BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Aqua Ohio Wastewater, Inc., for implementation of the Tax Cuts and Jobs Act of 2017	))))	Case No. 18-1841-ST-UNC
In the Matter of the Application of Aqua Ohio Wastewater, Inc. for Approval of Tariff Revisions	)))	Case No. 18-1842-ST-ATA

MOTION TO INTERVENE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene in this case where Aqua Ohio Wastewater, Inc. ("Aqua") proposes to return the benefits of the Tax Cuts and Jobs Act of 2017 to its sewer disposal customers.[1] The Public Utilities Commission of Ohio ("PUCO") initiated case 18-0047-AU-COI to determine how best to provide Ohio consumers with the full benefit of the federal tax cuts, and directed all rate-regulated utility companies to file an application "not for an increase in rates," in a newly initiated proceeding.[2] Further, the PUCO expressed that it is "open to any alternative proposals by utilities, provided such proposals pass all tax savings on to customers, have the full agreement of Staff, and provide for input from other interested stakeholders."[3] Considering the complexity of these issues, and the effect they will have on consumers, it is important that the PUCO thoroughly review Aqua's proposals to guarantee that Ohio consumers

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

[2] *In re the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-0047-AU-COI Finding and Order (October 24, 2018).

[3] Finding and Order (October 24, 2018).

receive the full benefit of the tax cuts through reductions in rates as soon as possible.

OCC is filing on behalf of Aqua's 157,601 thousand residential sewer disposal customers.[4] The PUCO should grant OCC's motion to intervene for the reasons set forth in the attached memorandum in support.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Ambrosia E. Logsdon
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[4] *See* R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

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MEMORANDUM IN SUPPORT

In this case, Aqua proposes to return the tax savings resulting from the Tax Cuts and Jobs Act of 2017 to consumers pursuant to the PUCO's Finding and Order[5] through a credit, the TCJA Negative Surcharge, to base sewer rates.

Considering the complexity of the issues involved in reviewing utility proposals for refund, and the effect they will have on consumers, it is important that the PUCO thoroughly review Aqua's proposal to guarantee that Ohio consumers receive the full benefit of the tax cuts through reductions in rates as soon as possible. Whether the PUCO accepts Aqua's proposal or orders a different approach, it is important for the PUCO to thoroughly analyze the impacts of the tax cuts to guarantee that customer's rates are promptly reduced by the full amount of the tax savings. OCC has statutory authority to represent the interests of Aqua's 157,601 thousand sewer utility customers under R.C. Chapter 4911.

R.C. 4903.221 provides, in part, that any person "who may be adversely affected"

[5] *In re the Application of the East Ohio Gas Company d/b/a Dominion Energy Ohio re: Implementation of the Tax Cuts and Jobs Act of 2017,* Case No. 18-1908-GA-UNC (December 31, 2018) at 3.

by a PUCO proceeding is entitled to seek intervention in that proceeding. The interests of Ohio's residential customers may be "adversely affected" by this case, especially if the customers were unrepresented in a proceeding to determine the benefits to customers resulting from the federal tax cuts. Thus, this element of the intervention standard in R.C. 4903.221 is satisfied.

R.C. 4903.221(B) requires the PUCO 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 proceedings;
>
> (4) Whether the prospective intervenor will significantly contribute to 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 investigating the reasonableness of Aqua's proposal to refund consumer savings under the Tax Cuts and Jobs Act. This interest is different from that of any other party, and especially different from that of Aqua whose advocacy includes the financial interest of shareholders. Further, the PUCO specifically requested the input from "interested stakeholders" when evaluating any utility proposal to comply with its Investigation of Tax Cuts and Jobs Act of 2017.[6] As a representative of the residential customers of Aqua that will be affected by the outcome of this case, the OCC is an "interested stakeholder."

[6] Finding and Order (October 24, 2018) at 18.

Second, OCC's advocacy for residential customers will include advancing the position that the federal Tax Cuts and Jobs Act of 2017 should result in the full flow-through of millions of dollars of utility tax savings to Ohio consumers by reducing their utility rates. 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 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 the PUCO will determine how to return the benefits of the Tax Cuts and Jobs Act of 2017 to customers.

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 PUCO 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.

Further, the Supreme Court of Ohio ("Court") confirmed OCC's right to intervene in PUCO proceedings, in deciding two appeals in which OCC claimed the PUCO erred by denying its interventions. The Court found that the PUCO abused its discretion in denying OCC's interventions and that OCC should have been granted intervention in both proceedings.[7]

OCC meets the criteria set forth in R.C. 4903.221, Ohio Adm. Code 4901-1-11, and the precedent established by the Court for intervention. On behalf of Ohio residential customers, the PUCO should grant OCC's Motion to Intervene.

[7] *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Motion to Intervene* was served on the persons stated below via electronic transmission, this 31st day of January 2019.

/s/ Ambrosia E. Logsdon
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Summary: Motion Motion to Intervene by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Logsdon, Ambrosia Ms.