

# **Water and Wastewater Regulatory Update from the Public Utilities Commission of Ohio**

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# Disclaimer

- This presentation reflects my views and not necessarily the views of PUCO staff or the commissioners.

# Topics we'll cover...

- The History of the PUCO
- Water Rules
- Rate Process
- Jurisdiction
- Site Visits
- Updates
- How to find PUCO regulatory docs
  - Tariffs
  - Docket
- Questions

# Personal Bio

- Academic background in marine biology, business, and leadership studies.

2014 - 2016

- **Miami-Dade County, FL** – pollution control inspector, coastal permitting specialist (docks, seawalls, boat lifts), water and wastewater inspector - state delegated program
- 2<sup>nd</sup> largest county level environmental agency in the US next to Orange County, CA.
- Surrounded by FLKNMR, Everglades NP, Big Cypress Preserve, Biscayne Bay NP
- Completed intensive six-month Pollution Control Inspector Training Program

2017 - 2018

- **Ohio EPA** – environmental specialist
- Operations, Central Office

2019 - Present

- **PUCO** – water utility specialist

# Service Monitoring and Enforcement Department (SMED)

- ~50 employees
- SMED examines the quality of service provided by utility companies to ensure that safe, dependable and quality services are being provided.
- Call Center - PUCO investigators answer and respond to thousands of customer complaints and requests for information each year through the PUCO Call Center.
- Downsized to one water specialist on staff in mid-2000s
- Inspect and monitor jurisdictional water company infrastructure and operations for compliance.

# 100 Years and Counting: The History of the PUCO

## Office of the Commissioner of Railroads and Telegraphs

- 1867 - founded by the General Assembly
- Reported on the physical, financial, and operating conditions of railroad and telegraph companies
- One commissioner appointed by governor
- Initially a fact-finding agency

## Railroad Commission

- 1906 – agency restructured as Railroad Commission.
- *The Railroad Act* – expanded agency to three commissioners with small staff
- Established authority to fix reasonable and non-discriminatory rates
- Permitted to formulate rules and regulations and exercise powers incidental to hearings

# Public Service Commission

- 1911- dealt with public concerns arising outside the limited field of railroads
- Jurisdiction extended to electric, gas, telephone, and water companies
- Given authority to value utilities and prescribe a uniform system of accounts (USOA) – set forth standardized format for annual reports and other financial statements
  - USOA guidance is published by the National Association of Regulatory Utility Commissioners (NARUC)
  - USOA established accounting standards for reporting financial statements
- Could approve or deny issuance of corporate securities by the utility company

# Public Utilities Commission of Ohio (PUCO)

1913 – Agency changed its name again and duties expanded to motor bus lines

1915 - Motor transportation of property added

- For-hire operators of trucks, tow trucks, and moving companies

1961 – Wastewater companies added

1983 – Agency expands from three- to five-person commission

- Commissioners appointed by the governor to serve five-year terms
- List of nominees presented by the PUCO Nominating Council



# Today's PUCO...

- Affects nearly every household in Ohio
- Today, the PUCO regulates service providers of all kinds of utilities:
  - Electric and natural gas companies
  - Telephone companies
  - Rail and trucking companies
  - Water and wastewater facilities
- Economic impact in Ohio of over \$24 billion
- Led by five commissioners serving staggered five-year terms
- Employs staff of ~150 - engineers, lawyers, analysts, accountants, customer service representatives, HR professionals, auditors, investigators, IT specialists, technical and field staff, communication professionals and economists.

# Mission

To assure all residential and business customers access to adequate, safe, and reliable utility services at fair prices, while facilitating an environment that provides competitive choices.

# Commissioners



**M. Beth Trombold, Commissioner**

Term ends: April 10, 2023 M. Beth Trombold was appointed to the Public Utilities Commission of Ohio



**Jenifer French, Chair**

Term ends: April 10, 2024 Jenifer French was appointed to the commission and named chair by Governor



**Daniel R. Conway, Commissioner**

Term ends: April 10, 2027 Daniel R. Conway was appointed to the Public Utilities Commission of Ohio



**Dennis P. Deters, Commissioner**

Term ends: April 10, 2026 Dennis P. Deters was appointed to the Public Utilities Commission of Ohio



**Lawrence K. Friedeman, Commissioner**

Term ends: April 10, 2025 Lawrence K. Friedeman was appointed to the Public Utilities Commission of

# Ohio Administrative Code Chapter 4901:1-15

## Rule 4901:1-15-10: Maintenance of plant and equipment

- Maintenance plan
- Engineering standards of construction
- Flushing, valve exercising, hydrant inspections, tank inspection, manhole inspections, etc.

## Rule 4901:1-15-14: Records and reports

- Customer records and complaints
- Service, financial, operating, and maintenance records
- Operational records

<https://codes.ohio.gov/ohio-administrative-code/chapter-4901:1-15>

# Ohio Administrative Code Chapter 4901:1-15

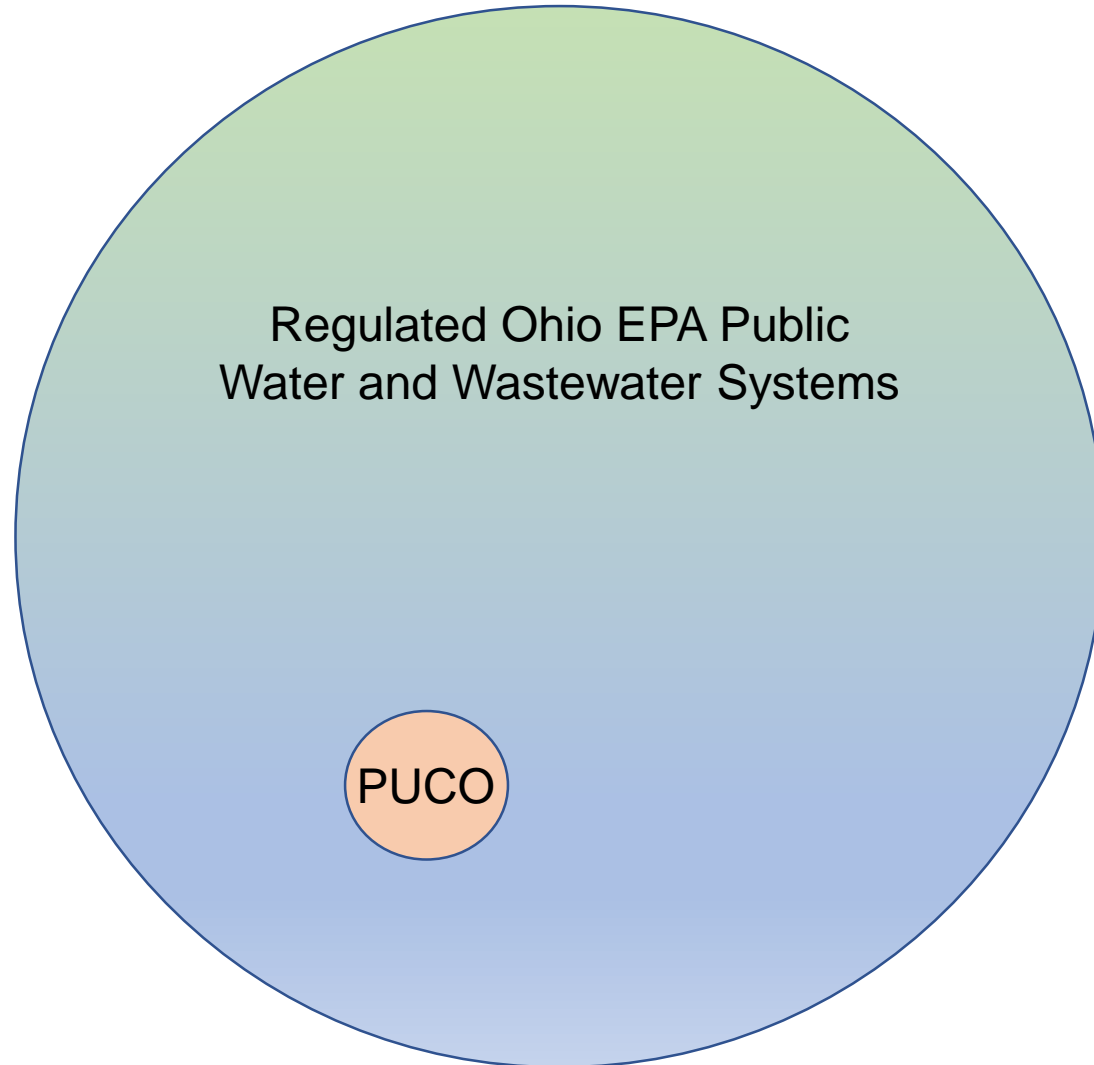
## Rule 4901:1-15-20 | Quality and adequacy of service

- Curb stop requirement
- Minimum static pressure of 35 psi, Maximum: 125 psi at curb stop
- Water loss control measures

# Steps in the Rule Review Process

1. Effective rules are reviewed every five years. The process takes about 7-9 months.
2. Workshop – open to utility stakeholders and the public
3. PUCO staff prepares proposed rules for written comment
4. Business Impact Analysis – may be performed to assess adverse impact of rules on business
5. Commission Order – issued after all comments and replies have been considered
6. Rules filed with JCARR for review
7. Effective date of rules established

# Shared Jurisdiction



# Jurisdictional Decisions

- The PUCO regulates investor-owned water and sewer utilities (Think Aqua Ohio)
- In general, whether an entity is subject to PUCO jurisdiction is dependent on whether it satisfies the definition of a “public utility” in ORC Ch. 4905.
- ORC 4905.3
  - (G): A water-works company, when engaged in the business of supplying water through pipes or tubing, or in a similar manner, to consumers within this state;
  - (M) A sewage disposal system company, when engaged in the business of sewage disposal services through pipes or tubing, and treatment works, or in a similar manner, within this state.

## Exemptions -

- A public utility that is owned and operated exclusively by and solely for the utility’s consumers (e.g., HOAs)
- A public utility owned or operated by any municipal corporation



# Case Precedent

## *Complainants v. Shroyer's Mobile Homes Park (1992)*

- Manufactured home park with ~125 lots located in Delaware, OH
- Outside corporate limits of City of Delaware
- Shroyer's purchases water from the City of Delaware
- Respondent says City charges 1.5 times normal rate for properties its serves outside city limits
- Historically, water utility charges were included in rent payments
- Shroyer's MHP begins metering customers and charging tenants based on water usage
- Some tenants experienced a significant increase in charges and filed a formal complaint.

Primary question raised in the case was whether the Shroyer's MHP met the definition of a waterworks company.

# Shroyer's MHP Argument

- Not a water-works company or, therefore, a public utility because it is not “engaged in the business of supplying water.”
- Instead, says that its primary business is operating as a manufactured home park that furnishes its tenants with water as a convenience.
- Claims MHP is a business governed by statutes and rules much akin to landlord-tenant law

## Four Part Test -

1. Have the manufactured home park owners manifested an intent to be a public utility by availing themselves of special benefits available to public utilities such as accepting a grant of a franchised territory, a certificate of public convenience and necessity, the use of eminent domain, or use of the public right of way for utility purposes?
2. Are the water services available to the general public rather than just to tenants residing in the manufactured home park?
3. Is the provision of water services ancillary to the primary business of operating a manufactured home park?
4. If there is a separate charge made for water services, is that charge reasonable?

# Commission's Ruling in Shroyer Case

- Found that Shroyer's MHP is not a public utility or a waterworks company as defined in ORC Sections 4905.02 and 4903.03 (A)(8).
- Commissioners said Shroyer has "not held itself out to provide water service to any but the tenants."
- Shroyer had not availed itself use of a public franchise, a public right of way, or the right of eminent domain in the construction and operation of its water system.
- The distribution of water was found to be ancillary to Shroyer's main business.
- Commissioners did not find Item Four to be meaningful in determining jurisdiction and said that jurisdiction must be established before a separate charge for water service is considered reasonable.

The Commission's Finding and Order dismissed the case and this ruling established case precedent for future jurisdictional decisions.

# What if a company is likely to be jurisdictional?

- **Answer:** The company is encouraged to file an Application for Certificate of Public Convenience and Necessity (ACE).
- Advise operator to consult with an attorney experienced in utility regulation.
- PUCO Staff cannot advise operators or determine jurisdiction.

## PUCO Rate Case Process



### Application

A utility files an application for a rate increase, starting the 275-day countdown. Evidence and testimony is prepared by interested parties.



### Review and report

PUCO staff reviews facts and issues raised in the application and prepares a staff report that serves as a recommendation to the commissioners.



### Hearings

Local public hearings are scheduled to collect testimony by affected customers.

An evidentiary hearing is held to hear from expert witnesses.



### Decision

The five commissioners review the case record and recommendation and issue a decision at a voting session through an opinion and order.



### Rehearing

Parties to the case have 30 days to file an application for rehearing, essentially appealing the case to the commissioners.

# Rate Case Process – Staff Report



## Review and report

PUCO staff reviews facts and issues raised in the application and prepares a staff report that serves as a recommendation to the commissioners.

- Annual and ad hoc site inspections of all water and sewer plants
  - **43** water facilities
  - **14** wastewater facilities
  - Aqua Ohio and Aqua Wastewater operate most of the investor-owned companies regulated by the PUCO
- Review of compliance documents
  - **PUCO**: operational reports, annual reports, photographs, water quality field tests - pressure, disinfection, iron, hardness
  - **Ohio EPA**: sanitary survey documents, compliance history, licenses and certificates, engineering plan reviews
  - Local health department reports
  - Customer surveys – discontinued
- Review of complaints received by Call Center.

# When should a company file a rate case?

**Answer:** Customer rates no longer cover the cost of delivering reliable service.

- A company can generally file a rate case at any time and is not required to do so by Ohio law.
- Many smaller water utilities delay filing a rate case application until financial difficulties arise or violations begin to accumulate from years of neglected maintenance.
- For smaller water companies, putting off applying for a rate increase eventually causes problems down the road. In other cases, poor or incomplete financial record-keeping causes delays.
- Aqua Ohio and other larger investor-owned water companies have more resources to navigate the ratemaking process and have a better understanding when the appropriate time is to apply for an increase.



# What if the utility invests in infrastructure improvements after the rate case and needs to cover associated costs?

- Service Increase Application (SIC)
- Adds a surcharge to the utility bill
- Tariff sets a limit on the number and nature of the surcharges, but generally customers won't see more than three surcharges at one time.
- Limit on how much the bill can be increase and capped between 3 – 4.25%.
- The mechanism allows recovery between rate cases which should incentivize investment in the eligible capital improvement projects and the smaller, more frequent increases also eliminate one large rate case increase, reducing potential for rate shock and the frequency of rate cases.

# Ordinance rates vs. PUCO rates

- Ordinance rates set by the local City Council or governing body.

# Commission Updates

- Water Rules Workshop - Five-year review of water rules planned in early 2023
- 30% rule reduction over next two years – Governor’s directive
- Water Application – public-facing, map of jurisdictional water and sewer service area
- Water Database migration – migrated from MS Access to a Salesforce database platform
- Number of jurisdictional facilities likely to increase over the next 5 years, particularly in wastewater
- Commissioner Trombold’s term ends April 10, 2023

# How to navigate the PUCO's Website

Website address: <https://puco.ohio.gov/home>

Water and Sewer Tariffs – water and sewer rates

Docketing Information System (DIS) – search cases

# PUCO Call Center

Four ways to contact the PUCO with a complaint:

1. Fill out the online complaint form

<https://puco.ohio.gov/help-center/file-a-complaint>

2. Call the PUCO Call Center at (800) 686-PUCO (7826), 8 a.m. to 5 p.m., Monday through Friday.
3. Fax your complaint to (614) 752-8351.
4. Mail your complaint to:

Public Utilities Commission of Ohio  
Attn: CSD  
180 E. Broad Street  
Columbus, Ohio 43215-3793

# Contact Information

Chad Wenger  
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Service Monitoring & Enforcement Department

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# Questions?

**Thank you!**