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August 10, 2011

VIA HAND DELIVERY

Chairman Eddie Roberson
c/o Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Docket No. 10-00189: *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*

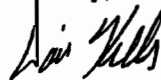
Dear Chairman Roberson:

Enclosed please find the Comments of Tennessee-American Water Company on the issue of the manner in which TAWC shall recover the remaining one half of its rate case expenses from Docket No. 08-00039.

Please file the original and four copies of this material and stamp the additional copy as "filed." Then please return the stamped copy to me by way of our courier.

Should you have any questions concerning this matter, please do not hesitate to contact me at the email address or telephone number listed above.

Sincerely,



David Killion

Enclosures

cc: Mr. David Foster, Chief of Utilities Division (w/o enclosure)
Mr. Jerry Kettles, Chief of Economic Analysis & Policy Division (w/o enclosure)
Ryan McGehee, Esq. (w/ enclosure)
David C. Higney, Esq. (w/ enclosure)

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Valerie L. Malueg, Esq. (w/ enclosure)
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Harold L. North, Jr., Esq. (w/ enclosure)
Mark Brooks, Esq. (w/ enclosure)
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**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

COMMENTS OF TENNESSEE-AMERICAN WATER COMPANY

Pursuant to the Notice of Filing and Deliberations (the "Notice") issued by the Tennessee Regulatory Authority (the "Authority") on August 3, 2011, Tennessee-American Water Company ("TAWC") submits its comments on the issue of the manner in which TAWC shall recover the remaining one half of its rate case expenses from Docket No. 08-00039.

As the Authority is aware, on March 14, 2008, TAWC filed its Petition in the 2008 Rate Case, Docket No. 08-00039. As part of the 2008 Rate Case TAWC requested that the Authority approve TAWC's regulatory expense in the amount of \$550,000. On September 22, 2008, the Authority granted TAWC a rate increase in the amount of \$1,655,541, but as part of that increase only included recovery of \$275,000 of the \$550,000 in regulatory expense. Thereafter, TAWC's new tariffs, reflecting only half of its requested regulatory expense, went into effect on October 1, 2008. On January 13, 2009, the TRA entered the Final Order in Docket No. 08-00039, and on March 16, 2009, TAWC appealed the Authority's Final Order to the Court of Appeals.

On January 28, 2011, the Court of Appeals issued its Opinion. *See Tennessee American Water Company v. The Tennessee Regulatory Authority, et al.*, No. M2009-005533-COA-R12-

CV, 2011 Tenn. App. LEXIS 51 (Tenn. Ct. App. Jan. 28, 2011). The Court of Appeals held that the Authority's decision "to only include one half of the cost of the rate case in the rate was arbitrary." *Id.* at *76. The Court of Appeals accordingly reversed the Authority's decision and "award[ed] TAWC the full amount of its proposed rate case expenses." *Id.* After the Court of Appeals issued its opinion TAWC sought to include recovery of the \$275,000 in the 2010 Rate Case, Docket No. 10-00189, but the Panel declined TAWC's request because the Court of Appeals had not yet issued its mandate.

Both the City of Chattanooga (the "City") and the Consumer Advocate and Protection Division of the Office of the Attorney General ("CAPD") filed Applications for Permission to Appeal the Opinion of the Court of Appeals to the Tennessee Supreme Court. The Tennessee Supreme Court denied both Applications on May 25, 2011. On June 7, 2011, the Court of Appeals issued its Mandate to the Authority, which consists of the Judgment and Opinion. *See* Tenn. R. App. P. 42(a). While the Court's Judgment technically remands this matter to the Authority, the Court did not remand the matter for a new trial or hearing. The Authority therefore has no discretion under Tenn. R. App. P. 43 to hold subsequent proceedings. *See* Tenn. R. App. P. 43 (allowing a case to be reinstated and subsequent proceedings conducted only "[w]hen the appellate court remands the case for a new trial or hearing and the mandate is filed in the trial court."). The Court's Opinion makes it absolutely clear that the scope of the remand is limited only to the Authority's duty to oversee the implementation of the Court's award of \$275,000 to TAWC through a revision of TAWC's tariffs. Specifically, as to the issue of recovery of the remaining \$275,000 in regulatory expense, the Authority clearly has no jurisdiction to hold further proceedings under Tenn. R. App. P. 43 because that issue was not remanded, but instead was reversed. *See Tennessee American Water Company*, 2011 Tenn. App.

LEXIS 51, at *76 (“[W]e reverse the Commission of the TRA on this issue and award TAWC the full amount of its proposed rate case expenses.”). The Authority therefore appropriately recognized the limited scope of the Court’s remand by stating in its Notice that the Authority will proceed only to deliberate “the issue of the manner in which TAWC shall recover those rate case expenses.”

Accordingly, TAWC is now contemporaneously filing its proposed Second Amended Tariffs, dated August 10, 2011, with an effective date of September 9, 2011. The Second Amended Tariffs consist of the Amended Tariffs approved by the Authority on April 18, 2011, in Docket No. 10-00189, which have been amended only to include the recovery of the additional \$275,000 ordered by the Court of Appeals.

TAWC submits that it is appropriate for TAWC to recover the \$275,000 in rates now by amortizing this amount over a period of one year. As noted above, the first \$275,000 of TAWC’s \$550,000 in regulatory expense for Docket No. 08-00039 was amortized over a three-year period beginning on October 1, 2008. As a result, TAWC has had to wait over 34 months to begin amortizing recovery of the balance of this significant expense. Requiring TAWC to amortize the balance of this amount over another three years starting now would mean that TAWC would be forced to wait a total of 70 months before it could recover its full regulatory costs expended in Docket No. 08-00039. Given the time value of money, that result would not be fair to TAWC.

TAWC estimates that an average residential customer, using 4,246 gallons of water per month, would pay an additional \$0.13 per month, or an additional \$1.61 over the proposed twelve-month amortization period, as a result of the increase. TAWC therefore requests that the Authority approve TAWC’s proposed Second Amended Tariffs as filed and issue an Order

stating that the new rates reflected in the Second Amended Tariffs issued August 10, 2011 with an effective date of September 9, 2011 be in effect for a term of one year from the effective date.

DATED: August 10, 2011

Respectfully Submitted,



R. Dale Grimes (#006332)

E. Steele Clayton (#017298).

C. David Killion (#026412)

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Attorneys for Petitioner

Tennessee- American Water Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by way of the method(s) indicated on this the 10th day of August, 2011, upon the following:

<input type="checkbox"/> Hand-Delivery	Ryan McGehee, Esq.
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