

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Aqua Ohio, Inc. for Authority to Increase)
Its Rates and Charges in the Stark) Case No. 10-311-WW-AIR
Regional Division.)

PUCO

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MEMORANDUM CONTRA AQUA OHIO, INC.'S
MOTION FOR APPROVAL OF WAIVERS OF VARIOUS APPLICATION
FILING REQUIREMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

On March 12, 2010, Aqua Ohio, Inc., ("Aqua" or "Company") filed its Notice of Intent to File an Application for an Increase in Rates and charges (amounting to an overall increase of 20%¹) regarding Aqua's sale of water to its customers in its Stark Regional Division. Also on March 12, 2010, Aqua filed a Motion for Approval of Waivers of Various Application Filing Requirements. In a separate filing today, the Office of the Ohio Consumers' Counsel ("OCC") is moving to intervene on behalf of all the approximately 35,000 consumers of Aqua, to protect their interest in reasonable rates (among other issues in the case).

As explained below, OCC requests that the Public Utilities Commission of Ohio ("Commission" or "PUCO") deny Aqua's requests for waivers of the Standard Filing Requirements ("SFRs"). In part, Aqua seeks a waiver from the PUCO's requirement to file all or parts of Schedules B, C, D, F and expert testimony on Rate of Return. Aqua

¹ Aqua's PFN Exhibit 2.

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also seeks tacit approval of its decision to provide information only for the Stark division of Aqua as opposed to Aqua Ohio and Aqua America (Aqua's parent corporation), stating in its Motion that Aqua proposes to prepare the schedules and information "for the Stark Regional Division only"²

The required information would provide transparency to customers and serve the needs of interested parties who will review this request by Aqua for the significant 20% rate increase during a time when Aqua's customers struggle in a dire economy. The information required by the Standard Filing Requirements may also serve the PUCO Staff's interest in a full investigation of this Aqua proposal to substantially increase customers' rates. Accordingly, the Commission should deny Aqua's waiver requests, in part, as discussed herein.

II. STANDARD OF REVIEW AND PROCEDURE

A. Burden to Show Good Cause

All applications requesting an increase in rates filed under R.C. 4909.18 must conform to the Standard Filing Requirements.³ A waiver of the standard filing requirements shall only be granted upon a showing of good cause.⁴ In determining whether good cause has been demonstrated by the utility, the Commission shall consider the following criteria:

- (i) Whether other information, which the utility would provide if the waiver is granted, is sufficient so that the commission staff can effectively and efficiently review the rate application.

² Aqua's Motion at Memorandum in Support paragraphs 1-5, and 7.

³ See Ohio Adm. Code 4901-7-01.

⁴ See Ohio Adm. Code 4901-7-01, Appendix A, Chapter II, Paragraph A, Subparagraph 4 (c).

- (ii) Whether the information, which is the subject of the waiver request, is normally maintained by the utility or reasonably available to it from the information which it maintains.
- (iii) The expense to the utility in providing the information, which is the subject of the waiver request.⁵

B. Procedure for Rulings on Waiver Requests

This Memorandum Contra is filed pursuant to Ohio Adm. Code 4901-1-12(B)(1), which provides for any party to file a memorandum contra within 15 days of the service of a motion. For purposes of motions and memoranda under Ohio Adm. Code 4901-1-12, it is provided in Ohio Adm. Code 4901-1-12(E) that “the term ‘party’ includes all persons who have filed motions to intervene which are pending at the time a motion or memorandum is to be filed or served.” OCC filed its Motion to Intervene in this proceeding on March 30, 2010. Therefore, OCC is considered a “party” for purposes of filing this memorandum contra under Rule 12.

In this regard, OCC has been a party to prior rate cases filed by Aqua,⁶ and has provided the Commission with consumer recommendations on Aqua’s waiver requests in Case No. 09-560-WW-AIR, for example. In another recent water rate case, the water company sought a waiver of a requirement of Ohio Adm. Code 4901-7-01, Appendix A, Chapter II, Paragraph (A) Subparagraph (6)(a), regarding the filing of direct testimony by utility personnel and other expert witnesses. There, the Commission stated, “The rule * * * contemplates that the Staff and *any intervening party* will have the information

⁵ See *Id.*

⁶ *In the Matter of the Application of Aqua Ohio, Inc. for Authority to Increase its Rates and Charges in the Lake Erie Division*, Case No. 07-564-WW-AIR; *In the Matter of the Application of Aqua Ohio, Inc. for Authority to Increase its Rates and Charges in the Masury Division*, Case No. 09-560-WW-AIR. *In the Matter of the Application of Aqua Ohio, Inc. for Authority to Increase its Rates and Charges in its Lake Erie Division*, Case No. 09-1044-WW-AIR.

necessary to form an opinion concerning the utility's rate of return calculation prior to a staff report of investigation and any objections being filed."⁷

OCC, on behalf of consumers, is such an "intervening party" as referenced by the PUCO and is a party that needs adequate information from public utilities, here Aqua, "to form an opinion" and present that opinion to the PUCO for its decision-making under R.C. 4903.09. In furtherance of this Commission-recognized imperative for the Staff and intervening parties to have adequate information, OCC submits its reasons for the PUCO to deny certain of Aqua's waiver requests.

III. LAW AND ARGUMENT

A. Aqua Has Failed to Show Good Cause Why Certain Waivers Should be Granted.

- 1. The Parties and the PUCO Staff can more effectively and efficiently review the rate Application as it affects Aqua's customers if the Application process is transparent and Aqua is not granted waivers from the SFRs.**

The Applicant in this case is Aqua Ohio, Inc., not the Stark Regional Division of Aqua Ohio. Therefore, adequate information on Aqua Ohio, not its Stark Regional Division, is the necessary component of Aqua's Application. A limitation of information specified in the SFRs to only information regarding Aqua's Stark Regional Division contradicts the PUCO's rules requiring information about the *applicant* and will not allow the Staff and intervening parties, such as OCC, to effectively and efficiently review the Company's Application.

⁷ *In the Matter of the Application of Ohio American Water Company To Increase Its Rates for Water and Sewer Service Provided to Its Entire Service Area*, PUCO Case No. 09-391-WS-AIR, June 3, 2009 Entry at Paragraph 8. (Emphasis added).

For example, the Company's Notice of Intent to File an Application For An Increase In Rates includes a sample copy of the letters sent to legislative and public officials in Aqua's Stark Regional Division that announce **Aqua Ohio's** (not Aqua Stark's) proposal to increase its overall rates by 20%.⁸ As justification for the proposed rate increase of over 20%, the letter states, "A primary reason for the rate request is to support Aqua [Ohio]'s infrastructure improvement program which enhances system reliability, fire protection and customer service."⁹

Aqua is a subsidiary of Aqua America, Aqua's parent company.¹⁰ It is or should be a matter of interest for those reviewing Aqua's significant rate increase proposal to investigate whether the financial burden on Aqua's Stark Regional Division customers is appropriate, given the fact it is only part of the overall Aqua corporate structure. There should be sufficient information to allow the PUCO and parties in the regulatory process the ability to verify that Aqua's Stark Regional Division customers are not in any way subsidizing other Aqua Ohio Divisions or the parent company, Aqua America.

Aqua's customers, including the residential consumers that OCC represents, have the right to review Aqua's Application and to present recommendations to the PUCO for its determination of reasonable and lawful rates. That right to investigate and recommend includes in its scope the typical issues to address when utilities operate with affiliates and claim expenses related to use of affiliate resources. The PUCO Staff, OCC and other interested parties should have all of the total company information and data, including consolidated rate of return information, necessary for a basic ratemaking determination as

⁸ PFN at 1.

⁹ Aqua Ohio Water Company's PFN Exhibit 2, Page 2 of 11.

¹⁰ Id. at Footnote 2.

to whether Aqua's customers are being fairly charged vis-a-vis other affiliates of Aqua Ohio, Inc. or Aqua America.

In addition to OCC's objection, generally, to the waiver of necessary SFR information from Aqua, OCC lists the following specific objections to the waiver requests of Aqua regarding the following schedules:

Schedules D-1.1 (Rate of Return Summary, Parent-Consolidated), D-2.1 (Embedded Cost of Short Term Debt, Parent-Consolidated), D-3.1 (Embedded Cost of Long Term Debt, Parent-Consolidated) and D-4.1 and D-4.2 (Embedded Cost of Preferred Stock, Parent-Consolidated):

The parent-consolidated (Aqua America) cost of capital data should be provided. Because there is no market-based cost of capital (equity) data for Aqua Ohio, the cost of capital analysis of this Application will rely on other water companies comparable to the parent-consolidated Aqua America, rather than Stark or Aqua Ohio. In addition, there should be essentially no cost associated with providing this important financial data because the data should be readily available to Aqua America.

Schedule D-5.1 (Comparative Financial Data/Parent-Consolidated):

It is not clear whether the waiver request is referring to Aqua Ohio, Inc. or Aqua America. But Aqua Ohio should have this information of its own operation readily available and should provide it.

Schedules F-1(Projected Income Statement – Total Company and Division, Current Rates), F-1A (Projected Income Statement, Proposed Rates-Total Company and Division, Current Rates) and F-4 & F-4A (Projected Statement of Changes in Financial Position-Total Company and Division):

Information regarding projected net earnings and changes in financial position on a total company basis, i.e., an Aqua Ohio, Inc., basis, may be more reliable than the same information for one service territory (Stark). Information in the above schedules is

essential to determine the impact of the proposed rates on the financial position of the Stark Regional Division and Aqua Ohio. If this information is not made available with the Application, Staff and intervening parties will ultimately request it through data and discovery requests, as OCC has done in past cases, creating needless additional rate case expense and delay for information that the PUCO already determined, in its SFR rules, should be provided. Therefore, the Commission should order Aqua to file the information with its Application as required by the Ohio Administrative Code and avoid the need for additional discovery in the case.

2. Aqua's Motion fails to demonstrate that the information required by the SFRs is unavailable.

While claiming that "the other information provided in the Application will be sufficient so that the Commission can effectively and efficiently review the rate Application,"¹¹ Aqua fails to allege or demonstrate that the information required by the SFRs is not "normally maintained by the utility or reasonably available to it from the information which it maintains."¹² In fact, as to Schedules C-11.1, C-11.2, C-12.1, C-12.3, C-13, Aqua offers that the information will be provided in response to data requests.¹³ Other information required by Schedules B-2.3, C-9, F-1, and F-1.a. is apparently available, but objected to by Aqua as "not relevant."¹⁴

It makes little sense to require Staff and intervening parties to request the information, and incur additional rate case expense, in data requests or discovery, if the information is available and is supposed to be provided anyway pursuant to the PUCO's

¹¹ Motion for Waiver at Part A (See heading).

¹² See Ohio Adm. Code 4901-7-01, Appendix A, Chapter II, Paragraph A, Subparagraph 4(c).

¹³ See Motion for Waiver, Part A, Paragraphs 3, 4, and 5.

¹⁴ *Id.* at Paragraphs 2 & 10.

rules for filing requirements. The process and the Application need to be transparent. Aqua should file the information with its Application, as the Ohio Administrative Code prescribes.

3. Aqua fails to demonstrate that there would be added expense in providing the information required by the SFRs.

Aqua's Motion claims, "The expense to provide the information subject to the waiver request is unreasonable."¹⁵ However, after raising this claim, Aqua's Motion subsequently fails to identify *any* amount of time or expense that will be necessary to produce *any* of the information required by the SFRs. Aqua's Motion contains no discussion of the matter of added expense at all. Thus, Aqua's Motion fails to support this criterion for waiver of SFRs.

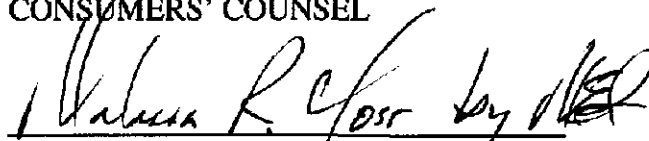
IV. CONCLUSION

In a case in which the Applicant, Aqua Ohio, Inc. is proposing a rate increase that would add 20% to the current water rates of the customers in Aqua's Stark Regional Division service territory, and at a time when customers are faced with a dire economy, all relevant information should be available for a full investigation of Aqua's proposed rate increase. Aqua's Motion fails to show good cause why the Commission should grant a waiver from nearly all of the SFRs at issue. Accordingly, the Commission should deny Aqua's request, in part, as discussed above.

¹⁵ Motion for Waiver at Part A (See heading).

Respectfully submitted,

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

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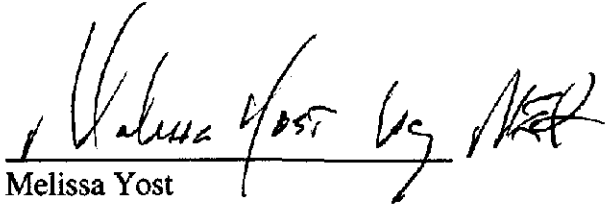
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra was served on the persons stated below via regular U.S. Mail Service, postage prepaid, this 30th day of March, 2010.


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