



**Before the House Public Utilities Committee**  
**Opponent Testimony Regarding House Bill 379**

**Presented by:**

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**March 14, 2012**

Good morning Chairman Stautberg, Vice Chair Roegner, Ranking Member Williams, and members of the House Public Utilities Committee. I am Amy Kurt, Director of Government Affairs for the Office of the Ohio Consumers' Counsel (OCC). Thank you for allowing me to testify today to discuss Substitute House Bill 379 (HB 379) and the impact the Bill could have on Ohio's residential water and sewer utility customers. OCC is the statutory representative of Ohio's residential utility consumers, and regularly appears before the Public Utilities Commission of Ohio (PUCO) to advocate for affordable and reliable utility services on consumers' behalf.

I will review a few of the changes proposed in this legislation, explain OCC's main concerns with HB 379, and recommend ideas for amendments to improve this bill for Ohio consumers. OCC is appreciative of the improvements that were made in the Substitute Bill. But OCC remains concerned about the potential for more surcharges and larger rate increases for Ohio customers.

## **A. The Water and Sewer Industries**

You have heard about competition for customers in the electric, natural gas and telephone industries. And you have made legislative changes with regard to that competition. Consumers do not have competitive choices with regard to investor-owned water and sewer utility services. They are captive customers to the water utilities. These utilities are regulated by the PUCO. And through regulation these utilities have an opportunity to recover their costs of service, in rate cases and in cases for System Improvement Charges (SICs). Additionally, these utilities have an opportunity to earn a just and reasonable return on their investment, as approved by the PUCO. I have included a map with my testimony to show the areas of the state served by investor-owned water and sewer utilities (See Attachment 1).

At this time of economic challenges in Ohio, customers have been expressing their concerns about water and sewer rate increases. OCC is currently attending the local public hearings for a rate case filed by one of Ohio's investor-owned water and sewer utilities. On Monday, March 12, 2012, there was a local public hearing in the city of Tiffin. There, many customers, including a Seneca County Commissioner, the mayor of Tiffin, the law director of Tiffin, the President of Heidelberg University, members of the City Council, a representative of the town's landlord association, and other residents, testified to their concerns with the proposed 22 percent rate increase. Last week, in Ashtabula, township trustees, village councilmen, and a county commissioner all testified to their concerns with the water company's proposed rate increase.<sup>1</sup>

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<sup>1</sup> The transcripts from these local public hearings will be available on the PUCO's website docketing system for Case Number: 11-4161-WS-AIR.

## **B. Substitute House Bill 379**

HB 379 expands the way investor-owned water and sewer utilities in Ohio can raise their customers' water and sewer bills. Under current law, water and sewer utilities can increase their customers' bills in two primary ways. First, there is a rate case, where all expenses, revenues and other investments are reviewed. Second, there is a System Improvement Charge, which is a separate, and limited, charge that can be added onto customers' bills without the process of a rate case.

Regarding the System Improvement Charge, HB 379 would change current law by expanding the type of costs that can be collected and by raising the cap on the amount of money that can be collected from water customers. Regarding rate cases, the Bill would change current law by weakening certain ratemaking standards that balance the interests of utilities and customers. Additionally, this Bill adds another potential surcharge to be paid by customers if a water or sewer utility's federal or state tax rate increases after a rate case.

## **C. Primary Concerns and Proposed Ideas for Amendments**

OCC has four primary concerns with HB 379, and is proposing ideas for amendments to address those concerns. I will briefly discuss each of them.

### **Concern #1: HB 379 Expands the Type of Infrastructure Costs That Utilities Can Collect from Customers Using a System Improvement Charge**

Some water utilities in Ohio lose more than 20 percent of their water through leaking pipes and other factors. Customers have to pay for this lost water, even though they don't receive it. The main goal of the System Improvement Charge has been to fund the replacement of leaking infrastructure (i.e.

mains, service lines, valves and hydrants). The System Improvement Charge was an exception to the traditional approach for water and sewer utilities to ratemaking because it allowed for the collection of certain utility costs outside of a rate case.

HB 379 expands on this exception by allowing even more types of costs to be collected through the System Improvement Charge. Many of these additional types of costs have little to do with reducing expensive and wasteful water losses. For example, the Bill would allow treatment plant costs (i.e. plant generators, motors, chemical feed systems, filters, pumps, etc.) to be collected from customers. That type of plant is costly and should be scrutinized as a part of the full prudence review that is conducted in a rate case where hearings are required--unlike in SIC cases. Most other states with this type of surcharge (like the SIC) limit it to expenses related to reducing water losses.

Additionally, HB 379 removes an important consumer protection in the current System Improvement Charge law. In Ohio Revised Code 4909.172(C) (lines 457-459), the SIC “shall exclude an improvement providing the utility with additional revenue ...” This statutory language is removed in HB 379, but should be restored. The SIC should not be used to have customers fund utility investments for new revenue opportunities, as if consumers were utility investors. The costs of those sorts of investments should only be considered as a part of a rate case where those revenues can be evaluated in light of a utility’s total financial picture. Then, customers can benefit from those revenues in exchange for paying the underlying additional costs.

**Summary of Consumer Amendment #1: Maintain the Law’s Limit on the Types of Costs That Utilities Can Collect from Customers Under the System Improvement Charge.**

In Section 4909.172 (C)(1) and (2) of the Bill (lines 455 – 479), there should be changes to improve protections for customers. We encourage the committee to amend the Bill so that the System Improvement Charge cannot include costs that are unrelated to reducing water losses (e.g. chemical feed systems, filters, pumps, motors, plant generators, and sludge-handling equipment). Replacing expensive water and sewer plant should be subject to a prudence review and hearings which are required in rate cases. In addition, the SIC should not include utility expenditures that are for generating new revenues for the utility.

**Concern #2: HB 379 Raises the Legal Cap on the Percentage Increase That Can be Charged to Water Customers in an SIC.**

There is currently a cap on the amount of money a water or sewer utility can charge its customers through a System Improvement Charge . This charge is only allowed to increase customers' rates by up to 3% of a customer's monthly bill for each request. Water and sewer utilities are allowed to request (at least 12 months apart) up to three consecutive SIC increases for a maximum of a 9% increase of a customer's monthly bill. HB 379 increases this cap (for water customers only) from 3% of a customer's monthly bill per year to 4.25%. This proposal could result in customers paying an increase of up to 12.75% in their monthly bills for their water service after a 2-year period of time. And the Bill would allow these increases without the safeguards of a prudence review of all revenues and all expenses that occur in a rate case. Current law which allows a 9% increase, plus the opportunity to file a rate case is sufficient. No other state currently provides any such mechanism to increase customers' water bills by up to 12.75% in the aggregate without a rate case. (See attachment 2.)

## **Summary of Consumer Amendment #2: Protect Water Consumers by Maintaining the Current Cap on SIC Increases**

In Section 4909.172 (B)(2) (lines 442-444) of the Bill, the language should be changed to maintain the current 3% cap in the law. The current law could result in customers' water bills being increased by 9% after a 2-year period without a rate case.

### **Concern #3: HB 379 Would Allow Utilities to Collect from Customers a Charge for Taxes**

HB 379 allows a separate charge on water and sewer customers' bills to collect state and federal taxes (Section 4909.173). Water and sewer utilities are currently, and should continue to be, allowed to collect the costs of taxes from their customers. However, there should be concerns about HB 379's proposal for several reasons.

First, there are various state and federal taxes – such as unemployment, federal income, Federal Insurance Contributions Act (FICA), gross receipts, among others. The Bill is unclear as to which state and federal taxes are included in the proposed surcharge.

Second, the costs to customers for taxes should be reviewed and determined in a rate case along with other expenses, not as a single issue. Many utility costs vary over time (taxes, energy, labor, etc), and all of these should be considered as a whole in a rate case.

Lastly, administrative efficiency would be served by maintaining the review of taxes in rate cases rather than creating another administrative process for the review of taxes.

### **Summary of Consumer Amendment #3: Protect Consumers by Removing the Tax Surcharge**

Section 4909.173 (lines 511 – 554) should be removed so that water and sewer utilities are not able to add a surcharge to customers' bills to collect more money because of an increase in *any* state or federal tax rate.

### **Concern #4: HB 379 Expands the Utility's Opportunities to Increase Customers' Rates in a Rate Case.**

Currently, investor-owned water and sewer utilities' base rates are set through a rate case. These rates are based on a "test year" that is chosen by the utility to be reflective of its overall revenues and expenses. HB 379 would give water and sewer utilities the ability to propose rate increases by expanding the test year to include the costs incurred for an additional 12-month period. And, HB 379 would allow the utility to select a date certain that is farther in the future than what is currently allowed. The date certain is the date for determining whether plant is used and useful in providing service and, if so, for ascertaining the value of the plant that customers will pay.

These changes will make the analysis of water utility rate cases more difficult. And these changes will create an uneven playing field between utilities and customers.

The above approach was recently adopted for natural gas utilities (HB 95). We do not yet know the outcome of this approach for natural gas utilities because, to our knowledge, no utility has since filed a rate case. What we do know, is that historically natural gas utilities file relatively few rate cases. Water utilities, on the other hand, file more frequent rate cases. So, the impact of this approach on water and sewer customers may be much more severe.

Additionally, natural gas companies are able to spread their costs out over hundreds of thousands (in some cases, millions) of customers. To this end, investor-owned water and sewer utilities have a much smaller customer base, ranging from less than 100 customers to about 87,000 customers. The costs of current expenses, plus the addition of projected future expenses that are “reasonably expected to occur,” could mean bigger rate increases for water and sewer customers.

Also, the use of a standard of what is “reasonably expected to occur” for purposes of setting rates will limit the ability in rate cases to test whether the claimed cost is really incurred by the utility. Further, there is the potential for concern that the bill language allowing post-test year costs is asymmetrical, meaning the possibility that some might claim utilities can benefit from use of the law but consumers cannot.

#### **Summary of Consumer Amendment #4: Protect Customers by Maintaining the Current Approach to Rate Cases**

The Bill should be amended to remove references to water-works or sewage disposal system utilities’ ability to expand their rate cases to include post-test year adjustments and a delayed date certain.

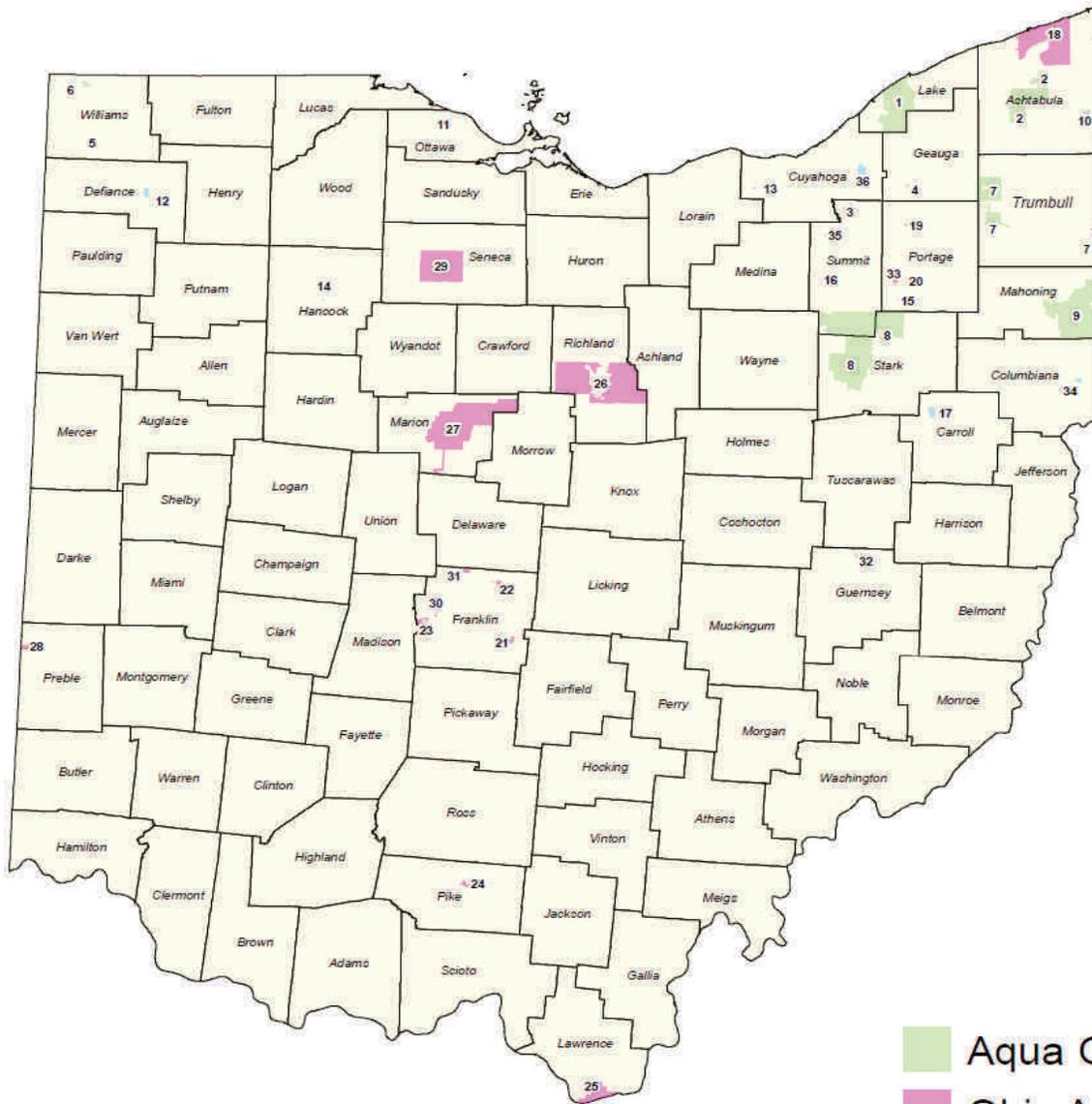
Rate cases should be maintained in their current form to balance the interests of the water and sewer utilities and their customers.

#### **D. Conclusion**

In conclusion, OCC appreciates the improvements that were made in Substitute House Bill 379, which included a reduction of the SIC cap by .75% for water and 2% for sewer companies, and the inclusion of a sunset date of 2025. However, OCC still has concerns about the impact the Bill could have on Ohio’s residential water and sewer utility customers. OCC has recommended ways to amend

the legislation to help protect customers. OCC's recommendations include maintaining the current cap in the law for limiting increases in SIC cases, maintaining the current limits on the types of costs that can be collected from customers in the SIC, removing the new tax surcharge, and maintaining the standards in traditional rate cases for balancing the interests of customers and utilities. Again, thank you for this opportunity to testify.

Attachment #1:  
Service Territories of Ohio's Regulated Water & Wastewater Utilities



- Aqua Ohio
- Ohio American
- Other

Public Utilities Commission of Ohio  
<http://www.puco.ohio.gov>

1	AQUA OHIO - LAKE ERIE DIV. - Lake County	19	OHIO AMERICAN - AURORA EAST
2	AQUA OHIO - LAKE ERIE DIV. - Ashtabula County	20	OHIO AMERICAN - BEECHCREST
3	AQUA OHIO - LAKE ERIE DIV. - Suburban	21	OHIO AMERICAN - BLACKLICK
4	AQUA OHIO - LAKE ERIE DIV. - Auburn Lakes	22	OHIO AMERICAN - HUBER RIDGE
5	AQUA OHIO - LAKE ERIE DIV. - Norlick Place	23	OHIO AMERICAN - LAKE DARBY
6	AQUA OHIO - LAKE ERIE DIV. - Seneca	24	OHIO AMERICAN - LAKE WHITE
7	AQUA OHIO - MASURY DIV.	25	OHIO AMERICAN - LAWRENCE COUNTY
8	AQUA OHIO - STARK REGIONAL DIV.	26	OHIO AMERICAN - MANSFIELD
9	AQUA OHIO - STRUTHERS DIV.	27	OHIO AMERICAN - MARION
10	CAMPLANDS WATER CO., LLC	28	OHIO AMERICAN - PREBLE
11	CARROL TOWNSHIP TREATMENT SERVICES	29	OHIO AMERICAN - TIFFIN
12	CHRISTI WATER SYSTEM INC.	30	OHIO AMERICAN - TIMBERBROOK
13	COLUMBIA PARK WATER & SEWER SYSTEM	31	OHIO AMERICAN - WORTHINGTON (VALLEY)
14	EAGLE CREEK UTILITY CO.	32	SALT FORK UTILITIES
15	FAIRLANE WATER CO.	33	SANDELWOOD WATER CO.
16	FRAZIER, LTD.	34	TOMAHAWK UTILITIES
17	MOHAWK UTILITIES	35	WATER & SEWER LLC
18	OHIO AMERICAN - ASHTABULA	36	WOODBURN REALTY CO.

Attachment #2  
 Comparison of Other States' Caps on Water Charges

#	States with System Improvement Charges	Percentage Cap
1	California	For California American Water Los Angeles District only – 3.12%.
2	Connecticut	Up to 7.5% of retail operating revenues approved in a base rate case. 5% cap in any given year.
3	Delaware	Capped at 7.5% not to exceed 5% in any 12-month period
4	Illinois	Capped at 5% of base rate revenues
5	Indiana	Up to 5% in one or through several filings
6	Missouri	Up to 10% of base rate revenue
7	New Hampshire	Capped at 7.5% in the aggregate not to exceed 5% in any 12-month period (For Aquarion Water Company only)
8	New York	For the six largest companies only – the caps are at the discretion of the Commission.
9	Ohio (current statute)	Three System Improvement Charge filings of up to 3% each are allowed between rate cases (up to a 9% maximum)
10	Pennsylvania	Up to 7.5% in one or through several filings