

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 25, 2011

IN RE:

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

)
) **DOCKET NO.**
) **10-00189**
)
)

**ORDER GRANTING, IN PART, AND DENYING, IN PART, TENNESSEE
AMERICAN WATER COMPANY'S MOTION IN LIMINE TO
STRIKE TESTIMONY OF TERRY BUCKNER AND ATTACHMENT**

This matter is before the Hearing Officer upon *Tennessee American Water Company's Motion in Limine to Strike the Rebuttal Testimony of Terry Buckner and Attachment* ("Motion in Limine") filed with the Tennessee Regulatory Authority ("Authority") on February 25, 2011. In its *Motion in Limine*, Tennessee American Water Company ("TAWC" or "Company") seeks to strike the rebuttal testimony of Terry Buckner, together with an attached audit of New Jersey American Water Company, filed by the Consumer Advocate and Protection Division of the Attorney General ("Consumer Advocate") on February 24, 2011. . The *Motion in Limine* asserts that, contrary to the scope of rebuttal testimony permitted after the deposition of Patricia Schumaker, the rebuttal testimony of Terry Buckner is an attempt ". . . to submit testimony regarding unrelated tax issues and an audit report of New Jersey Water Company that has yet to be considered, approved or modified by the New Jersey Board of Public Utilities."

The parties presented oral argument on the *Motion in Limine* during the Pre-Hearing Conference on February 25, 2011. In response to the *Motion in Limine*, the Consumer Advocate asserted that the New Jersey Water Company audit was not being offered for the truth of the

matters asserted therein but instead to provide an example of an audit in comparison with the audit of Tennessee American Water Company performed by Ms. Schumaker. According to the Consumer Advocate, Mr. Buckner's testimony with regard to the tax issues was filed as the result of the change in position of the Company as set forth in the rebuttal testimony of Michael Miller and James Warren.

Based on the *Motion in Limine* and the arguments presented by the parties, the Hearing Officer determined that the New Jersey Water Company audit and the rebuttal testimony of Mr. Buckner relative thereto should not be considered as evidence in this proceeding and should not be filed as part of the record. Nevertheless, because the audit is not being offered for the truth of matters asserted therein, the audit of New Jersey Water Company may be used during cross examination but may not be filed as evidence. The testimony of Mr. Buckner with respect to the tax issues should not have been filed in the context of testimony rebutting the deposition testimony of Patricia Schumaker, but is permissible as rebuttal testimony to the change in position by TAWC.

For these reasons, the Hearing Officer grants, in part, Tennessee American Water Company's *Motion in Limine* and strikes that part of Mr. Buckner's rebuttal testimony related to the audit of New Jersey Water Company that appears in Mr. Buckner's rebuttal testimony from Page 2, Line 3 to Page 5, Line 20. The Hearing Officer determined that Mr. Buckner's rebuttal testimony regarding the tax issues is relevant, is proper rebuttal to TAWC's testimony and would be permitted as testimony during the Hearing.

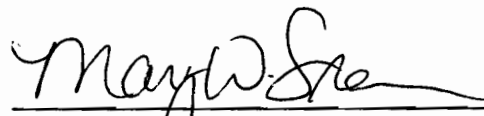
IT IS THEREFORE ORDERED THAT

1. Tennessee American Water Company's *Motion in Limine* is granted, in part, and those portions of Mr. Buckner's rebuttal testimony related to the audit of New Jersey Water

Company appearing at Page 2, Line 3 to Page 5, Line 20 of the Rebuttal Testimony of Terry Buckner, together with the audit itself, are stricken.

2. The Consumer Advocate shall refile Mr. Buckner's rebuttal testimony with Page 2, Line 3 to Page 5, Line 20 omitted and without the audit of New Jersey Water Company.

3. Tennessee American Water Company's *Motion in Limine* is denied, in part, with respect to Mr. Buckner's rebuttal testimony regarding the tax issues. Mr. Buckner's testimony regarding the tax issues is proper rebuttal to TAWC's testimony and will be permitted as testimony in this proceeding.


Chairman Mary W. Freeman
Hearing Officer