

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**PUCO**

In the Matter of the Commission's Review )  
of Chapter 4901-7, Ohio Administrative ) Case No. 08-558-AU-ORD  
Code, Standard Filing Requirements for )  
Rate Increases Filed Pursuant to Chapter )  
4909, Revised Code. )

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

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In order to ensure that Ohio residential utility consumers receive adequate service at reasonable rates, the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility customers, files this Application for Rehearing of the Finding and Order ("Order") that the Public Utilities Commission of Ohio ("Commission" or "PUCO") journalized on May 13, 2010 in this proceeding. In the Order, the Commission revised its standard filing requirements for public utilities seeking to increase the rates that customers pay.

OCC files this Application for Rehearing of the Commission's Order under R.C. 4903.10 and Ohio Adm. Code 4901-1-35. The Order is unreasonable and unlawful because the PUCO did not require (but should have required) a company providing only water or sewer service to count all its customers, including year-round customers, seasonal customers and available for use customers, in determining the company's size for the purpose of filing requirements for its application.

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The reasons for granting OCC's Application for Rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On May 7, 2008, the PUCO issued an Entry in this proceeding setting forth rules, proposed by the PUCO Staff, for the standard filing requirements for applications requesting an increase in rates pursuant to R.C. 4909.18, all complaints filed under R.C. 4909.34 and all petitions filed under R.C. 4909.35.<sup>1</sup> Included in the Entry were proposed revisions to the thresholds for filing requirements for gas, telephone and water/sewer companies. The thresholds are based on the number of customers the utility serves, with smaller utilities having filing requirements different from larger utilities.

On July 15, 2008, OCC filed Comments on the proposed rules.<sup>2</sup> In its Comments, OCC asked the Commission to clarify that a water utility, or combination water and sewer company, must include year-round customers, seasonal customers and available for use customers in determining the filing requirements for the utility's application.<sup>3</sup>

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<sup>1</sup> Entry at 3.

<sup>2</sup> In an Entry issued on June 13, 2008, the Commission extended the deadline for filing comments to July 15, 2008 and the deadline for filing reply comments to September 30, 2008. OCC filed Reply Comments on September 30, 2008.

<sup>3</sup> OCC Comments at 9.

In the Order, the Commission responded to OCC's request for clarification by stating that "*a combined water and sewer company* must count all of its customers combined, including year-round customers, seasonal customers, and available-for-use customers."<sup>4</sup> The Commission, however, did not address companies that provide *only* water (or sewer) service.

## **II. STANDARD OF REVIEW**

Applications for rehearing are governed by R.C. 4903.10. R.C. 4903.10 requires that an 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." In addition, Ohio Adm. Code 4901-1-35(A) states: "An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing."

In considering an application for rehearing, R.C. 4903.10 provides that "the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear." The statute also provides: "If, after such rehearing, the commission is of the opinion 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; otherwise such order shall be affirmed." As shown herein, the statutory standard for modifying the Order is met here.

## **III. ALLEGATION OF ERROR**

In its Comments, OCC asked the Commission to "clarify that a water utility, or combination water and sewer company, must include year-round customers, seasonal

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<sup>4</sup> Order at 8 (emphasis added).

customers and available for use customers in determining the filing requirements for the utility's application."<sup>5</sup> In the Order, the Commission provided a clarification, but limited the clarification only to companies that provide *both water and sewer service*: "In response to OCC's request for clarification, the Commission states that *a combined water and sewer company* must count all of its customers combined, including year-round customers, seasonal customers, and available-for-use customers."<sup>6</sup> The Commission did not address the requirements for companies that provide only water or sewer service.

The Commission should modify the Order and require companies that provide only water or sewer service to also count year-round customers, seasonal customers and available for use customers in determining the filing requirements for the company's application. In asking for the clarification in its Comments, OCC noted that some utilities provide service to areas that have a large seasonal population.<sup>7</sup> This may include companies that, either now or in the future, offer only water or sewer service. In determining which filing requirements to follow, such companies should include all their customers, as combined water and sewer companies must do.

The modification to the Order sought by OCC is consistent with the language contained in Appendix A to Ohio Adm. Code 4901-1-07. In setting forth the standard filing requirements for each category of utilities, Appendix A contains the following statement: "For the purpose of determining the size of the utility (small or large), each utility company shall include in its customer count *all* customers over which the public utilities commission of Ohio has jurisdiction without regard to the number of customers

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<sup>5</sup> OCC Comments at 9.

<sup>6</sup> Order at 8 (emphasis added).

<sup>7</sup> OCC Comments at 9.

proposed to be affected by the application.”<sup>8</sup> The Commission should ensure that companies providing only water or sewer service furnish an accurate customer count, in order to ensure that they follow the appropriate filing requirements.

It was unreasonable for the Commission to not require companies that offer only water or sewer service to count all their customers in determining the filing requirements for rate increase cases. The Commission should modify the Order and apply the requirement to companies that provide only water or sewer service.

#### IV. CONCLUSION

As discussed herein, the Commission’s Order is unreasonable. In order to protect residential customers, the Commission should modify the Order as OCC recommends.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS’ COUNSEL



Terry L. Etter, Counsel of Record  
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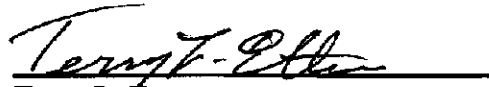
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<sup>8</sup> Ohio Adm. Code 4901-1-07, Appendix A at 8, 160, 188 (emphasis added).

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Application for Rehearing was provided electronically to the persons listed below on this 14<sup>th</sup> day of June 2010.



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