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August 14, 2008

Via Hand-Delivery

Chairman Tre Hargett
c/o Ms. Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

filed electronically in docket office on 08/14/08

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. 08-00039

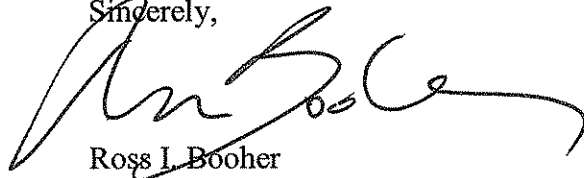
Dear Chairman Hargett:

Enclosed please find an original and seven (7) copies of filing of Tennessee American Water Company's First Motion in Limine regarding the Testimony Offered by Michael Majoros.

Please return three copies of this document, which I would appreciate you stamping as "filed," and returning to me by way of our courier.

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

Sincerely,



Ross L. Booher

RB/cw
Enclosure

Chairman Tre Hargett

August 14, 2008

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cc: Hon. Mary Freeman (*w/o enclosure*)
Hon. Sara Kyle (*w/o enclosure*)
Hon. Eddie Roberson (*w/o enclosure*)
Richard Collier, Esq. (*w/o enclosure*)
Ms. Shilina Chatterjee (*w/o enclosure*)
Ms. Kelly Grams (*w/o enclosure*)

6960265.1

**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 PERMIT IT TO EARN)	
A FAIR AND ADEQUATE RATE OF)	
RETURN ON ITS PROPERTY USED AND)	Docket No. 08-00039
USEFUL IN FURNISHING WATER)	
SERVICE TO ITS CUSTOMERS)	

**TENNESSEE AMERICAN WATER COMPANY'S FIRST MOTION IN LIMINE
REGARDING THE TESTIMONY OFFERED BY MICHAEL MAJOROS**

Tennessee American Water Company ("TAWC") files this motion *in limine* requesting that the Hearing Officer exclude the pre-filed testimony of the City of Chattanooga's witness, Michael J. Majoros. Pursuant to Rule 702 of the Tennessee Rules of Evidence, Mr. Majoros is unqualified to testify as an expert regarding the subject of his testimony, the interpretation and application of the Sarbanes-Oxley Act.

I. The Hearing Officer Should Exclude Mr. Majoros' Testimony Pursuant To Rule 702 Of The Tennessee Rules Of Evidence.

Under Tennessee law, it is a threshold admissibility requirement that any witness attempting to offer expert testimony on a subject must first be qualified in that subject by knowledge, skill, experience, training or education. Bryant v. State, 539 S.W.2d 816, 819 (Tenn. Ct. Crim. App. 1976) ("establishment of an expert witnesses' qualifications is a necessary predicate for the allowance of his testimony"). Rule 702 of the Tennessee Rules of Evidence provides:

If scientific, technical or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by

knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise.

Accordingly, to provide admissible testimony as an expert, “one must be particularly skilled, learned or experienced in a science, art, trade, business, profession or vocation. The expert must possess a thorough knowledge [of that] upon which he testifies that is not within the general knowledge and experience of the average person.” Stooksbury v. Am. Nat’l Prop. & Cas. Co., 126 S.W.3d 505, 515 (Tenn. Ct. App. 2003).

II. Mr. Majoros Lacks Any Qualifications To Opine On The Sarbanes-Oxley Act.

The City offers Michael J. Majoros as an expert witness to opine whether the management audit of TWAC performed by Joe Van den Berg “complies with the Tennessee Regulatory Authority’s (“TRA” or “Commission”) mandate for a management audit performed in compliance with Sarbanes-Oxley requirements.” (emphasis added). See Majoros Pre-Filed Testimony at 1. Mr. Majoros is a professional witness and an executive at an economic consulting firm, most of whose work involves the development, preparation and presentation of testimony. Id. In his pre-filed testimony, Mr. Majoros opines that Mr. Van den Berg “did not perform an audit in compliance with Sarbanes-Oxley requirements.” Id. at 2-3. Mr. Majoros then dedicates virtually all of his pre-filed testimony attempting to interpret and apply the Sarbanes Oxley securities law statute.

Mr. Majoros, however, lacks the qualifications, knowledge and/or experience expressly required by Tennessee law to offer any testimony at all on the interpretation or application of Sarbanes Oxley. As an initial matter, the only basis set forth in Mr. Majoros’ pre-filed testimony for his claimed expertise regarding Sarbanes-Oxley is that Mr. Majoros’ states he has read the Sarbanes-Oxley statute. Id. at 3. Reading the Sarbanes Oxley statute does not set Mr. Majoros

apart from the finder of fact in this case, the TRA, as the Directors and TRA staff are just as capable of reviewing the text of the statute as is Mr. Majoros.

Mr. Majoros is not a lawyer of any kind, much less a securities lawyer with specialized training or experience in applying or interpreting the Sarbanes-Oxley securities law statute. Mr. Majoros resume and testimony also do not establish that he currently is a Certified Public Accountant (CPA), much less a CPA with specific experience implementing Sarbanes Oxley Act requirements.¹ See id. at 17 (displaying lack of credentials). Mr. Majoros also acknowledges that he has never received any formal training in the interpretation or implementation of Sarbanes-Oxley Act requirements. See City of Chattanooga Resp. to TAWC at 4. Mr. Majoros has also never previously given any expert testimony regarding the adoption, implementation or interpretation of Sarbanes-Oxley. Id. at 5. Mr. Majoros also concedes that he has **never** participated in or even reviewed a management audit he considers to be in compliance with Sarbanes-Oxley. Id. at 10. Nor has Mr. Majoros testified or disclosed during discovery that he has personal experience or responsibility for certifying Sarbanes-Oxley requirements. In short, Mr. Majoros has failed to offer any evidence whatsoever that he meets the threshold requirements set forth in Tennessee law to opine regarding Sarbanes-Oxley.

Accordingly, under the standards clearly articulated in the Tennessee Rules of Evidence and Tennessee jurisprudence, Mr. Majoros' pre-filed testimony should be excluded because Mr. Majoros is not qualified to testify regarding the subject of his testimony – namely, compliance with Sarbanes-Oxley. As summarized above, Mr. Majoros has no special knowledge, skill, experience, training or education that would enable him to opine on the requirements of the

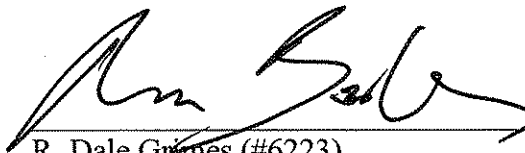
¹ Mr. Majoros' CV does not list any legal training. Further, his CV does not indicate that he is an active certified public accountant in good standing. While his CV lists certain certified public accounting associations of which he claims an affiliation, these organizations accept member who are not certified public accountants, according to their

Sarbanes-Oxley Act. Plainly stated, Mr. Majoros is a layman attempting to interpret and apply a complex securities law.

Conclusion

Neither the City nor Mr. Majoros has shown that Mr. Majoros possesses specialized expertise regarding the Sarbanes-Oxley Act, let alone regarding the extensive and complex issues associated with interpreting the Act. Given his lack of any specialized knowledge, skill, training, experience or education on the subject of compliance with Sarbanes-Oxley, TAWC respectfully submits that Mr. Majoros cannot “possess a *thorough* knowledge [of that] upon which he testifies,” as required by Rule 702 of the Tennessee Rules of Evidence. Stooksbury, 126 S.W.3d at 515 (emphasis added). Accordingly, TAWC respectfully requests the Hearing Officer to rule that the pre-filed testimony of Michael J. Majoros regarding Sarbanes-Oxley requirements is inadmissible as evidence in this case and that Mr. Majoros be barred from presenting any opinions regarding Sarbanes-Oxley in this proceeding.²

Respectfully submitted,



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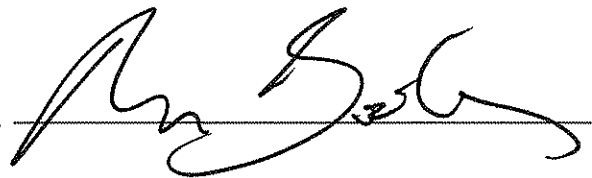
websites. Since Mr. Majoros has failed to disclose that he is either a lawyer or a certified public accountant in his direct testimony or in response to discovery requests, it appears he holds no such licenses or certifications.

² We attach hereto a revised copy of Mr. Majoros' pre-filed testimony with all testimony regarding Sarbanes-Oxley stricken.

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 14th day of August, 2008, upon the following:

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BEFORE THE
TENNESSEE REGULATORY AUTHORITY

In the Matter of the Application of)
TENNESSEE-AMERICAN WATER CO.) Docket 08-00039
Petition to Change and Increase Certain)
Rates for Water Service)

DIRECT TESTIMONY OF
MICHAEL J. MAJOROS, JR.

ON BEHALF OF THE
CITY OF CHATTANOOGA

July 14, 2008

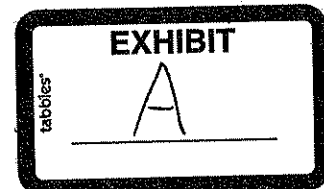


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1 **Introduction**

2 **Q. State your name, position, and business address.**

3 A. My name is Michael J. Majoros, Jr. I am Vice President of Snavely King Majoros
4 O'Connor & Bedell, Inc. ("Snavely King"), located at 1111 14th Street, N.W., Suite
5 300, Washington, D.C. 20005.

6 **Q. Describe Snavely King.**

7 A. Snavely King is an economic consulting firm founded in 1970 to conduct
8 research on a consulting basis into the rates, revenues, costs and economic
9 performance of regulated firms and industries. We have a professional staff of
10 12 economists, accountants, engineers and cost analysts. Most of our work
11 involves the development, preparation and presentation of expert witness
12 testimony before Federal and state regulatory agencies. Over the course of our
13 37-year history, members of the firm have participated in more than 1,000
14 proceedings before almost all of the state commissions and all Federal
15 commissions that regulate utilities or transportation industries.

16 **Q. Have you prepared a summary of your qualifications and experience?**

17 A. Yes, Appendix A is a summary of my qualifications and experience. Appendix B
18 contains a tabulation of my appearances as an expert witness before state and
19 Federal regulatory agencies.

20 **Q. For whom are you appearing in this proceeding?**

21 A. I am appearing on behalf of the City of Chattanooga.

22

1 **Prior Experience**

2 **Q. Do you have any specific experience in the public utility field?**

3 A. Yes, I have been in the field of public utility regulation since the late 1970's. My
4 testimony has encompassed numerous complex issues – including mergers,
5 transfers, affiliate transactions and inter-company allocations.

6 **Q. Does your experience specifically include water utilities?**

7 A. Yes, I have appeared as an expert in several water utility proceedings.

8 **Subject and Purpose of Testimony**

9 **Q. What is the subject of your testimony?**

10 A. I am addressing the level of administrative charges and fees imposed on TAWC
11 by its parent, American Water Works Company ("AWC"). In particular, this
12 testimony addresses Joe Van den Berg's Audit Report relating to the American
13 Water Works Service Company ("AWWSC"). ~~I will address whether the audit~~
14 ~~complies with the Tennessee's Regulatory Authority's ("TRA" or "Commission")~~
15 ~~mandate for a management audit performed in compliance with Sarbanes-Oxley~~
16 ~~requirements to determine whether all costs allocated to TAWC were incurred as~~
17 ~~a result of prudent or imprudent management decisions by TAWC's parent, and~~
18 the reasonableness of the methodology used to allocate costs to TAWC.¹ I will
19 also address the usefulness of this report for ratemaking purposes.

20 **Q. What do you conclude?**

21 A. My testimony presents the results of my review and analysis of Mr. Van den
22 Berg's report (the "BAH Report"). ~~I conclude that Mr. Van den Berg did not~~

¹ Docket No. 06-00290 Order, June 10, 2008 ("Order"), pages 26-27.

1 ~~conduct an audit in compliance with Sarbanes-Oxley requirements.~~ I conclude
2 that Mr. Van den Berg did not address whether all costs allocated to TAWC were
3 incurred as a result of prudent or imprudent management decisions by the parent
4 of the Petitioner, Tennessee American Water Company ("TAWC") as the TRA
5 ordered. I also conclude that the Authority should not rely on the BAH Report as
6 a basis to determine the necessity or the reasonableness of AWWSC's costs
7 allocated and assigned to TAWC. ~~Finally, I recommend disallowance of all costs~~
8 ~~related to the BAH Report and all AWWSC management fees and allocated~~
9 ~~costs until the originally specified audit is conducted and examined in a later~~
10 ~~proceeding.~~

11 **Q. What did you do to prepare yourself to submit this testimony?**

12 A. I read Mr. Van den Berg's testimony and studied his Exhibit. I reviewed
13 responses to various data requests. I reviewed Public Law 107-204 - the
14 "Sarbanes-Oxley Act of 2002" which is attached as Exhibit___ (MJM-1) to my
15 testimony. I reviewed Patrick L. Baryenbruch's prefiled testimony, exhibits and
16 transcripts in Docket No. 06-00290. I reviewed Director Miller's May 14, 2007
17 letter to Chairman Kyle setting-forth the Motion he intended to introduce at the
18 next day's hearing. I also reviewed the transcript of the May 15, 2007 hearing in
19 which Director Miller introduced his Motion. Finally, I reviewed the Authority's
20 June 10, 2008 Order in Docket No. 06-00290. Director Miller's letter, the May 15,
21 2007 transcript, and the June 10, 2008 Order are attached as collective
22 Exhibit___ (MJM-2).

1 **Background**

2 **Q. What is the background of your testimony?**

3 A. TAWC includes \$4.3 million in its revenue requirement for management fees and
4 service company charges. This has long been an area of concern for ratepayers.
5 For example, in 1996 the management fees and service company charges were
6 only \$1.3 million.² In Docket No. 06-00290 TAWC was granted \$3.9 million, and
7 has requested rates in this proceeding based on a further 10 percent increase.
8 In Docket No. 06-00290, TAWC submitted Mr. Baryenbruch's testimony and
9 exhibits, which purported to demonstrate the necessity and reasonableness of
10 the charges submitted in that proceeding. Mr. Baryenbruch conceded that his
11 study was not an audit and that he did not bore into the numbers and the process
12 to collect the numbers, he merely accepted numbers provided to him and then
13 compared those numbers to other benchmarks he had accumulated.³ The
14 benchmarks were not water industry benchmarks, rather they related to other
15 industries. The TRA Order accepted a certain amount of TAWC's requested
16 charges but ordered TAWC to complete a management audit performed in
17 compliance with Sarbanes-Oxley requirements.

18 ~~Q. Why do you conclude that TRA desired a Sarbanes-Oxley audit to~~
19 ~~determine the prudence, necessity and reasonableness of these charges?~~

20 ~~A. Director Miller's May 15, 2007 Motion clearly spelled out the requirement for an~~
21 ~~audit conducted in conformance with Sarbanes-Oxley requirements. The Motion~~
22 ~~was incorporated into the June 10, 2008 Order. Clearly, the TRA desired a~~

² Docket No. 06-00290, April 18, 2007 Transcript, page 18.

³ Id., page 52.

1 ~~comprehensive audit in conformity with rigid standards.~~ TRA did not order
2 completion of a comparison of AWWSC's costs to electric utility costs. ~~Rather, it~~
3 ~~ordered a management audit performed in compliance with Sarbanes-Oxley~~
4 ~~requirements and~~ ordered that the audit was to determine whether all costs
5 allocated to TAWC were incurred as a result of prudent or imprudent
6 management decisions by TAWC's parent. The audit was also to address the
7 reasonableness of the methodology used to allocate costs to TAWC.⁴

8 ~~Q. What are the benefits of adherence to Sarbanes-Oxley?~~

9 ~~A. Compliance with Sarbanes-Oxley requirements determines whether the~~
10 ~~Company has internal controls in place designed to ensure that the reported~~
11 ~~costs are accurate, and accurately classified and meet the required attributes, i.e.~~
12 ~~prudence and reasonableness. That is because Sarbanes-Oxley places a heavy~~
13 ~~emphasis on audit testing, internal controls and accountability. It also requires~~
14 ~~management attestation to the propriety of the costs at issue.~~

15 ~~Sarbanes-Oxley~~

16 ~~Q. What is Sarbanes-Oxley?~~

17 ~~A. Sarbanes-Oxley ("SOX") is an Act co-authored by Senator's Sarbanes and Oxley~~
18 ~~and signed into law by President George W. Bush. It emanates from the ENRON~~
19 ~~and other corporate scandals in early part of President Bush's first term. SOX~~
20 ~~requires detailed audits by independent certified public accountants. The~~
21 ~~purpose of this law is "To protect investors by improving the accuracy and~~
22 ~~reliability of corporate disclosures made pursuant to the securities laws and for~~

⁴ June 10, 2008 Order.

1 ~~other purposes.~~⁵

2 ~~Q. What is the primary thrust of SOX?~~

3 ~~A. Independent tests of internal controls in place in accordance with a set of,~~
4 ~~professional standards in order to express an independent opinion on~~
5 ~~management's financial statements.~~

6 ~~Q. How does SOX define an audit?~~

7 ~~A. SOX defines an audit as:~~

8 ~~An examination of the financial statements of any issuer by~~
9 ~~an independent public accounting firm in accordance with~~
10 ~~the rules of the Board or the Commission (or, for the period~~
11 ~~preceding the adoption of applicable rules of the Board~~
12 ~~under section 103, in accordance with then-applicable~~
13 ~~generally accepted auditing and related standards for such~~
14 ~~purposes), for the purpose of expressing an opinion on such~~
15 ~~statements.~~⁶
16

17 **BAH Report**

18 **Q. Please describe and summarize Mr. Van den Berg's report and the process**
19 **BAH used to arrive at its conclusions.**

20 **A.** Even though the TRA specified an audit performed in compliance with Sarbanes-
21 Oxley requirements, and Mr. Van den Berg recognizes that requirement on page
22 2 of his testimony, he states at the beginning of the same paragraph that TAWC
23 "retained Booz Allen to provide an independent assessment of the costs incurred
24 by AWWSC that are subject to potential allocation to TAWC."⁷ Mr. Van den Berg

⁵ Exhibit___(MJM-1), Preamble

⁶ SOX Section 2(a) (2).

⁷ Van den Berg Testimony, page 2.

1 does not identify his assignment as an audit, let alone an audit performed in
2 compliance with Sarbanes-Oxley requirements.

3 **Q. Did Mr. Van den Berg conduct an audit?**

4 A. No, Mr. Van den Berg did not conduct an audit; he conducted an assessment
5 described in Figure 1-1 of his report. ~~The figure, titled "Approach to Analysis",~~
6 ~~clearly demonstrates that Mr. Van den Berg did not complete a management~~
7 ~~audit in compliance with Sarbanes-Oxley requirements.~~ Mr. Van den Berg does
8 not mention Sarbanes-Oxley in his Approach to Analysis. While Mr. Van den
9 Berg discusses his review of AWWSC's budget process, he does not state that
10 the system in place as described to him by Company managers is functioning
11 properly, nor does he describe the controls in place to insure compliance, nor
12 does he provide any objective basis, such as audit test work, for his opinions.
13 Mr. Van den Berg's report discusses how AWWSC described its process, but
14 provides no indication of whether it is working properly.

15 Mr. Van den Berg also describes his benchmark comparison of AWWSC
16 fees and charges against certain electric utilities. The BAH Report does not use
17 readily available benchmarking data for water utilities. The TRA is no better off
18 than it was in Docket No. 06-00290, when it reviewed the Baryenbruch report,
19 which used a similarly flawed methodology, and found it necessary to order a
20 management audit conducted in conformity with SOX requirements.

21 **Q. Should the cost of the BAH Report be disallowed?**

22 A. In my opinion, AWWSC should not have paid for this report, none of its cost
23 should be assigned to ratepayers, TAWC should not have submitted this report

1 to the TRA, and TAWC should be required to have a real Sarbanes Oxley audit
2 completed before management fees or allocations are charged to TAWC's
3 ratepayers.

4 ~~**Beez Allen Audit Does Not Comply With SOX**~~

5 Q. ~~Why do you conclude the Beez Allen Report does not comply with SOX~~
6 ~~requirements?~~

7 A. ~~I will summarize the BAH failings based on what I believe are the more salient~~
8 ~~requirements.~~

9 ~~• BAH is not an independent public accounting firm.⁸~~

10 ~~• BAH did not conduct an "audit" as specified by SOX.⁹~~

11 ~~• BAH did not conduct an audit in conformity with or even cite to the rules of the~~
12 ~~Public Company Accounting Oversight Board.¹⁰~~

13 ~~• BAH did not cite to professional standards and did not comply with stringent~~
14 ~~standards SOX requires.¹¹~~

15 ~~• BAH report did not include a concurring or second partner review and~~
16 ~~approval of such report.¹²~~

17 ~~• BAH Report did not contain any management attestations.¹³~~

18 ~~• BAH Report is not independent, it was reviewed and edited by~~
19 ~~management.¹⁴~~

⁸ ~~SOX 2.(a)(2).~~

⁹ ~~Id.~~

¹⁰ ~~Id.~~

¹¹ ~~Id., and 2.(a)(10), and Section 103.~~

¹² ~~SOX Section 103.~~

¹³ ~~SOX Title 3.~~

¹⁴ ~~SOX 2.(a)(2)~~

1 • ~~BAH report did not describe the scope of the auditor's testing of the internal~~
2 ~~control structure and procedures required by section 404(b) Internal Control~~
3 ~~Evaluation and Reporting.~~¹⁵

4 • ~~BAH Report did not present the findings of the auditor from such testing.~~¹⁶

5 • ~~BAH Report did not provide an evaluation of whether AWWSC's internal~~
6 ~~control structure and procedures include maintenance of records that in~~
7 ~~reasonable detail accurately and fairly reflect the transactions reported to~~
8 ~~BAH by AWWSC.~~¹⁷

9 • ~~BAH Report did not provide an evaluation of whether such internal control~~
10 ~~structure and procedures provide reasonable assurance that transactions are~~
11 ~~recorded as necessary to permit calculation of costs conforming to TRA~~
12 ~~requirements, and that receipts and expenditures underlying those costs are~~
13 ~~being made only in accordance with authorizations of management and~~
14 ~~directors in conformance with TRA rules.~~¹⁸

15 • ~~BAH Report did not contain a description, at a minimum, of material~~
16 ~~weaknesses in such internal controls, and of any material noncompliance~~
17 ~~found on the basis of such testing.~~¹⁹

¹⁵ ~~SOX 103(a)(2)(A)(iii)~~

¹⁶ ~~SOX 103(a)(2)(A)(iii)(I)~~

¹⁷ ~~SOX 103(a)(2)(A)(iii)(II)(aa)~~

¹⁸ ~~SOX 103(a)(2)(A)(iii)(II)(bb) with modifications~~

¹⁹ ~~SOX 103(a)(2)(A)(iii)(III)~~

1 **Baryenbruch Report**

2 **Q. Please compare Mr. Van den Berg's study with Mr. Baryenbruch's findings**
3 **in Docket 06-00290.**

4 A. In my opinion, Mr. Van den Berg's study is merely an expansion of the type of
5 study Mr. Baryenbruch submitted in Docket No. 06-00290. In both cases, the
6 authors seek to justify costs for a water utility by comparing them to costs
7 reported by electric utilities. ~~That type of study lead to the TRA's directive to~~
8 ~~have an "audit performed in compliance with Sarbanes-Oxley requirements."~~

9 **BAH Report Did Not Test for Prudence or Reasonableness**

10 **Q. How did the BAH report address prudence and reasonableness?**

11 A. Mr. Van den Berg states that he "used both quantitative and qualitative
12 assessments to establish a comprehensive framework within which the
13 'prudency' of activities and related costs could be determined."²⁰

14 **Q. Did the BAH Report establish whether all costs allocated to TAWC were**
15 **incurred as a result of prudent or imprudent management decisions?**

16 A. No. BAH conducted an assessment based on a framework he developed using
17 information provided by the Company and electric utility statistics. Based on my
18 review of Mr. Van den Berg's testimony and Exhibit, I conclude he did not
19 specifically determine and apply definitions of prudence, imprudence or
20 reasonableness, and he did not determine or verify that AWWSC's internal
21 controls were designed to catch imprudent costs. Hence, Mr. Van den Berg's
22 conclusions are subjective. I did not see any reference to actual testing of

²⁰ Van den Berg Testimony, page 3.

1 whether all costs were incurred as a result of prudent or imprudent management
2 decisions. Nor did I find any evidence of an analysis to determine whether
3 AWWSC's internal control system would catch excessive and imprudent costs
4 resulting from imprudent management decisions.

5 **Other Report Failings**

6 **Q. Why do you conclude the TRA should not use the Booz Allen report as a**
7 **basis to judge the reasonableness of AWWSC's allocated and assigned**
8 **costs to TAWC?**

9 A. In addition to its other failings, Mr. Van den Berg compared benchmarks to
10 electric industry statistics when he could have used water industry statistics.

11 **Management Audits**

12 **Q. ~~Although BAH did not conduct an audit in compliance with SOX~~**
13 **~~requirements~~, does Mr. Van den Berg's report resemble other management**
14 **audits with which you are familiar?**

15 A. No, I have reviewed several management audit reports in the past, and in fact, I
16 participated in a management audit conducted by the Kentucky Public Service
17 Commission. I have reviewed management audits conducted by other
18 jurisdictional agencies, the Pennsylvania Public Service Commission for
19 example. Mr. Van den Berg's report does not resemble any of those other
20 management audits in either scope or findings.

21 **Q. Can you provide an example of a management audit?**

22 A. Yes, the Pennsylvania Public Service Commission conducted a management
23 audit of TAWC's sister company, the Pennsylvania American Water Company

1 ("PAWC"). I have attached a copy of the audit report as Exhibit___ (MJM-3).²¹

2 All one must do is examine and contrast that report with the BAH report to realize
3 that BAH did not conduct a management audit.

4 ~~Q. Did the Pennsylvania Public Service Commission conduct the PAWC audit~~
5 ~~in compliance with SOX?~~

6 ~~A. No, SOX was not a law, or even in the works at the time.~~

7 ~~Q. Do you believe that a requirement to conduct an audit complying with SOX~~
8 ~~to determine whether all costs allocated to PAWC were incurred as a result~~
9 ~~of prudent or imprudent management decisions by PAWC's parent and the~~
10 ~~reasonableness of the methodology used to allocate those costs would~~
11 ~~have had a measurable impact on the PAWC management audit report?~~

12 ~~A. Absolutely, the report would have been more detailed, focusing on the controls in~~
13 ~~place and whether they were working in such a way as to have confidence in the~~
14 ~~results. The report would also include management's sworn attestations as to~~
15 ~~the propriety, prudence and reasonableness of those allocated costs.~~

16 Summary

17 **Q. Please summarize your testimony.**

18 ~~A. BAH did not conduct a management audit in compliance with Sarbanes-Oxley~~
19 ~~requirements to determine whether all costs allocated to TAWC were incurred as~~
20 ~~a result of prudent or imprudent management decisions by TAWC's parent and~~
21 ~~the reasonableness of the methodology used to allocate costs to TAWC, as TRA~~
22 ~~specified in Docket No. 06-00290. The BAH Report is merely an expansion of~~

²¹ Although TAWC classifies this report as "Confidential," I am using the unconfidential version I obtained in discovery in the current Pennsylvania Docket No. R-2008-232689.

1 ~~the type of study Mr. Baryenbruch submitted in Docket No. 06-00290 which led to~~
2 ~~the TRA's Sarbanes-Oxley requirement.~~ BAH did not conduct audit test work of
3 specific transaction to determine if they were the result of prudent or imprudent
4 management decisions. Nor did he determine or verify if AWWSC's internal
5 controls were designed to catch imprudent and unreasonable costs. The BAH
6 Report is not useful for ratemaking purposes. None of the costs of the BAH
7 Report should be charged to ratepayers in anyway. ~~Furthermore, I recommend~~
8 ~~disallowance of all AWWSC management fees and allocated costs until the~~
9 ~~originally specified audit is conducted and examined in a later proceeding.~~

10 **Q. Does this conclude your testimony?**

11 **A.** Yes, it does.

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 14th day of August, 2008, upon the following:

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