

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

CASE NO. 22-1096-ST-AIR

OPINION AND ORDER

Entered in the Journal on December 13, 2023

I. SUMMARY

{¶ 1} The Commission grants Aqua Ohio Wastewater, Inc.'s application to increase its wastewater service rates and approves the stipulation between Aqua Ohio Wastewater, Inc; and Staff, allowing a return of 6.78 percent for water service rendered in Aqua Ohio Wastewater, Inc.'s Franklin areas (formerly served by Ohio American Water Company), Firestone Trace areas, and the Southwood Estates areas.

II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} R.C. 4909.18 requires, in part, that any public utility seeking to establish, modify, amend, change, increase, or reduce any rate must file an application with the Commission.

{¶ 3} Aqua Ohio Wastewater, Inc. (AWI or the Company) is a sewage disposal system company as defined by R.C. 4905.03(M), and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 4} On November 30, 2022, AWI filed a notice of intent to file an application to increase its water rates in its AWI's Franklin areas formerly served by 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).

{¶ 5} Also on November 30, 2022, AWI 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.

{¶ 6} On December 30, 2022, AWI filed an application pursuant to R.C. 4909.18 for an increase in its waterworks service rates. in the aforementioned service areas. By its application, AWI requested a rate increase to allow for a revenue requirement of \$4,227,831, which would generate additional base revenues of \$451,842, or approximately 11.97 percent over current revenues for those service areas.

{¶ 7} By Entry issued January 11, 2023, the Commission set the test period for the application to begin on July 1, 2022, and end June 30, 2023, and set the date certain as June 30, 2023. In addition, the Entry granted the requested SFR waivers.

{¶ 8} That same day, the Commission issued an Entry directing Staff to issue a request for proposal for audit services to assist the Commission with auditing AWI's rate increase application. By Entry dated February 8, 2023, the Commission selected Larkin & Associates, PLLC (Auditor) to conduct the aforementioned audit.

{¶ 9} By Entry issued March 8, 2023, the Commission found that AWI'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 December 30, 2022. This Entry also directed AWI to publish a notice of the application, pursuant to R.C. 4909.19.

{¶ 10} On April 5, 2023, the Ohio Consumers' Counsel (OCC) filed a motion to intervene in the case. By Entry issued July 14, 2023, the attorney examiner granted OCC's motion to intervene.

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

July 13, 2023 (Staff Report). That same day, Staff filed the Auditor's application audit performed by Larkin & Associates (Audit Report).

{¶ 12} By Entry issued July 14, 2023, the attorney examiner (1) scheduled a prehearing conference for August 18, 2023; (2) scheduled an evidentiary hearing for September 11, 2023; (3) set the deadline for filing objections to the staff reports, direct testimony, and motions to intervene by August 14, 2023; (4) set the deadline for filing motions to strike objections to the staff reports as August 21, 2023, and (5) set the deadline for filing both memoranda contra motions to intervene and memoranda contra motions to strike objections to the staff reports as August 28, 2023.

{¶ 13} By Entry issued July 18, 2023, local public hearings were scheduled to be held in Columbus, Ohio on August 28, 2023; Marion, Ohio on August 29, 2023; and Ashtabula, Ohio on August 31, 2023. Each local public hearing was scheduled jointly with the local public hearing for Case No. 22-1094-WW-AIR (22-1094), Aqua Ohio, Inc.'s (Aqua's) application to increase its waterworks service rates. Notice of the local public hearings was published in accordance with R.C. 4903.083 and proof of such publication was filed on August 25, 2023.

{¶ 14} Objections to the Staff Report were filed on August 14, 2023, by AWI and OCC.

{¶ 15} Staff and OCC moved for and were granted extensions of the deadline for filing direct testimony: OCC until August 16, 2023, and Staff until September 5, 2023.

{¶ 16} The prehearing conference was held as scheduled on August 18, 2023, during which the parties discussed the status of the matter.

{¶ 17} On August 30, 2023, the parties filed a joint motion to modify the procedural schedule to allow for additional settlement discussions.

{¶ 18} By Entry issued September 1, 2023, the attorney examiner extended procedural deadlines and rescheduled the evidentiary hearing for October 16, 2023.

{¶ 19} On October 3, 2023, a joint motion for protective order was filed by Staff, Aqua, and AWI, seeking to keep confidential those portions of the Audit Report marked as confidential. The joint motion was granted on the record on October 16, 2023.

{¶ 20} On October 5, 2023, a Stipulation and Recommendation (Stipulation or Joint Ex. 1.0) was filed and signed by AWI and Staff. On October 13, 2023, OCC filed correspondence in the docket indicating it did not oppose the Stipulation.

{¶ 21} On October 11, 2023, AWI filed supplemental direct testimony of Robert L. Davis in support of the Stipulation. (AWI Ex. 9.0.)

{¶ 22} The evidentiary hearing was held on October 16, 2023, and the Stipulation and supporting exhibits, including the supplemental direct testimony of Mr. Davis, were admitted into the record.

III. DISCUSSION

A. *Applicable Law*

{¶ 23} 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). Affording such weight to a stipulation is especially valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 24} 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, Order on Remand (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. Opinion and Order (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 considers whether the settlement (1) is a product of serious bargaining among capable, knowledgeable parties, (2) benefits ratepayers and the public interest, and (3) does not violate any important regulatory principle or practice.

B. Local Public Hearing Testimony

{¶ 25} The Commission held three local public hearings in this matter, scheduling each in conjunction with local public hearings in related Case No. 22-1094.

{¶ 26} At the local hearing in Columbus, Ohio, on August 28, 2023, no residents appeared to provide testimony.

{¶ 27} At the local public hearing held in Marion, Ohio, on August 29, 2023, three individuals provided testimony for Case No. 22-1094-WW-AIR, but no one provided testimony for AWI's application in the present case.

{¶ 28} At the local hearing in Ashtabula, Ohio, on August 31, 2023, four residents testified regarding Aqua's application in Case No. 22-1094-WW-AIR, but no testimony was offered related to AWI's application in the present case.

{¶ 29} Numerous public comments were filed in opposition to a rate increase.

C. Summary of the Stipulation

{¶ 30} As previously stated, a Stipulation signed by AWI and Staff was filed on October 5, 2023. The parties signing the Stipulation intended the document to resolve all outstanding issues in this proceeding and to notify the Commission that they withdraw their respective objections to the Staff Report. (Joint Ex. 1.0 at 3-4.) While not a signatory, OCC separately filed correspondence on October 13, 2023, indicating it did not oppose the

Stipulation. 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 \$4,081,920. The rates and charges in AWI'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, AWI's current rates are no longer sufficient to yield a reasonable compensation for the services rendered and are, therefore, unreasonable. According to the Stipulation, 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 and 9.5% as a reasonable return on equity, as reflected in the schedules attached to the Stipulation. (Joint Ex. 2.0 at Sched. A.)

{¶ 32} The following information presents the value of AWI's property used and useful in the rendition of water services as of the June 30, 2023 date certain, as stipulated by the parties (Joint Ex. 2.0 at Sched. B):

Plant in Service	\$ 31,357,017
Depreciation Reserve	\$ (9,813,320)
Net Plant in Service	\$ 21,543,698
Construction Work in Progress	\$ 0
Working Capital Allowance	\$ 0
Contributions in Aid of Construction	\$ (3,428,605)
Advances for Construction	\$ 0
Customers' Advances-Related Facilities	\$ 0
Other Items	\$ <u>(1,591,765)</u>
Jurisdictional Rate Base	<u>\$ 16,523,328</u>

{¶ 33} The following information reflects AWI's adjusted operating revenue, adjusted operating expenses, and adjusted net operating income for the 12 months ended June 30, 2023, as stipulated by the parties (Joint Ex. 2.0 at Sched. C):

<u>Operating Revenue</u>	
Total Operating Revenue	\$ 3,729,839
<u>Operating Expenses</u>	
Operation and Maintenance	\$ 1,835,762
Depreciation and other Amortization	\$ 788,381
Taxes, Other than Income Taxes	\$ 163,808
Income Taxes	\$ 96,187
Total Operating Expenses	<u>\$ 2,884,138</u>
Net Operating Income	<u>\$ 845,701</u>

{¶ 34} As stipulated, under its present rates, AWI would have an operating income of \$845,701. Applying these figures to AWI's rate base of \$16,523,328 yields a rate of return of 5.12 percent, which the parties contend is insufficient to provide AWI 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 \$16,523,328. Consequently, the parties have stipulated that the required operating income for AWI is \$1,120,156. (Joint Ex. 2.0 at Sched. C.) Additionally, the parties have stipulated that a just and reasonable increase in the revenue requirement is \$352,081 (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 service-rendered basis immediately after the Commission approves the Stipulation and final tariffs are filed with the Commission. (Joint Ex. 1.0 at 3).

D. Consideration of the Stipulation

{¶ 35} Robert L. Davis, the President of AWI, 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. (AWI Ex. 1.0 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.

{¶ 36} Regarding 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 a myriad of ways. First, the settlement avoids an extensive hearing, presumably avoiding litigation costs. Second, Mr. Davis states that the Stipulation reduces the requested \$4,227,831 revenue requirement to the stipulated amount of \$4,081,920. Finally, the Stipulation implements a rate of return of 6.78 percent, which is less than the 7.37 percent rate of return requested in the application. Upon review of the Stipulation, we find that it satisfies the second criterion as it benefits ratepayers by avoiding the cost of litigation and is in the public interest.

{¶ 37} Mr. Davis also testified that the Stipulation does not violate any important regulatory principle or practice (AWI Ex. 1.0 at 5). 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.

{¶ 38} The Commission observes that the Stipulation reached in this case is entered into by each party except OCC, who separately expressed its non-opposition to it. The Commission also 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, AWI shall file final tariffs reflecting the revisions. The new tariffs will become effective on a services-rendered basis immediately after the Commission approves the Stipulation and the final tariffs are filed with the Commission. AWI is instructed to modify its notice accordingly (Joint Ex. 4.0).

{¶ 39} In reaching this determination, the Commission notes that the rates set forth in Joint Ex. 3.0 include projected value or valuation of property from April 1, 2023, through June 30, 2023 (Joint Ex. 1 at 3). Pursuant to R.C. 4909.191, if the Commission incorporates projected value or valuation of property into its determination under R.C. 4909.15(A)(1), the waterworks company shall, not later than ninety days after data for the actual value or valuation as of the date certain becomes known, submit to the Commission proposed rate or charge adjustments that provide for the recalculation of rates or charges reflective of customer class responsibility, corresponding to the differences, if any, between the projected value or valuation incorporated into the Commission's determination and the actual value or valuation as of the date certain. Pursuant to Staff's letter of December 12, 2023, on November 9, 2023, AWI provided to Staff 12 months of actual plant valuation as of the date certain. Staff, through its external auditor, verified the plant valuation. Staff recommends that no rate change or charge adjustment is necessary at this time. AWI is directed to file in this docket, within 30 days of this Opinion and Order, 12 months of actual plant balances as of date certain by detailed National Association of Regulatory Utility Commissioners Uniform System of Accounts for Class A Sewer Utilities (1976) pursuant to R.C. 4909.191(B).

{¶ 40} Additionally, as reflected in the Staff Report, Staff anticipates that maps and metes and bounds of service areas exclude nonjurisdictional municipalities that lie within the overall service areas. Upon completion of the current joint AWI and Staff project of reviewing Aqua's current service area maps and metes and bounds, Staff anticipates a compete replacement filing of the associated water and wastewater certificates to reflect all service areas including all internal names used to reference the service areas or service area components with their associated maps and metes and bounds. (Staff Ex. 1 at 12.) Additionally, the Stipulation provides that "[u]nless otherwise specifically provided for in this Stipulation, all rates, terms, terms, conditions, and any other items shall be treated in accordance with the Staff Report filed on July 13, 2023" (Joint Ex. 1 at 2). Therefore, AWI is directed to continue to work with Staff and file new maps and netes and bounds of service areas consistent with the Staff Report by the end of the first quarter 2024.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 41} On November 30, 2022, AWI filed a notice of intent to file an application for an increase in rates. Also on November 30, 2022, AWI filed a motion for approval of a test year of July 1, 2022, to June 30, 2023, and a date certain of June 30, 2023.

{¶ 42} On December 30, 2022, AWI filed an application for an increase in its rates for wastewater service in its following service areas: Franklin areas formerly served by Ohio American Water Company, Firestone Trace, and Southwood Estates.

{¶ 43} By Entry issued January 11, 2023, the Commission set the test period for the application to begin on July 1, 2022, and end June 30, 2023, and set the date certain as June 30, 2023. In addition, the Entry granted the requested SFR waivers.

{¶ 44} That same day, the Commission issued an Entry directing Staff to issue a request for proposal for audit services to assist the Commission with auditing AWI's rate increase application. By Entry dated February 8, 2023, the Commission selected Larkin & Associates, PLLC to conduct the aforementioned audit.

{¶ 45} By Entry issued March 8, 2023, the Commission accepted the application as of the filing date of December 30, 2022.

{¶ 46} On July 13, 2023, Staff filed its written report of investigation with the Commission, along with an audit of the application prepared by Larkin & Associates, PLLC.

{¶ 47} By Entry issued July 14, 2023, the attorney examiner (1) scheduled a prehearing conference for August 18, 2023; (2) scheduled an evidentiary hearing for September 11, 2023; (3) set the deadline for filing objections to the Staff Report, direct testimony, and motions to intervene as August 14, 2023; (4) set the deadline for filing motions to strike objections to the Staff Report as August 21, 2023, and (5) set the deadline for filing both memoranda contra motions to intervene and memoranda contra motions to strike objections to the Staff Report as August 28, 2023.

{¶ 48} By Entry issued July 18, 2023, local public hearings were scheduled for Columbus, Ohio on August 28, 2023; Marion, Ohio on August 29, 2023; and Ashtabula, Ohio on August 31, 2023. Each local public hearing was scheduled jointly with the local public hearing for related Case No. 22-1094. Notice of the local public hearings was published in accordance with R.C. 4903.083 and proof of such publication was filed on August 25, 2023.

{¶ 49} Intervention was granted to OCC.

{¶ 50} On August 14, 2023, objections to the Staff Report were filed by AWI and OCC.

{¶ 51} Local public hearings were held as scheduled on August 28, 2023, in Columbus, Ohio; on August 29, 2023, in Marion, Ohio; and on August 31, 2023, in Ashtabula, Ohio. Notice of the local public hearings was published in accordance with R.C. 4903.083 and proof of such publication was filed on August 25, 2023.

{¶ 52} On October 5, 2023, a Stipulation was filed by AWI and Staff. OCC filed a notice of non-opposition to the Stipulation on October 13, 2023.

{¶ 53} The evidentiary hearing was held on October 16, 2023, and the Stipulation and supporting exhibits, including the supplemental direct testimony of Mr. Davis, were admitted into the record.

{¶ 54} The value of all of AWI'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 \$16,523,328.

{¶ 55} The current net annual compensation of \$845,701 represents a rate of return of 5.12 percent on the jurisdictional rate base of \$16,523,328.

{¶ 56} A rate of return of 5.12 percent is insufficient to provide AWI with reasonable compensation for the water services rendered to its customers.

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

{¶ 58} An authorized revenue increase of \$352,081 will result in a return of \$1,120,156 which, when applied to the rate base of \$16,523,328, yields a rate of return of 6.78 percent.

{¶ 59} The allowable gross annual revenue to which AWI is entitled for the purposes of this proceeding is \$4,081,920.

{¶ 60} AWI'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. The application complies with the requirements of these statutes.

{¶ 61} 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.

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

V. ORDER

{¶ 63} It is, therefore,

{¶ 64} ORDERED, That the Stipulation filed on October 5, 2023, be approved in accordance with this Opinion and Order. It is, further,

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

{¶ 66} ORDERED, That, consistent with Joint Ex. 3.0, AWI 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,

{¶ 67} ORDERED, That the final revised tariffs shall become effective on a services-rendered basis on or after the date they are filed with the Commission. It is, further,

{¶ 68} ORDERED, That AWI 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,

{¶ 69} ORDERED, That AWI comply with the conditions set forth in the Stipulation. It is, further,

{¶ 70} ORDERED, That AWI file the actual plant valuation balances consistent with Paragraph 39. It is, further,

{¶ 71} ORDERED That AWI update its maps and metes and bounds consistent with Paragraph 40. It is, further,

{¶ 72} 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,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

CRW/JSA/dmh

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

12/13/2023 2:57:07 PM

in

Case No(s). 22-1096-ST-AIR

Summary: Opinion & Order granting Aqua Ohio Wastewater, Inc.'s application to increase its wastewater service rates and approves the stipulation between Aqua Ohio Wastewater, Inc; and Staff, allowing a return of 6.78 percent for water service rendered in Aqua Ohio Wastewater, Inc.'s Franklin areas (formerly served by Ohio American Water Company), Firestone Trace areas, and the Southwood Estates areas electronically filed by Debbie S. Ryan on behalf of Public Utilities Commission of Ohio.