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February 18, 2011

Mary Freeman, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

filed electronically in docket office on 02/18/11

Attention: Sharla Dillon

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. 10-00189

Dear Chairman Freeman:

Enclosed please find for filing in the above-referenced proceeding the Utility Workers Union of America, AFL-CIO and UWUA Local 121's Response to the Tennessee American Water Company's Motion In Limine and Reply to Response In Opposition to Motion to Substitute Affiant. The original and four (4) copies will be sent via U.S. Mail.

Please feel free to contact either of the undersigned if you have any questions. Thank you for your attention to this matter.

Sincerely,



Scott H. Strauss
Katharine M. Mapes

Attorneys for UWUA Intervenors

Enclosures

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. 10-00189

**RESPONSE OF THE UWUA TO THE MOTION IN LIMINE OF TENNESSEE
AMERICAN WATER COMPANY AND REPLY TO RESPONSE IN OPPOSITION TO
UWUA'S MOTION TO SUBSTITUTE AFFIANT**

Pursuant to Tenn. R. & Reg. Ch. 1220-1-2-.06(2), the Utility Workers Union of America, AFL-CIO and its Local 121 (collectively, "UWUA" or the "Union") hereby respond in opposition to the February 14, 2011, Motion in Limine to Strike the Statement of Jerry Haddock, Strike Certain Testimony of James Lewis, and to Exclude the Testimony of Martin Blevins ("Motion") filed by the Tennessee American Water Company ("TAWC" or the "Company"). For the reasons stated herein, the Company's Motion should be denied, and the Union's request to substitute Mr. Blevins for Mr. Haddock should be granted. In addition, the Union respectfully requests that the Authority expedite its decision on this matter so that the UWUA can begin discussions concerning scheduling Mr. Blevins' appearance at the hearing, should that be necessary.¹

¹ In submitting this pleading, the UWUA also replies to the Company's February 14, 2011, Response in Opposition to UWUA's Motion to Substitute Affiant ("Opposition") for the purpose of clarifying and correcting certain points referenced therein, and respectfully requests that the Authority accept that reply in the interests of creating a complete record in this proceeding. The two documents in question filed by the Company are not readily separable; they make similar and intertwined arguments and any answer must necessarily address both.

In support of its position, the UWUA states:

The Blevins/Haddock testimony provides unique insight into an important matter that is at issue in this case: the status of the Company's valve maintenance operations.² There should be no issue as to the competency of either affiant to address this subject: both Messrs. Blevins and Haddock were until recently TAWC employees, directly involved in valve maintenance operations. Mr. Haddock, now a truck driver, is unable to appear at hearing. Mr. Blevins, his former supervisor, is available to appear at hearing, and has adopted Mr. Haddock's statements with modest corrections. Mr. Lewis' testimony relies in part on the Haddock Statement, and if the UWUA's motion is granted, will be relying on the (almost identical) Blevins Statement. The Company seeks to exclude their highly informed testimony (and Mr. Lewis's reliance upon it) by asserting that the challenged material constitutes hearsay or is otherwise prejudicial. These claims should be rejected because they are not supported by Tennessee law, the Authority's Rules and Regulations, or the facts and circumstances at issue.

I. THE COMPANY'S HEARSAY OBJECTIONS ARE UNAVAILING

TAWC contends that both Mr. Blevins' Statement, and Mr. Lewis' discussion in testimony of the Haddock statement that Mr. Blevins now seeks to adopt, constitute impermissible hearsay. These claims should be rejected.

A. Blevins Affidavit

The Company argues that the Blevins Affidavit constitutes hearsay because "Mr. Blevins cannot have personal knowledge of another's observations and opinions." Motion at 4. However, as Mr. Blevins testifies in his Statement (§ 3), "[t]hroughout [his] tenure as Field

² The Haddock and Blevins Statements, and Mr. Lewis's related testimony, are directly responsive to, and a significant detailed expansion upon, the Company's statement in this proceeding that ongoing valve maintenance is difficult in light of its current staffing shortages. See Exhibit No. UWUA-10 to the Direct Testimony of UWUA witness James Lewis.

Operations Supervisor, [he] was aware of ongoing valve maintenance activities, including those engaged in by Jerry Haddock. During the period from July/August 2010 until the completion of [his] employment, the employees under [his] direct supervision included Mr. Haddock.” Mr. Blevins swears in his Statement, that as Mr. Haddock’s supervisor, he is familiar with and “can attest to the accuracy of the circumstances and events described in Mr. Haddock’s Statement” based upon his own personal knowledge. *Id.* ¶ 4. There is no reasonable basis for questioning Mr. Blevins’ knowledge and familiarity with the Company’s valve maintenance practices in recent years. The Company’s own documents regarding its valve maintenance program list Mr. Blevins as one of the key employees responsible for implementing it. TN-UWUA-02-Q7-ATTACHMENT (attached as the Appendix to this pleading). Mr. Blevins’ testimony concerning his own personal knowledge of the Company’s valve maintenance program, including his supervision of Mr. Haddock, is not hearsay.

The Company also objects that it will be unable to cross-examine Mr. Haddock. The basis for objection evaporates if the Authority grants the UWUA’s motion to substitute Mr. Blevins for Mr. Haddock. In that event, the Company will have the opportunity to cross-examine Mr. Blevins, and can pursue the issue of Mr. Blevins’ knowledge of the information set forth in the Haddock Statement.

B. Lewis Testimony

The Company argues that Mr. Lewis’ discussion of the Haddock statement constitutes hearsay. The Union is calling Mr. Lewis as an expert as well as a fact witness. Even in a judicial setting, expert witnesses are entitled to rely on a range of materials outside their own personal experience, including what would ordinarily be hearsay. Tenn. R. Evid. 703 (“The facts or data in the particular case upon which an expert bases an opinion or inference may be those

perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.”) Again, however, if the Union is permitted to substitute Mr. Blevins for Mr. Haddock, then there is no basis for objection. The Company will be able to challenge Mr. Lewis’ reliance upon the Haddock/Blevins information by cross-examining Mr. Blevins at hearing.

II. PERMITTING THE REQUESTED SUBSTITUTION WILL NOT PREJUDICE THE COMPANY

The Company argues that the Union’s requested substitution of Mr. Blevins for Mr. Haddock is “clearly prejudicial.” Opposition at 3. This objection lacks merit. Barring minor corrections to Mr. Haddock’s statement³--of the sort any witness might make to their pre-filed testimony at the time of admittance--Mr. Blevins’ affidavit does not attempt to introduce any new evidence into the proceeding in an untimely fashion. The Company had time to consider and respond to the points in Mr. Haddock’s statement and, in fact, asked discovery questions going towards those points and responded to them in its rebuttal testimony. Rebuttal Testimony of John Watson at 27:14 *et seq.*

Further, along with Mr. Haddock’s statement, the UWUA made plain to all parties that “UWUA does not intend to call Mr. Haddock as a fact witness. However, if necessary the UWUA can seek to make him available.” UWUA Supplemental Response to TAWC’s Discovery Request No. 3. To date, undersigned counsel have received no such request from the Company (or any other party); nonetheless, when it became clear that Mr. Haddock would not be available at the hearing, UWUA produced Mr. Blevins, who can be cross-examined on the

³ Mr. Blevins believe the Company has closer to 20,000 small valves than 10,000; he also believes a specific incident referred to by Mr. Haddock occurred in January 2010 rather than January 2009.

matters in question. If the Authority grants UWUA's motion to substitute, Mr. Blevins will appear at hearing and be subject to cross-examination on his statement and his knowledge of the matters set forth in the adopted Haddock statement.⁴

More fundamentally, the Company provides no support for its claim of "prejudice" and there would appear to be no reasonable basis for concern. Both Mr. Blevins and Mr. Haddock are former TAWC employees, and their statements focus solely on internal company matters. They are providing information that the Company should either be deemed to know already, or to which TAWC should have ready access. In these circumstances, the Union asserts that the Authority is best served by hearing the testimony of Mr. Blevins, a former supervisor with responsibilities relating to the Company's valve program.

III. THE RELIEF SOUGHT IN SEEKING TO SUBSTITUE MR. BLEVINS FOR MR. HADDOCK DOES NOT CONTRAVENE TENNESSEE LAW

The Company argues that Tennessee law does not provide for a substitution of witnesses, but is unable to point to any statutory provision that prohibits such an arrangement where justified. The Authority enjoys a high degree of discretion with respect to evidentiary matters. Chapter 1220-1-2-.16(1) of the Authority's Rules and Regulations states that the admissibility of evidence is governed by T.C.A. §§ 65-2-109 and 4-5-313. The former states, in relevant part:

The authority shall not be bound by the rules of evidence applicable in a court, but it may admit and give probative effect to any evidence which possesses such probative value as would entitle it to be accepted by reasonably prudent persons in the conduct of their affairs; provided, that the authority shall give effect to the rules of privilege recognized by law; and provided further, that the authority may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence.

T.C.A. § 65-2-109(1). As such, the Authority plainly possesses the requisite power, where

⁴ Given that Mr. Blevins has recently become employed, the Union has asked that the parties agree to a date and time certain for Mr. Blevins to appear in Chattanooga.

justified, to grant the requested substitution of one TAWC employee for his supervisor.

There are sound reasons to grant that request here. Mr. Haddock's employment situation makes his appearance at the scheduled hearing impossible. The Union, seeking to provide all parties with the greatest possible notice, timely informed all parties both of this fact--and of its proposed substitution of Mr. Blevins for Mr. Haddock.

The Company also objects that Mr. Haddock and Mr. Blevins provided their testimony in the form of an affidavit.⁵ This is an effort to elevate form above substance. The Blevins statement is sworn, and Mr. Blevins will be available at hearing. If directed, the UWUA is willing to provide Mr. Blevins' Statement as formal testimony, or in such form as required by the Commission.

⁵ Tennessee law explicitly allows testimony by affidavit in administrative proceedings, providing procedures under which, not less than ten (10) days prior to a hearing, any party may deliver an affidavit it proposes to introduce into evidence. T.C.A. § 4-5-313(2). It provides also that "[t]he officer assigned to conduct the hearing may admit affidavits not submitted in accordance with this section where necessary to prevent injustice." T.C.A. § 4-5-313(3).

WHEREFORE, for the foregoing reasons, the Company's motion should be denied and the UWUA's motion should be granted. The Union asks for a ruling on this request as expeditiously as possible, so that, if the Union's request is granted, the undersigned counsel can arrange a date and time certain for Mr. Blevins to appear at trial.

Respectfully submitted,

/s/ Mark Brooks

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/s/ Scott H. Strauss

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February 18, 2011

ATTACHMENT

**TENNESSEE AMERICAN WATER COMPANY
DOCKET NO. 10-00189
SECOND DISCOVERY REQUEST OF THE
UTILITY WORKERS UNION OF AMERICA,
AFL-CIO AND UWUA LOCAL 121**

Responsible Witness: **John Watson**

Question:

2-7. For the period since January 1, 2009, identify, by job title, the individuals responsible for valve maintenance, including related decisions on hiring and capital expenditures.

Response:

For the period since January 1, 2009, the following individuals, by job title, have been responsible for valve maintenance, including hiring and capital expenditures:

- Superintendent, Field Services
- Field Services Operations Supervisor
- Superintendent, Production
- Supervisor, Production
- Non-Revenue Senior Specialist
- Project Manager
- Engineer
- Senior HR Generalist
- President, Tennessee American Water
- Tennessee American Water Company Board of Directors

Employees below do not have hiring or capital expenditure authority, but would have involvement from time to time for valve maintenance work in addition to the job functions listed above:

- Truck Driver/Utility Worker
- Utility Worker
- Master Maintenance Mechanic
- Distribution Clerk
- Cross Connection Sr. Specialist
- CAD Drafter
- Engineering Clerk

The individuals who held the above-listed positions since January 1, 2009 are listed on the attachment, labeled TN-UWUA-02-Q7-ATTACHMENT.

Tennessee American Water

Individuals Responsible for Valve Maintenance (Including Hiring and Capital Expenditures) - 2009 and 2010	
Name	Title
Bishop, Monty L.	Superintendent - Field Operations
Bennette, Michael J.	Supervisor - Field Operations
Blevins, Marvin R.	Supervisor - Field Operations
Norwood, R. Gary	Supervisor - Field Operations
Bartley, Rachel	Supervisor - Field Operations
Morrison, Leah	Supervisor - Field Operations
Griffin, Dillard	Acting Superintendent - Field Operations
Brock, Doug	Acting Superintendent - Field Operations
Zinnanti, Mark	Superintendent - Production
Bratcher, Neil	Supervisor - Production
Moorhouse, Stan	Supervisor - Production
Schleifer, Ron	Non-Revenue Senior Specialist
Taylor, Randal D.	Engineering Project Manager
Nartey, Kate	Engineer
Thornton, Rebecca L.	Senior Human Resources Generalist
Rogers, Kevin N.	Manager - Finance, Tennessee American Water Company
Watson, John S.	President, Tennessee American Water Company
Rowe, Nick	Tennessee American Water Company Board of Directors
Germ, John	Tennessee American Water Company Board of Directors
Lynch, Walter	Tennessee American Water Company Board of Directors
Wolf, Ellen	Tennessee American Water Company Board of Directors
Watson, John S.	Tennessee American Water Company Board of Directors
Degillio, Deborah	Tennessee American Water Company Board of Directors

Individuals Responsible for Valve Maintenance (Except for Hiring and Capital Expenditures) - 2009 and 2010	
Name	Title
Haddock, Gerald L.	Truck Driver Utility Worker
Taylor, Morris	Truck Driver Utility Worker
King, Elijah	Truck Driver Utility Worker
McNabb, David A.	Truck Driver Utility Worker
Haws, Erich	Truck Driver Utility Worker
McGhee, B. Shawn	Truck Driver Utility Worker
Morgan, Ray	Utility Worker
Bednarski, Richard	Heavy Equipment Operator
Hughes, Jane	Distribution Clerk
Russell, Linda	Distribution Clerk
Chrnaogor, Adam	Master Maintenance Mechanic
Walker, Melvin	Master Maintenance Mechanic
Burrell, Dale	Master Maintenance Mechanic
Ha, Jason	Master Maintenance Mechanic
Hughes, Ken	Master Maintenance Mechanic
Justice, Matthew	Master Maintenance Mechanic
Banks, Kitty	Cross Connection Sr. Specialist
Betty, Steve	Cross Connection Sr. Specialist
Harvey, Robbie	CAD Drafter
Reece, Jimmy	Engineering Clerk
Williams, Faye	Engineering Clerk
Wortham, Deborah	Engineering Clerk

CERTIFICATE OF SERVICE

I, Scott H. Strauss, counsel for UWUA Intervenor, hereby certify that on the 18th day of February, 2011, caused a true and correct copy of the foregoing Notice to be served upon all parties of record via U.S. mail or facsimile.

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