IN 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	)	DOCKET NO. 10-00189
PERMIT IT TO EARN A FAIR AND	)	
ADEQUATE RATE OF RETURN ON	)	
ITS PROPERTY USED AND USEFUL IN	)	
FURNISHING WATER SERVICE TO	)	
ITS CUSTOMERS	)	

COMMENTS OF THE CONSUMER ADVOCATE AND PROTECTION DIVISION REGARDING THE TENNESSEE REGULATORY AUTHORITY'S NOTICE OF AUGUST 3, 2011

The Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter ("Consumer Advocate") respectfully submits the following comments to the *Notice of Filing and Deliberations* ("*Notice*") of the Tennessee Regulatory Authority ("Authority", "TRA") filed in this docket on August 3, 2011. Herein, the Consumer Advocate provides comments concerning the recovery of $275,000 by Tennessee American Water Company ("TAWC") pursuant to the Court of Appeals.

At the conclusion of Docket 08-00039 ("2008 rate case"), TAWC filed an appeal with the Tennessee Court of Appeals challenging a number of the TRA's determinations. In the Court of Appeals' decision, the Court upheld the TRA's Final Order in the 2008 rate case with the exception of the Authority's ruling to allow both ratepayers and the stockholders of TAWC to share in the cost of the rate case:

> 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 by ratepayers and the portion to be born[e] by the shareholders. Such an examination should have taken place and its results included in the record and Final Order. Based on the lack of such findings, the TRA's decision to only include one half of the cost of the rate case in the rate was arbitrary. Accordingly, we reverse the Commission of the TRA on this issue and award TAWC the full amount of its proposed rate case expenses.

Tennessee American Water Company v. Tennessee Regulatory Authority, No. 2011 WL 334678* 27, (Tenn.Ct.App.2011)(cert.denied). Review of the Court of Appeals' determination on this issue was sought with the Tennessee Supreme Court by the City of Chattanooga and the Consumer Advocate; however, the request was denied on May 25, 2011. In light of the ruling of the Tennessee Court of Appeals and assuming the issue is not moot, the Consumer Advocate does not oppose the recovery of a maximum of $275,000, as specifically ordered by the Court. Moreover, the Consumer Advocate does not oppose the maximum of $275,000 over the period of one year. However, it is the position of the Consumer Advocate that at the end of one year, the recovery of this amount must cease.

The Consumer Advocate does have concerns with the general issue of rate case expense and this matter in particular. It should be noted that while the Court reversed the TRA on this issue for failing to provide an analysis in the 2008 final order of what expenses were "unnecessary, improvident or improper", the fact remains there was no evidence in the record from the 2008 rate case from which to conduct such an analysis. This problem arose again during the hearing on the merits in this docket.[1] As recognized by the hearing panel in this docket at the conclusion of the hearing on the merits, the burden of proof in regards to rate case

[1] *Initial Order of the Hearing Officer Relating to Proof on Rate Case Expenses and the Joint Motion Filed By the Parties*, Docket 10-00189, March 22, 2011, pp. 2-4.

expense is no different than any other element of a public utility's rate case which requires more than cursory statements and estimates.[2] All public utilities must recognize that the category of rate case expense is not a license to spend at will and that such costs must not only be proven as reasonable and provident with evidence, but also controlled. This is especially true in light of the economic circumstances of the households and businesses served by TAWC.

Moreover, the procedure outlined in the Authority's *Notice* of August 3, 2011, is unique. The Consumer Advocate does not suggest a rate case should be filed for this issue given the expense and time entailed. However, raising rates to recover one expense item without a rate case is nothing more than single issue rate-making and violates the matching principle of rate-making embedded in the test year concept. The matching principle embraces the importance of recognizing all revenues and costs with a carefully constructed test period within the confines of a rate case. Raising rates for recovery of one item, absent a rate case or extraordinary circumstances, is contrary to established rate making principles.

Procedurally, the 2010 rate case is essentially over. While no final order has been issued by the Authority in this docket, the 2010 rate case subject to this proceeding concluded with new rates in tariffs which went into effect several months ago. The Court of Appeals has held that disputes over the tariff rates of a prior matter are mooted by the implementation of subsequent tariffs. *City of Chattanooga v. Tennessee Regulatory Authority*, 2010 WL 2867128*5 (Tenn.Ct.App.2010); *Consumer Advocate v. Tennessee Regulatory Authority*, 2006 WL 249511*10 (Tenn.Ct.App.2006). Thus, even though the TRA's *Notice* of August 3, 2011, states that the TRA will be "specifically deliberating the issue of the manner in which TAWC shall recover those rate case expenses", the TRA should also consider whether the rate case expense

[2] *Id.*

matter from 2008 is moot given the implementation of the 2010 rate case tariff rates. Given these concerns, should the Authority grant TAWC recovery of $275,000 for 2008 rate case expense in the 2010 rate case docket, it must not be considered an action that constitutes a precedent or provides a decision looked upon for guidance in future proceedings before TRA.

RESPECTFULLY SUBMITTED,

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Dated: August 10, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail on August 10, 2011, upon:

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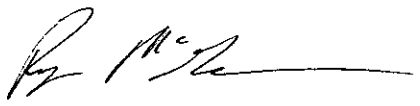

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