

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 25, 2011

IN RE:

**PETITION OF TENNESSEE AMERICAN WATER
COMPANY FOR A GENERAL RATE INCREASE**

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**DOCKET NO.
10-00189**

**ORDER GRANTING CITY OF CHATTANOOGA'S
FIRST MOTION IN LIMINE**

This matter is before the Hearing Officer upon the February 24, 2011 filing of the *City of Chattanooga's First Motion in Limine* ("*First Motion in Limine*") with the Tennessee Regulatory Authority ("Authority"). In its *First Motion in Limine*, the City of Chattanooga ("City") asserts that all evidence pertaining to and any consideration of the claims of Tennessee American Water Company ("TAWC" or "Company") for regulatory expenses requested previously in Docket No. 08-00039 should be excluded from the present case due to lack of subject matter jurisdiction.

On January 28, 2011, the Tennessee Court of Appeals issued its Opinion on the appeal brought by Tennessee American Water Company of the TRA's decision in Docket No. 08-00039, the Company's last rate case. In its Opinion, the Court affirmed the Authority's decision in all respects except the amount of regulatory expenses allowed for recovery by the Company. On that issue, the Court reversed the Authority's decision and remanded the matter to the TRA for the Company to recover the full amount of the rate case expenses it had claimed in that case. Following issuance of the Court's Opinion, the Company filed testimony and documents to

include in this case, the regulatory expenses that it had not been permitted to recover in Docket No. 08-00039.

In its motion, the City states that under Rules 42(a) and 43(c) of the Tennessee Rules of Appellate Procedure (the "Rules"), the regulatory expenses associated with the Company's last rate case in Docket No. 08-00039 are not properly before the Authority and should be excluded from this proceeding. The City asserts that, under the Rules, the Authority does not have subject matter jurisdiction until the mandate of the Court is transmitted to the Authority, which typically occurs 64 days after entry of the Court's judgment, and further, upon expiration of the ten-day notice to the parties that jurisdiction on the matter has been reinstated. Following conclusion of this period, approximately 74 days, the Authority may proceed on the instructions of the Court.

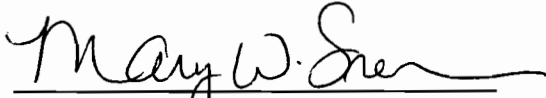
As entry of the Court's judgment occurred on January 28, 2011, the Authority has not yet received the Court's mandate nor has the notice period expired. Thus, the Authority's jurisdiction on this appellate issue has not yet been re-established, and it may not proceed in this docket to consider the unrecovered regulatory expenses associated with Docket No. 08-00039. Upon review of the City's motion, its citations and arguments therein, the Hearing Officer finds that the *City of Chattanooga's First Motion in Limine* is well founded, and hereby grants the motion.

During the Pre-Hearing Conference held on February 25, 2011, the Hearing Officer informed the parties of this ruling verbally, in advance of the issuance of this Order. Following the Hearing Officer's verbal ruling, TAWC stated that, as the City had electronically sent the motion on February 24, 2011 and filed it in the docket file on February 25, 2011, TAWC had not had an opportunity to file a written response but anticipated presenting oral argument before the

Hearing Officer during the Pre-Hearing Conference. Thereafter, the Hearing Officer permitted TAWC to present its position on the motion.

In response to the *First Motion in Limine*, TAWC asserted it would ask that the Authority to take judicial notice of the Opinion of the Court of Appeals in order to include and expedite the Company's recovery of the unrecovered portion of its regulatory expenses incurred in Docket No. 08-00039. TAWC contended that jurisdiction would not return to the Authority until the end of March, based on the timeline provided in the Rules. As the Company currently has a rate case pending before the Authority, TAWC asserted that inclusion of the regulatory expenses related to Docket No. 08-00039 would be more efficient for the Company and the Authority. Further, the Company asserted that the rate case currently before the Authority in this docket is a new and different case. As such, it is not improper for the Authority to consider, as a whole, TAWC's accumulated deferred regulatory expenses. In summary, TAWC asserted that the Authority's consideration of the Company's regulatory expenses, including those that have not been recovered previously as part of Docket No. 08-00039, does not violate the jurisdictional parameters of the TRA, and urged the Hearing Officer to, as a practical matter, allow those regulatory expenses to be incorporated in the present case.

The Hearing Officer, in light of the Company's oral argument on this issue and after further consideration thereof, is not persuaded that the decision rendered verbally and set forth herein above should be modified or the reversed. Therefore, the *City of Chattanooga's First Motion in Limine* is granted.


Chairman Mary W. Freeman
Hearing Officer