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April 5, 2007

**VIA HAND-DELIVERY**

Chairman Sara Kyle  
c/o Sharla Dillon  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

***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. 06-00290***

Dear Chairman Kyle:


Enclosed please find an original and sixteen (16) copies of Tennessee American Water Company's Motion to Strike from the Record and/or to Exclude as Evidence the Supplemental Direct Testimony of Terry Buckner Related to the Tennessee American Water Company's Customer Information System.

Please return three copies of the Motion, which I would appreciate your stamping as "filed," and returning to me by way of our courier.

Should you have any questions concerning any of the enclosed, please do not hesitate to contact me.

With kindest regards, I remain

Yours very truly,

 by permission  
  
R. Dale Grimes

RDG/ms  
Enclosures

Chairman Sara Kyle

April 5, 2007

Page 2

cc: Hon. Pat Miller (*w/o enclosure*)  
Hon. Ron Jones (*w/o enclosure*)  
Hon. Eddie Roberson (*w/o enclosure*)  
Ms. Darlene Standley, Chief of Utilities Division (*w/o enclosure*)  
Richard Collier, Esq. (*w/o enclosure*)  
Mr. Jerry Kettles, Chief of Economic Analysis & Policy Division (*w/o enclosure*)  
Ms. Pat Murphy (*w/o enclosure*)  
Michael A. McMahon, Esq. (*w/enclosure*)  
Frederick L. Hitchcock, Esq. (*w/enclosure*)  
Vance Broemel, Esq. (*w/enclosure*)  
Henry Walker, Esq. (*w/enclosure*)  
David Higney, Esq. (*w/enclosure*)  
Mr. John Watson (*w/o enclosure*)  
Mr. Michael A. Miller (*w/o enclosure*)

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN 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. 06-00290**

**TENNESSEE AMERICAN WATER COMPANY'S MOTION TO STRIKE FROM THE  
RECORD AND/OR TO EXCLUDE AS EVIDENCE THE SUPPLEMENTAL DIRECT  
TESTIMONY OF TERRY BUCKNER RELATED TO THE TENNESSEE AMERICAN  
WATER COMPANY'S CUSTOMER INFORMATION SYSTEM**

On April 3, 2007, the Consumer Advocate and Protection Division ("CAPD") filed the Supplemental Direct Testimony of Terry Buckner (the "Supplemental Testimony"). In the Supplemental Testimony, Buckner sets forth certain changes to the CAPD's Rate Base and Depreciation Expense calculations related to Tennessee American Water Company's ("TAWC") Customer Information System ("E-CIS"). According to the Supplemental Testimony, these categories should be adjusted because in a November 18, 2004 Order ("2004 IURC Order"), the Indiana Utility Regulatory Commission ("IURC") found the E-CIS to be an imprudent decision. (Supplemental Test., 3-6.) TAWC hereby requests that the Hearing Officer strike from the record and/or exclude as evidence those portions of the late-filed Supplemental Testimony related to the E-CIS system because all intervenor testimony was due to be filed on March 5, 2007 and the CAPD appears to have been fully aware of any issues related to the E-CIS for more than two years.

### Argument

As justification for the last-minute submission of the Supplemental Testimony, the CAPD asserts that “(1) the CAPD received responses to their second round of discovery on Friday, March 30, 2007 . . . and the representations made by TAWC in those responses need to be addressed; (2) the CAPD’s investigation has been on going . . . and (3) the CAPD is addressing corrections based on informal discussions with TAWC.” (Supplemental Test., 1-2.) None of these reasons provides sufficient justification for the CAPD’s decision to raise this new issue by filing the Supplemental Testimony one month late and a mere two weeks before the Hearing in this case. The CAPD has known about the E-CIS costs and the 2004 IURC Order long before TAWC’s responses to the CAPD’s second discovery requests – indeed the CAPD knew about these issues during TAWC’s last rate case – but has chosen to remain silent until it submitted the Supplemental Testimony at this late date.

1. The Scheduling Order Required that the CAPD’s Pre-Filed Testimony Be Filed By March 5, 2007.

In the March 1, 2007 Order Granting, In Part, Joint Motion of City of Chattanooga and Chattanooga Manufacturers Association for Extension of Time to Submit Testimony and Further Modifying Procedural Schedule (“Scheduling Order”), the Hearing Officer set forth a procedural schedule for the filing of discovery and pre-filed testimony in this case. In the Scheduling Order, the Hearing Officer granted the intervenor parties’ request for additional time to submit their pre-filed testimony and set March 5, 2007 as the date upon which all of the intervenors’ pre-filed testimony must be filed. The Hearing Officer found that, as to the submission of pre-filed testimony, the procedural schedule set forth in the Scheduling Order was fair to the intervenors, stating:

The fact that discovery is ongoing and the Company continues to supplement its discovery responses is not novel to this case. Rarely are parties able to discover completely the opposing side's case and gather all of the information they would like to obtain before the filing of testimony. The Hearing Officer cannot agree with the assertion in the *Joint Motion* that 'the parties are handcuffed from filing such testimony' on account of not having a 'complete universe of material . . .'. The volume of document production and information provided by the Company to date is sufficient to proceed with the submission of pre-filed testimony. Moreover, while discovery is ongoing, the testimony of the Company has been on file since November 22, 2006. **The heart of the Company's case is revealed in its filed testimony and that testimony has been available to the Intervenors for more than three months.**

(Scheduling Order, 3-4 (emphasis added) (citation omitted).) It is simply too late for the CAPD to file additional testimony under the schedule set forth in the Scheduling Order. As is discussed further below, there is simply no basis to grant the CAPD the extraordinary relief of permitting the filing of Supplemental Testimony or permitting such testimony to be considered as evidence.

2. The CAPD Has Known About the E-CIS Costs and the 2004 IURC Order for More Than Two Years.

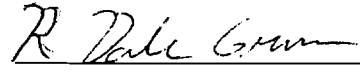
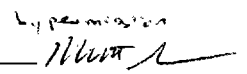
The CAPD's claim that it could not, until now, submit testimony about the E-CIS costs because it had not yet received TAWC's second round of discovery responses is absurd. First, the CAPD, and particularly Mr. Buckner, has been aware of the 2004 IURC Order for more than two years. On page 7 of Mr. Buckner's direct testimony filed in TAWC's 2004 rate case, Mr. Buckner cites the 2004 IURC Order: "[s]imilar circumstances were found in Indiana-American Water Company's petition to increase rates before the Indiana Utility Regulatory Commission ("IURC") in Cause No. 42520 dated November 18, 2004." (Direct Test. of Terry Buckner, Dec. 23, 2004, Tenn Regulatory Auth., Docket No. 04-00288 at p. 7.) A copy of the relevant portion of Mr. Buckner's 2004 testimony is attached as Exhibit A.

Second, the costs related to the E-CIS that are addressed in the Supplemental Testimony were included as capital items in the 2004 TAWC rate case (Docket No. 04-00288). In that case,

the CAPD agreed with TAWC's rate base calculation, and the Tennessee Regulatory Authority voted unanimously to accept the Settlement Agreement between the CAPD and TAWC. (*See* Order Approving Settlement Agreement, July 21, 2005, Tenn. Regulatory Auth., Docket No. 04-00288 at pp. 7; Exhibit A, Schedule 2.) A copy of the July 21, 2005 Order, which includes the Settlement Agreement, is attached as Exhibit B. By filing the Supplemental Testimony at this late date, the CAPD has, essentially, performed an eleventh-hour flip-flop on whether the E-CIS costs are properly included in rate base due to nothing more than the fact that two years ago the IURC found the E-CIS to be an imprudent decision. It is worth noting that the IURC is the only state regulatory authority that has made this finding and that this issue is being reconsidered in Indiana American Water Company's current rate case.

In sum, Mr. Buckner's Supplemental Testimony as it relates to the E-CIS is unjustifiably late, and the circumstances surrounding the late submission do not warrant the extraordinary step of permitting the testimony to be included in the record and/or considered as evidence. As quoted above, the Hearing Officer specifically stated that "[t]he heart of the Company's case is revealed in its filed testimony and that testimony has been available to the Intervenors for more than three months." (Scheduling Order, 4.) The Hearing Officer's statement is applicable to all of the Supplemental Testimony, but is particularly applicable to the testimony regarding the E-CIS. The E-CIS costs were included as capital items in TAWC's petition, and the CAPD has known about the 2004 IURC Order since at least December 2004. Because the Supplemental Testimony is filed late, in violation of the Scheduling Order, TAWC respectfully requests that the Hearing Officer strike from the record in this case and/or exclude as evidence those portions of the Supplemental Testimony relating to the E-CIS.

Respectfully submitted,

  <sup>by permission</sup>

R. Dale Grimes (#6223)

J. Davidson French (#15442)

Ross I. Booher (#019304)

BASS, BERRY & SIMS PLC

315 Deaderick Street, Suite 2700

Nashville, TN 37238-3001

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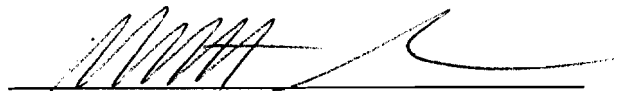
*Counsel for Petitioner*

*Tennessee American Water Company*

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via the method(s) indicated, on this the 5th day of April, 2007, upon the following:

<input type="checkbox"/> Hand	Michael A. McMahan
<input type="checkbox"/> Mail	Special Counsel
<input type="checkbox"/> Facsimile	City of Chattanooga (Hamilton County)
<input checked="" type="checkbox"/> Overnight	Office of the City Attorney
<input checked="" type="checkbox"/> Email	Suite 400
	801 Broad Street
	Chattanooga, TN 37402
<input checked="" type="checkbox"/> Hand	Timothy C. Phillips, Esq.
<input type="checkbox"/> Mail	Vance L. Broemel, Esq.
<input type="checkbox"/> Facsimile	Office of the Attorney General
<input type="checkbox"/> Overnight	Consumer Advocate and Protection Division
<input checked="" type="checkbox"/> Email	425 5th Avenue North, 2 <sup>nd</sup> Floor
	Nashville, TN 37243
<input checked="" type="checkbox"/> Hand	Henry M. Walker, Esq.
<input type="checkbox"/> Mail	Boult, Cummings, Conners & Berry, PLC
<input type="checkbox"/> Facsimile	Suite 700
<input type="checkbox"/> Overnight	1600 Division Street
<input checked="" type="checkbox"/> Email	Nashville, TN 37203
<input type="checkbox"/> Hand	David C. Higney, Esq.
<input type="checkbox"/> Mail	Grant, Konvalinka & Harrison, P.C.
<input type="checkbox"/> Facsimile	633 Chestnut Street, 9 <sup>th</sup> Floor
<input checked="" type="checkbox"/> Overnight	Chattanooga, TN 37450
<input checked="" type="checkbox"/> Email	
<input type="checkbox"/> Hand	Frederick L. Hitchcock, Esq.
<input type="checkbox"/> Mail	Chambliss, Bahner & Stophel, P.C.
<input type="checkbox"/> Facsimile	1000 Tallan Building
<input checked="" type="checkbox"/> Overnight	Two Union Square
<input checked="" type="checkbox"/> Email	Chattanooga, TN 37402





Before the

**TENNESSEE REGULATORY AUTHORITY**

**IN RE:**

**PETITION OF TENNESSEE-AMERICAN WATER COMPANY FOR  
APPROVAL FO CHANGE IN RATES AND CHARGES**

**DOCKET NO. 04-00288**

\*\*\*\*\*

**DIRECT TESTIMONY  
OF  
TERRY BUCKNER**

\*\*\*\*\*

**December 23, 2004**



1           Workpapers PAY-2 and PAY-3 provide the price out of all  
2           non-union and salaried employees. There are no significant  
3           differences between these amounts and the forecasted amounts  
4           provided by TAWC.

5  
6           While “[T]he Company is requesting a level of 106 employees  
7           in this case,”<sup>4</sup> per their direct testimony, TAWC has only 95  
8           employees as of September 30, 2004.<sup>5</sup> Secondly, TAWC’s price out  
9           of Operation and Maintenance Labor for their financial exhibits  
10          includes 107 employees. As a result, there is a disagreement as to  
11          what the actual employee level for operating TAWC should be.  
12          Similar circumstances were found in Indiana-American Water  
13          Company’s petition to increase rates before the Indiana Utility  
14          Regulatory Commission (“IURC”) in Cause No. 42520 dated  
15          November 18, 2004. The IURC found:

16                 we cannot accept that these positions are necessary  
17                 for providing utility service, given the length of  
18                 time they were vacant.<sup>6</sup>  
19

20          Additionally, the Staff of the West Virginia Public Service

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<sup>4</sup>M. Miller direct testimony, Page 14, Lines 16-17.

<sup>5</sup>TAWC response to CAPD First Set of Discovery, Question 12.

<sup>6</sup>IURC Cause No. 42520, Page 82.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**July 21, 2005**

**IN 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.  
04-00288**

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**ORDER APPROVING SETTLEMENT AGREEMENT**

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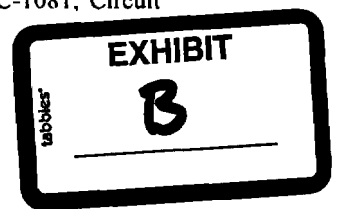
This matter came before Chairman Pat Miller, Director Deborah Taylor Tate and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a Hearing held on January 31, 2005 for consideration of the *Proposed Settlement Agreement* ("*Settlement Agreement*") between the Tennessee American Water Company ("TAWC" or "the Company"), the Consumer Advocate and Protection Division of the Office of the Attorney General of Tennessee ("Consumer Advocate"), the City of Chattanooga ("Chattanooga") and the Chattanooga Manufacturers Association ("CMA") (collectively "the parties").

**BACKGROUND**

On October 25, 1999, TAWC and Chattanooga entered into a settlement agreement of a previously-filed condemnation lawsuit<sup>1</sup> wherein Chattanooga sought to acquire certain assets of TAWC. Section 2.B of the settlement agreement stated as follows:

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<sup>1</sup> See *City of Chattanooga v Tennessee-American Water Company et al*, Case No 99-C-1081, Circuit Court of Hamilton County, Division IV



[The Company] and the City will file a joint petition with the Tennessee Regulatory Authority ("TRA") seeking permission to reduce over a two-year period the current charge of \$301.00 a year per fire hydrant to \$50.00 a year per fire hydrant at the end of that period. If the TRA does not approve this provision, then this section is null and void.

In accordance with the settlement agreement, on November 17, 1999 TAWC filed a tariff for approval in TRA Docket No. 99-00891. TAWC proposed to decrease, in quarterly reductions, its annual charges to Chattanooga for fire hydrants from the rate of \$301.20 per hydrant to a reduced rate of \$50.00 per hydrant. According to TAWC, the reductions would result in an annual revenue impact of negative \$1,127,964.<sup>2</sup> During an Authority Conference held on January 11, 2000, a majority<sup>3</sup> of the Directors voted to approve the proposed reduction in annual fire hydrant charges to Chattanooga. In its Order approving TAWC's tariff filing, the Authority recognized that the lost revenues would be imputed into TAWC's subsequent rate filings, thus reflecting the decision of the Company and its stockholders to absorb the contribution loss.<sup>4</sup>

On February 7, 2003, in Docket No. 03-00118, TAWC sought TRA approval of an increase in annual revenues of \$3,866,813 and an overall rate of return of 8.559% with an 11% return on equity during the attrition year ending March 31, 2004. In the proposed tariffs filed by TAWC, the additional annual revenues would be recovered by increased charges to all classes of customers. Chattanooga, the Consumer Advocate and CMA intervened in that docket and participated in the hearing held on June 30 and July 1, 2003. In advance of the hearing, TAWC and the Consumer Advocate filed with the Authority a Proposed Settlement Agreement relating to specific issues, including a return of 7.73%

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<sup>2</sup> See *In re Tariff Filing to Reduce Fire Hydrant Annual Charges as Part of a Settlement Agreement Between the City of Chattanooga and Tennessee-American Water Company*, Docket No. 99-00891, Company's Response to Authority Data Request, December 20, 1999, Attachment A

<sup>3</sup> Director Lynn Greer voted not to approve the tariff

<sup>4</sup> See *In re Tariff Filing to Reduce Fire Hydrant Annual Charges as Part of a Settlement Agreement Between the City of Chattanooga and Tennessee-American Water Company*, Docket No. 99-00891, *Order Approving Tariff*, p. 5 (September 26, 2000)

on investments and a 9.9% return on equity.

The panel voted unanimously to accept the Proposed Settlement Agreement<sup>5</sup> and, by its acceptance, determined the rate base to be \$87,062,756, the return on investment to be 7.73% and the return on equity to be 9.9%. The two issues remaining for determination were the question of continued imputation of the reduction of fire hydrant charges and the appropriate rate design for implementing the rate increase. In Docket No. 99-00891, the TRA approved the tariff filing by TAWC that voluntarily reduced rates to Chattanooga by \$1,127,964 per year for public fire protection service. As part of its Petition in Docket No. 03-00118, TAWC requested the TRA reinstate this revenue stream. The parties in Docket No. 03-00118 were unable to reach a settlement on this issue. The panel found that while the record contained no evidence necessitating a modification of the Order in Docket No. 99-00891, there was evidence to support TAWC's claim that additional revenue requirement may be necessary. For these reasons, a majority of the panel found that the imputation of reduced fire hydrant rates to Chattanooga should be discontinued.<sup>6</sup> The Authority concluded that TAWC was entitled to a rate increase of \$2,745,411. As to \$1,127,964 of the rate increase, the amount of \$563,982 was ordered to be recovered directly from Chattanooga through an increase to the fire hydrant rate.

#### **Travel of this Docket**

On September 10, 2004, TAWC filed a 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

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<sup>5</sup> *Id.* at 44

<sup>6</sup> See *In 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, *Final Order Approving Rate Increase and Rate Design and Approving Rates Filed by Tennessee American Water Company and Concurrence and Dissent of Director Pat Miller* (June 25, 2004)

property used and useful in furnishing water service to its customers ("*Petition*") The pre-filed direct testimonies of Mr. Paul T. Diskin, Mr. Michael A. Miller, Mr. John S. Watson, Mr. James H. Vander Weide, Dr. Edward L. Spitznagel, Jr., Mr. Paul Herbert, and Mr. Monty L. Bishop were filed along with the *Petition*.

TAWC's *Petition* was considered at a regularly scheduled Authority Conference held on September 27, 2004, at which time the panel voted unanimously to suspend the proposed rate increase for ninety (90) days, from October 10, 2004 to January 7, 2005 and to appoint the Authority's General Counsel or his designee as Hearing Officer in the proceeding to hear preliminary matters prior to the Hearing, to rule on any petitions for intervention, and to set a procedural schedule to completion.

On October 1, 2004, the Consumer Advocate filed a *Petition to Intervene* in this proceeding, which was granted by the Hearing Officer on October 11, 2004.<sup>7</sup> On October 25, 2004, CMA filed its *Petition to Intervene by the Chattanooga Manufacturers Association* and on October 26, 2004, Chattanooga filed its *Petition to Intervene*. In an Order issued on October 28, 2004, the Hearing Officer granted both petitions for intervention.

Following discovery in the form of interrogatories and requests for production of documents, the intervening parties submitted pre-filed direct testimony as follows. Chattanooga filed the direct testimony of Mr. Trevor Hamilton, Ms. Daisy Madison and Mr. James "Tony" Quarles; CMA filed the direct testimony and exhibit of Mr. Michael Gorman, Mr. Jack Callaghan and Mr. Dan Nuckolls, and the Consumer Advocate filed the direct testimony of Dr. Steve N. Brown, Mr. Michael D. Crysler, and Mr. Terry Buckner. Rebuttal testimony of Mr. Paul T. Diskin, Mr. Michael A. Miller, Mr. John S.

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<sup>7</sup> See *Order Granting Petition For Intervention And Establishing Procedural Schedule* (October 11, 2004)

Watson, Dr. James H. Vander Weide and Mr. Paul Herbert was filed by TAWC. CMA filed rebuttal testimony of Mr. Michael Gorman.

On December 15, 2004, the Hearing Officer ordered that the proposed rate increase, which was initially suspended on September 27, 2004, should be re-suspended through March 9, 2005 or until the panel acted on the merits of the *Petition*, whichever occurred first. A Hearing was scheduled in this Docket to begin on January 31, 2005.

On January 27, 2005, TAWC and the Consumer Advocate filed the *Settlement Agreement* relating to specific issues and in which those parties stipulated to the following.

1. The Parties stipulate and agree that Tennessee-American is entitled to earn a 7.76% return on investments with a 9.9% return on equity, as shown in attached Schedule 9.
2. The Parties further stipulate and agree that a 7.76% return on investment generates a revenue deficiency of \$297,005. The revenue deficiency is shown in attached Schedule 1.
3. The Parties further stipulate and agree that Tennessee-American shall withdraw its request for the "Low Income Tariff" as referenced and described in paragraph 13 of its Petition.
4. The Parties further stipulate and agree that Tennessee-American shall measure and report service metrics as summarized in attached Schedule 10.
5. The Parties further stipulate and agree that the increase in rates attributable to the revenue deficiency of \$297,005 shall be allocated to all classes of customers in an across-the-board percentage increase of 0.93% to the metered tariffs, as shown in attached Schedule 11.
6. In light of the General Assembly's enactment of Tenn. Code Ann. § 65-5-101(d)(2004) prohibiting privately-owned water utilities from charging municipal governments for fire hydrant service, the Attorney General and Tennessee-American further stipulate and agree that public fire hydrant service charges of \$897,285 approved by the Tennessee Regulatory Authority ("TRA") in TRA Docket No. 03-00118 to be allocated to municipal governments shall be allocated to all classes of customers exclusive of municipal

governments in an across-the-board percentage increase of 2.90% to the metered tariffs, as shown in attached schedule 11 . . .

### **The Hearing**

The Hearing in this matter was held before the voting panel assigned to this Docket on January 31, 2005. Participating in the Hearing were the following parties and their respective counsel:

**Tennessee American Water Company** - R. Dale Grimes, Esq. and J. Davidson French, Esq., Bass, Berry and Sims, PLC, 315 Deaderick Street, AmSouth Center, Suite 2700, Nashville, Tennessee 37238-3001;

**Consumer Advocate and Protection Division** – Timothy C. Phillips, Esq. and Joe Shirley, Esq., Office of the Attorney General, P.O. Box 20207, Nashville, Tennessee 37202;

**Chattanooga Manufacturers Association** – Kristy Godsey, Esq., Boulton, Cummings, Conners & Berry, PLC, 1600 Division St., #700, Nashville, Tennessee 37203 and David C. Higney, Esq., Grant, Konvalinka & Harrison, P.C., 633 Chestnut Street, 9th Floor, Chattanooga, Tennessee 37450; and

**City of Chattanooga, Tennessee** - Michael A. McMahan, Esq. and Phillip A. Noblett, Esq., Special Counsel, 801 Broad Street, Suite 400, Chattanooga, Tennessee 37402.

At the Hearing, the parties presented information to the panel regarding the *Settlement Agreement*. At the time of the Hearing, TAWC and the Consumer Advocate had signed the *Settlement Agreement* and, although Chattanooga and CMA had not signed the *Settlement Agreement* at the time of the Hearing, they confirmed their intent to become signatories. Additionally, at the time of the Hearing, the *Settlement Agreement* contained an error which the parties agreed to delete. Specifically, the *Settlement Agreement* presented at the Hearing contained language in numbered paragraph 6 on page 2 that stated, “. . . allocated to all classes of customers exclusive of municipal governments in an across-the-board percentage increase . . . .” The parties agreed that the language in paragraph 6 should not have contained the phrase “exclusive of municipal governments.”

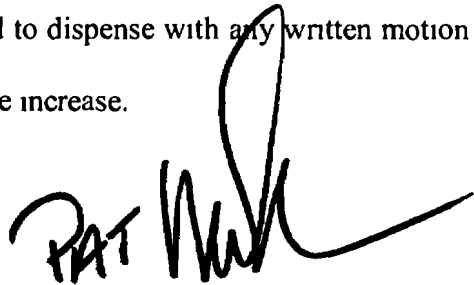


After hearing from all the parties, the panel voted unanimously to accept the *Settlement Agreement* contingent on the aforementioned correction and all parties becoming signatories. By acceptance of the *Settlement Agreement*, the Authority determined the rate base to be \$87,611,390, the return on investment to be 7.76% and the return on equity to be 9.9%. Additionally, the panel voted unanimously to authorize the Hearing Officer to dispense with a written motion by TAWC to end the suspension of the rate increase proposed in the *Petition*. On February 4, 2005, consistent with the panel's decision, the parties filed a corrected *Settlement Agreement* signed by all parties.

**IT IS THEREFORE ORDERED THAT:**

1. The *Proposed Settlement Agreement* filed by the Tennessee American Water Company, the Consumer Advocate and Protection Division of the Office of the Attorney General of Tennessee, Chattanooga Manufacturers Association and the City of Chattanooga, Tennessee, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.

2. The Hearing Officer is authorized to dispense with any written motion by TAWC to end the suspension of the proposed rate increase.

A handwritten signature in black ink, appearing to read "PAT MILLER", with a long, sweeping horizontal stroke extending to the right.

Pat Miller, Chairman

A handwritten signature in black ink, appearing to read "Deborah Taylor Tate", with a stylized, cursive script.

Deborah Taylor Tate, Director

A handwritten signature in black ink, appearing to read "Sara Kyle", with a stylized, cursive script.

Sara Kyle, Director

IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

RECEIVED

2005 FEB -4 PM 2:34

IN RE:

T.R.A. DOCKET ROOM

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. 04-00288

---

**PROPOSED SETTLEMENT AGREEMENT**

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For the sole purpose of settling the case of 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, TRA Docket No. 04-00288, the Office of Attorney General through the Consumer Advocate and Protection Division ("Attorney General"), the City of Chattanooga ("City"), the Chattanooga Manufacturers Association ("CMA"), and Tennessee-American Water Company ("Tennessee-American") (collectively, the "Parties") hereby agree and stipulate as follows in the above-styled case set for hearing on January 31, 2005:

1. The Parties stipulate and agree that Tennessee-American is entitled to earn a 7.76% return on investments with a 9.9% return on equity, as shown in attached Schedule 9.
2. The Parties further stipulate and agree that a 7.76% return on investment generates a revenue deficiency of \$297,005. The revenue deficiency is shown in attached Schedule 1.

**EXHIBIT**

**A**

3. The Parties further stipulate and agree that Tennessee-American shall withdraw its request for the "Low Income Tariff" as referenced and described in paragraph 13 of its Petition.

4. The Parties further stipulate and agree that Tennessee-American shall measure and report service metrics as summarized in attached Schedule 10.


5. The Parties further stipulate and agree that the increase in rates attributable to the revenue deficiency of \$297,005 shall be allocated to all classes of customers in an across-the-board percentage increase of 0.93% to the metered tariffs, as shown in attached Schedule 11.

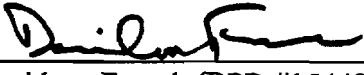
6. In light of the General Assembly's enactment of Tenn. Code Ann. § 65-5-101(d) (2004) prohibiting privately-owned water utilities from charging municipal governments for fire hydrant service, the Parties further stipulate and agree that public fire hydrant service charges of \$897,285 approved by the Tennessee Regulatory Authority ("TRA") in TRA Docket No. 03-00118 to be allocated to municipal governments shall be allocated to all classes of customers in an across-the-board percentage increase of 2.90% to the metered tariffs, as shown in attached Schedule 11.

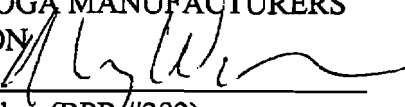
7. The Parties further stipulate and agree that Tennessee-American shall submit with its next rate case petition a cost of service study in the same form as that submitted by Dr. Herbert in Tennessee-American's last rate case, TRA Docket No. 03-00118. The Parties further stipulate and agree that in any future proceeding each Party reserves its right to proffer its own testimony and evidence regarding the sufficiency, conclusions, weight and relevancy of such cost of service study.

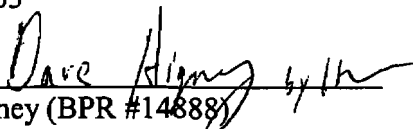
8. In the event that the TRA does not accept the Proposed Settlement in whole or in part, the Parties are not bound by any position set forth herein.

TENNESSEE-AMERICAN WATER  
COMPANY

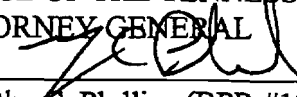
BY:   
R. Dale Grimes (BPR #6223)  
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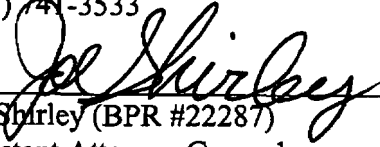
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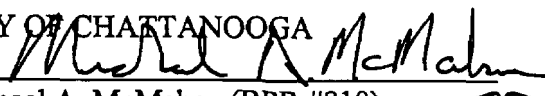
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Dated: February 3, 2005

**CERTIFICATE OF SERVICE**


I hereby certify that a true and exact copy of the foregoing has been forwarded by facsimile and/or first-class mail, postage prepaid on February 4th, 2005, to the following:

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\_\_\_\_\_  
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Senior Counsel

#81968

Tennessee-American Water  
Index to Schedules  
For the 12 Months Ending December 31, 2005

	<b><u>Schedule No.</u></b>
Revenue Deficiency	1
Comparative Rate Base	2
Income Statement at Current Rates	3
Income Statement at Proposed Rates	4
Operation & Maintenance Expenses	5
Taxes Other Than Income Taxes	6
Excise and Income Taxes	7
Revenue Conversion Factor	8
Cost of Capital	9
Service Metrics	10
Rate Design	11

Tennessee-American Water  
Revenue Deficiency  
For the 12 Months Ending December 31, 2005

Line No.		CAPD *		Company		Difference
1	Rate Base	87,611,390	A/	87,611,390	A/	-
2	Operating Income at Present Rates	6,616,813	B/	5,846,425	B/	770,388
3	Earned Rate of Return (Line 2/Line 1)	7.55%		6.67%		0.88%
4	Cost of Capital	7.76%	C/	7.997%	E/	-0.24%
5	Required Operating Income (Line 1*Line 4)	6,798,644		7,006,283		(207,639)
6	Operating Income Deficiency (Line 5-Line 2)	181,830		1,159,858		(978,027)
7	Gross Revenue Conversion Factor	1.633418	D/	1.69890763	E/	(0.065490)
8	Revenue Deficiency (Line 6*Line 7)	297,005		1,970,491		(1,673,486)

A/ Schedule 2

B/ Schedule 3

C/ Schedule 9

D/ Schedule 8

E/ Diskin REVISED Exhibit 1, Schedule 1

Tennessee-American Water  
Comparative Rate Base  
For the 12 Months Ending December 31, 2005

Line No.		CAPD	A/	Company	A/	Difference
1	Utility Plant in Service	160,157,718		160,157,718		-
2	Construction Work in Progress	801,659		801,659		-
3	Utility Plant Capital Lease	1,590,500		1,590,500		-
4	Limited-Term Utility Plant - Net	(3,270)		(3,270)		-
5	Working Capital	1,385,205		1,385,205		-
6	Def Maint	5,641		5,641		-
7	Total Additions	163,937,453		163,937,453		-
8	Accumulated Depreciation	51,928,414		51,928,414		-
9	Accumulated Amort of Utility Capital Lease	742,234		742,234		-
10	Accumulated Deferred Income Taxes	13,486,419		13,486,419		-
11	Customer Advances for Construction	2,432,851		2,432,851		-
12	Contributions In Aid of Construction	7,765,092		7,765,092		-
13	Unamortized Investment Tax Credit	45,733		45,733		-
14	RWIP	(74,680)		(74,680)		-
15	Total Deductions	76,326,063		76,326,063		-
16	Rate Base	87,611,390		87,611,390		-

A/ Company Exhibit 1, Sch 2



Tennessee-American Water  
Income Statement at Current Rates  
For the 12 Months Ending December 31, 2005

Line No		CAPD *		Company		Difference
1	Operating Revenues	33,057,417	A/	33,057,417	A/	-
2	Operations and Maintenance Expense	16,262,091	B/	16,709,359	B/	(447,268)
3	Depreciation and Amortization Expense	4,558,016	C/	4,558,016	C/	-
4	Taxes Other Than Income	3,314,870	D/	3,456,977	G/	(142,107)
5	State Excise Tax	170,901	E/	378,505	H/	(207,604)
6	Federal Income Tax	2,163,517	E/	2,136,926	H/	26,591
7	Total Operating Expense	26,469,395		27,239,783		(770,388)
8	AFUDC	28,791	F/	28,791	F/	-
9	Net Operating Income for Return	6,616,813		5,846,425		770,388

A/ Company Exhibit 2, Sch 2

B/ Schedule 5

C/ Company Exhibit 2, Sch. 1

D/ Schedule 6

E/ Schedule 7

F/ Company Exhibit 2, Sch 3

G/ Company Exhibit 2, Sch 1, but does not tie to Company's supporting workpapers (See Sch. 6)

H/ Company Exhibit 2, Sch. 6

Tennessee-American Water  
Income Statement at Proposed Rates  
For the 12 Months Ending December 31, 2005

Line No.		Current Rates	A/ B/	Adjustments	C/	Proposed Rates
1	Operating Revenues	32,522,732	B/	297,005		32,819,737
2	Forfeited Discount Revenues	534,685	B/	4,990		539,675
3	Total Revenues	33,057,417		301,995		33,359,412
4	Operations and Maintenance Expense	16,262,091		2,809		16,264,900
5	Depreciation and Amortization Expense	4,558,016				4,558,016
6	Taxes Other Than Income	3,314,870				3,314,870
7	State Excise Tax	170,901		19,447		190,348
8	Federal Income Tax	2,163,517		97,909		2,261,425
9	Total Operating Expense	26,469,395				26,589,559
10	AFUDC	28,791				28,791
11	Net Operating Income for Return	6,616,813				6,798,644

A/ Schedule 3

B/ Company Exhibit 2, Sch. 2

C/ Schedule 1, Line 8 x appropriate factor from Schedule 8

Tennessee-American Water  
 Operation & Maintenance Expenses  
 For the 12 Months Ending December 31, 2005

Line No		CAPD * A/	Company B/	Difference
1	Salaries and Wages	4,082,080	4,383,883	(301,803)
2	Purchased Water	26,148	15,330	10,818
3	Fuel and Power	1,650,433	1,755,680	(105,247)
4	Chemicals	861,861	861,861	-
5	Waste Disposal	118,201	133,438	(15,237)
6	Management Fees	3,219,932	3,062,940	156,992
7	Group Insurance	1,339,248	1,386,004	(46,756)
8	Pensions	829,731	892,790	(63,059)
9	Regulatory Expense	58,000	58,000	-
10	Insurance Other Than Group	673,430	657,000	16,430
11	Customer Accounting	570,625	572,893	(2,268)
12	Uncollectible Expense	289,530	289,530	-
13	Rents	37,888	38,286	(398)
14	General Office Expense	208,057	193,122	14,935
15	Miscellaneous Expense	1,715,487	1,661,970	53,517
16	Other Maintenance Expense	<u>581,440</u>	<u>746,632</u>	<u>(165,192)</u>
17	Total O&M Expense	<u><u>16,262,091</u></u>	<u><u>16,709,359</u></u>	<u><u>(447,268)</u></u>

A/ CAPD Workpapers

B/ Company Exhibit 2, Sch. 3

Tennessee-American Water  
Taxes Other Than Income Taxes  
For the 12 Months Ending December 31, 2005

Line No		CAPD		Company	D/	Difference
1	Other General Taxes	900		900		-
2	Gross Receipts Tax	356,815	A/	566,595		(209,780)
3	TRA Inspection Fee	59,413		59,413		-
4	Property Taxes	2,300,000	B/	2,503,629		(203,629)
5	Franchise Tax	259,938		259,938		-
6	FICA Taxes	332,999	C/	332,999		-
7	Unemployment Taxes	4,805	C/	4,805		-
8	Total Taxes Other Than Income Taxes	<u>3,314,870</u>		<u>3,728,279</u>		<u>(413,409)</u>

A/ CAPD Workpaper T-OTAX2

B/ CAPD Workpaper T-OTAX1

C/ CAPD Workpaper T-OTAX3

D/ Company Exhibit 2, Sch. 5 adjusted by Company Response to CAPD Data Request #17

Tennessee-American Water  
Excise and Income Taxes  
For the 12 Months Ending December 31, 2005

Line No		Attrition Amount A/	
1	Operating Revenues	33,057,417	B/
2	Salaries and Wages	4,082,080	
3	Purchased Water	26,148	
4	Fuel and Power	1,650,433	
5	Chemicals	861,861	
6	Waste Disposal	118,201	
7	Service Company Charges	3,219,932	
8	Group Insurance	1,339,248	
9	Pensions	829,731	
10	Regulatory Expense	58,000	
11	Insurance Other Than Group	673,430	
12	Customer Accounting	570,625	
13	Uncollectible Expense	289,530	
14	Rents	37,888	
15	General Office Expense	208,057	
16	Miscellaneous Expense	1,715,487	
17	Other Maintenance Expense	581,440	
18	Depreciation and Amortization Expense	4,558,016	
19	Taxes Other Than Income	3,314,870	
20	NOI Before Excise and Income Taxes	8,922,440	
21	AFUDC	28,791	
22	Interest Expense	(3,200,900)	C/
23	Pre-tax Book Income	5,750,331	
24	Schedule M Adjustments	(4,479,690)	D/
25	Excise Taxable Income	1,270,641	
26	Excise Tax Rate	6.50%	
27	Excise Tax Payable	82,592	
28	Excise Tax Deferred	88,309	
29	Excise Tax Expense	170,901	
30	Pre-tax Book Income	5,750,331	
31	Preferred Dividend Credit	(28,824)	E/
32	Excise Tax	(170,901)	
33	Schedule M Adjustments	(4,479,690)	D/
34	FIT Taxable Income	1,070,917	
35	FIT Rate	35.00%	
36	Federal Income Tax Payable	374,821	
37	ITC Amortization	(76,368)	
38	Federal Income Tax Deferred	1,865,064	
39	Federal Income Tax Expense	2,163,517	

A/ Schedule 5

B/ Schedule 4

C/ Schedule 1, line 1 \* Weighted Cost of Debt per Schedule 9

D/ This is the net difference of the Permanent Differences of \$2,950 and the Temporary Differences of \$4,482,640 shown on E/

E/ Exhibit No. 2, Schedule 6, Page 2 of 2

Tennessee-American Water  
Revenue Conversion Factor  
For the 12 Months Ending December 31, 2005

Line No.		<u>Amount</u>	<u>Balance</u>
1	Operating Revenues		1 000000
2	Add: Forfeited Discounts	0 0168 A/	<u>0.016800</u>
3	Balance		1.016800
4	Uncollectible Ratio	0 0093 B/	<u>0.009456</u>
5	Balance		1.007344
6	State Excise Tax	0 0650 C/	<u>0.065477</u>
7	Balance		0 941866
8	Federal Income Tax	0 3500 C/	<u>0 329653</u>
9	Balance		<u>0 612213</u>
10	Revenue Conversion Factor (Line 1 / Line 11)		<u><u>1.633418</u></u>

A/ Company Exhibit 2, Sch. 2 (\$534,685/\$31,840,192)

B/ Company Workpapers

C/ Statutory Rate

Tennessee-American Water  
Cost of Capital  
For the 12 Months Ending December 31, 2005

Line No	Parent	Ratio	*Cost	Weighted Cost	Tax Deductible
1	Short Term Debt	6.30%	2.40%	0.15%	0.12%
2	Long Term Debt	42.30%	6.00%	2.54%	2.05%
3	Preferred Equity	0.30%	5.00%	0.02%	
4	Common Equity	51.10%	9.90%	5.06%	
5	Total	<u>100.00%</u>		<u>7.77%</u>	
	<u>Tennessee American.</u>	<u>Ratio</u>	<u>Cost</u>	<u>Weighted Cost</u>	
6	Short Term Debt	0.00%	0.00%	0.00%	
7	Long Term Debt	19.20%	7.71%	1.48%	1.48%
8	Common Equity	80.80%	7.77%	6.28%	
9	Total	<u>100.00%</u>		<u>7.76%</u>	<u>3.65%</u>
Final Capital Structure					
	<u>Parent</u>	<u>Ratio</u>	<u>Cost</u>	<u>Weighted Cost</u>	<u>Tax Deductible</u>
10	Short Term Debt	5.09%	2.40%	0.12%	0.12%
11	Long Term Debt	34.18%	6.00%	2.05%	2.05%
12	Preferred Equity	0.24%	5.00%	0.01%	
13	Common Equity	41.29%	9.90%	4.09%	
	Total Parent	<u>80.80%</u>	<u>7.76%</u>	<u>6.27%</u>	
	<u>Tennessee American</u>				
14	Short Term Debt	0.00%	0.00%	0.00%	0.00%
15	Long Term Debt	19.20%	7.71%	1.48%	1.48%
16	Total Subsidiary	<u>19.20%</u>	<u>7.71%</u>	<u>1.48%</u>	
17	Total	<u>100.00%</u>		<u>7.75%</u>	<u>3.65%</u>

Source Exhibit CAPD-SB, Schedules 37 and 38

**TENNESSEE AMERICAN WATER COMPANY**  
**Settlement Agreement Regarding Service Metrics and Reporting**  
**TRA Docket # 04-00288**  
**January 27, 2005**  
**SCHEDULE 10.**

**Customer Service - Call Center:**

1. Begin Reporting Monthly Customer Care Scorecard (as identified in Mike Miller's Rebuttal Testimony) on a monthly basis and reporting to the Tennessee Regulatory Authority (TRA), the CAPD by March 1, 2005.
2. Develop similar Monthly Customer Care Scorecard with "Tennessee Specific" Statistics reporting by January 1, 2006 to TRA and CAPD. TAWC is not currently able to measure dropped calls from TN ratepayers, but will work with the Consumer Advocate toward establishing the necessary mechanisms to measure dropped calls, if practicable.

**Tennessee Local Operations:**

3. TAWC Employee Reporting by job title with its quarterly reporting to the TRA including allocated Tennessee specific Call Center employees.
4. Field Service (Tennessee Office) - Monthly Reporting To TRA and CAPD by March 1, 2005
  - A. Service Orders Worked - Monthly
  - B. Appointment Orders - % on-time
  - C. Appointments Missed
  - D. Meter Reading
    - a. Total meters
    - b. Meters read
    - c. Estimates
    - d. % Estimated
    - e. Number of Meters not billed 3 months, 6 months, 12 months

**Customer Surveys:**

5. Customer Survey Responses Reported To TRA and CAPD On A Quarterly Basis beginning 2005) detailed by affiliate:
  - A. Satisfaction in Reaching American Water Call Center
  - B. Satisfaction with Call Center Operation Problem Resolution
  - C. Satisfaction with company response for service
  - D. Satisfaction with water quality



Tennessee American Water Company  
Rate Design - Docket #04-00288

Schedule 11

	A/ Present	Fire Hydrant Shift	Post Shift	%	Increase	%	Total
Residential	\$ 13,302,692	\$ 385,753	\$ 13,688,445	2.90%	\$ 127,686	0.93%	\$ 13,816,131
Commercial	9,464,969	274,466	9,739,435	2.90%	90,849	0.93%	9,830,285
Industrial	3,399,370	98,575	3,497,945	2.90%	32,629	0.93%	3,530,574
Other Public Authority	2,500,771	72,518	2,573,289	2.90%	24,004	0.93%	2,597,292
Sales for Resale	920,714	26,699	947,413	2.90%	8,837	0.93%	956,250
Private Fire	1,354,352	39,274	1,393,626	2.90%	13,000	0.93%	1,406,625
Public Fire	897,285	(897,285)	-	-100.00%		0.00%	-
Total	\$ 31,840,153	\$ -	\$ 31,840,153	0.00%	\$ 297,005	0.93%	\$ 32,137,158

A/ TAWC witness Herbert Exhibit