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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Aqua)
Ohio, Inc. to Amend Tariff Pages to its)
Stark Division Tariff.)

Case No. 11-681-WW-ATA

In the Matter of the Application of Aqua)
Ohio, Inc. to Amend Tariff Pages to its)
Struthers Division Tariff.)

Case No. 11-682-WW-ATA

In the Matter of the Application of Aqua)
Ohio, Inc. to Amend Tariff Pages to its)
Lake Erie Division Tariff.)

Case No. 11-683-WW-ATA

**AQUA OHIO, INC.'S RESPONSE TO THE OFFICE OF THE OHIO CONSUMERS'
COUNSEL'S MOTION TO INTERVENE AND COMMENTS**

As noted in the Office of the Consumers Counsel's ("OCC") Motion to Intervene and Comments, filed on March 7, 2011, Aqua Ohio, Inc. ("Aqua") filed three applications to amend tariff language in its Lake Erie, Struthers and Stark Division tariffs¹ (hereinafter referred to herein as the "Tariff Cases"). The language proposed in the Tariff Cases would allow a property owner three additional options to avoid disconnection for non-payment of water service to a property where there are multiple water users served off of one service line, with no individual shut off valve for individual tenants, and where one or more of the tenants fails to pay for water service. In this rather rare circumstance, there is a separate meter for each user, but only one service line. Otherwise, it would not be possible to bill the individual tenants separately. However, unlike the vast majority of Aqua's billed customers, there is no separate shut-off valve for the individual non-paying users' line. Currently, the only option available to

¹ Case numbers noted in the caption.

a property owner in this situation to avoid termination of service to the property is to allow Aqua access to the customer service line and meter to isolate the non-paying customer. In addition to this option, the language proposed in the Tariff Cases provides a property owner with three additional ways to avoid interruption of water service to the property.

I. RESPONSE TO MOTION TO INTERVENE

As the OCC notes in its Motion to Intervene², the law governing Aqua's tariff application is set forth at RC 4909.18, which states in part:

"4909.18 Application to establish or change rate.

Any public utility desiring to establish any rate, joint rate, toll, classification, charge, or rental, or to modify, amend, change, increase, or reduce any existing rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same, shall file a written application with the public utilities commission. ...If the commission determines that such application is not for an increase in any rate, joint rate, toll, classification, charge, or rental, the commission may permit the filing of the schedule proposed in the application and fix the time when such schedule shall take effect. If it appears to the commission that the proposals in the application may be unjust or unreasonable, the commission shall set the matter for hearing and shall give notice of such hearing by sending written notice of the date set for the hearing to the public utility and publishing notice of the hearing one time in a newspaper of general circulation in each county in the service area affected by the application. At such hearing, the burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility. ***" (Emphasis added.)

Therefore, applications filed under RC 4909.18 may be set for a hearing if they are applications for an increase in rates, or if the proposals in the application may be unjust

² Motion to Intervene and Comments by the Office of Consumer's Counsel, filed herein on March 7, 2011, at p.5.

or unreasonable. Neither situation is presented by these Tariff Cases, so there is no reason for the Commission to hold a hearing.

Nowhere in its comments does OCC argue that the tariff language proposed by Aqua in these Tariff Cases constitutes an application for an increase in rates. Rather, OCC argues only that in these Tariff Cases, "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 only one tenant."³ "More specifically, the Applications apply to situations where the tenants are individually metered but there is only one service line for the entire property."⁴ Clearly then, none of the Tariff Cases could be characterized as an Application for an increase in rates. In fact, allowing Aqua to cease servicing non-paying water users will likely result in decreased rates for paying customers, since paying customers will cease to subsidize service to non-paying users.

Further, while OCC makes several arguments that the Tariff Cases do not comply with the provisions of RC 4909.18, OCC never argues that it is unjust or unreasonable to disconnect service to a non-paying water user. Nor could it, for no utility company in Ohio is required to provide service to a user that does not pay, absent rare and specific circumstances, generally related to preserving the public health.⁵

³ Id., at 4. However, that assertion is not an accurate description of these applications. By the filing of these Tariff Cases, Aqua seeks to permit a landowner to utilize additional options to avoid disconnection of service to a multi-tenant property. In other words, Aqua is seeking to amend its tariffs to avoid disconnection, not to provide Aqua more ways to allow it to disconnect service.

⁴ Id.

⁵ It is important to note that Ohio's other investor owned water utility, Ohio American Water Co., has substantially the same language in its tariff as proposed by Aqua in these Tariff Cases. (See, Section 3(C) 2nd Revised Sheet No. 29, PUCO No.15 Tariff of Ohio American Water Company, "Where a rental property for more than one unit has a single line serving two or more units, and the customer(s) in one or more units has qualified for disconnection, after the Company provides 14 days notice to the property

As a preliminary matter then, OCC is not entitled to intervention because there is no reason to hold a hearing in connection with the Tariff Cases. As set forth in Ohio Domestic Violence v. PUCO (1994), 70 Ohio St.3d 311, 315, R.C. 4903.221 clearly contemplates intervention in only quasi-judicial proceedings, characterized by notice, hearing and the making of an evidentiary record. Since the Tariff Cases are not applications for an increase in any rate, nor are the proposed tariff revisions unjust or unreasonable, there is no basis to hold a hearing in the Tariff Cases. Since no hearing should be held, and indeed OCC does not request that a hearing be held, OCC has no right to intervene in the Tariff Cases.

Ohio Consumer's Counsel v. Public Utilities Commission of Ohio, (2006) 111 Ohio St.3d 384, cited by OCC does not provide OCC intervention as of right in all cases. As noted there, no party to that case cited any concern about delay. The Tariff Cases were filed on February 7, 2011 and were set to be considered on the Commission's March 9, 2011 meeting. OCC's delay in filing for intervention until two days before the matter was to be considered by the Commission is unreasonable, and OCC makes no showing or allegation that this delay was reasonable or excusable. At this point, OCC's intervention would unreasonably delay the proceedings.

Further, in Ohio Consumer's Counsel, which dealt with an application to change certain accounting procedures,⁶ there were no alternative avenues through which a would-be intervener could seek recourse from the PUCO.⁷ However, in the present

owner, the property owner shall either: (i) immediately install a separate service line to the unit so that the Company may shut off water only to the offending customer(s) of the involved unit(s); (ii) pay the bill on account of the customer of the unit(s); or (iii) assure access to Company personnel to the customer(s) meter(s) or separate curb stop."

⁶ Id., at 5.

⁷ Id., at 7.

Tariff Cases, as in Ohio Domestic Violence, under RC 4905.26, any person aggrieved by the application of the proposed tariff amendments may file a complaint utilizing the complaint procedure set forth in that section.⁸

As stated in Ohio Domestic Violence, "Since the Commission did not exercise its discretion to hold a hearing on applications for new services under RC 4909.18, there is no right to intervene. Intervention in such circumstances would defeat the General Assembly's apparent intent that new services, which in the discretion of the Commission appear to be just and reasonable, be offered to the public without regulatory delay."⁹

II. RESPONSE TO COMMENTS

Under RC 5321.04, a landlord who is a party to a rental agreement shall "[s]upply running water, reasonable amounts of hot water and reasonable heat at all times, except where*** the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection." Therefore, a property owner who rents to others is under a clear legal obligation to provide running water and a reasonable amount of hot water to tenants unless water consumption is controlled solely by the tenant.

Currently, Aqua's tariff allows Aqua to access the customer service line and meter to isolate the customer whose actions or inactions subject the customer to disconnection.¹⁰ The clear purpose and intent of this provision is to allow Aqua to

⁸ Ohio Domestic Violence, at 315.

⁹ Id.

¹⁰ See Stark Division existing tariff Section 3-2, First Revised Sheet No. 4, Struthers Division existing tariff Section 3-2, Fifth Revised Sheet No. 4, and Lake Erie Division existing tariff Section 3-2, First Revised Sheet No. 2.

disconnect non-paying users of water service, so that such non-paying users do not continue to receive water service paid for by subsidies from paying customers.

The proposed tariff language offers four¹¹ ways, rather than one, for a property owner to discontinue water service to non-paying users without disrupting service to paying customers: 1.) install separate shut-off valves for the use of each tenant, 2.) 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, 3.) provide Aqua access to the tenant's meter,¹² or 4.) assume liability for the individual tenant's past due bill and future bills.¹³

As noted, the property owner may still provide access to the tenant's meter, as provided for in current language. The proposed tariff language provides three additional options. OCC mischaracterizes the intent of the language by stating "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." However, Aqua does not expect that disconnection of service to the entire property to occur. Faced with an inability to satisfy the mandatory legal responsibility to provide water and hot water service to paying tenants, Aqua expects that a property owner will avail herself of one of the four options provided by the proposed tariff language to continue water service to the property, one of which is already provided for in the current tariff. Limiting the property owner to one option rather than four does not increase the probability that service to a property will continue. Nor does providing a

¹¹ Three in addition to providing access to a customer service line or meter.

¹² Basically, existing language.

¹³ See, Applications in Tariff Cases.

property owner with three additional options for continuation of service, rather than limiting her to one, change the purpose or intent of the tariff language. It merely increases the ways in which a property owner may handle a tenant attempting to obtain water service without paying for it, and makes it more probable that paying tenants will not be inconvenienced by an interruption in service.

OCC also fails to note that under current tariff language, if a property owner fails to allow Aqua access to the customer service line and meter, to isolate a non-paying water user, service to the entire property may be disconnected after appropriate notice.¹⁴ As noted above, providing three additional ways to allow service to a property to continue does not change the intent of the language. Rather, these additional options decrease the probability that any paying tenant will have water service interrupted. By providing additional options to a property owner to continue service, in addition to the existing language, Aqua decreases the risk that any paying customer will be disconnected or inconvenienced. Further, disconnecting service to non-paying users who attempt to obtain water service without paying for it keeps the rates of paying residential customers as low as possible, by eliminating subsidies to non-paying users and reducing un-collectible expenses, which should please OCC as the representative of residential consumers, the great majority of whom pay for their water usage.

The proposal does not result in lost revenues, rather, by providing property owners with additional options to deal with non-paying water users, the language increases the probability that service to a property will not be interrupted. Moreover, by

¹⁴ See Stark Division existing tariff Section 3-2, First Revised Sheet No. 4, Struthers Division existing tariff Section 3-2, Fifth Revised Sheet No. 4, and Lake Erie Division existing tariff Section 3-2, First Revised Sheet No. 2.


providing additional options to secure payment, the proposed language should increase the probability that revenues will be realized and should decrease un-collectibles expense.

The content of the ten day notice simply does not change under the proposed language. Hence, like many other provisions of the tariff that do not change, no change to the ten day notice is set forth in the Applications in the Tariff Cases. The current notice provided for in the tariff satisfies all applicable legal criteria. OCC is incorrect to assume the contents of the notice change simply because the Application in the Tariff Cases is silent on proposed changes to the notice.

III. CONCLUSION

For the reasons stated above, OCC should not be permitted to intervene in the Tariff Cases at this time and the Commission should approve the Applications and set a date at which those provisions requested in these Tariff Cases should go into effect.

Respectfully submitted,



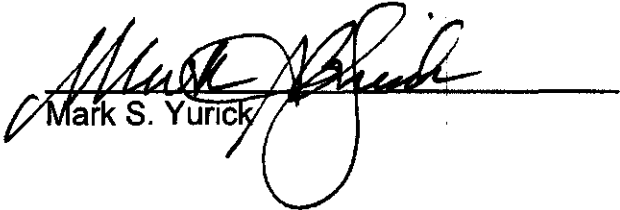
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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Aqua Ohio, Inc.'s Response to the Office of the Ohio Consumers' Counsel Motion to Intervene and Comments* was served by electronic and regular U.S. mail, postage prepaid, on this 14th day of March, 2011 upon the following:

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