



**Office of the  
Ohio Consumers' Counsel**  
*Residential Utility Consumer Advocate*

**TESTIMONY BEFORE  
HOUSE PUBLIC UTILITIES COMMITTEE**

**HB 344**

Submitted by:  
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**TESTIMONY OF  
JANINE L. MIGDEN-OSTRANDER  
BEFORE THE  
HOUSE PUBLIC UTILITIES COMMITTEE**

Good afternoon, Chairman Sayre, Vice Chairwoman Williams, Ranking Minority Member Snitchler and members of the committee. I am Janine Migden-Ostrander, the Ohio Consumers' Counsel. The Office of the Ohio Consumers' Counsel (OCC) is the statutory representative of Ohio's 4.5 million residential utility households. I would like to thank you for the opportunity to testify before you in support of House Bill 344 and Senate Bill 228, its companion bill in the Senate.

As Ohio's residential utility advocate, we work to protect the residential consumers of investor-owned water and sewer utilities from unreasonable rate increases. We support HB 344 and SB 228 because they will protect Ohio's residential consumers from part of the substantial cost of water and sewer rate case expenses. I thank each of you for considering these important pieces of legislation.

In my testimony today, I will outline the specifics of these important bills and the basis for their need. I will conclude by urging this committee to act swiftly in passing HB 344 in its current form.

**Overview Of The Legislation**

Under Ohio's current system of utility regulation, a water or sewer company that files for a rate increase before the Public Utilities Commission of Ohio (PUCO) may have the opportunity to recover 100 percent of its rate case expense from its consumers in the form of increased rates. Rate case expenses can include, but are not limited to fees and expenses of attorneys, consultants, witnesses, utility employees and studies related to rate cases. For example, a water utility with a case recently decided by the Commission alleges that its rate case expense is nearly \$1,000,000 for a case where it sought to raise the water and sewage rates by \$37.4 million for its approximately 56,000 customers in

Ohio. Furthermore, in recent years, some companies have increased the frequency of their applications to increase rates to nearly an annual basis. Escalating charges to prepare and present rate cases and increases in rate case frequency are causing an increasing burden on Ohio's consumers.

HB 344 and SB 228 would require large investor-owned water and sewage companies to pay their fair share of rate case expenses incurred when they request a rate increase. The bill would cap the portion of those expenses that companies could recover from consumers at 50 percent in cases filed pursuant to Section 4909.18 of the Ohio Revised Code. The PUCO would have the discretion to increase the company's responsibility for this cost beyond 50 percent if, for example, the Commission finds that the utility engaged in wasteful legal spending, unnecessarily increased costs of litigation, or otherwise incurred expenses for which residential consumers should not have to foot the bill. It is undisputed that the approval of rate increases benefits the company's investors, especially when high returns on equity are granted by the Commission. It makes more sense for investors to also share in the costs of rate cases. Also, by sharing this cost, it will force the water or sewer company to be more cognizant of the money they are spending to put forth its case for a requested rate increase, hence, saving money for customers and shareholders alike.

The legislation also would prohibit the recovery of rate case expenses from a Purchased Water Adjustment Clause pursuant to Ohio Revised Code Section 4909.171, a System Improvement Charge pursuant to 4909.172 of the Revised Code and emergency rate increase cases pursuant to Section 4909.16 of the Revised Code. Just as importantly, the legislation also would prohibit the recovery of rate case expenses from any other ratemaking mechanism established after the effective date of this legislation.

Understanding that smaller investor-owned water and sewer companies may lack the resources of the larger companies, the proposed bills exclude companies that serve fewer than 15,000 customers in Ohio.

Therefore, on behalf of approximately 145,000 customers receiving water and/or sewer service from utilities that serve more than 15,000 customers who would be governed by this legislation, the Office of the Ohio Consumers' Counsel urges you to support the proposed legislation.

**Basis Of Need**

House Bill 344 and SB 228 would affect Aqua Ohio, Inc. and the Ohio American Water Company as they are the only investor-owned water and sewer utilities in Ohio with more than 15,000 customers. Combined, the two companies serve approximately 145,000 customers in Ohio. As I mentioned before, the number of water and sewer rate increase requests has become more frequent. In fact, the number of rate increase requests these two utilities have sought is staggering. Since 2000, Aqua Ohio and Ohio American Water have brought 11 rate increase requests before the PUCO. During this time, Aqua Ohio has been approved to raise rates approximately 40.1 percent. Additionally, the recent Aqua Masury Division rate case was decided and the Company was granted a 65.91% increase phased-in over four years. The Company had originally requested a rate increase of 80.83% beginning in the first year. Another Aqua rate case is currently pending before the Commission and, in March 2010, they indicated their intent before the Commission to file a rate case for its Stark Division. Similarly, Ohio American Water has been approved by the PUCO for six increases that have raised rates approximately 51.5 percent during this period.

The figure below shows each of the rate cases initiated by Aqua Ohio and Ohio American Water, and the estimated cost of their rate case expenses, according to PUCO Staff reports.

**Figure 1. Estimated rate case expenses from customers since 2000 of Ohio’s investor-owned water and sewer utilities that serve a total of 15,000 customers or more.**

| <i>Aqua Ohio</i>                                |                    |                 |
|---|--------------------|-----------------|
| Rate Case Expenses <sup>1</sup><br>case-by-case |                    |                 |
| Case Number                                     | Rate Case Expenses | Rates Effective |
| 09-1044-WW-AIR                                  | Not yet available  | Case in review  |
| 09-560-WW-AIR                                   | \$ 96,000          | May 6, 2010     |
| 07-564-WW-AIR                                   | \$ 75,000          | May 15, 2008    |
| 03-2290-WW-AIR                                  | \$ 100,000         | Oct. 20, 2004   |
| 01-2924-WW-AIR                                  | \$ 100,000         | Nov. 8, 2002    |
| 00-713-WW-AIR                                   | \$50,000           | Mar. 23, 2001   |
| <b>Totals</b>                                   | <b>\$421,000</b>   |                 |

| <i>Ohio American Water</i>                        |                    |                 |
|---|--------------------|-----------------|
| Rate Case Expenses <sup>1,2</sup><br>case-by-case |                    |                 |
| Case Number                                       | Rate Case Expenses | Rates Effective |
| 09-391-WS-AIR                                     | \$ 692,785         | Est. May 2010   |
| 07-1112-WS-AIR                                    | \$ 400,001         | Nov. 13, 2008   |
| 06-433-WS-AIR                                     | \$ 399,960         | March 7, 2007   |
| 03-2390-WS-AIR                                    | \$ 292,000         | Feb. 25, 2005   |
| 01-626-WW-AIR                                     | \$246,000          | Feb. 7, 2002    |
| 99-1038-WW-AIR                                    | \$400,000          | June, 29, 2000  |
| <b>Totals</b>                                     | <b>\$2,433,746</b> |                 |

Again, since current practice allows water and sewer utilities the opportunity to recover all of their reasonable rate case expenses, there is no incentive for water companies to minimize rate case costs. Regardless of what a utility spends in order to raise customers’ rates, the consumers may end up paying for those expenses through higher bills.

The OCC has heard from more and more consumers who are concerned about their increasing utility costs – especially during these difficult economic times. They report having to make very tough decisions about how to balance their basic cost of living expenses: paying for mortgages or rent; medication; and other life necessities that include trying to pay for their utility services.

<sup>1</sup> Except for Case No. 09-391-WS-AIR, rate case expense figures are provided in PUCO Staff Reports as recommendations to the commissioners. In Case No. 09-391-WS-AIR, the Commission granted OAW \$692,785 in rate case expense in its May 5, 2010 Opinion and Order.

<sup>2</sup> Ohio American Water in its initial brief before the PUCO, Case No. 09-391-WS-AIR (page 35), totals its rate case expenses for its last six rate cases at \$3,361,349.

With the current levels of poverty and unemployment in Ohio you begin to understand why consumers can no longer afford their most essential utility service. Unemployment in Ohio stands at 11.0 percent according to current figures from the Ohio Department of Job and Family Services.<sup>3</sup> Poverty levels have climbed to 13.3 percent – a 25 percent increase – since the 2000 Census was conducted, according to the American Community Survey's latest estimates.

But the statewide poverty and unemployment levels may not be as telling as the hardship that is being experienced in many of the communities served by the large investor-owned water and/or sewer utilities. The number of people in poverty in city of Marion has increased from 13.8 percent a decade ago to 21.7 percent in 2009. Lawrence County is experiencing poverty at a level of 18.9 percent.<sup>4</sup> Trumbull and Ashtabula counties are experiencing unemployment levels around 14 percent.

Additionally, based on analysis of disconnection data for the largest water utility in the state, the percentage of total water customers that were disconnected for non-payment in 2008 was 13 percent. During the same period, the total number of disconnections for electric and natural gas consumers in the state was at 9.4 percent. Disconnections for non-payment can be a key indicator of the lack of affordability for utilities. Certainly, water service is as essential to the health and safety of consumers as electric and natural gas utility services and the magnitude of disconnections is cause for concern.

Ohioans are struggling. Saddling consumers with more frequent rate increases, and then also charging them for 100 percent of the rate case costs associated with raising those rates demonstrates a lack of sensitivity to the plight of their Ohio customers. And as previously noted rate case expenses have only increased. This issue needs to be addressed with new laws that protect consumers.

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<sup>3</sup> "Ohio and U.S. Employment Situation," Ohio Department of Job and Family Services, April 16, 2010. <http://jfs.ohio.gov/RELEASES/unemp/201004/UnempPressRelease.asp>

<sup>4</sup> "The Ohio Poverty Report, June 2009," Ohio Department of Development, Policy, Research and Strategic Planning Office. <http://www.development.ohio.gov/Research/files/p700000000.pdf>

This situation has moved to the point of excess. Take Ohio American Water, for example. In its recently decided rate case before the PUCO (May 5, 2010), OAW estimated it had spent more than \$973 thousand in rate case expenses.

Hundreds of consumers of this water system routinely testify in public hearings and write letters that are filed in the PUCO docket. These customers are at their breaking points because of the frequency and dollar amount of increases in their water and sewer rates. Some indicate that they are unable to sell their homes because of the price of the water. Some consumers resort to taking micro-showers and they do not water their lawns because of the high costs and they are concerned that the high water prices are contributing to neighborhood blight. They are pleading with us to help them.

In the approximately 200 letters filed in OAW's most recent rate case and testimonies of the more than 630 customers who attended public hearings, there are disconcerting stories about the price of water and the affect it has on their lives. The details are varied, but the issues are similar. Consumers who have lived in their homes for 30 or more years tell stories of being on the verge of losing them because of the cost of water. Consumers have shared their water bills with the OCC which in some instances cost \$200-\$300 a month. They are worried that their water rates could once again increase while their salaries remain stagnate, are cut or worse yet, eliminated. Local leaders have become more involved than ever before in the fight to reign in water costs. Leaders from 18 cities, townships and villages have signed resolutions and written letters to oppose Ohio American Water's rate increase.

Further, our abilities as the residential consumers' utility advocate for these consumers are handcuffed when we seek to help them in cases involving poor water quality issues or defend them against utility rate increases. Company lawyers are quick to contend that our exploration causes increases in their work, and ultimately, increases rate case expenses. The OCC wants to limit rate case expenses while also fulfilling our statutory duty of getting to the bottom of a utility's "need" to raise rates. But a utility's decision to file

frequent rate increase applications, and use expensive consultants, lawyers and expert witnesses puts the OCC in a particularly difficult situation.

The OCC always must weigh the benefit of additional discovery or local public hearings against the potential resulting effect on rate case expenses and, ultimately, consumers. In response to OCC's due diligence, utilities may use consultants to respond to questions or send several outside lawyers to local public hearings. Their fees, as well as their travel expenses get passed on to customers in rates.

Water and sewer companies, along with their shareholders, benefit directly from the results of increased rates. For the reasons I previously mentioned in my testimony, there needs to be responsibility placed on these large water and/or sewer utilities to absorb a fair portion of the expenses they incur during a rate case. This should be considered as part of their normal cost of doing business. House Bill 344 and Senate Bill 228 will hold water and sewer utilities and their shareholders responsible for at least half of the rate case costs they are allowed in future rate cases. This legislation will further encourage corporate officers to more closely monitor the costs of rate case filings and exercise greater prudence in the manner and frequency with which they pursue higher rates.

### **Conclusion**

Chairman Sayre and members of this committee, in closing, I would like to thank each of you for your interest in this matter so important to Ohio's water and sewer customers. My staff and I look forward to working with you and to assisting the consumers of Ohio American Water and Aqua Ohio to find ways to lessen their utility costs and find workable solutions to reduce their water and/or sewer rates into the future.