CSI - Ohio

The Common Sense Initiative

MEMORANDUM

TO: Jeff Jones, Chief – Telephone and Water Section, PUCO Legal Department

FROM: Todd Colquitt, Business Advocate

DATE: August 2, 2012

RE: CSI Review – PUCO Case No. WS-11-5605-WS-ORD, Standards for Waterworks Companies and Sewage Disposal Companies

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative ("CSI") Office under Ohio Revised Code ("ORC") section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis. This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

There are thirty-five (35) rules governing operating standards for private waterworks and sewage disposal companies subject to oversight by the Public Utilities Commission of Ohio ("PUCO" or "Commission"), and are delineated in Ohio Administrative Code 4901:1-15-01 through 35. The rules set forth the requirements for obtaining a certificate of public convenience and necessity ("CPCN"), customer service standards, outage notification, billing requirements, disconnection and reconnection procedures, and other service standards for the provision of such services.

The Commission sought public comment on the rule package by issuing an Entry dated November 9, 2011 seeking comments to be filed by November 30, 2011 and reply comments to be filed by December 14, 2011. Those deadlines were subsequently extended at the request of stakeholders to December 9, 2011 and December 23, 2011, respectively. Notices of the proposed rulemaking and subsequent deadline extension were served by the PUCO on all regulated private waterworks and sewage disposal companies, and also upon the Office of the Ohio Consumers' Counsel ("OCC") and Ohio Environmental Protection Agency ("OEPA"). The PUCO received two sets of comments and reply comments, one from the Office of the Ohio Consumers' Counsel -- representing residential customer interests – and one from Aqua Ohio,

Inc. (“Aqua”) – a large private waterworks company. The Commission then released a Finding and Order on February 1, 2012 approving the rules. No Applications for Rehearing were filed by stakeholders objecting to the approved rules. Nonetheless, after having discussions with the CSI Office on the CSI rule review process that took effect on January 1, 2012, the Commission completed and served its Business Impact Analysis (“BIA”) on the aforementioned pool of stakeholders on June 18, 2012, seeking comments by stakeholders on the BIA by July 2, 2012. No comments were submitted by any party on the BIA.

During the stakeholder comment and reply period for the rules themselves, the OCC filed comments seeking changes to nine (9) rules, while Aqua sought changes to two (2). Both commenters opposed the changes suggested by the other. The PUCO did not adopt changes suggested by either. In the case of the changes requested by the OCC, the PUCO determined that the requested changes were either duplicative or unwarranted additional regulatory burdens. With respect to the two changes requested by Aqua, the Commission determined that it lacked the requisite statutory authority to grant one change. The other one sought to limit the number of medical certifications within a certain timeframe that a customer could obtain to prevent disconnection. The PUCO determined that maintaining the existing rule of three 30-day medical certifications in any twelve-month period rather than reducing that number to one per twelve-month period was appropriate.

Upon completion of the comment cycle for the BIA on July 2, 2012, the CSI Office met Commission Staff to discuss and request changes to the original BIA. Among the changes requested were expansion of the BIA to formally include all 35 rules, including those rules which in and of themselves did not necessarily contain any adverse business impact. The reason for this requested change is because OAC 4901:1-15-03 states that non-compliance with any rule in 4910:1-15 would make the regulated entity subject to fines and penalties, thereby creating an adverse impact as defined in ORC 107.52(B), separate and apart from any licensing or reporting requirements that might otherwise trigger ORC 107.52. Additionally, the CSI Office requested answers more specifically responsive to some of the questions, for example why the Commission felt that ORC 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) did not apply.

After reviewing the proposed rule package, the comments, reply comments, and Commission Finding and Order made in the PUCO Docket generating this rule package (WS 11-5605-WS-ORD), the associated original BIA, and the revised BIA; the CSI Office has determined that the rule package satisfactorily meets the standards espoused by the CSI Office and the purpose of the rule package justifies the adverse impacts identified in the revised BIA.

Recommendations

For the reasons described above, the CSI Office has no recommendations regarding this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Agency should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Todd Snitchler, Chairman, Public Utilities Commission of Ohio
Mark Hamlin, Lt. Governor's Office