

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Aqua)
Ohio, Inc., for Authority to Assess a)
System Improvement Charge in the Lake) Case No. 20-532-WW-SIC
Erie/ Masury/ Prior American / Prior)
Mohawk/ Prior Tomahawk Properties.)

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

The Office of the Ohio Consumers' Counsel ("OCC") moves to intervene where Aqua Ohio, Inc. ("Aqua") seeks to increase rates to its customers for infrastructure replacement costs through another System Improvement Charge ("SIC") to customers in its Lake Erie Division, Masury Division, and service areas formerly served by Ohio American Water Company, Mohawk Utilities, Inc., and Tomahawk Utilities, Inc.¹ Under Aqua's proposal, its residential customers would each pay a surcharge equal to 3.50% of their total water service bill.²

OCC is filing on behalf of Aqua's 158,000 residential water customers who are being asked to pay the rate increase proposed by Aqua. The reasons the Public Utilities Commission of Ohio ("PUCO") should grant OCC's Motion are further set forth in the attached Memorandum in Support.

¹ See Aqua Application at 1.

² See Aqua Application, Exhibit A at 1 and Schedule 10.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Amy Botschner O'Brien

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MEMORANDUM IN SUPPORT

Aqua proposes to charge its customers for infrastructure replacement costs through a System Improvement Charge, which if approved, would be the third system improvement charge increase to Aqua’s customers since base rates were approved (increased) in 2017. If Aqua’s charges are approved as proposed in the Application, each of Aqua’s consumers will be assessed an additional 3.50% surcharge³ on their monthly water bills on top of the 3.66% surcharge⁴ and 3.73% surcharge⁵ that Aqua was authorized to charge customers in the utility’s previous two SIC cases, both charges approved by the PUCO in 2019. OCC has authority under law to represent the interests of the 158,000 residential water customers of Aqua, pursuant to R.C. Chapter 4911.

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 because if approved,

³ See Aqua Application, Exhibit A at 1 and Schedule 10.

⁴ *In the Matter of the Application of Aqua Ohio, Inc., for Authority to Assess a System Improvement Charge*, Case No. 18-0337-WW-SIC, Finding and Order (Feb. 6, 2019).

⁵ *In the Matter of the Application of Aqua Ohio, Inc. for Authority to Assess a System Improvement Charge*, Case No. 19-0567-WW-SIC, Finding and Order (Oct. 23, 2019).

Aqua's will increase consumers' monthly utility bills yet again. 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; and
- (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 Aqua's residential consumers in a proceeding where their monthly water bills will potentially increase. This interest is different from that of any other party and especially different from 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 the proposed charge cannot be approved for charging to consumers unless it is found to be just and reasonable.⁶ OCC's position is therefore directly related to the merits of this case that is pending before the PUCO.

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.

⁶ See R.C. 4905.22 ("All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission..."). See also, R.C. 4909.172.

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 in which the PUCO will determine the charges that customers pay for water service.

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), which OCC already has addressed and which 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 consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, 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 Supreme Court of Ohio for intervention. On behalf of Ohio residential consumers, the PUCO should grant OCC's Motion to Intervene.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Amy Botschner O'Brien
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⁷ See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, ¶¶13-20.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Intervene was served on the persons stated below via electric transmission this 2nd day of April 2020.

/s/ Amy Botschner O'Brien _____
Amy Botschner O'Brien
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/2/2020 10:39:52 AM

in

Case No(s). 20-0532-WW-SIC

Summary: Motion Motion to Intervene by The Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Botschner O'Brien, Amy