

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:

**TENNESSEE AMERICAN WATER
COMPANY'S REQUEST FOR A PROPOSAL
FOR A MANAGEMENT AUDIT**

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DOCKET NO. 09-00086

PETITION TO INTERVENE

Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118, respectfully petitions the Tennessee Regulatory Authority ("TRA" or "Authority") to grant the Consumer Advocate's intervention into this proceeding on behalf of the public interest, because consumers may be adversely affected.

The Consumer Advocate has not previously intervened in the docket because it was the understanding of the Consumer Advocate that the purpose of this docket was for the Authority to approve a request for a proposal for a management audit of management fees of Tennessee American Water Company ("Tennessee American" or "TAWC"). Now, however, Tennessee American is requesting that the TRA "approve and adopt" the management audit, as evidenced by its Motion to Approve and Adopt Schumaker & Company's Affiliate Audit Report of Tennessee American Water Company for the Tennessee Regulatory Authority, filed January 4, 2011. The Company is seeking such approval of the audit, in support of the level of management fees it currently seeks, prior to the conclusion of TAWC's pending rate case in

Docket 10-000189. The Consumer Advocate, therefore, is seeking to intervene in this docket to oppose any such approval or adoption of the management audit in this docket.

For purposes of judicial economy and reducing costs to all parties, the Consumer Advocate does not seek a contested case in Docket 09-00086 at this time. Rather the Consumer Advocate seeks intervention to be heard and to respond to TAWC's pending motion in Docket 09-00086 on the issue of "approving and adopting" the management audit. At this time, however, the Consumer Advocate will state that any consideration by the Authority of the Shumaker and Company Audit submitted in Docket 09-00086 should be made at the conclusion of Docket 10-00189, TAWC's current pending rate case after the TRA has heard from all parties in the rate case. It is anticipated that several of the intervenors in the rate case will have positions on the audit and the Consumer Advocate believes that those positions should be heard by the TRA before it makes any decision on the audit. For cause, Petitioner would show as follows:

1. The Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118 to represent the interests of Tennessee consumers of public utilities services by initiating and intervening as a party in proceedings before the Authority in accordance with the Uniform Administrative Procedures Act and Authority rules.

2. TAWC is a public utility regulated by the Authority and provides water services to consumers located in the State of Tennessee.

3. On March 23, 2009, TAWC filed a Request for Proposal for a Management Audit in Docket 08-00039, a rate case brought by TAWC. In response to TAWC's Request, the TRA opened the present docket, 09-00086, in order to consider an RFP for a management audit,

consideration of a multi-state audit with other public service commissions involved, and any public comments on the RFP.

4. In its Order Moving Request for Proposal to New Docket, dated July 16, 2009, opened Docket 09-00086 for purposes of approving an RFP, investigating the opportunity for a multi-state audit and receiving public comments. A copy of the Order is attached to the Petition to Intervene as **Exhibit A**.

5. Based on a review of the record and caption of this docket ("*Tennessee American Water Company's Request for Proposal for a Management Audit*"), the Consumer Advocate understood that the purpose of the docket would be to approve an RFP for an audit, not approving or disapproving the resulting audit itself.

6. On September 10, 2010, TAWC submitted the Shumaker & Company Audit ("Shumaker Audit") in Docket 09-00086.

7. On September 17, 2010, TAWC filed in the Authority a *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*, requesting an upward adjustment of \$9,984,463, or 27.66%, in the rates it charges to customers with a proposed effective date of October 17, 2010 in Docket 10-00189. TAWC relies heavily on the management audit filed in Docket 10-00189 in support of its position regarding management fees.

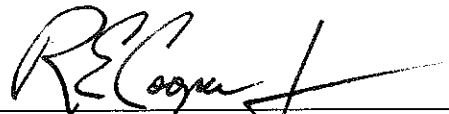
8. On January 4, 2010, just prior to the filing of pre-filed testimony of the intervening parties in Docket 10-00189, TAWC filed a motion in Docket 09-00086 requesting the Authority to "approve and adopt" the Shumaker Audit, including those findings of the "appropriateness and reasonableness" of the management fees sought by TAWC.

9. The Consumer Advocate opposes and objects to TAWC's motion requiring the Authority to approve and adopt the Shumaker Audit in Docket 09-00086 prior to the conclusion of the pending rate case in Docket 10-00189. The current rate case in Docket 10-00189 is the most appropriate forum for consideration of the Shumaker Audit while allowing interested parties due process.

10. Only by participating in this proceeding can the Consumer Advocate work adequately to protect the interests of consumers.

WHEREFORE, Petitioner respectfully asks the Authority to grant the Petition to Intervene.

RESPECTFULLY SUBMITTED,



ROBERT E. COOPER, JR. (BPR #010934)
Attorney General and Reporter
State of Tennessee



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Dated: January 6, 2011.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition to Intervene was served via U.S. Mail or electronic mail upon:

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This the 6 day of January, 2011.



RYAN MCGEHEE

NASHVILLE, TENNESSEE

IN RE:

DOCKET NO.
08-00039

This matter came before Chairman Eddie Roberson, Director Sara Kyle and Director Mary W. Freeman of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on June 15, 2009 for consideration of the *Notice of Filing of Tennessee American Water Company’s Request For Proposal for a Management Audit (“Draft RFP”)* filed by Tennessee American Water Company (“TAWC” or “Company”) on March 23, 2009.

On March 14, 2008, TAWC filed a petition in this docket requesting an increase in its rates. Contributing to this request was a projected increase in management fees¹ of \$355,365 or 8.9% over the level that was approved in its prior rate case.² In Docket No. 06-00290, the Authority approved the Company's request for management fees, however, because of certain unresolved questions

² 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. 06-00290.

regarding management fees paid to the Service Company, the TRA ordered TAWC to have a management audit performed to determine whether all costs allocated to the Company were the result of prudent management decisions at the Service Company level and to assess the reasonableness of the methodology used to allocate costs to TAWC. Specifically, the panel ordered:

... TAWC should have a management audit performed in compliance with Sarbanes-Oxley ["SOX"] requirements. . . . This audit should determine whether all costs allocated to TAWC were incurred as a result of prudent or imprudent management decisions by TAWC's parent and should address the reasonableness of the methodology used to allocate costs to TAWC.³

The audit report of Booz Allen Hamilton ("BAH"), ordered by the panel in Docket No. 06-00290, was filed as part of the Company's petition for a rate increase in this docket and was sponsored by the testimony of Mr. Joseph Van Den Berg. In the pre-filed testimony and during the hearing in this docket, City of Chattanooga's witness, consultant Mr. Michael Majoros, asserted that Mr. Van Den Berg's firm did not conduct a management audit in compliance with SOX requirements. Mr. Majoros cited a list of reasons for his conclusion, the most notable that BAH is not an independent public accounting firm as required by SOX and Mr. Van Den Berg's report is not independent, since he has also provided testimony on behalf of TAWC in other dockets, both before the TRA and other utility commissions.

Based on the evidence presented, the panel determined in this docket that the Company had not complied with the Authority's directive in Docket No. 06-00290. The panel ordered TAWC to develop and submit for the Authority's approval a Request for Proposal ("RFP") for a comprehensive management audit performed by an independent certified public accountant. The panel stated:

The RFP for the audit shall include, but not be limited to, an investigation of AWWSC's management performance and decisions relating to internal processes and internal controls with an attestation and recommendation of any needed management changes and implementation thereof. Further, the audit shall evaluate and attest to

³ *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, Order, pp. 26-27 (June 10, 2008).

the charges allocated to TAWC, including the efficiency of processes and/or functions performed on behalf of TAWC, as well as the accuracy and reasonableness of the allocation factors utilized. This RFP should be filed in this docket no later than six months from September 22, 2008, for approval by the Authority. The issuance of the RFP shall occur subsequent to an approval of the RFP by the Authority.⁴

Further, the panel directed the Company to contact the Authority Staff if the Company had any questions regarding the scope of the audit.⁵

On March 23, 2009, TAWC filed the *Draft RFP* in this docket. Prior to filing the *Draft RFP* in the docket, the Company submitted a preliminary version to TRA Staff Paul Greene and Shilina Chatterjee Brown for their comments.⁶

On June 11, 2009, Chairman Roberson pre-filed the motion he intended to make at the June 15, 2009 Authority Conference regarding the *Draft RFP*. On June 15, 2009, the Company filed comments in response to Chairman Roberson's pre-filed motion.

FINDINGS AND CONCLUSIONS

At the regularly scheduled Authority Conference held on June 15, 2009, the panel considered the *Draft RFP*. After considering statements by counsel for the Company and the entire record, the panel voted unanimously as follows:

1. A new docket for consideration of the RFP shall be opened and all filings related to the Request for Proposal in Docket No. 08-00039 shall be transferred to the new docket.
2. Staff shall contact other state regulatory agencies in states served by companies owned by American Water Works Company to determine any interest in participation in a multi-state audit.⁷

⁴ *Order*, p. 22 (January 13, 2009).

⁵ *Id.*, footnote 68.

⁶ Because of their direct contact with the Company regarding the drafting of the RFP, Paul Greene and Shilina Chatterjee Brown have not been a part of the Advisory Staff in reviewing the *Draft RFP*.

⁷ Director Roberson clarified that he did not intend to mandate a multi-state audit through his motion. Rather, Staff was being directed to explore the possibility of a multi-state audit.

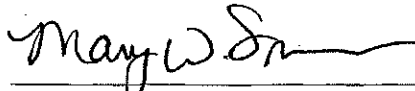
3. The General Counsel or his designee shall be appointed as Hearing Officer to handle any preliminary matters and prepare the matter for final deliberations. The Hearing Officer is directed to handle preparation of this matter as expeditiously as possible.
4. Interested parties may file comments on the proposed RFP with Authority Staff's suggested changes (attached hereto as Exhibit 1) no later than June 29, 2009.

IT IS THEREFORE ORDERED:

1. A new docket for consideration of the Request for Proposal shall be opened and all filings related to the Request for Proposal in Docket No. 08-00039 shall be transferred to the new docket.
2. Staff shall contact other state regulatory agencies in states served by companies owned by American Water Works Company to determine any potential interest in participation in a multi-state audit.
3. The General Counsel or his designee is appointed Hearing Officer to handle any preliminary matters and prepare the matter for final deliberations. The Hearing Officer is further directed to handle preparation of this matter as expeditiously as possible.
4. Interested parties may file comments on the proposed RFP, as incorporated with Authority Staff's suggested changes (attached hereto as Exhibit 1), no later than June 29, 2009.


Eddie Roberson, Chairman


Sara Kyle, Director


Mary W. Freeman, Director