

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
ISLAND WATERWORKS, LLC FOR A  
CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY.

CASE NO. 17-201-WS-ACE

## OPINION AND ORDER

Entered in the Journal on April 4, 2018

### I. SUMMARY

{¶ 1} The Commission approves the application of Island Waterworks, LLC for a Certificate of Public Convenience and Necessity to provide water and sewer service in Middle Bass, Ohio.

### II. PROCEDURAL BACKGROUND

{¶ 2} Island Waterworks, LLC (Island Waterworks or the Company) is a for-profit, single-member, limited liability corporation that renders water and sewer services in Middle Bass, Ohio. The Company's principal place of business is located at 1233 Fox Road, Middle Bass, Ohio 43446.

{¶ 3} On January 20, 2017, February 17, 2017, and February 24, 2017, Island Waterworks filed an application, pursuant to R.C. 4933.25 and Ohio Adm.Code 4901:1-15-05, seeking a certificate of public convenience and necessity to operate a waterworks and sewage disposal system in Middle Bass, Ohio. In its application, the Company requested that the Commission determine the value of the Company's rate base, authorize a fair rate of return, prescribe the proper depreciation accrual rates, identify the magnitude of the Company's expenses, and make such other findings that are necessary to grant the certificate requested by the Company.

{¶ 4} Island Waterworks proposes to provide water and sewer service to St. Hazards Yacht Club Condominium Association dba Middle Bass Lakeshore Condominiums

(Lakeshore Condominiums), Hazards Adventures Company (Hazards Adventures),<sup>1</sup> and Island Productions, LLC (Island Productions) on Middle Bass Island, Middle Bass, Ohio.

{¶ 5} Island Waterworks is a public utility as defined in R.C. 4905.02, a waterworks company, as defined in R.C. 4905.03(G), and a sewage disposal company, as defined in R.C. 4905.03(M). Therefore, Island Waterworks is subject to the jurisdiction of the Commission under authority of R.C. 4905.04 and 4905.05.

{¶ 6} R.C. 4933.25 requires waterworks companies and sewage disposal companies to obtain a certificate from this Commission before constructing, installing, or operating a waterworks or sewage disposal facility. Ohio Adm.Code 4901:1-15-05 specifies the proper format and information required in an application to obtain a waterworks company and sewage disposal company certificate.

{¶ 7} On February 28, 2017, the Commission's Staff (Staff) filed comments pointing out the lack of a metes and bounds description as required by Ohio Adm.Code 4901:1-15-05. On April 18, 2017, the company provided a metes and bounds description along with additional information depicting the service area.

{¶ 8} On June 1, 2017, the attorney examiner issued an Entry ordering the Company to publish legal notice of its application on or before June 28, 2017, in Ottawa County, Ohio, in a newspaper of general circulation. The notice included proposed rates and an instruction that anyone objecting to the application must file a written statement by July 12, 2017.

{¶ 9} As ordered, Island Waterworks filed proof of publication on July 12, 2017. No statements objecting to the application have been filed. Nor has any person moved to intervene.

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<sup>1</sup> Hazards Adventures operates a restaurant.

{¶ 10} On December 19, 2017, Staff filed comments on the application in which it provided its recommendations.

{¶ 11} On March 9, 2018, the parties filed a Joint Stipulation and Recommendation (Stipulation) purporting to resolve all issues in this proceeding. Attached to the Stipulation is the company's overall financial summary for 12 months ended December 31, 2016 (Appendix A) and proposed tariff (Appendix B).

{¶ 12} By Entry issued March 16, 2018, the attorney examiner scheduled a hearing for March 26, 2018, to consider the merits of the Stipulation.

{¶ 13} Staff filed testimony on March 19, 2018, to support the Stipulation entered into by the parties.

{¶ 14} On March 26, 2018, a hearing was held, at which the parties presented evidence to be included in the record of this proceeding.

### **III. STIPULATION OF THE PARTIES**

{¶ 15} According to the Stipulation, the parties agree that Staff shall recognize an amount of \$8,726 for a portion of the legal fees incurred from 1997 to 2007 as legal fees incurred for the purpose of constructing and operating Island Waterworks' water and sewer systems. Half the total expense is to be allocated to the water system; the other half is to be allocated to the sewer system.

{¶ 16} In its application, Island Waterworks proposed an annual revenue requirement of \$180,150 for water service and \$162,585 for wastewater service. Staff, on the other hand, recommended an annual revenue requirement in the range of \$72,546 to \$73,481 for water service and \$81,788 to \$83,714 for wastewater service.

{¶ 17} In the Stipulation, the parties struck compromises to resolve various issues. After discussions, the parties agreed on a total revenue requirement of \$83,343 for water service and \$95,958 for wastewater service.

{¶ 18} Appendix A of the Stipulation shows that the total authorized revenue requirement reflects 9.3 percent as a reasonable rate of return on rate base, given the uniqueness and size of Island Waterworks. The parties believe that the rate of return recognizes the added risks and costs associated with operating a small water and sewer system on an island that is only accessible by ferry or airplane.

{¶ 19} The parties agreed on compensation for the chief executive officer and general manager of Island Waterworks. The compensation for the role of chief executive officer and general manager will be set at \$25,000 annually for both operating systems.

{¶ 20} The Stipulation provides that the revenue requirement will be allocated to residential and non-residential customers. The non-residential facilities, Island Productions and Hazards Adventures, will be allocated 40.81 and 9.41 percent, respectively. The residential facility, Lakeshore Condominiums, will be allocated 49.78 percent.

{¶ 21} The parties have agreed on water and sewer services billing arrangements for Island Waterworks' customers. Billing shall occur monthly throughout the applicable season. Island Productions will be billed for seven months annually from April through October at a monthly rate of \$10,453.24. Hazards Adventures will be billed for five months annually from May through September at a monthly rate of \$3,374.44. Lakeshore Condominiums will be billed for eight months annually from April through November at a monthly rate of \$11,157.01.

{¶ 22} Staff and the Company agree that a 1.5 percent late payment charge, as proposed in the application, should be adopted.

{¶ 23} The stipulating parties also agree that a \$50.00 reconnection charge should apply to reconnections performed during normal business hours. If the reconnection is performed outside of normal business hours, the parties agree that Island Waterworks' should be allowed to base its reconnection charge on out-of-pocket expenses.

{¶ 24} The parties agree that Island Waterworks' water and sewer systems are seasonal and that both systems will operate and provide service on a seasonal basis. Island Waterworks will maintain water and sewer services for Lakeshore Condominiums from approximately April 1 through approximately November 30 of each year. For Island Productions, Island Waterworks will provide water and sewer services from approximately April 1 through October 31 of each year. For Hazards Adventures, Island Waterworks will provide water and sewer services from May 1 until September 1 of each year. The parties acknowledge that the service dates are approximations; they may vary year-to-year. Services may not be available until later in April and may be discontinued before the end of November. The Company will attempt to commence service as soon as practicable, but seasonal commencement of water and sewer services are contingent upon the operation of the Middle Bass Island ferry and Ohio Environmental Protection Agency approval of system operations. For service beyond the seasonal service period, the tariff provides that a customer may request service pursuant to a special contract arrangement mutually agreed upon by the customer and Island Waterworks.

{¶ 25} The parties recommend that the Commission waive Ohio Adm.Code 4901:1-15-20(A) and (C)(5). These rules require 24-hour service and the institution of a water loss control program. The parties explain that Island Waterworks provides seasonal services to one residential facility from approximately April 1 to November 30 and to two non-residential facilities from approximately April 1 through October 31.

{¶ 26} The parties agree that the terms and conditions of water and sewer services provided in the tariff attached as Appendix B of the Stipulation are reasonable and should

be approved. The effective date should be upon approval of the application, the Stipulation, and the filing of final tariffs in compliance with the orders of the Commission.

{¶ 27} The parties agree that the Stipulation; the company's application, as supplemented; the proof of publication; Staff's comments and Staff's testimony should be made a part of the record in this proceeding.

{¶ 28} The parties request that the Commission approve this Stipulation in time for the rates and charges contained in the tariffs attached to the Stipulation to become effective for bills rendered on and after April 1, 2018.

{¶ 29} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are afforded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 30} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-498-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

{¶ 31} The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

{¶ 32} During the March 26, 2018 public hearing, Staff introduced the Stipulation as Joint Exhibit 1. In addition, Staff offered the testimony of John L. Berringer to support the Stipulation. Mr. Berringer states that the Stipulation is the product of serious bargaining among knowledgeable parties. For support, he states that the agreement is the product of an open process in which all parties were represented by able counsel and technical experts, and the decisions made were based upon thorough analysis of complex issues. Furthermore, the Stipulation represents a comprehensive compromise of issues raised by parties with diverse interests. The outcome, he believes, is a fair and reasonable result. (Staff Ex. 2 at 2.)

{¶ 33} Mr. Berringer testified that the Stipulation benefits ratepayers and promotes the public interest because the total revenue requirement of \$83,343 for water service and \$95,958 for wastewater service represents a compromise that benefits Island Waterworks' ratepayers, in contrast to the revenue requirement proposed in the company's initial filing: \$180,150 for water service and \$162,585 for wastewater service. Mr. Berringer added that 9.3 percent is a reasonable rate of return given the uniqueness and size of Island Waterworks. The parties believe the rate of return recognizes the added risks and costs

associated with operating a small water and sewer system on an island that is only accessible by ferry or airplane. (Staff Ex. 2 at 3.)

{¶ 34} Because the Stipulation complies with all relevant and important regulatory principles and practices, Mr. Barringer concludes that the Stipulation does not violate any important regulatory principle (Staff Ex. 2 at 3).

{¶ 35} Based on our three-pronged standard of review, the facts asserted by Staff's witness, and consideration of the terms and conditions set forth in the parties' agreement, we find that the terms and conditions expressed in the Stipulation represent reasonable resolutions to the issues raised by the application and Staff's recommendations. Accordingly, the Stipulation should be approved and adopted.

#### IV. CONCLUSION

{¶ 36} The record supports Island Waterworks' application for a certificate. Island Waterworks has complied with the applicable provisions of Ohio Adm.Code Chapter 4901:1-15. As recommended by the parties, we find the Company has shown good cause for waiver of Ohio Adm.Code 4901:1-15-20(A) and (C)(5).

{¶ 37} There is a present and continuing need by the public in the area encompassed by the application for the facilities and services of the type which the Company proposes to provide under the authority it seeks. Based on the record, Island Waterworks possesses the managerial, technical, and financial resources to provide water and wastewater services. Accordingly, a certificate of public convenience and necessity should be issued to Island Waterworks authorizing it to provide water and wastewater services in the service area designated in its application.

#### V. ORDER

{¶ 38} It is, therefore,



{¶ 39} ORDERED, That the Stipulation filed by the parties is approved and adopted. It is, further,

{¶ 40} ORDERED, That Ohio Adm.Code 4901:1-15-20(A) and (C)(5) be waived. It is, further,

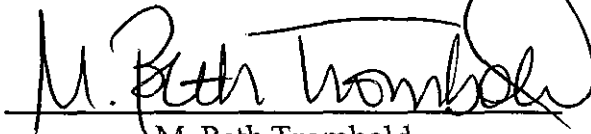
{¶ 41} ORDERED, That Island Waterworks file in final form three printed copies of its approved tariff. Rates, charges, terms, and conditions shall be effective upon filing. It is, further,

{¶ 42} ORDERED, That a copy of this Finding and Order be served upon all parties and interested persons of record.

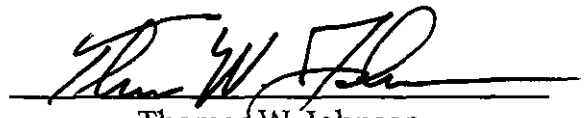
THE PUBLIC UTILITIES COMMISSION OF OHIO



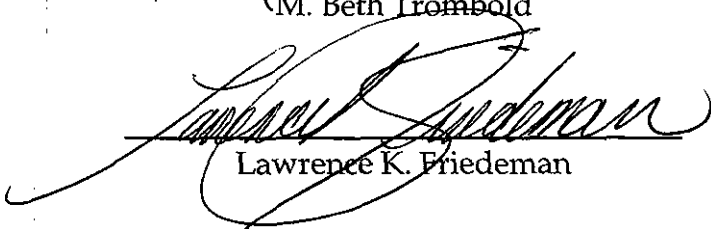
Asim Z. Haque, Chairman



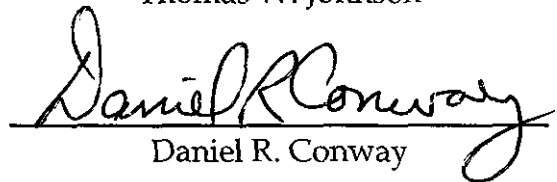
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway

LDJ/vrm

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Barcy F. McNeal  
Secretary