

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

JUNE 21, 2001

IN RE:

**EXTENSION OF WATER PURCHASE
AGREEMENT BETWEEN TENNESSEE
AMERICAN WATER COMPANY AND THE CITY
OF FORT OGLETHORPE, GEORGIA**

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**DOCKET NO.
00-01124**

ORDER APPROVING EXTENSION OF WATER PURCHASE AGREEMENT

This matter came before the Tennessee Regulatory Authority ("Authority") at the regularly scheduled Authority Conference held on February 21, 2001, for consideration of the application (the "Application") of Tennessee American Water Company ("Tennessee American") for approval of an extension (the "Extension") of a water purchase agreement (the "Agreement") between Tennessee American and the City of Fort Oglethorpe, Georgia ("Fort Oglethorpe" or the "City"). Tennessee American filed its Application with the Authority on December 12, 2000.

Based upon careful consideration of the Application and the record in this matter, the Authority makes the following findings and conclusions:

1. The Authority approved the Agreement by Order dated March 10, 1997 in Authority Docket No. 97-00223. Under the Agreement, Fort Oglethorpe agreed to purchase a minimum of 273,750,000 gallons per year at \$.95 per 1,000 gallons.
2. The Application before the Authority seeks to extend the Agreement an additional three (3) years with three (3) optional three (3) year renewal periods. The initial term of the Extension begins with effective date of the purchase of water under the Extension, which shall

commence at the beginning of the next monthly billing cycle following approval of the Extension by the Authority. The Extension alters the terms of the sale of water to Fort Oglethorpe. Under the new terms, Fort Oglethorpe agrees to purchase a minimum of 273,750,000 gallons per year and to pay \$.95 per 1,000 gallons for the first 35,000,000 gallons it purchases each month. The Extension states that water purchased in excess of 35,000,000 gallons per month shall be paid at the rate of \$.74 per 1,000 gallons.¹ Tennessee American included this new rate for usage exceeding 273,750,000 gallons per year in anticipation of future growth in Fort Oglethorpe.

3. The Extension further differs from the Agreement in that Fort Oglethorpe agrees in the Extension that none of the water it receives from Tennessee American will be transferred outside the Lower Tennessee-Hiwassee River Basin, as defined by the Tennessee Department of Environment and Conservation ("TDEC"), unless Fort Oglethorpe gives ninety (90) days notice of such transfer to Tennessee American and Tennessee American notifies Fort Oglethorpe that TDEC has approved the transfer. The purpose of this provision is to ensure compliance with the Inter-Basin Transfer Act of 2000.²

4. An additional change to the Agreement is that a new part, Schedule A, is attached to the Extension and incorporated therein. Schedule A describes certain non-regulated services which the City may purchase and the terms, conditions, and hourly rates of those services.

5. The Authority has jurisdiction over this matter pursuant to Tenn. Code Ann. § 65-4-101 *et seq.* and Authority Rule 1220-4-1-.07, which states:

SPECIAL CONTRACTS. Special contracts between public utilities and certain customers prescribing and providing rates, services and practices not covered by or permitted in the general tariffs, schedules or rules filed by such utilities are subject to supervision, regulation and control by the

¹ Like the Agreement, the Extension provides for a charge for any given month in which Fort Oglethorpe has used less than 273,750,000 over the preceding twelve-month period.

² Tenn. Code Ann. § 69-8-201 *et seq.*

Authority. A copy of such special agreements shall be filed, subject to review and approval.

6. The terms of the Agreement and the Extension, which distinguish Fort Oglethorpe from Tennessee American's tariff customers, justify a departure from Tennessee American's tariff through a special contract. The Agreement, like Tennessee American's other special contract agreements,³ is a sale for resale agreement, a category that does not exist under Tennessee American's current tariff.⁴ The inclusion of a three (3) year term of service and a minimum usage requirement further distinguishes Fort Oglethorpe from Tennessee American's tariff customers.

7. The use of a special contract in dealing with large-usage customers such as Fort Oglethorpe provides greater flexibility to the Tennessee American than is available under its tariff. The unique terms and conditions of the Agreement and the Extension, which differ from Tennessee American's tariff, are in the public interest. These terms and conditions benefit Tennessee American and its ratepayers by providing the Company a long-term source of revenue and by helping control the Company's production costs during peak usage periods. Use of a special contract allows Tennessee American to attract Fort Oglethorpe and other large-use customers⁵ and collect additional revenues to the benefit of Tennessee American and its ratepayers without the burden of undergoing a full-scale rate review in order to revise its tariff.

³ Tennessee American also has special contract agreements with Signal Mountain, Tennessee (approved by the Authority in Docket No. 97-00223) and the Catoosa Utility District (approved by the Authority in Docket No. 98-00885).

⁴ Tennessee American is provided the opportunity, through special contracts, to secure new business and pursue new prospects in instances where an approved tariffed rate does not currently exist. Absent the flexibility to negotiate special contracts and submit such contract to the Authority for approval, Tennessee American is faced with potential forfeiture of its ability to generate additional revenues that inure to the benefit of its ratepayers. Each special contract is evaluated on its own merits, given the circumstances existing at the time of consideration. Notwithstanding our actions here, Tennessee American has the continuing responsibility to acknowledge when new customer classes emerge and amend its existing tariff accordingly.

⁵ Fort Oglethorpe is one of the largest customers currently served by Tennessee American and has the potential to be the largest of Tennessee American's special contracts customers in terms of sales by volume.

In addition, the Agreement provides Fort Oglethorpe and its residents with a dependable supply of water at fair and affordable prices.

8. No party has petitioned for intervention in this matter or objected to the Authority's approval of the Extension.

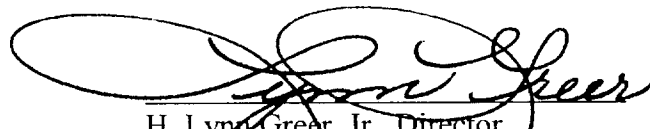
9. After careful review of the Application and of the entire record in this matter, the Directors find that approval of the Extension is appropriate pursuant to Authority Rule 1220-4-1-.07.

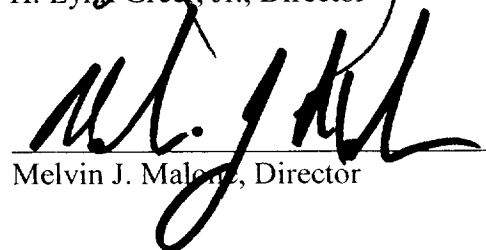
Based on the foregoing findings and conclusions, the Directors voted unanimously at the February 21, 2001 Authority Conference to approve the Extension of the water purchase agreement.

IT IS THEREFORE ORDERED THAT:

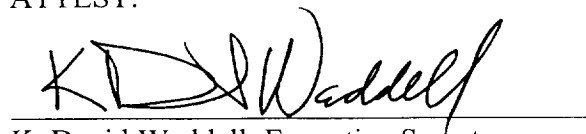
1. The Extension of the Water Purchase Agreement between Tennessee American Water Company and the City of Fort Oglethorpe, Georgia is approved.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary