

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Aqua)
Ohio, Inc. to Amend Tariff Pages to its) Case No. 11-681-WW-ATA
Stark Division Tariff.)

In the Matter of the Application of Aqua)
Ohio, Inc. to Amend Tariff Pages to its) Case No. 11-682-WW-ATA
Struthers Division Tariff.)

In the Matter of the Application of Aqua) Case No. 11-683-WW-ATA
Ohio, Inc. to Amend Tariff Pages to its)
Lake Erie Division Tariff.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in these cases where Aqua Ohio, Inc. ("Aqua" or "Company") is seeking to amend its tariffs by proposing additional disconnection criteria for its customers living in multi-tenant residences.¹ OCC is filing on behalf of all the approximately 67,000 residential utility customers of Aqua. 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.

The Memorandum in Support includes comments regarding the additional disconnection options Aqua is seeking through an amendment to its tariff. The Commission should order Aqua to modify its Application and tariff, consistent with OCC's comments.

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

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Richard C. Reese

Richard C. Reese, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-8574

reese@occ.state.oh.us

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Aqua)
Ohio, Inc. to Amend Tariff Pages to its) Case No. 11-681-WW-ATA
Stark Division Tariff.)

In the Matter of the Application of Aqua)
Ohio, Inc. to Amend Tariff Pages to its) Case No. 11-682-WW-ATA
Struthers Division Tariff.)

In the Matter of the Application of Aqua) Case No. 11-683-WW-ATA
Ohio, Inc. to Amend Tariff Pages to its)
Lake Erie Division Tariff.)

MEMORANDUM IN SUPPORT

These cases involve the review of the reasonableness and lawfulness of Aqua's proposal to amend its tariffs to permit the Company to disconnect the service of customers who have paid their bills. OCC has authority under law to represent the interests of all the approximately 67,000 residential utility customers of Aqua, pursuant to R.C. Chapter 4911. OCC herein supports its Motion to Intervene and provides comments regarding inadequacies found in Aqua's Applications to amend its tariffs.

I. MOTION TO INTERVENE

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 that involves the possible disconnection of water service even in cases where customers are current on their water bill. 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 representing the residential customers of Aqua in this case involving the tariff provisions concerning disconnection of service for water customers of the Company. 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 residential customers will include advancing the position that Aqua's water customers who are current on their bill shall not be subject to disconnection of their water service. 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.

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 advocate for residential utility customers, OCC has a very real and substantial interest in this case where residential customers could be subject to disconnection of service through no fault of their own.

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 customers. 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

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

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 customers, the Commission should grant OCC's Motion to Intervene.

II. COMMENTS

A. Background

On February 7, 2011, Aqua filed three applications to amend the general terms and conditions within its tariff for the Lake Erie Division,³ Struthers Division,⁴ and Stark Division⁵. Aqua is seeking additional options to allow it to disconnect customers' service for specific situations where a tenant in a multiple family dwelling is not paying for water service and the Company is unable to shut-off service to one tenant. More specifically, the Applications apply to situations where the tenants are individually metered but there is only one service line for the entire property. The Company claims, therefore that it is unable to terminate service for the one nonpaying customer without also terminating service for the other customers – even though the other customers are not delinquent in paying their water bills.

B. Company Proposal

The proposed tariff provides Aqua with a unilateral right to terminate service to the property with ten-day advance notice to the property owner and the other paying Aqua customers.

³ *In the Matter of the Application of Aqua Ohio, Inc. to Amend Tariff Pages to its Stark Division Tariff*, Case 11-681-WW-ATA, Application.

⁴ *In the Matter of the Application of Aqua Ohio, Inc. to Amend Tariff Pages to its Struthers Division Tariff*, Case 11-682-WW-ATA, Application.

⁵ *In the Matter of the Application of Aqua Ohio, Inc. to Amend Tariff Pages to its Lake Erie Division Tariff*, Case 11-683-WW-ATA, Application.

*The property owner shall notify the Company within 7 days of receiving the above notification of which option he is choosing. In the event the property owner does not comply with the above, at least 10 days notification will be given to both the property owner and tenants prior to discontinuing service to the property.*⁶
(Emphasis Added).

Aqua's proposed tariff amendment would permit it to notify the property owners of multi-tenant dwellings served by only one service line to offer four alternatives which would permit the Company to disconnect only the service of only nonpaying customers.⁷ According to the proposed tariff, the property owner's four alternatives would be: install separate outside shut-off valves for each tenant; configure the building as a master-metered premise in which one metered account in the property owner's name would provide service for the entire building; provide the Company access to the tenant's meter; or the property owner would assume liability for the individual tenant's past due bill and future bills.

The proposed tariff goes even further and creates the possibility of disconnection of service for a *paying* customer if the property owner fails to adopt one of the alternatives provided by the Company for multi-tenant properties served by one service line.

C. The Proposed Tariff Violates Commission Rules and Standards

Aqua's proposed Application for a tariff amendment is in violation of R.C. 4909.18 which requires, among other things that the Application to amend the Company's tariff:

* * * shall contain a schedule of the * * * regulation or practice affecting the same, a schedule of the modification amendment,

⁶ Application, Exhibit B at 12.

⁷ Application, Exhibit B at 12.

change, increase, or reduction sought to be established, and a statement of the facts and grounds upon which such application is based. If such application * * * proposes the establishment or amendment of a regulation, the application shall fully describe the * * * the regulation proposed to be established or amended, and shall explain how the proposed service * * * differs from services * * * presently offered or in use, or how the regulation proposed to be established or amended differs from regulations presently in effect.

Aqua's application contains no description of the regulation to be amended and does contain a statement of fact and grounds upon which the Application is based. The Application is, therefore, deficient under the Ohio law.

R.C. 4905.22 provides that: "Every public utility shall furnish necessary and adequate service and facilities * * * as are adequate and in all respects just and reasonable." Aqua's customers are entitled to service that is "in all respects just and reasonable." The provision of just and reasonable service necessarily requires that paying customers not be disconnected for the nonpayment of water bills by other Aqua customers. The Application is in violation of Ohio law in several respects and should be rejected by the Commission.

The Company proposes to infringe on the rights of residential customers of Aqua by holding the paying customers of Aqua, who are current on their water bills, responsible for the failure of other customers to pay their bill. Ohio Adm. Code 4901:1-15-27 governs the disconnection of service to water customers. Rule 27 provides that no customer can be disconnected unless each of the "disconnection conditions" in the rule applies. There is no authority in Rule 27 for the disconnection of water service to Aqua

customers who are paying the bills for their water service. In addition, the Commission rules state that each waterworks tariffs must contain:

A statement that nothing within the company's tariff shall take precedence over the rules set forth in this chapter, unless otherwise specifically ordered by the commission pursuant to rule 4901:1-15-02 of the Administrative Code.⁸

There is no authority in the Rule for Aqua to disconnect some of its customers' water service when a neighboring customer did not pay his or her water bill.⁹ Because the Application is incomplete and lacking rationale for the proposed change, OCC can only assume that Aqua would expect that a disconnection of service to the property would result in the paying tenants applying enough pressure on the property owner to address the issue. The Application should have included a completed Exhibit C-1 since the proposed tariff results in a change to Aqua's General Regulations Governing Service in its tariff. The additional tariff language would also modify the intent of Ohio Adm. Code 4901:1-15-27. The Company's proposed practice would jeopardize the health, safety and convenience of paying customers in order to leverage action by the property owner. Even if Aqua is unsuccessful in persuading a property owner to provide additional disconnection options for the Company, such as installing additional shut-off capabilities or expanding access meters for each customer, paying customers should not be penalized.

⁸ Ohio Adm. Code 4901:1-15-15(A)(2).

⁹The rule is as follows: 4901:1-15-27(A) Service may not be refused or disconnected to any customer or refused to any applicant for service unless the company complies with all of the disconnection procedures contained in this rule. Service shall not be disconnected to any customer unless the disconnection conditions in this rule may be specifically applied to that customer.

D. The Proposed Tariff Results in Lost Revenues

Aqua's proposed tariff amendment may be counter-productive considering that the tariff results in potential lost revenues for the Company. The proposed tariff disregards the impact of customers who pay their bills in a timely fashion but would no longer be purchasing water from the Company (and no longer making payments to the Company) if service is disconnected to the entire property.

Aqua was provided approval to adjust rates for the Lake Erie Division within the last year.¹⁰ If Aqua is experiencing difficulty in disconnecting tenants in multi-tenant dwellings who are not paying their water bills, the issues could have been raised in the rate case proceeding. However, to now address these issues in a proposed tariff amendment circumvents the opportunity OCC and others had in the rate proceeding to explore the full impact this change has on residential consumers.

E. The Proposed Tariff Fails to Define the Content of the Ten-Day Notice

Aqua proposes that with a 10-day advance notice to the property owner and tenants, the Company can disconnect service to the property. However, the tariff fails to explain how the disconnection notice provisions of Ohio Adm. Code 4901:1-15-27(D) are to be modified to accommodate the changes to the tariff. For instance, a disconnection notice must contain the reasons for disconnection and actions the customer can take to avoid disconnection. None of this vital information is referenced in the tariff amendment. This lack of explanation for what will be in the ten-day notice to customers is a critical oversight. The PUCO should determine what information Aqua should be

¹⁰ *In the Matter of the Application of Aqua Ohio, Inc. for Authority to Increase Rates and Charges in the Lake Erie Division*, Case 09-1044-WW-AIR, Opinion and Order, September 1, 2010.

required to provide for customers, in the notice. Tenants who paid their water bills and receive the notice will certainly be seeking remedies to avoid the disconnection of water service. What steps tenant/customers may take to avoid disconnection of water service must be contained in the notice. Because the proposed tariff amendment permits disconnection of all customers on a single service line, if the landlord or property owner does not take certain actions, the steps to avoid disconnection available to these customers seem limited.

The Commission has promulgated rules related to landlord-tenant disconnection issues and the 10-day notice in the natural gas and electric disconnection rules.¹¹ The disconnection rules which apply to electric and natural gas companies, among other things, contain landlord-tenant provisions which spell out requirements for a notice to each tenant of multi-tenant dwelling if service is to be disconnected for nonpayment of the bill by the landlord or property owner. Unfortunately, these rules do not apply to the water industry. Approving a ten-day advance notice requirement without specifying the content of such ten-day notice should not be permitted.

F. The Application Mischaracterizes a Change in Intent of the Tariff

Aqua claims in the Applications that the proposed changes involve “Various related and unrelated textual revisions, without change in intent.”¹² However, the applications clearly change the intent of the existing tariff. Under its current tariff, Aqua has a right to access the service line and meter to isolate the customer who is not paying the water bill and subject that customer to disconnection. The current tariff states¹³:

¹¹ Ohio Adm. Code 4901:1-18-08.

¹² Application at 1.

¹³ Application, Exhibit A at 12.

The Company shall have the right to access the customer service line and meter to isolate the customer(s) whose actions/inactions subject the customer to disconnection. (Emphasis Added).

Under the proposed tariff, however, Aqua significantly changes the intent of the tariff by unreasonably shifting its current responsibility to the property owner and the other paying customers. Aqua has provided no factual support for the tariff amendment, as required by Ohio law¹⁴ and appears to be creating a solution in search of a problem.

III. CONCLUSION

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 Aqua's 67,000 residential consumers, the Commission should grant OCC's Motion to Intervene.

Aqua has proposed tariff amendments that place Aqua's customers who pay their water bills at risk of being disconnected because other customers have not paid their water bills. The proposed tariff change violates Commission rules and, in fact, results in lost revenues for the Company. For all the above reasons, the Commission should deny Aqua's Application to amend its tariffs.

¹⁴ R.C. 4909.18.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ Richard C. Reese

Richard C. Reese, Counsel of Record
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-8574
reese@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene and Comments* was served on the persons stated below *via* regular U.S. Mail Service, postage prepaid, this 7th day of March 2011.

/s/ Richard C. Reese _____
Richard C. Reese
Assistant Consumers' Counsel

SERVICE LIST

John W. Bentine
Mark S. Yurick
Chester Willcox & Saxbe, LLP
65 E. State Street, Suite 1000
Columbus, OH 43215
jbentine@cwsllaw.com
myurick@cwsllaw.com

William L. Wright
Attorney General's Office
Public Utilities Commission of Ohio
180 E. Broad St., 6th Fl.
Columbus, OH 43215
William.wright@puc.state.oh.us

Attorneys for Aqua Ohio, Inc.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

3/7/2011 5:21:27 PM

in

Case No(s). 11-0681-WW-ATA, 11-0682-WW-ATA, 11-0683-WW-ATA

Summary: Motion Motion to Intervene and Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Reese, Richard C.