

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

PETITION FOR APPEAL OF THE HEARING OFFICER'S INITIAL ORDER

Pursuant to T.C.A. § 4-5-415(b), the Utility Workers Union of America, AFL-CIO and UWUA Local No. 121 (collectively "UWUA" or the "Union") respectfully petition for appeal of an Initial Order of the Hearing Officer in the above-captioned docket. The Union appeals the Hearing Officer's ruling issued February 25, 2011 on the matters of UWUA's Motion to Substitute Affiant and the related Motion in Limine of the Tennessee American Water Company ("TAWC" or the "Company"). The Union's Motion to Substitute Affiant sought to substitute Marvin R. Blevins, a former supervisor at the Company, as a witness in this proceeding in lieu of his former employee, Jerry Haddock, who is unable to appear at trial. The Company's Motion sought to strike the statements of both Mr. Haddock and Mr. Blevins, and to strike the portion of the Testimony of James Lewis that discussed Mr. Haddock's statement. The Authority denied the Union's Motion and granted the Company's on each point.

The Union seeks to appeal each of these rulings to the full panel of the Authority. It challenges the determination that Mr. Haddock's statement, which stated "I swear and

affirm that this statement is true to the best of my knowledge,” was not properly sworn and therefore cannot properly be considered as evidence. Tennessee law explicitly allows variances of the form of an affidavit “where necessary to prevent injustice.”

T.C.A. § 4-5-313(3). It also states that:

when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

T.C.A. § 4-5-313(1). Such is the case here.

The Union filed Mr. Haddock’s statement with the Authority almost immediately after being contacted by him. It is on matters highly relevant to this case, providing important information to assist the Authority in its required inquiry into “the safety, adequacy and efficiency or lack thereof of the service or services furnished by” the Company. T.C.A. § 65-5-101(a). There is good reason to believe that the Haddock statement can properly be relied upon. It is based on personal knowledge and bears directly on the issue of service adequacy: Mr. Haddock performed valve maintenance work for the Company. There is no prejudice to the Company that would result from admission of this evidence, which was presented to it in full at the time the Union made its (timely) initial presentation and which concerns only matters regarding its own internal operations. Before raising any objection whatsoever to Mr. Haddock’s statement (and Mr. Lewis’s associated testimony¹), the Company had and took an opportunity to seek discovery on the contents of that statement and to file associated rebuttal testimony.

The Union seeks to substitute Mr. Blevins as a witness adopting the Haddock statement because, due to his employment as a truck driver, Mr. Haddock is unavailable

¹ Mr. Lewis was brought by the Union as an expert witness on the subject of water company operations in general

to appear at the hearing. Substitution is not uncommon in regulatory proceedings and there is every reason to permit substitution in the circumstances here. The Company challenges Mr. Blevins' statement adopting the Haddock statement as hearsay. Mr. Blevins was a supervisor directly involved in the Company's valve maintenance operations. Mr. Blevins is speaking to matters within his own personal knowledge concerning the Company's valve maintenance and operations, gained through his direct supervision of Mr. Haddock on all matters presented in that statement, and is available to be cross-examined at hearing.²

Given the importance of this testimony, the Union respectfully requests that argument be heard by the full panel of the Authority on Monday, January 28th prior to commencement of the scheduled hearing in this proceeding.

and TAWC operations in particular and, as such, can rely on a variety of matters outside his ordinary experience, including those that would ordinarily constitute hearsay.

² Mr. Blevins made only minor corrections and clarifications to Mr. Haddock's testimony of the sort Mr. Haddock himself (and any other witness in this proceeding) might make prior to testifying.

Respectfully submitted,

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February 25, 2011

CERTIFICATE OF SERVICE

I, Scott H. Strauss, counsel for UWUA Intervenors, hereby certify that on the 25th 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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