

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

IN RE:)
)
TENNESSEE AMERICAN WATER) **DOCKET NO. 09-00086**
COMPANY'S REQUEST FOR A PROPOSAL)
FOR A MANAGEMENT AUDIT)
)

**RESPONSE OF THE CONSUMER ADVOCATE TO TAWC'S MOTION TO APPROVE
AND ADOPT SCHUMAKER & COMPANY'S AFFILIATE AUDIT REPORT OF
TENNESSEE AMERICAN WATER COMPANY**

The Consumer Advocate respectfully responds to Tennessee American Water Company's ("TAWC", "Company") *Motion to Approve and Adopt Schumaker & Company's Affiliate Audit Report* filed on January 4, 2011. On January 6, 2011, the Consumer Advocate filed a petition to intervene in this docket in order to oppose TAWC's motion. The Consumer Advocate is mindful of the fact the Consumer Advocate's petition to intervene has not yet been considered by the Tennessee Regulatory Authority ("Authority", "TRA"). However, the Consumer Advocate files this response to the Company's motion now in order to be timely pursuant to TRA Rule 1220-1-2-.06. In summary, the Consumer Advocate opposes the Company's motion and respectfully submits the current rate case in Docket 10-00189 is the appropriate proceeding to consider the Shumaker & Company Audit ("Shumaker Audit").

**DOCKET 09-00086 IS NOT AN APPROPRIATE PROCEEDING FOR
CONSIDERATION OF THE RELIEF SOUGHT BY TAWC**

No prior notice has ever been given that this docket would be the proceeding in which the TRA would consider approving and adopting the findings of the Shumaker Audit. While TAWC discusses the Authority's "intent" of considering the merits of the Shumaker Audit in Docket 09-

00086, the record does not bear out the Company's speculation. Docket 09-00086 was opened for purposes of drafting and issuing an RFP, investigating whether other state public service commissions would consider a multi-state audit and acting as an official in-box for all filings and public comments associated with the RFP.¹ In essence, the Authority opened the docket to shepherd the RFP process. At no point has the Authority indicated or given notice of any "intent" to consider the merits or adoption of the Shumaker Audit in Docket 09-00086 as asserted by the Company.

While TAWC has attempted to frame Docket 09-00086 as a proceeding the TRA *intended* as a forum to approve or adopt the audit and specifically "close the book" on the management fee issue, there is no indication or notice of this intent in the record. Moreover, the Company reads far too much into Director Roberson's statement from the 2008 rate case regarding revisiting the management fee issue as requiring the Authority to adopt the Audit in Docket 09-00086. Naturally, the Authority is already revisiting the management fee issue in the current rate case, at the conclusion of which the TRA will determine just and reasonable rates for the Company.

The Authority approved the RFP in a complete and transparent manner. While the TRA was involved in every step of the RFP process and the selection of the auditors, the finished product is not the Authority's audit. What the Company seeks in this docket is for the TRA to take ownership of an audit which it did not participate in and for the Authority to accept its findings prior to hearing the positions and evidence of the intervening parties in Docket 10-00189. However, TAWC places great evidentiary reliance on the Shumaker Audit in the current

¹ *Order Moving Request for Proposal to New Docket*, p. 3-4, July 16, 2009, Docket 08-00039/09-00086.

rate case.² Thus, in weighting the credibility of the Company's request in this matter, the Authority must consider how "closing the book" on the management fee issue in Docket 09-00086 would impact the current rate case in terms of evidence, shifting the burden of proof and due process.

While there are aspects of the audit the Consumer Advocate concurs with, there is now evidence in the record of Docket 10-00189 opposing or countering certain findings of the Shumaker Audit and the level of the management fees requested.³ Moreover, in contrast to the Authority's conduct in Docket 09-00086, issues surrounding the completed audit are not transparent. An obvious example is the Company's claim of privilege for communications regarding the Company's participation in the Shumaker Audit. Practically every entry in the privilege log filed in Docket 10-00189 by TAWC thus far concerns the Company's communications concerning the Shumaker Audit while it was being conducted.⁴ However, the intervening parties are unable to review them due to the claim of a legal privilege.

Given these circumstances, the Company's heavy reliance on the audit as evidence in Docket 10-00189, and the positions of the intervening parties regarding certain aspects of the Shumaker Audit in the current rate case, it is simply not appropriate for the Company to urge the Authority to issue a seal of approval in Docket 09-00086 prior to the conclusion of Docket 10-00189.

² Direct Testimony of Mike Miller, September 17, 2010, p. 25-40.

³ Direct Testimony of Terry Buckner, January 5, 2011, p. 21-41; Direct Testimony of Kim Dismukes, January 5, 2011, p. 5-55; Direct Testimony of Mike Gorman, January 5, 2011, p. 23.

⁴ City's *Third Motion to Compel TAWC to Respond to Discovery*, January 7, 2011.

THERE IS NO REMEDY TAWC CAN REAP FROM DOCKET 09-00086

The Consumer Advocate does not share the sense of urgency of TAWC in requiring the TRA to “close the book” on the management fee issue in the middle of a pending rate case. Authority action of the nature requested by TAWC in Docket 09-00086 will provide no relief to the Company. While the Company blames the decision of the Authority in the 2008 rate case as having forced TAWC to under-earn and financially struggle, if the Authority were to “approve and adopt” the Shumaker Audit now, the Company would not receive any rate relief until the conclusion of the current rate case.⁵

As TAWC can gain no relief from action requested of the Authority in Docket 09-00086, the objective sought by the Company can only be to cut off the intervening parties in Docket 10-00189 from questioning specific aspects of the Company’s reliance on the audit as evidence in the pending rate case. While the Consumer Advocate concurs with some aspects of the Shumaker Audit, it and other intervening parties question and disagree with other aspects. In essence, the Company seeks for the TRA to “close the book” on the management fee issue prior to the disposition of the pending rate case which results in cutting off the due process rights of the intervenors and shifts the burden of proof away from TAWC, a result that is contrary to Tennessee law.

JUDICIAL ECONOMY

In terms of due process, cost, time and resources, the current rate case docket provides the most natural, appropriate and efficient forum for the Authority to consider the audit and the

⁵ The doctrines of retroactive rate-making and single issue rate-making prohibit any increase in rates for the Company in Docket 09-00086.

input of the intervening parties as to its findings and conclusions. A rate case docket can be taxing enough on the Authority, the intervening parties and the Company. Opening a "second front" on the same issue is simply not efficient. Rather the Authority should consider the Shumaker Audit in the current pending rate case, the conclusion of which is just a few months away. Moreover, the action of the Company and the nature of the relief sought in this docket is simply not a prudent or reasonable exercise in terms of controlling costs while the rate case in Docket 10-00189 is so near to completion.

CONCLUSION

For the reasons herein, the Consumer Advocate respectfully submits the Authority should deny TAWC's motion.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'R. McGehee', is written over a horizontal line.

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CERTIFICATE OF SERVICE

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

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on this the 11 day of January, 2011.



Ryan L. McGehee