

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Water)
and Sewer LLC for an Increase in its Rates)
and Charges for Sewage Disposal Service)

CASE NO. 11-4509-ST-AIR

**INTERVENOR VILLAGE OF RICHFIELD'S MEMORANDUM
CONTRA TO WATER AND SEWER LLC'S APPLICATION FOR REHEARING**

Now comes the Intervening Party, the Village of Richfield, by and through undersigned counsel, and submits its Memorandum contra Water and Sewer LLC's ("Water and Sewer") Application for Rehearing filed on September 11, 2012, pursuant to Ohio Revised Code Section 4903.10 and Ohio Administrative Code Section 4901-1-35.

O.R.C. 4903.10(B) permits the Commission discretion to grant or deny a rehearing if, in the Commission's judgment, there is sufficient reason that the Commission's Order is "unreasonable or unlawful." Further, the Commission may not, upon such rehearing, "take any evidence that, with reasonable diligence, could have been offered upon the original hearing." *Id.*

For the reasons set forth herein, the Village of Richfield (the "Village") opposes a rehearing of this matter and opposes the submission of additional evidence by Water and Sewer on the issues identified in Water and Sewer's Application for Rehearing.

Allowance for Insurance Expense (First and Third Grounds for Rehearing)

Water and Sewer alleges five (5) grounds on which it requests a rehearing. The first and third grounds pertain to the calculation of allowances for insurance expenses. Neither has merit. At the Commission's hearing on Water and Sewer application for rate increase, held on May 10,

2012, Water and Sewer was provided ample opportunity to present all relevant evidence relating to the issue of allowance for insurance expenses, and Water and Sewer did, in fact, present a substantial amount of evidence on the issue. The Commission's Opinion and Order with respect to the basis for allocating and calculating the insurance expenses took that evidence into consideration and is neither unreasonable nor unlawful.

Moreover, even if the Commission were to grant a rehearing it should not allow Water and Sewer to present new evidence on this issue because there is no indication whatsoever that any such new evidence could not have been offered at the original hearing of this matter.

Future Rate Reductions Based Upon Amortization of Certain Expenses

The second ground upon which Water and Sewer seeks a rehearing is the determination of the dates upon which the flat rates/sewer charges will be reduced in connection with the expiration of certain expense amortizations. The Village maintains that a rehearing on this issue should be denied because the basis for the calculation of the reduced rates is not unreasonable or unlawful. In addition, the reduction in rate, as provided for in the Commission's Opinion and Order, will ensure that Water and Sewer does not benefit from over-recovery on the amortized expenses. The requirement that Water & Sewer file tariffs upon completion of certain expense amortizations is a reasonable and lawful safeguard against such over-recovery.

Rate Case Expenses

As its fourth ground for rehearing, Water and Sewer argues that the rate case expenses should not have been limited to \$15,000.00 in the Commission's Opinion and Order when the actual cost for the rate case was allegedly \$27,057.00. However, as has been recognized, it is not the Commission's function to guarantee the dollar-for-dollar recovery of specific past expenses, but rather to provide a reasonable allowance for expenses so as to provide applicant a reasonable

future earnings opportunity. *See In re: Dayton Power & Light Co.*, 29 P.U.R. 4th 145 (PUCO 1979); *In re: Ohio Edison Company*, 61 P.U.R. 4th 241 (PUCO 1984). The Village respectfully submits that the Commission acted appropriately and lawfully by evaluating the size of the requested rate case expense against the requested revenue increase, and considering the number of customers. Through this lens, the expense requested by Water and Sewer is clearly exorbitant and unreasonable, and far exceeds that required to permit applicant a reasonable future earnings opportunity. The 77 customers of Water and Sewer, on the other hand, *cannot* reasonably be expected to reimburse such expenses. The Commission's limitation on the recoverable rate case expenses was lawful and reasonable. No rehearing should be permitted.

Substitution of Service Application

Finally, as its fifth ground for seeking a rehearing, Water and Sewer states that the requirement in the Commission's Opinion and Order that Water and Sewer file a substitution of service application with the Commission by December 2013 is unreasonable and unlawful. Primarily, Water and Sewer argues that the events that must precede the substitution of service are outside of its control and that it is therefore unfair to hold Water and Sewer to such timetable. To-wit, Water and Sewer says that "the ball is in Richfield's court with respect to issues such as securing the required funding, obtaining necessary land rights, and managing the pace of construction" and that "these are matters beyond the company's control."

To the contrary, one of the biggest hurdles to the "long term sewer solution" is financing, an area in which contribution and cooperation from Water and Sewer will be necessary. This was recognized in the Joint Stipulation of Intent filed by the parties, Joint Exhibit 1 at hearing, which provides that topics of discussion in the meetings to be held between Water and Sewer and the Village on a quarterly basis shall include:

“Discussion of the options available to Richfield for funding the costs of the project, including, but not limited to, available grants and/or loans, assessments of benefited properties within the village limits, tap-in fees charged to benefitted properties located outside the village limits including property now owned by Richfield Furnace Run Associates (and how those fees might be structured), the transfer of the Water and Sewer collection facilities to the Village at no cost (and the terms or conditions necessary for such transfer to occur), and possible additional contributions by Water and Sewer.”¹

The notion that the financing of the Village’s sewer project is utterly beyond Water and Sewer’s control is disingenuous. Information from Water and Sewer about the amount it will contribute to this project, and the manner in which it will do so, is critical. The Village stands ready to have such discussions, and believes that the Commission’s imposed deadline for Water and Sewer to file a substitution of service application helps to ensure that Water and Sewer will diligently and timely cooperate with the Village on the sewer project.

The Village notes that the quarterly meeting between the parties set for September 12, 2012 pursuant to the Joint Stipulation and the initial meeting in June 2012 was postponed, in part because Water and Sewer stated that it was unaware that this date had been set. Yet, Water and Sewer was present at the June meeting and reviewed and approved the report of that meeting submitted to the PUCO on or about July 12, 2012, which contained a recital of that agreed future date. In fact, the final line of the report stated: “The parties will meet again at Richfield Town Hall on September 12, 2012 at 10:00 a.m.”

For all of the above reasons, and Village maintains that the requirement that Water and Sewer file a substitution of service application by December 2013 is well within the authority of the Commission and completely reasonable under the circumstances present in this matter.

¹ As the Commission well knows, Water and Sewer’s owners (as Richfield Furnace Run Associates) plan to develop 125 acres of land adjacent to Water and Sewer’s current service area with hundreds of residential dwelling units. Water and Sewer has been clear from the outset that it seeks assurance that these adjacent lands could be served by the sanitary sewer the Village contemplates for the current service area.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Intervenor Village of Richfield's Memorandum Contra to Water and Sewer LLC's Application for Rehearing was served upon Barth E. Royer, Esq., counsel for Water and Sewer LLC, Bell and Royer Co., L.P.A., 33 South Grant Avenue, Columbus, Ohio 43215-3900 by regular U.S. mail, postage prepaid, this 21st day of September, 2012.

/s/ William R. Hanna

William R. Hanna

Attorney for Village of Richfield

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Summary: Memorandum Intervenor Village of Richfield's Memorandum Contra to Water and Sewer LLC's Application for Rehearing electronically filed by Ms. Leslie G. Wolfe on behalf of The Village of Richfield