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July 17, 2009

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T.R.A. DOCKET ROOM
Via Hand-Delivery

Hon. Sara Kyle, Chairman
c/o Ms. Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

**Re: Tennessee American Water Company's
Request for Proposal for a Management Audit
Docket No. 09-00086**

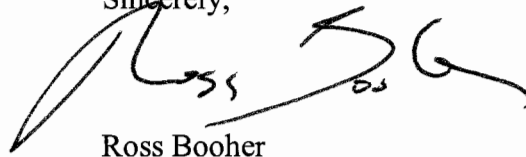
Dear Chairman Kyle:

Enclosed please find an original and five (5) copies of Tennessee American Water Company's Comments Regarding Recent Communications Filed in this Docket Regarding a Multi-State Audit. Please return one (1) copy of this document, which I would appreciate your stamping as "filed," and returning to me by way of our courier.

Please note that this material also has been transmitted electronically to the Tennessee Regulatory Authority today.

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

Sincerely,



Ross Booher

RB/smb
Enclosures

cc: Hon. Eddie Roberson, Ph.D.
Hon. Mary W. Freeman
Ms. Darlene Standley, Chief of Utilities Division
Gary Hotvedt, Esq.
Kelly Cashman-Grams, Esq.

Chairman Sara Kyle

July 17, 2009

Page 2

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

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

**TENNESSEE AMERICAN WATER COMPANY'S
COMMENTS REGARDING RECENT COMMUNICATIONS FILED
IN THIS DOCKET REGARDING A MULTI-STATE AUDIT**

On March 23, 2009, on the instruction of the Tennessee Regulatory Authority ("Authority"), Tennessee American Water Company ("Tennessee American" or "TAWC") submitted a Request For Proposal For A Management Audit ("RFP") with the Authority. On June 11, 2009, Chairman Roberson filed a motion that sought to: (i) open this Docket; (ii) direct Authority staff to contact other state regulatory agencies to explore interest in participating in a multi-state management audit; (iii) appoint a Hearing Officer to this Docket; and (iv) allow any interested parties to file comments regarding a proposed revised RFP that Chairman Roberson tendered as an exhibit to his June 11 motion. On June 15, 2009, the Authority approved Director Roberson's Motion. This Docket was subsequently opened and, on June 19, Director Roberson sent a letter ("Director Roberson's Multi-State Audit Letter") to the chairmen of eighteen state regulatory commissions in an attempt to explore whether those commissions were interested in participating in a multi-state audit of Tennessee American's service company.

On June 24, 2009, the Hearing Officer in this matter issued a Notice scheduling a status conference to consider any Comments filed regarding the proposed Request for Proposal filed by

Director Roberson on June 11, 2009. Between June 24 and June 29, 2009, the Authority received three responses to Director Roberson's Multi-State Audit Letter. On June 29, 2009, Tennessee American filed Comments in this Docket. No other party has filed Comments or intervened.

On July 1, 2009, the Hearing Officer conducted the status conference, in which only Authority staff and counsel for Tennessee American participated.¹ During the status conference, the subject of a multi-state audit was discussed. The Hearing Officer indicated that the Authority might want to delay scheduling a hearing on the RFP until after the National Association of Regulatory Utility Commissioners ("NARUC") conference, which was scheduled for July 19-22, 2009. Status Conference Tr. at 19-20 (July 1, 2009) ("Conf. Tr."). Authority staff indicated that the NARUC conference might provide Authority staff or Directors the opportunity to gauge the interest of other state commissions. Conf. Tr. at 19-20.

Tennessee American again expressed concern because a multi-state audit: (i) would create additional delay; and (ii) is premature without having had the opportunity to determine whether a cost issue exists on the RFP (a factor the Directors indicated would drive the determination of whether a multi-state audit was necessary). Conf. Tr. at 21-22. Additionally, in light of the non-public communications likely to occur between the Authority and other regulators, Tennessee American requested that any written or verbal communications by Directors or Authority staff be filed in this Docket. Conf. Tr. at 33; *see also* TAWC Comments at 9 (June 29, 2009). Finally, Tennessee American requested that the Authority schedule deliberations on the approval of the RFP for July 13, 2009. Conf. Tr. at 21.

¹ Counsel for the Consumer Advocate and Protection Division ("CAPD") was present in the Hearing Room as an observer, but acknowledged that the CAPD had chosen not to intervene or directly participate. Conf. Tr. at 3.

Between July 1, 2009 and July 17, 2009, the Authority website documents five additional communications between the Authority and regulators in three states regarding the multi-state audit issue. As a result of these additional communications and the issues they raise, Tennessee American respectfully files these Comments regarding the multi-state audit issue.

I. **A Multi-State Audit Is Impractical At This Time And Will Result In Unconscionable Delay.**

Developing a mutually acceptable RFP for an inherently complex management audit has become a time-consuming process. Indeed, Tennessee American and Authority staff began working together over five months ago to develop the proposed RFP filed in Docket No. 08-00039 on March 23, 2009. Following that submission, other Authority staff devoted more than two additional months on proposed substantive revisions to the RFP, which were submitted as part of Director Roberson's motion on June 11, 2009. Tennessee American and the Authority then expended additional time and resources during the initial Comments process and at the status conference. Additional weeks have passed since the Hearing Officer considered Tennessee American's Comments on the proposed RFP attached to Director Roberson's June 11 motion.

Inevitably, involving other state regulators in a multi-state audit process will require at least as much time as the Authority has already devoted, and probably far more, as each state commission conducts its own review, revision and approval process from scratch. Similarly, additional time and resources would be required from Tennessee American and other American Water subsidiaries to work with and respond to the proposals of other state commissions. The requisite time and resources could be further complicated or expanded should interveners become involved in any given state. Further, the various states' interests would need to be

reconciled and ultimately approved state by state. Such a process would certainly take many, many more months – time that, as discussed below, Tennessee American simply cannot afford.

Notably, the communications filed thus far by other state regulators confirm that a multi-state audit is likely unworkable from a practical perspective, and will lead to unconscionable delay in the completion of the management audit ordered by the Authority. For example:

- Nearly a month has passed and, based on the communications disclosed by the Authority to date in this docket, *twelve* of the eighteen state commissions have not communicated *any* response to Director Roberson’s Multi-State Audit Letter. Of the six state commissions that have responded, one has confirmed it has no interest in participating in a multi-state audit and none of the other five have reached a final decision whether to participate in this Docket.
- The Authority does not have control over the timing of responses and actions of other commissions (*see* Email Between Darlene Standley and Curt Gassert, Indiana Utility Regulatory Commissioner, Docket No. 09-00086 (July 8, 2009)), and each commission will likely take varying, and sometimes indefinite, amounts of time to consider decisions related to this Docket (*see, e.g.,* Letter to Chairman Roberson from Kentucky PSC, Docket No. 09-00086 (June 22, 2009)).
- As indicated in questions posed to the Authority by the Executive Director of the Missouri Public Service Commission and the Authority staff’s response thereto, coordinating a multi-state audit would likely require multiple state commissions to agree on the answers to numerous questions including:

Who will draft the RFP?
Who will have input into the RFP?
Who will evaluate responses to the RFP?
Who will have final say on the firm chosen?

How will participating states be notified of progress?
How will participating states give specific input on specific state issues?
How long do you anticipate the project lasting?
How will the costs be split between the states?

Email Between Darlene Standley and Jim Busch, Missouri PSC, Docket No. 09-00086 (July 15, 2009).

Taken together, these recent communications confirm that the involvement of other commissions will introduce additional delay and uncertainty to the process, and impose further hardship and cost on Tennessee American and the Authority. Accordingly, the Authority should not pursue a multi-state audit as it is incompatible with issuing a RFP or completing the management audit in a timely manner.

II. The Delay In The Completion Of The Management Audit Is Inflicting Irreparable And Unconscionable Harm On Tennessee American.

As Tennessee American has previously stated, the delays inherent in the TRA's pursuit of a multi-state audit impairs Tennessee American's due process in seeking recovery of the management fees disallowed by the TRA, which can only be restored by the timely completion of the RFP and/or management audit. Critically, Tennessee American expects that a completed management audit will confirm that Tennessee American is not recovering enough revenues to pay for the prudent and reasonable management fees Tennessee American must incur to achieve the quality level of service the Authority and customers demand. Consequently, each day the other commissions take to respond to Director Roberson's Multi-State Audit Letter, or ponder the scope of their involvement, only further delays the re-examination of the management fee issue by the Authority. Such delay results in direct, compounding, and unrecoverable financial losses to Tennessee American.²

² Tennessee law expressly prohibits retroactive ratemaking. *See Security Alarms & Servs., Inc. v. Tenn. Pub. Serv. Comm'n*, 1984 Tenn. App. LEXIS 3426, at *7 (Tenn. Ct. App. Sept. 13, 1984) (noting that "[t]he legislature has not

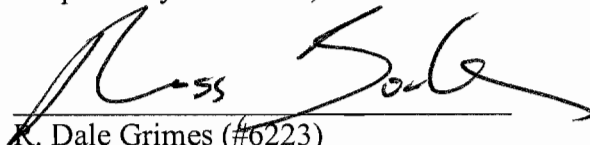
Involvement of other states at this late stage in the RFP process, or in any manner that would otherwise delay the completion of the audit and re-examination of the management fees, is untenable and will likely require Tennessee American to seek alternative remedies such as: (i) petitioning the Authority to approve a surcharge, subject to a refund, to provide for the growing shortfall; and/or (ii) establishing a deferral account for the same purpose. Accordingly, Tennessee American respectfully requests that the Authority not pursue a multi-state audit. At a minimum, if the Authority remains interested in further considering the responses to Director Roberson's Multi-State Audit Letter, the Authority should ensure that any responses do not delay the approval of the RFP in this Docket, delay the commencement and completion of the management audit in this Docket, or otherwise undermine the Authority's reliance on any management audit that is completed in response to the RFP.

III. Conclusion

For the reasons set forth above, Tennessee American respectfully requests that the Authority set a hearing and final deliberations on the approval of the RFP this month (at the July 27, 2009 Authority conference or at a specially set Authority conference, if necessary), without attempting to engage in a complicated, expensive, and time-consuming multi-state audit, so that Tennessee American may issue an Authority-approved RFP no later than Monday, August 3, 2009.

conferred upon the [TRA] the power of retroactive ratemaking"). As a result, the management fee shortfall that Tennessee American is currently experiencing cannot be recovered in future rates, necessitating mechanisms such as those suggested in the subsequent paragraph of these Comments, *infra*.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ross Booher", written over a horizontal line.

R. Dale Grimes (#6223)

Ross I. Booher (#19304)

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