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February 4, 2005
TRA DOCKET ROOM

Jean Stone, Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Re: *In re: Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges*
Docket Number: 04-00288

Dear Ms. Stone:

The Chattanooga Manufacturers Association ("CMA") has just received a copy of the proposed tariff filed by the Tennessee American Water Company. The tariff is scheduled to become effective tomorrow, February 5, 2005. This is contrary to:

- (1) the directive of Chairman Miller who stated that the company will "file a written motion" to lift the current suspension which was imposed on the company's original rate filing and promised that CMA would have "the opportunity to respond" to that motion before any rate increase became effective (transcript, at 26);
- (2) the instructions of Director Kyle who said the agreed-upon increase in rates should go into effect "no sooner than the next billing cycle"; (transcript, at 25¹); and
- (3) TRA Rule 1220-4-1-.04 which states that all tariff changes must be filed "at least thirty days before the effective date" unless upon application and upon good cause shown the Authority waives the thirty day period.

For these reasons, CMA opposes any increase in rates prior to the expiration of the statutory, six-month suspension period which runs through March 9, 2005. To CMA's knowledge, the Authority has never, at least since the creation of the TRA in 1996, allowed a rate increase such as this one to become effective prior to the expiration of the statutory deadline. Any such action would give the company an undeserved windfall in excess of the \$300,000 annual increase agreed to by the parties and would therefore be inconsistent with the settlement agreement.

The company's originally proposed rates have been suspended "through March 9, 2005, or until the panel acts on the merits of the petition, whichever occurs first." Order of December 15, 2004, at 2. Although the panel has now orally approved the proposed settlement, no written order

¹ Mr. Grimes replied, "That would be fine" Tr., 25

December 23, 2004

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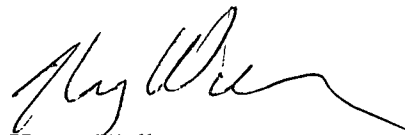
has yet been issued. Moreover, when the agency orally voted to approve the settlement, the panel also stated that the settlement will not become effective until after the TRA approves the company's motion to lift the suspension now in effect and that such approval will not occur until after CMA has had the opportunity to respond to the motion. Those events have not occurred. Finally, even if the company now purports to withdraw its motion to lift the current suspension, that does not mean that the revised tariffs which were filed today may become effective tomorrow. The suspension imposed on the company's original tariffs "through March 9" or "until the panel acts" applies only to those original tariffs and does not apply to the revised tariffs filed today. Those revised tariffs, as a matter of law, cannot become effective for thirty days absent a request by the company and an order from the agency granting that request. No such request has been made and none should be granted. To the contrary, all the accounting evidence entered into the record in this case concerning the impact of these proposed rates is based on the assumption that the new rates will not become effective until the expiration of the six-month period. To allow the rate increase to become effective sooner will give the company a revenue bonus in excess of the rate increase agreed to by the parties and will unfairly burden the company's customers who did not anticipate that the rate increase would occur prior to March 10.

There is no legal or equitable reason for the Authority to give the company a \$25,000 windfall (1/12 of \$300,000) and impose a \$100,000 penalty on retail customers (1/12 of \$1.2 million, including the shift in hydrant fees) simply because the parties reached a settlement agreement one month prior to the expiration of the six-month statutory deadline.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:



Henry Walker

HW/djc

cc: Dale Grimes
Tim Phillips
Mike McMahan
David Higney
Ray Childers
Pat Miller, Chairman
Debi Tate, Director
Sara Kyle, Director