

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 22, 2011

IN RE:

PETITION OF TENNESSEE AMERICAN WATER  
COMPANY FOR A GENERAL RATE INCREASE

)  
) DOCKET NO.  
) 10-00189  
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INITIAL ORDER OF HEARING OFFICER RELATING TO PROOF ON  
RATE CASE EXPENSES AND THE JOINT MOTION FILED BY THE PARTIES

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The *Petition* filed in this docket by Tennessee American Water Company ("TAWC" or the "Company") sought a rate increase of \$9,984,463, which included a request to recover rate case expense for this case in the amount of \$645,000. Subsequently, before the Tennessee Regulatory Authority ("TRA" or "Authority") held its Hearing on the *Petition*, TAWC filed testimony and exhibits that increased the Company's request for rate case expense to \$1.240 million. This matter is before the Hearing Officer upon the motion of Director Eddie Roberson to obtain additional proof from the parties on the issue of rate case expense, which was made at the close of the evidentiary hearing in this docket on March 8, 2011 and which was unanimously approved by the voting panel.

**Background**

**Director Roberson's Motion Related to Rate Case Expenses**

The Hearing on TAWC's *Petition* for a rate increase was held in Chattanooga, Tennessee from February 28, through March 4, 2011 and on March 7 and 8, 2011 in Nashville, Tennessee. The following Intervenors participated in the Hearing: the Consumer Advocate and Protection

Division of the Office of the Attorney General ("Consumer Advocate"), City of Chattanooga, Tennessee ("City"), Chattanooga Regional Manufacturers Association ("CRMA"), and the Utility Workers Union of America, AFL-CIO and UWUA Local 121 ("UWUA").

On March 8, 2011, upon conclusion of the parties' proof, the voting panel heard oral argument on the City's objection and motion to exclude certain evidence presented by TAWC, consisting of two revised accounting schedules, from being entered as evidence in this docket. These accounting schedules were submitted by the Company as a part of the pre-filed rebuttal and revised rebuttal testimony of Michael Miller and resulted in an increase of approximately \$1.6 million in TAWC's rate increase request. A significant portion of this additional increase was attributable to the Company's revised request for the recovery of rate case expenses in this docket. During the oral argument, counsel for TAWC confirmed that even though the Company's *Petition* originally sought a rate increase in the amount of \$9,984,463, the Company wanted to include as a part of its proof in this case schedules and exhibits which increased the contested amount of the request to \$11,580,683.<sup>1</sup>

After the City's motion was denied by the panel, Director Roberson made a motion that would require TAWC to provide additional evidence, including supporting affidavits or testimony, reflecting the amount of rate case expenses the Company has incurred in this proceeding. In presenting his motion, Director Roberson outlined his reasons for requesting such action:

I've heard the articulate arguments on this issue. I have a motion to make. I believe this motion is needed to be compliant with the recent Court of Appeals decision. I have asked several questions throughout this proceeding of company witnesses, especially Mr. Miller, to get into the record some information regarding the regulatory expenses for this case being claimed by the Company. I

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<sup>1</sup> This discussion paralleled the Company's remarks provided earlier in the Hearing as an explanation for the apparent discrepancy in the amount requested in the *Petition* and referenced in the Company's Notice of Hearing and the increased amount of the request that resulted from the filing of these accounting schedules.

recall, in Chattanooga, when the notice of publication was placed into the record, there was a discussion with Mr. Grimes about the amount that was being asked as a rate increase in this case. There was an apparent discrepancy between the amount of the requested rate increase in the published notice, that being \$9,984,463, and a revised rate increase request in the amount of \$11,580,683, as provided by the Company subsequently in this case. The new figures appear to be driven largely by an increase in the rate case expense for this case, which has raised from \$645,000 to \$1.240 million, as stated in the rebuttal testimony of Mr. Miller at page 78, and in Mr. Miller's Exhibit 11 to his rebuttal testimony.<sup>2</sup>

Director Roberson expressed concern as to whether there was a sufficient evidentiary record upon which the Authority could base a decision on the issue of the rate case expense as requested by TAWC. Director Roberson called attention to the Court of Appeals' decision in TAWC's 2008 rate case (TRA Docket No. 08-00039), in which the Court of Appeals rejected the action of the Authority in cutting in half TAWC's recovery of the rate case expenses requested in that docket. Director Roberson, quoting from page 30 of the Court of Appeals' decision, recited the Court's basis for that decision as follows:

The record and final order do not explain what specific expenses the TRA deemed unnecessary, improvident, or improper or that the Authority closely examined the costs associated with the rate case to determine the portion to be recovered from the ratepayers and the portion to be borne by shareholders. Such an examination should have taken place and its results included in the record and in the final order.<sup>3</sup>

Director Roberson also expressed concern that the Company revised its rate case expenses in the rebuttal testimony filed after the issuance of the Court of Appeals' decision on January 28, 2011.

For these reasons, Director Roberson made the motion that TAWC provide additional evidence of rate case expense to demonstrate that the rate case expenses being claimed were necessary, reasonable, and prudent. Director Roberson's motion included an abbreviated procedure for the submission of evidence by all parties on the issue of rate case expense and

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<sup>2</sup> Transcript of Proceedings, Volume VII B, pp. 124-125 (March 8, 2011).

<sup>3</sup> *Tennessee American Water Company v. Tennessee Regulatory Authority, et al.*, Court of Appeals No. M2009-00533-COA-R12-CV, p. 30 (January 28, 2011).

provided for a limited hearing to allow for cross-examination of the evidence presented by the parties. The motion assigned to the Hearing Officer the duty of working with the parties to establish a date for the limited hearing and to develop a schedule for the filing of supporting proof in advance of the hearing date. The panel voted unanimously to approve Director Roberson's motion. Thereafter, counsel for the Company expressed objection to the motion and stated that the Company would proceed to place the requested rates into effect under bond at the expiration of the six month period.<sup>4</sup>

#### **Parties' Joint Motion for Approval of Rate Case Expense**

While in the process of establishing a schedule for the filing and presentation of additional proof relating to rate case expense in this docket, the parties notified TRA General Counsel that they were engaged in negotiations on that issue. On March 16, 2011, a *Joint Motion for Approval of Rate Case Expense* ("*Joint Motion*") was filed by TAWC along with all of the intervening parties: Consumer Advocate, the City, CRMA, the UWUA, Walden's Ridge Utility District, and Signal Mountain, Tennessee. Through the *Joint Motion*, all of the parties in this docket have asked the Authority to approve their proposed amount as the rate case expenses to be recovered by TAWC without the submission of further proof as to the Company's initial and revised amount of rate case expense through a separate proceeding on that issue. As a part of the settlement of the rate case expense element in this proceeding, the Company withdraws from consideration "its updated proof of the cost of its '2010 Rate Filing' as shown on Rebuttal Exhibit MAM-11."<sup>5</sup> In turn, the parties withdraw their objection to and no longer contest the Company recovering \$645,000 (the Company's original request in its *Petition*) for rate case

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<sup>4</sup> Notwithstanding Tenn. Code Ann. § 65-5-103(a) giving the TRA nine months to complete its investigation of a proposed rate increase, § 65-5-103(b)(1) permits the Company to place the proposed rates into effect under bond six months after the date of filing, upon notification to the Authority.

<sup>5</sup> *Joint Motion for Approval of Rate Case Expense* ("*Joint Motion*"), p. 1 (March 16, 2011).

expense in this docket.<sup>6</sup> Because the amount of rate case expense is no longer a contested issue in this proceeding, “. . . the parties submit that no further hearings on the issue of rate case expense are needed . . . .”<sup>7</sup> Further, TAWC will not place the proposed rate increase into effect under bond at the expiration of the six month period as stated during the Hearing on March 8, 2011, but instead “. . . has agreed to withhold implementation of any increase under bond until after 12:01 a.m., April 5, 2011.”<sup>8</sup>

### **Findings and Conclusions**

Pursuant to the motion of Director Roberson, the Hearing Officer has been assigned the responsibility of establishing the procedure for the submission of additional proof on the issue of TAWC’s requested recovery of rate case expenses in this docket. Such a procedure would be to provide the Authority a mechanism for obtaining additional proof from the parties on the rate case expense issue, particularly in light of the revised testimony and exhibits filed by TAWC that placed proof in the record of an increase in the requested rate case expense from \$645,000 to \$1.2 million. With the filing of the *Joint Motion*, the Company agrees to withdraw this “proof” of its increase in rate case expenses and all parties have settled on a recovery by TAWC of rate case expense in the amount of \$645,000. The Hearing Officer is appreciative of the efforts and actions of the parties in undertaking negotiations and submitting an agreement on this important and significantly contested issue.

Based upon the representations of the parties, the Hearing Officer finds that the submission of the *Joint Motion* acts as a stipulation of the parties as to the issue of the rate case expense in this case and concludes that no further proceedings – the filing of testimony and

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<sup>6</sup> The *Joint Agreement* provides that the Intervenors are not waiving any position in other rate cases regarding the recovery of rate case expense in general or as to the recovery of legal fees as a component of rate case expense.

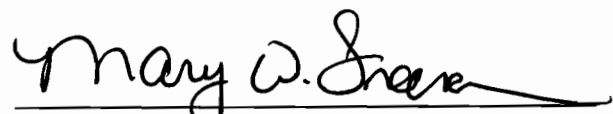
<sup>7</sup> *Joint Motion*, p. 2.

<sup>8</sup> *Joint Motion*, p. 2.

holding a hearing for the purpose of cross-examination of evidence – are necessary with respect to that issue. The Hearing Officer further concludes that, in light of the parties' agreement in the *Joint Motion*, the establishment and convening of a separate proceeding as to the issue of rate case expense would impose an additional and unnecessary expense on the parties and possibly on the ratepayers of TAWC.

While the decision to accept the proposed amount for rate case expense falls within the ultimate purview of the voting panel of Directors assigned in this docket, the Hearing Officer determines that the agreements represented in the *Joint Motion* remove the necessity of conducting the anticipated proceeding on the issue of rate case expense. Further, based on the foregoing and upon the Company's agreement not to place the proposed rate increase into effect until April 5, 2011, the Hearing Officer continues the suspension of the rate increase until April 5, 2011 and sets the date for deliberations of the merits of TAWC's *Petition* for **April 4, 2011**.

**BE IT HEREBY ORDERED.**

  
Chairman Mary W. Freeman  
Hearing Officer