

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
AQUA OHIO, INC. TO INCREASE ITS
RATES AND CHARGES FOR ITS
WATERWORKS SERVICE.

CASE NO. 21-595-WW-AIR

OPINION AND ORDER

Entered in the Journal on September 21, 2022

I. SUMMARY

{¶ 1} The Commission grants Aqua Ohio, Inc.'s application to increase its water rates and approves the Stipulation between Staff, Aqua, Ohio, Inc., the Ohio Consumers' Counsel, and the City of Marion, allowing a return of 6.78 percent for water service rendered in Aqua Ohio, Inc.'s Lake Erie and Masury service divisions, and those customers formerly served by Mohawk Utilities, Inc., Tomahawk Utilities, Inc., Ohio American Water Company, Firestone Trace, and Southwood Estates.

II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} Aqua Ohio, Inc. (Aqua or Company) is a waterworks company as defined in R.C. 4905.03(G) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On May 21, 2021, Aqua filed a notice of intent to file an application to increase its water rates in its Lake Erie and Masury service divisions, and those customers formerly served by Mohawk Utilities, Inc., Tomahawk Utilities, Inc., Ohio American Water Company, Firestone Trace, and Southwood Estates, pursuant to R.C. 4909.43(B), and in compliance with Ohio Adm.Code 4901-7-01, Appendix A, Chapter I of the Commission's Standard Filing Requirements (SFRs). Aqua subsequently noticed errors in the Exhibit 2B attached to each notice of intent and on May 28, 2021, filed an amended Exhibit 2B for each notice of intent.

{¶ 4} Also on May 21, 2021, Aqua filed a motion for approval of test period and date certain and for waivers from certain SFRs, pursuant to which the Company requested waivers from filing various financial informational data required by the Commission's SFRs.

{¶ 5} On June 28, 2021, Aqua filed an application pursuant to R.C. 4909.18 to increase its rates for water service in the aforementioned service areas. By its application, Aqua requested a rate increase to allow for a revenue requirement of \$77,296,379, which would generate additional base revenues of \$8,290,405, or approximately 12.01 percent over current revenues for those service areas.

{¶ 6} On June 29, 2021, the Ohio Consumers' Counsel (OCC) filed a motion to intervene in the case. By Entry issued September 30, 2021, the attorney examiner granted OCC's motion to intervene.

{¶ 7} By Entry issued July 14, 2021, the Commission set the test period for the application to begin on January 1, 2021, and end December 31, 2021, and set the date certain as December 31, 2021. In addition, this Entry granted some of the requested SFR waivers requested by Aqua.

{¶ 8} By Entry issued January 12, 2022, the Commission found that Aqua's application met the requirements of R.C. 4909.17 to 4909.19 and the Commission's SFRs and accepted the application as of the filing date of June 28, 2021. This Entry also directed Aqua to publish a notice of the application, pursuant to R.C. 4909.19.

{¶ 9} On February 9, 2022, the City of Marion (Marion) filed a motion to intervene in the case. No memoranda contra Marion's motion were filed, Marion participated in the proceedings as an intervening party, and by this Opinion and Order the Commission officially grants Marion's motion to intervene.

{¶ 10} Pursuant to R.C. 4909.19, Staff conducted an investigation of the facts, exhibits, and matters relating to Aqua's application and filed a report of investigation on February

11, 2022 (Staff Report or Staff Ex. 1.0). Staff also filed on February 11, 2022, an audit of the application, prepared by Larkin & Associates PLLC (Staff Ex. 2.0).

{¶ 11} By Entry issued February 17, 2022, the attorney examiner (1) scheduled a prehearing conference on March 16, 2022, (2) scheduled an evidentiary hearing on April 11, 2022, (3) set the deadline for filing (a) objections to the staff reports, (b) direct testimony, and (c) motions to intervene on March 14, 2022, (4) set the deadline for filing motions to strike objections to the staff reports on March 21, 2022, and (5) set the deadline for filing both memoranda contra motions to intervene and memoranda contra motions to strike objections to the staff reports on March 28, 2022.

{¶ 12} By Entry issued February 22, 2022, local public hearings were scheduled for Marion, Ohio on March 29, 2022; Ashtabula, Ohio on March 30, 2022; and Columbus, Ohio on March 31, 2022. Each local public hearing was scheduled jointly with the local public hearing in related Case No. 21-596-ST-AIR. Notice of the local public hearings was published in accordance with R.C. 4903.083 and proof of such publication was filed on May 12, 2022.

{¶ 13} Objections to the Staff Report were filed on March 14, 2022, by Aqua and OCC.

{¶ 14} The prehearing conference was held as scheduled on March 16, 2022, during which the parties proposed an extension of the remaining procedural dates to allow for continued settlement discussions.

{¶ 15} By Entry issued March 18, 2022, the attorney examiner extended procedural deadlines and rescheduled the evidentiary hearing for May 9, 2022.

{¶ 16} On April 11, 2022, Aqua filed a motion to strike certain objections to the Staff Report filed by OCC. On April 18, 2022, OCC filed a memorandum contra OCC's motion to strike objections.

{¶ 17} On April 27, 2022, Staff filed an unopposed motion to modify the procedural schedule to allow for additional settlement discussions. Staff stated that no parties objected to the extension request.

{¶ 18} By Entry issued May 5, 2022, the attorney examiner granted the unopposed motion to modify the procedural schedule, which rescheduled the evidentiary hearing for June 9, 2022.

{¶ 19} On June 1, 2022, Staff filed a motion to continue testimony and hearing dates, requesting that Staff's testimony deadline and the hearing date both be extended two weeks. Staff stated that the parties continued to work toward settlement and that additional time was needed to conclude negotiations. Staff stated that no party objected to the requested continuance.

{¶ 20} By Entry issued June 2, 2022, the attorney examiner granted Staff's second unopposed motion to continue testimony and hearing dates, rescheduling the evidentiary hearing for June 23, 2022.

{¶ 21} On June 16, 2022, a Stipulation and Recommendation (Stipulation or Joint Ex. 1.0) was filed, signed by Aqua, Staff, OCC, and Marion.

{¶ 22} On June 21, 2022, Aqua filed supplemental direct testimony of Robert L. Davis in support of the Stipulation (Aqua Ex. 9.0).

{¶ 23} The evidentiary hearing was held on June 23, 2022, as directed by the attorney examiner, and the Stipulation and supporting exhibits, including the supplemental direct testimony of Mr. Davis, were admitted into the record.

{¶ 24} During the evidentiary hearing, Aqua stated that the customer notices to be distributed based on the Stipulation were not attached to the Stipulation filed in the case docket. Counsel for Aqua, therefore, indicated that the notices were prepared and reviewed by all parties to the Stipulation and that no party had objections to them. Counsel further

stated that Aqua would file copies of the notices in the case docket following the hearing. Consistent with Aqua's representation, Aqua filed copies of the notices pursuant to a motion to admit Joint Exhibit 4.0 to the Stipulation on June 23, 2022. Having reviewed the motion, the Commission finds that it is reasonable and should be granted, and Joint Exhibit 4.0 should be part of the record in this proceeding.

III. DISCUSSION

A. *Applicable Law*

{¶ 25} 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 accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123,125,1992-Ohio-122, 592 N.E.2d 1370, 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.

{¶ 26} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR (Apr. 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (Mar. 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (Dec. 30, 1993). 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?

B. *Local Public Hearing Testimony*

{¶ 27} The Commission held three local public hearings in this matter, scheduling each in conjunction with local public hearings in related Case No. 21-596-ST-AIR. At the local public hearing held in Marion, Ohio, on March 29, 2022, three individuals provided testimony. First, Mark Russell, the Law Director for the City of Marion, testified to thank the Commission for holding a public hearing in Marion and allow local citizens the opportunity to testify (Marion Tr. at 7). Terry Cline testified that he was skeptical of Aqua as a company and the motives for a rate increase. Rather than institute a rate increase for improvements, Mr. Cline felt that the Company should cut salaries and better contain their costs before increasing payments from consumers. Mr. Cline stated that if Aqua could not run the system within their means, then another entity should take over the service. Mr. Cline reported unsatisfactory customer service experience with Aqua and stated that he does not trust the Company. Mr. Cline also expressed skepticism of the Commission. (Marion Tr. at 8-10.) Lastly, Patricia Franklin testified as the negative effect that the proposed rate hike would have on her. Ms. Franklin stated that she is on a fixed income and if the rate increase were implemented, she would have to find ways to cut back on expenses elsewhere. As food prices also increase, Ms. Franklin believes the rate increase would be difficult for her and other similarly situated customers. Ms. Franklin argued that if a rate hike was necessary then it should be for around half of what Aqua requested. Further, Ms. Franklin wondered if there was a mechanism that could alleviate some of the burden a rate increase would have on senior citizens. Finally, Ms. Franklin voiced concern about the condition of the pipes and infrastructure of Aqua's system. (Marion Tr. at 11-12.)

{¶ 28} At the local hearing in Ashtabula, Ohio, on March 30, 2022, no residents appeared to provide testimony.

{¶ 29} At the local hearing in Columbus, Ohio, on March 31, 2022, no residents appeared to provide testimony.

C. *Summary of the Stipulation*

{¶ 30} As previously stated, a Stipulation signed by Aqua, Staff, OCC, and Marion was filed on June 16, 2022. The Stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding and all parties withdraw their respective objections to the Staff Report, which were filed on March 14, 2022 (Joint Ex. 1.0 at 1, 5). Below is a further summary of the provisions agreed to by the stipulating parties.

{¶ 31} Per the terms of the Stipulation, the parties agree on a revenue requirement of \$73,296,028, which is an increase of \$5,178,891. The rates and charges in Aqua's tariffs will be amended to increase annual operating revenue accordingly, effective with bills rendered to consumers on and after the filing of such tariffs with the Commission. According to the Stipulation, Aqua's current rates are no longer sufficient to yield a reasonable compensation for the services rendered and are, therefore, unreasonable. The recommended total revenue requirement provides reasonable compensation for the services rendered. This total revenue requirement reflects 6.78 percent as a reasonable rate of return on rate base, as reflected in the schedules attached to the Stipulation. (Joint Ex. 2.0 at Sched. A.)

{¶ 32} The following information presents the value of Aqua's property used and useful in the rendition of water services as of the December 31, 2021, date certain, as stipulated by the parties (Joint Ex. 2.0 at Sched. B):

| | |
|---------------------------------------|-----------------|
| Plant in Service | \$449,860,000 |
| Depreciation Reserve | (\$126,728,986) |
| Net Plant in Service | \$323,131,015 |
| Construction Work in Progress | \$0 |
| Working Capital Allowance | \$0 |
| Contributions in Aids of Construction | (\$27,176,987) |
| Advances for Construction | (\$1,406,987) |

| | |
|--|----------------------|
| Customers' Advances-Related Facilities | \$0 |
| Other Items | (\$29,769,797) |
| Jurisdictional Rate Base | \$264,777,243 |

{¶ 33} The following information reflects Aqua's adjusted operating revenue, adjusted operating expenses, and adjusted net operating income for the 12 months ended December 31, 2021, as stipulated by the parties (Joint Ex. 2.0 at Sched. C):

| | |
|-------------------------------------|---------------------|
| <u>Operating Revenue</u> | |
| Total Operating Revenue | \$68,117,138 |
| <u>Operating Expenses</u> | |
| Operation and Maintenance | \$24,581,098 |
| Depreciation and other Amortization | \$11,452,562 |
| Taxes, Other than Income Taxes | \$16,367,745 |
| Income Taxes | \$1,619,899 |
| Total Operating Expenses | \$54,021,303 |
| Net Operating Income | \$14,095,835 |

{¶ 34} As stipulated, under its present rates, Aqua would have operating income of \$14,095,835. Applying these figures to Aqua's respective rate base of \$264,777,243, yields a rate of return of 5.32 percent, which the parties contend is insufficient to provide Aqua with reasonable compensation for water service rendered to its customers. The parties have recommended a rate of return of 6.78 percent on the stipulated rate base of \$264,777,243. Consequently, the parties have stipulated that the required operating income for Aqua is \$17,954,351. (Joint Ex. 2.0 at Sched. C.) Additionally, the parties have stipulated that a just

and reasonable increase in the revenue requirement is \$5,178,891 (Joint Ex. 2.0 at Sched. A). The parties request that the Commission approve the proposed final tariffs, which will go into effect on a bills-rendered basis immediately after the Commission approves the Stipulation (Joint Ex. 1.0 at 5).

{¶ 35} The Stipulation provides for a number of actions to be undertaken by Aqua. For consumer protection, Aqua agrees to provide annual shareholder funding of \$20,000 for a bill-payment assistance program to assist low-income customers throughout its Ohio service territory to prevent disconnection of water service per the terms of the existing agreement, continuing an existing program that Aqua already runs pursuant to settlement in a previous Commission proceeding. To better assess the needs for water bill payment assistance, Aqua also agrees to provide OCC and Staff with quarterly reports on the number of customers and dollar amounts provided for customers that obtain bill payment assistance through Aqua Aid and the federal Low-Income Home Water Assistance Program. Aqua further agrees to provide in the public domain (on the Aqua website) a quarterly report reflecting certain nonconfidential reporting of information such as: (i) the number of disconnections by service area along with dollar amounts; (ii) the number of final notices along with dollar amounts; (iii) the number of accounts in 60-days arrears along with dollar amounts; (iv) the number of Aqua customers on payment plans along with dollar amounts; (v) the number of reconnections by service area, and (vi) the number of Aqua residential consumers by service area. (Joint Ex. 1.0 at 3-4.)

D. Consideration of the Stipulation

{¶ 36} Robert L. Davis, the President of Aqua, provided testimony indicating that the Stipulation is a product of serious bargaining among capable, knowledgeable parties. Mr. Davis testified that negotiations of the Stipulation were an open process in which all parties were represented by experienced counsel that have participated in numerous Commission proceedings. Further, Mr. Davis testified that the parties engaged in extensive negotiations and that the Stipulation represents a comprehensive compromise of the issues by parties

with diverse interests. (Aqua Ex. 9.0 at 3-4.) Therefore, upon review of the terms of the Stipulation, based on our three-prong standard of review, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

{¶ 37} With regard to the second criterion, Mr. Davis asserts that the Stipulation benefits ratepayers and the public interest because the Stipulation results in a just and reasonable revenue requirement that benefits ratepayers by recognizing some of the objections to the Staff Report and considering appropriate alternatives for other objections. Mr. Davis believes that settlement of the case benefits the public in myriad ways. First, the settlement avoids an extensive hearing, presumably avoiding litigation costs. Second, Mr. Davis states that the Stipulation reduces the requested \$77,296,379 revenue requirement to the stipulated amount of \$73,296,028. Third, the Stipulation implements a rate of return of 6.78 percent, which is less than the 7.42 rate of return requested in the application. Finally, Mr. Davis explains that the Stipulation establishes a shareholder funded program to provide bill-payment assistance to low-income customers throughout its service territory, among other obligations agreed to by Aqua. (Aqua Ex. 9.0 at 4.) Upon review of the Stipulation, we find that, as a package, it satisfies the second criterion as it benefits ratepayers by avoiding the cost of litigation and is in the public interest.

{¶ 38} Mr. Davis also testified that the Stipulation does not violate any important regulatory principle or practice (Aqua Ex. 9.0 at 4). The Commission finds that there is no evidence that the Stipulation violates any important regulatory principle or practice, and, therefore, the Stipulation meets the third criterion.

{¶ 39} The Commission notes that the Stipulation reached in this case is entered into by all parties to the proceeding, including OCC and Marion. As part of the Stipulation, Aqua agreed to provide annual funding for a bill assistance program to aid low-income customers and prevent disconnections. Further, Aqua agreed to provide certain information to Staff and OCC to help monitor and assess the need for bill payment assistance for customers, as well as releasing other nonconfidential reporting information for public

inspection. Each of these provisions of the Stipulation will benefit customers and make the process more transparent. Finally, the Commission notes that proposed tariffs in compliance with the Stipulation were submitted by the parties for the Commission's consideration. Upon review, the Commission finds the proposed revised tariffs to be reasonable. Consequently, Aqua shall file final tariffs reflecting the revisions. The new tariffs will become effective on a bills-rendered basis on or after September 21, 2022. Moreover, Aqua is instructed to modify its notice accordingly (Joint Ex. 4.0).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 40} On May 21, 2021, Aqua filed a notice of intent to file an application for an increase in rates. Also on May 21, 2021, Aqua filed a motion for approval of a test year of January 1, 2021, to December 31, 2021, and a date certain of December 31, 2021.

{¶ 41} On June 28, 2021, Aqua filed an application for an increase in its rates for water service in its Lake Erie and Masury service divisions, and those customers formerly served by Mohawk Utilities, Inc., Tomahawk Utilities, Inc., Ohio American Water Company, Firestone Trace, and Southwood Estates.

{¶ 42} By Entry issued July 14, 2021, the Commission set the test period for the application to begin on January 1, 2021, and end December 31, 2021, and set the date certain as December 31, 2021. In this Entry, the Commission also granted some waivers of the SFRs.

{¶ 43} On January 12, 2022, the Commission issued an Entry that accepted Aqua's application for filing as of June 28, 2021.

{¶ 44} On February 11, 2022, Staff filed its written report of investigation with the Commission, along with an audit of the application prepared by Larkin & Associates PLLC.

{¶ 45} By Entry issued February 17, 2022, persons wishing to file objections to the Staff Report were directed to file appropriate pleadings by March 14, 2022. This Entry also scheduled a prehearing conference for March 16, 2022, and set the evidentiary hearing to

commence on April 11, 2022. Subsequent Entries issued on March 18, 2022, May 5, 2022, and June 2, 2022, respectively, ultimately rescheduled the evidentiary hearing for June 23, 2022.

{¶ 46} Intervention was granted to OCC and Marion.

{¶ 47} On March 14, 2022, objections to the Staff Report were filed by Aqua and OCC.

{¶ 48} Local public hearings were held as scheduled for March 29, 2022, in Marion, Ohio; March 30, 2022, in Ashtabula, Ohio; and March 31, 2022, in Columbus, Ohio. Notice of the local public hearings was published in accordance with R.C. 4903.083 and proof of such publication was filed on May 12, 2022.

{¶ 49} On June 16, 2022, a Stipulation was filed by Aqua, Staff, OCC, and Marion.

{¶ 50} The evidentiary hearing commenced on June 23, 2022. During the hearing, the Stipulation and supporting exhibits, including the testimony of Mr. Davis, was admitted into the record.

{¶ 51} The value of all of Aqua's property used and useful for the rendition of water services to customers affected by this application, determined in accordance with R.C. 4909.15, is not less than \$264,777,243.

{¶ 52} The current net annual compensation of \$14,095,835 represents a rate of return of 5.32 percent on the jurisdictional rate base of \$264,777,243.

{¶ 53} A rate of return of 5.32 percent is insufficient to provide Aqua with reasonable compensation for the water services rendered to its customers.

{¶ 54} A rate of return of 6.78 percent is fair and reasonable under the circumstances of this case and is sufficient to provide Aqua just compensation and return on its property used and useful in the provision of water services to its customers.

{¶ 55} An authorized revenue increase of \$5,178,891 will result in a return of \$17,954,351 which, when applied to the rate base of \$264,777,285, yields a rate of return of 6.78 percent.

{¶ 56} The allowable gross annual revenue to which Aqua is entitled for purposes of this proceeding is \$73,296,028.

{¶ 57} Aqua's application was filed pursuant to, and this Commission has jurisdiction of the application under the provisions of R.C. 4909.17, 4909.18, and 4909.19, and the application complies with the requirements of these statutes.

{¶ 58} The Stipulation was the product of serious bargaining among capable, knowledgeable parties, advances the public interest, and does not violate any important regulatory principles or practices. The unopposed Stipulation submitted by the parties is reasonable and should be adopted in its entirety.

{¶ 59} Aqua is authorized to withdraw its current tariffs and should file final revised tariffs.

V. ORDER

{¶ 60} It is, therefore,

{¶ 61} ORDERED, That the Stipulation filed on June 16, 2022, be approved in accordance with this Opinion and Order. It is, further,

{¶ 62} ORDERED, That the application of Aqua for authority to increase its rates and charges for water service be granted to the extent provided in this Opinion and Order. It is, further,

{¶ 63} ORDERED, That Aqua be authorized to file, in final form, completed copies of its revised tariffs in its respective TRF docket, as well as in this case docket. It is, further,

{¶ 64} ORDERED, That the final revised tariffs shall become effective on a bills-rendered basis on or after September 21, 2022. It is, further,

{¶ 65} ORDERED, That Aqua's June 23, 2022 motion to admit Joint Exhibit 4.0 to the Stipulation be granted, pursuant to Paragraph 24. It is, further,

{¶ 66} ORDERED, That Aqua shall immediately commence notifying customers of the changes to the tariff via bill message or bill insert, or separate mailing, in the form outlined in Joint Exhibit 4.0. The notification should occur on or before receipt of the first bill reflecting the new rates. It is, further,

{¶ 67} ORDERED, That Marion be granted intervenor status, pursuant to Paragraph 9. It is, further,

{¶ 68} ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

DMH/dmh

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Case No(s). 21-0595-WW-AIR

Summary: Opinion & Order granting Aqua Ohio, Inc.'s application to increase its water rates and approving the Stipulation between Staff, Aqua, Ohio, Inc., the Ohio Consumers' Counsel, and the City of Marion, allowing a return of 6.78 percent for water service rendered in Aqua Ohio, Inc.'s Lake Erie and Masury service divisions, and those customers formerly served by Mohawk Utilities, Inc., Tomahawk Utilities, Inc., Ohio American Water Company, Firestone Trace, and Southwood Estates. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio