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July 10, 2003

VIA FEDERAL EXPRESS
Ms. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

RE: ***Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges so as to Permit it to Earn a Fair and Adequate Rate of Return on its Property used and Useful in Furnishing Water Service to its Customers, Docket No. 03-00118.***

Dear Chairman Tate:

Enclosed for filing is the original and 13 copies of the Post-Hearing Brief of the City of Chattanooga.

Should you have any questions, please contact me.

Sincerely

Michael A. McMahan
Special Counsel

MAM/add

Enclosures

cc: Certificate of Service List

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	:	
	:	
TENNESSEE-AMERICAN WATER COMPANY, PETITION TO CHANGE AND INCREASE CERTAIN RATES AND CHARGES SO AS TO PERMIT IT TO EARN A FAIR AND ADEQUATE RATE OF RETURN ON ITS PROPERTY USED AND USEFUL IN FURNISHING WATER SERVICES TO ITS CUSTOMERS.	:	DOCKET NO. 03-00118

POST-HEARING BRIEF OF CITY OF CHATTANOOGA

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The issues in this case have essentially been narrowed to who should bear the burden of a revenue deficiency of approximately $1,100,000.00 (hereinafter "$1.1") related to the Tennessee-American Water Company's (hereinafter "TAWC") tariff reduction in Case No. 99-00891, as detailed in the Transcript of Excerpt of Directors' Conference dated January 11, 2000 (Exhibit 8). TAWC agreed at that time that it would make up any deficiency in revenue through cost savings and growth. TAWC represented to the Tennessee Regulatory Authority (hereinafter "TRA") that it would not thereafter seek to recover this revenue loss from ratepayers. The statements at the Directors' Conference and the Order issued in that matter clearly establish a holding by the TRA that TAWC could not thereafter seek to recover this lost revenue from ratepayers and that any losses should be borne by TAWC's shareholders.

Mr. Gorman offered an appropriate way for TAWC to write off this revenue deficiency in accordance with Financial Accounting Standard ("FAS") 121. Although TAWC argues that it would not thereby obtain the rate of return authorized by statute and constitution, TAWC had voluntarily waived those rights in Case No. 99-00891. In summary, the City urges the TRA to

adopt the rate schedule agreed to by all parties for a revenue deficiency of $1,600,000.00 (hereafter "$1.6"). Alternatively, the City submits that the rate schedule agreed to by three (3) of the four (4) parties to the hearing for a $2,700,000.00 (hereafter "$2.7") revenue deficiency is supported by the record in this cause.

II. STATEMENT

As discussed on pages 20 and 21 of the Transcript, all the parties have agreed to a proposed rate design if the award is $1.6. If the award is $2.7, depending upon how the fire hydrant issue comes out, three (3) of the four (4) parties, --- the City, Chattanooga Manufacturers Association (hereafter "CMA"), and TAWC, agreed to a rate design for $2.7. The Consumer Advocate does not agree with the $2.7 rate design.

The rate design agreed to by all the parties with respect to $1.6 and by three-fourths (3/4) of the parties with respect to the $2.7 deficiency are a first step approach in rate making from a cost study approach (Mr. Pappas, page 35, lines 1-13; page 36, lines 18-22).

The Consumer Advocate was awkwardly forced to take a position on the $2.7 rate revenue deficiency by virtue of demands from Chairman Kyle (Transcript, pages 39-44). At first, Mr. Broemel did not want to offer any alternative rate schedule (Transcript, page 27, lines 14-19). Then he said the TAWC and the City could either bear the loss or split it in half (Transcript, page 31, lines 7-12). If this were not the case, then he said it should be paid by the City.

The position taken by Mr. Broemel during the hearing is contrary to the evidentiary position taken by the Consumer Advocate, via Dr. Brown, in the pre-filed direct testimony in this case. In the pre-filed testimony, the Consumer Advocate took the position that rate increases should be proportionately increased for all classes of users. The City respectfully submits that

taking such a contrary position on the date of the hearing deprived the City of procedural due process with respect to this issue. Moreover, the Consumer Advocate at the hearing provided no testimony to rebut the testimony introduced by TAWC, the CMA, and the City in regard to this issue. The TRA should ignore Mr. Broemel's suggestion that the City bear the loss.

The pre-filed testimony of all the parties was admitted (Transcript, pages 56-57).

Mr. Michael Miller, V.P. and Treasurer of American Water Works Service Company, Charleston, West Virginia, provided TAWC's testimony with regard to reduced revenue. He testified that TAWC was unable to generate the savings anticipated at the time of the fire hydrant reduction, because of the bankruptcy of a major user, North American Royalties, increased property tax assessments, and the need for pension contributions (Transcript, page 62, lines 5-19). He claimed that TAWC at that hearing was only referring to the "stub period" between that tariff and some future tariff with respect to the reduction in fire hydrant fees rather than "any permanent reduction" (Transcript, pages 63-64). There is no reference to a "stub period" in that transcript. He admitted in cross-examination by Mr. Walker, however, that he had not represented TAWC with regard to that hearing before the TRA. Mr. L'Ecuyer had represented TAWC in that proceeding. Accordingly, Mr. Miller's interpretation of the situation was based solely upon reading the transcripts and order of the proceeding before the TRA (Transcript, pages 83-84). Such testimony should be given little, if any, credence.

The only witnesses before the TRA with first-hand knowledge of this issue were Mr. L'Ecuyer, President of TAWC, and former Mayor, Jon Kinsey. Mr. L'Ecuyer chose in his pre-filed direct testimony not to address this issue and he elected not to testify live before the TRA. It is a well-known legal maxim that failure to call an available witness possessing peculiar knowledge concerning facts essential to a party's cause, calling a witness less familiar with the

matter, gives rise to a strong presumption that testimony of such uninterrogated witness (Mr. L'Ecuyer) would not sustain the contentions of the party. *Craig v. Marquette Cement Manufacturing Company*, 229 S.W.2d 148, 190 Tenn 234 (Tenn. 1950); *National Life and Accident Insurance Company v. Eddings*, 221 S.W.2d 695, 188 Tenn 512 (Tenn. 1949). Where a party has within its power to produce a witness who was in a position to know facts and who was apparently favorable to him, his failure to call such witness affords an inference that his testimony would not support the party's contentions. *Waller v. Skeltons*, 212 S.W.2d 690, 31 Tenn.App. 103 (Tenn.App. 1948). This is especially true where the witness is present in the courtroom during the trial of the case. *Loy v. Loy*, 151 S.W.2d 178, 25 Tenn.App. 99 (Tenn.App. 1941). It is also the rule that where a party to fails to call one of their employees who had knowledge of the matter, as a witness, that it is assumed that such employee's testimony would have been unfavorable. *Tindell v. Bowers*, 216 S.W.2d 752, 31 Tenn.App. 474 (Tenn.App. 1949). Mr. L'Ecuyer is an attorney (Direct Testimony, page 1) and undoubtedly understood the consequences of his failure to testify on this issue. Accordingly, it should be presumed that Mr. L'Ecuyer would have testified contrary to the position being maintained by TAWC in this case relating to never seeking a rate increase caused by the loss of revenue for fire hydrants.

Mr. Miller testified that each and every state referred to in his direct testimony does not charge full cost to municipalities for fire hydrants (Transcript, page 73, lines 17-24). TAWC has proposed in their initial filing a proposed twenty-five percent (25%) cap of costs and services on public fire protection (Transcript, page 76, lines 9-14). Under the proposed rate structure for the $1.6 deficiency level, the fire hydrant tariff would increase 20.9%. This is a far larger increase than any other class.

The residential class was the biggest under-producing class of users. TAWC proposes a gradual movement toward full cost of services for residents realizing that it would be unfair and unreasonable to try to bring them up to full cost of service immediately (Transcript, pages 81-82).

As to fire hydrants, TAWC proposes that public authorities would pay twenty-five percent (25%) of the cost of a fire hydrant. In this regard, it is noted that the City of Chattanooga is not the only user of fire hydrants in the TAWC system. There are other municipalities which also have fire hydrants, including, but not limited to, Red Bank, Signal Mountain, East Ridge, and Lookout Mountain, Tennessee and Georgia.

Mr. Miller was questioned extensively about the Opinion and Order in the 2000 Tariff, Case No. 99-00891, Director's Conference (Exhibit 8). The most telling response comes from page 5, paragraph 3 of the Order which states:

> "The Company's ratepayer shall not at any time, through increase in rates, fees, schedules, or otherwise, bear any of the costs resulting from this tariff filing by Tennessee-American Water Company to voluntarily reduce its fire hydrant charges to the City of Chattanooga."

(Transcript, page 90, lines2-7.) Chairman Kyle's question beginning on page 95, line 9 of the Transcript correctly deduces that TAWC now seeks to add the qualification to its representations made in the Case No. 99-00891 that they only meant to talk about the "next two years" or, as Mr. Miller called it, the "stub period" (Transcript, page 101-102).

Mr. Miller admits that what had really happened since the time that Mayor Kinsey and Mr. L'Ecuyer appeared before the TRA was that TAWC suffered adverse economic conditions. TAWC had lost a major customer in North American Royalties of about $660,000.00 per year and a further reduction by a major user, Southern Cellulose (Transcript, page 98-99). TAWC

had not foreseen the need to increase pension payments (Transcript, page 99). These are the factors which make them file for a rate case at this time (Transcript, page 99). Although TAWC may not have foreseen these particular losses, it had to know on January 11, 2000, that adverse economic consequences, rather than its rosy forecast, were possible.

Mr. Paul R. Herbert, vice-president of the valuation and rate division of Gannett Fleming, Inc., was called by TAWC to give testimony concerning the cost of services study. He admitted that the study was based upon an American Water Works study, not specific to Tennessee.

Mr. Herbert also filed direct rebuttal testimony to Coppinger's estimate of the annual fire usage of water of 630,000 gallons or 84,000 cubic feet. Mr. Herbert stated that calculating this correctly at the rate of 0.555 per 100 cubic feet amounted to only $466.20 per year. This represents the actual cost of water used in fire fighting on an annual basis (Transcript, page 123). It is readily apparent that the City pays a very high rate for the water it uses to fight fires.

Mr. Herbert in his pre-filed direct testimony estimated that the Total Operation and Maintenance Expenses for public fire protection was $400,465.00 (Schedule B, page 4 of 7). Of this total, $3,719.00 was attributed to supply of water and $72,167.00 was attributed to the maintenance of fire hydrants (Schedule B, page 2 of 7). Mr. L'Ecuyer represented to the TRA in the 2000 hearing that it cost about $400.00 to install a hydrant (Exhibit 8). It is obvious from Chief Coppinger's testimony that Mr. Herbert's pre-filed direct testimony grossly exaggerates the actual cost to TAWC for water, maintenance of fire hydrants, and other operation and maintenance expenses that are attributed to public fire hydrants.

Mr. Herbert further admitted that as to the cost of service study, the rate for fire hydrants were driven by pumping station, storage tank, and size of the lines (Transcript, page 123). Generally speaking, providing a system that would meet the requirements for commercial

industrial customers would also meet their need for fire protection. The direct cost for public fire service was based upon the direct costs associated with fire hydrants such as operation and maintenance, depreciation and return on investment. However, the cost of services study places a high allocatable portion of the distribution system, such as mains, pumping and storage facilities that are designed and sized in order to provide the instantaneous demand required when a fire emergency occurs (Transcript, page 126-127). (See also pre-filed direct testimony.)

Chief Coppinger in his direct testimony points out that various building codes and laws pertaining to fire safety require that fire protection be afforded whether through public or private fire protection devices. Private fire protection devices require a source of water similar to that required for public fire hydrants (Coppinger Direct Testimony, pages 2-3). However, the cost of services study contributes a relatively high percentage of the extra capacity cost, cost of the pumping facilities, storage facility, distribution main capacity, etc, to public fire protection. There is no rational basis why a large portion of that purported cost should not be placed on the end-users who are the direct beneficiaries of having fire protection.

Obviously, this implicates the public policy issue of whether these should be costs attributed to the end users of the water system or to municipalities such as Chattanooga. The end user of the water would have to pay for that extra capacity if the City were not involved in providing public fire protection. This is undoubtedly why so many of TAWC's sister companies such as Missouri-American, Illinois-American, and West Virginia-American do not have public fire protection tariffs. California has eliminated this tariff classification. Pennsylvania limits the fee to 25% of the "cost of service" (See Michael Miller Direct Testimony, pages 5-13 and Exhibit MAM-1). The Eastside Utility District, located in Chattanooga, does not charge Chattanooga or its other governmental customers for fire hydrant protection.

Even when cost of services data is introduced, such data is not afforded exclusivity. CF *Industries v. Tennessee Public Service Commi*ssion, 599 S.W.2d 536 (Tenn. 1980) Rates need not be determined using definite formulas; a rate need only fall with the "zone of reasonableness" that takes into consideration the interests of both the consumer and the utility. *Tennessee Cable Television V. Public Service Commission*, 844 S.W.2d 151 (Tenn. Ct. App. 1992). A rate should be reasonable not only for the time created, but for a reasonable time thereafter. The current rate for fire hydrants approved by the TRA is $50 per hydrant per year. It is respectfully submitted that an increase of 20.9% for fire hydrants is the maximum increase that is justified in light of the foregoing rate-making principles.

Dr. Brown testified on behalf of the Consumer Advocate and Protection Division that he questioned the cost of service study and that their basis of the demand factors used by TAWC to arrive at the position that the residential class was paying substantially less than it should. He stated that it appeared that there was a lot of judgment involved in the allocation of the factors (Transcript, page 133). It is apparent from the application of the "demand factors" to public fire protection that this judgment was allocated unfairly to public fire protection.

Daisy Madison, City Treasurer and Deputy Finance Officer for the City of Chattanooga, testified that the City obtains water services not only from Tennessee-American Water Company, but also from Eastside Utility District and Hixson Utility District. Eastside Utility District does not charge the City with respect for fire hydrant services. The arrangement with Hixson Utility District mirrors that of the arrangement with Tennessee-American Water Company (Transcript, page 135-136). The City pays nothing to the Eastside Utility District for fire hydrants, with the cost allocated over the rest of their customer base (Transcript, page 137). In her pre-filed direct testimony, Ms. Madison explained that the City was a major customer of

TAWC with an annual water bill of about $790,216.00 per year. Fire hydrants account for $237,435.00 of this amount. The City will be facing a significant increase in its cost of water under the $1.6 million rate design.

Mr. Gorman testified that the major cost drivers which were creating a revenue deficiency are largely customer-related costs (Transcript, page 145, lines 5-7). Since TAWC had agreed to accept $1.1 less of lower revenues from the fire hydrant issue, it would be reasonable for TAWC to recognize that the revenue was not going to be received. He stated that there was an accounting requirement that would require a write-down on the plant to a level that recognizes the expected future revenues you would receive for supporting that plant. The write-off would cure the earnings deficiency. (Transcript, page 146, lines1-17). An additional step would be necessary to cure the credit rating which could come from an equity infusion from the parent company or the suspending dividends to the stockholders to restore the common equity balance. Suspended dividend payments or a cash infusion from the parent company could be used to retire debt. (Transcript, page 146-147). If this write-down were to occur in conformance with the TRA 2000 Order, TAWC's investments in assets would be written down such that the fire service would be providing one hundred percent (100%) of its cost of service (Transcript, page 151). The ultimate receiver of the benefits of the fire hydrant service will pay them one way or the other, either through utility rates or through taxes by the municipality (Transcript, page 152). Although such write-downs are not common, they have been used in other circumstances such as when electric utilities restructure for a competitive market (Transcript, page 155). The settlement between TAWC and The City was uncommon and should likewise provide a basis for writing down assets under FAS 121.

Mr. Childers, CEO of Chattanooga Manufacturers Association ("CMA"), a trade association, testified that it was his understanding that the costs would be born by TAWC, not the ratepayers (Transcript, page 163).

Mr. Miller, testified in rebuttal to the testimony of Mr. Gorman. He disagreed with the concept of writing down equity or obtaining equity infusion from the parent company (Transcript, page 174). He did not think that the stockholders would look favorably upon the situation in not receiving dividends (Transcript, page 177). He stated that TAWC could not be guaranteed additional equity from American Water Company (Transcript, page 176). However, he reluctantly acknowledged that FAS 121 could be applicable to the situation, but didn't think it was a good cure (Transcript, page 179).

Mr. Miller acknowledged that assets that provide fire protection services are not easily identified. While mains, tanks, boosters, and plant capacities are used to provide fire service, the only assets specific to fire service are the hydrants themselves (Transcript, page 182).

As to the corporate structure, he testified that RWE owns American Waterworks which owns Tennessee-American Water Company. In the intermediate corporate chain are Thames U.S. and Thames Aqua Holdings, which eventually lead to RWE (Transcript, page 184). He agreed that RWE could infuse capital into TAWC. If TAWC had to do a write off, it would involve $8,000,000.00 to $10,000,000.00 worth of assets (Transcript, page 187). Interestingly, TAWC seemed to have no concerns spending and writing off $5,200,000.00 that it spent in public relations, legal fees, and related costs when it chose to fight the City over the eminent domain case (See Kinsey Direct Testimony, Appendix E). If TAWC wrote off those $8,000,000.00 to $10,000,000.00 assets, on a going forward basis, it would thereafter have a

reasonable opportunity to earn a prescribed return in Tennessee (Transcript, page 193, line 23 - page 194 line 2).

Chief Jim Coppinger, Fire Chief for the City of Chattanooga, testified that the annual cost of water for fire service was $466.20 (Pre-trial testimony, page 5, line 21, as corrected on Transcript, page 201). Building Codes, Fire Codes, and Life Safety Codes require fire protection in buildings of public occupancy or certain heights. This could involve fire protection systems such as sprinklers or stand pipes or private fire hydrants. This equipment requires a certain water flow and pressure (Transcript, page 201-202). The point being made is that, if the City does not provide public fire protection, then the end users of the water, the private individuals and companies, would have to provide their own fire protection to comply with applicable building and life safety codes.

The City currently pays TAWC for 3,691 fire hydrants. The City receives only minimal repair or maintenance for those hydrants. The City itself checks the fire hydrants twice per year and reports any deficiencies such as hydrant caps that are too hard to get on or off or hydrants that are too hard to turn. This involves approximately 200 hydrants per year. An additional 85 hydrants are damaged by automobile wrecks, etc (Transcript, page 203). For this minimal water usage and minimal hydrant maintenance, the City will be paying approximately $240,000.00 under the $1.6 tariff.

TAWC has not extended 6-inch mains into all areas of Chattanooga. They have told Coppinger that they will not do so until there are enough customers to be able to receive enough payment back for the expense. Under such circumstances, the City is required to provide tankers to carry their own water to the fire scenes (Transcript, page 204-205). Even major additions to the system, such as the 750,000 gallon storage tank at Tiftonia, does not enhance public fire

protection (Transcript, page 206). This is another reason why too much reliance should not be placed on the cost of services data, which allocates a relatively high percentage of the cost of such assets to public fire protection even though TAWC admits it is unwilling to put the mains in the ground for that purpose.

Jon M. Kinsey was the Mayor of the City of Chattanooga from April of 1977 until April of 2001 (Transcript, page 208). He became concerned about spending in excess of $1,000,000.00 per year in fire hydrant fees and discussed the matter with the then President of TAWC, Dick Sullivan. Mr. Sullivan's response to the inquiry was that TAWC charged this amount because they could do so. The City's hydrant tariff had been previously arbitrarily set without even so much as a cost of services study.

Mr. Kinsey then approached TAWC about buying the company; however, he was rebuffed. The City then initiated eminent domain proceedings to acquire the assets. TAWC spent between $5,000,000.00 and $6,000,000.00 over a 10 month period primarily in public relations and advertising to fight the City. Mr. L'Ecuyer admitted in the January 11, 2000 hearing that this loss was being absorbed by the shareholders and the then 20 sister companies in the American Water Works family. If TAWC had decided not to compromise with Chattanooga and had proceeded through the eminent domain case, then the shareholders would have been guaranteed by the Tennessee and U.S. Constitutions to a fair and reasonable value for TAWC's assets. This should provide further support for the proposition that those shareholders should now bear the loss of the revenue deficiency caused by loss of fire hydrant revenue. The matter was ultimately resolved with a compromise wherein the City would drop its eminent domain suit if TAWC would decrease their fire hydrant fees in excess of $1,000,000.00 (Transcript, page 209-210).

Of course, Mayor Kinsey and TAWC knew that they could not bilaterally make such an agreement. It would require the approval of the TRA. As Mayor Kinsey correctly stated, TAWC was questioned vigorously during the TRA proceeding about how they were going to make up the lost revenues and not charge it back to the existing ratepayers. As Mayor Kinsey noted, TAWC knew that such a course of action would have a return on the bottom line.

All of this is a matter of public record and, when RWE purchased TAWC, they should have been aware of the potential revenue loss (Transcript, page 211). Mayor Kinsey admitted that the City dismissed the eminent domain proceeding before the 2000 tariff was filed (Transcript, page 216). However, he was confident that with both the City and TAWC asking for it to be done, that the TRA would approve the reduction in tariffs (Transcript, page 230). He understood that the tariff reduction would be permanent, but there would be subsequent tariff filings, but they would only involve inflationary increases in the range of 1% to 2%.

Mayor Kinsey testified in the 2000 hearing that it was a good compromise, because it would not result in any increase to any ratepayer at that point (Transcript, page 225).

Mayor Kinsey explained that the reason for the 2 year phase in of the reduction in the fire hydrant tariff was to allow TAWC some time to become more efficient and to get an area where they could handle that reduction in revenue. It was the Mayor's understanding that those savings would recur forever (Transcript, page 229).

TAWC has raised the issue that it has some sort of statutory or constitutional right to the revenue that it voluntarily relinquished when it settled the eminent domain case with the City by agreeing to a significant reduction in the fire hydrant tariff. Constitutional and statutory provisions may be waived, and it is respectfully submitted this is exactly why TAWC did when it submitted the reduced tariff to the TRA as part of its settlement agreement with the City. *State*

Department of Highways v. Urban Estates, Inc. 465 S.W.2d 537, 225 Tenn.193 (Tenn. 1971). A constitutional waiver does not have to be explicit; it may be implied by the facts and circumstances of each case. *Martin v. Rose*, 744 FV.2d 1245 (6th Cir. 1984). There is no question that TAWC knowingly and willingly reduced its tariff for fire hydrants utilizing the statutory procedures for changes in tariffs without regard to whatever statutory or constitutional claim it might have with regard to that revenue. One who voluntarily proceeds under a statue and claims benefits thereby conferred, will not be heard to question its constitutionality in order to avoid its burdens. *Waldauer v. Britton*, 113 S.W.2d 1178, 172 Tenn. 649 (Tenn. 1938).

TAWC was represented by Mr. Pappas and by, President of TAWC at the Director's Conference on January 11,2000 (Exhibit 8). Mr. L'Ecuyer is also an attorney. It was pointed out by Director Greer that there would be a 5.5% revenue reduction to the company, and Greer asked who was going to eat the $1,125,000. Mr. L'Ecuyer explained that TAWC planned to make up the lost revenue through growth and savings. He stated explicitly: "I can assure you that there is no plan at this time to file any rate case in the immediate future." (pg. 5). Director Greer continued that this would represent a loss to the stockholders, and Mr. L'Ecuyer agreed. Director Greer pressed the point further about asking for a rate increase for this lost revenue in the future and Mr. Pappas responded: "This particular loss will not – is not occasioned for a rate increase."

At the conclusion of an extended discussion on the issue, Director Malone made the motion to approve the reduction in the fire hydrant tariff upon the basis that "the company has represented that it will not in the future seek to recover lost revenue in a rate case from the ratepayer…" His motion also included the condition that "we order that the allocation of the lost revenue be to the stockholders and not to the ratepayers whether now or at such later time in the future." Directory Kyle voted yes, and the matter passed 2-1. Although Director Malone voted

"no," his comments made it clear that he would not in the future approve "any attempt by the company at a later time to recover lost revenues from the ratepayers ..."

As noted earlier, Paragraph 3 of the Order in that case stated:

> "The Company's ratepayer shall not at any time, through increase in rates, fees, schedules, or otherwise, bear any of the costs resulting from this tariff filing by Tennessee-American Water Company to voluntarily reduce its fire hydrant charges to the City of Chattanooga."

This is the history of the $1.1 million in "fire hydrant" revenue which TAWC now seeks to recoup from the ratepayers. There is no question from the record that TAWC voluntarily waived any claim that it might have to that revenue. Although TAWC hoped to recoup that loss through growth and savings, it knowingly assumed the risk that it could not. The shareholders and not the ratepayers should bear any resulting loss in revenue. TAWC can address the financial shortfall by a combination of writing off its losses using FAS 121, quit paying dividends to stockholders, or seeking a capital infusion from its parent company. We recommend that the TRA put this issue to rest permanently by making an explicit finding of facts and conclusions of law in regard to this issue.

III. CONCLUSION

TAWC knowingly and willingly waived any claim that it might have to the $1.1 million loss in fire hydrant revenue in the Director's Conference held on January 11, 2000. The TRA properly held in that matter that the resulting loss in revenue should be borne by the shareholders not the ratepayers. The parties have all agreed to a $1.6 million rate design which fulfills the revenue requirements of TAWC, and which effectively and properly puts the loss of the fire hydrant revenue on the stockholders.

If the Directors should disagree, then three of the four parties to this proceeding have agreed to a rate design for $2.7 million. Aside from the issue of TAWC's attempt to improperly recoup revenue that it agreed to forego, this rate design is well supported by the record in this cause.

Respectfully submitted,

CITY OF CHATTANOOGA, TENNESSEE
RANDALL L. NELSON, CITY ATTORNEY

BY: _____

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served a true and correct copy of the foregoing pleading by either hand delivery or by depositing same in the United States mail, postage prepaid, and addressed to the following:

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This the 10th day of July, 2003.

Michael A. McMahan

by [illegible]