opinion and order, and to cancel and withdraw its superseded tariffs. It is, further,

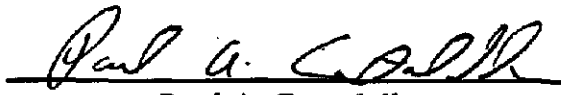
ORDERED, That the effective date of the new tariffs shall be a date not earlier than both the date of this opinion and order and the date upon which four complete, printed copies of final tariffs are filed with the Commission. The new tariffs shall be effective for bills rendered on or after such effective date. It is, further,

ORDERED, That a copy of this opinion and order be served on all parties of record.

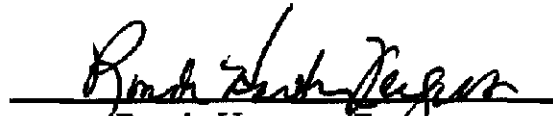
THE PUBLIC UTILITIES COMMISSION OF OHIO



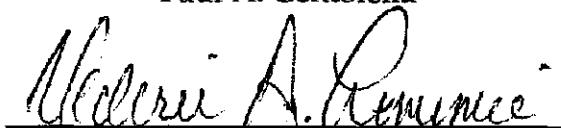
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

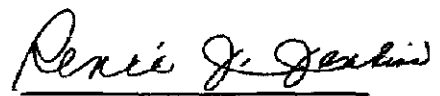


Cheryl L. Roberto

JRJ/vrm

Entered in the Journal

MAY 27 2009



Renee J. Jenkins  
Secretary