

SPIEGEL & MCDIARMID LLP

GEORGE SPIEGEL (1919-1997)
ROBERT C. MCDIARMID
ROBERT A. JABLON
JAMES N. HORWOOD
THOMAS C. TRAUGER
JOHN J. CORBETT
CYNTHIA S. BOGORAD
SCOTT H. STRAUSS
LISA G. DOWDEN
PETER J. HOPKINS
DAVID E. POMPER
WILLIAM S. HUANG
PABLO O. NÜESCH
TILLMAN L. LAY
LARISSA SHAMRAJ
STEPHEN C. PEARSON

1333 NEW HAMPSHIRE AVENUE, NW
WASHINGTON, DC 20036

WWW.SPIEGELMCD.COM

Telephone 202.879.4000
Facsimile 202.393.2866
E-mail INFO@SPIEGELMCD.COM

Direct Dial 202.879.4035
EMAIL SCOTT.STRAUSS@SPIEGELMCD.COM

ASSOCIATES
REBECCA J. BALDWIN
KATHARINE M. MAPES
MELISSA E. BIRCHARD
ANJALI G. PATEL
DANIEL H. SILVERMAN*
*MEMBER OF NEW YORK BAR ONLY
OF COUNSEL
DANIEL I. DAVIDSON
FRANCES E. FRANCIS
MARGARET A. MCGOLDRICK
JEFFREY A. SCHWARZ
BARRY M. SMOLER
LEE C. WHITE

November 23, 2011

Mary Freeman, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

filed electronically in docket office on 11/23/11

Attention: Sharla Dillon

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

Dear Chairman Freeman:

Enclosed please find for filing in the above-referenced proceeding the Utility Workers Union of America, AFL-CIO's Request for Enforcement of Order and Related Relief. The original and four (4) copies will be sent via U.S. Mail.

Please feel free to contact either of the undersigned if you have any questions. Thank you for your attention to this matter.

Sincerely,



Scott H. Strauss
Katharine M. Mapes

Attorneys for UWUA Intervenors

Enclosures

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

REQUEST FOR ENFORCEMENT OF ORDER AND RELATED RELIEF

The Utility Workers Union of America, AFL-CIO ("UWUA") seeks enforcement of the Commission's directive in this proceeding that Tennessee American Water Company ("TAWC" or "the Company") submit, on a semi-annual basis, data that includes the expected date by which the Company will fill any staffing vacancies below the 110-full time employee ("FTE") level authorized in this proceeding. UWUA asserts that TAWC has failed to comply with this obligation, and asks that the Authority direct the Company (1) to provide the requisite data; and (2) to promptly fill all staffing vacancies so that the Company has a full-time employee workforce of 110 persons. This action will conform TAWC's staffing level to the Authority's decision to include in rates the salaries and expenses associated with 110 FTEs, and comports fully with the Company's sworn commitment to the Authority made during the hearing in this proceeding.

In support of these requests, UWUA states:

During the Authority's April 4, 2010 meeting in this docket, the Authority approved¹ Director Freeman's April 1, 2011, motion, which included the following provision:

Further, I move that the Company be required to submit semi-annual reports on staffing levels with the Utility Division Chief. Such reports should include the following: the actual number of full-time employees ("FTEs") for the previous period, an explanation for any differences between authorized and actual FTEs, and the date TAWC expects to fill any vacant positions.

During the discussion held among the Directors concerning this Motion, Director Freeman made clear that the number of FTEs authorized for inclusion in rates was 110 persons, stating that she wanted to "clarify that the salaries and wages expense in my motion is based on 110 employees."

Tr. 63:10-12.

In accordance with the Commission's directive, on October 21, 2011, TAWC filed with the Chief of the Utilities Division, the Company's first "Semi-Annual Valve Inspection and Headcount Report." Submitted in the form of a letter from Kevin N. Rogers, TAWC's Operations Manager, the Report states that the Company is currently employing only 100 FTEs, ten fewer than the 110 FTEs authorized by the TRA. According to Mr. Rogers, the ten vacancies—which represent roughly 9% of the TAWC workforce—have been held open for two reasons:

- [The Company's] pension costs this year have increased approximately \$500k on an annual basis over [its] amended filing request in Docket No. 10-00189.
- [The Company is] still awaiting the result of an arbitration hearing involving the termination of ten employees.²

¹ See Tr., 82.

² The report is in error; there were eight Union-represented employees terminated, and two supervisory personnel. The supervisors were not involved in the arbitration.

The report concludes that “[t]he timing of the filling of our vacant positions is undetermined and will be greatly impacted by the resolution of these two issues.”

On information and belief, the arbitration panel that heard the challenge to the employee terminations issued its final decision on October 14, 2011, affirming all of the dismissals. Accordingly, there is no longer any question that those positions will not be filled by any of the terminated employees. Assuming *arguendo* that it was acceptable for the Company to fail to staff its workforce at the 110 FTE level while the arbitration was pending, that proceeding no longer justifies the Company’s failure to staff its workforce in accordance with the Authority’s directive.

Similarly, the Company’s pension costs are irrelevant to its obligation to employ sufficient personnel to provide adequate service to TAWC customers. The Authority included funding for 110 full-time employees in the rates that are currently in effect. This action was taken following testimony at hearing that the Company was understaffed, and that staffing deficiencies had led to problems with respect to the conduct of valve maintenance. The expectation at the time Director Freeman’s motion was approved was that the Company would maintain full employment and, to the extent there were vacancies from time-to-time, would either fill those vacancies promptly or would inform the Authority in its semi-annual report of the date by which all such vacancies would be filled. There was no expectation or understanding that staffing levels would be dependent upon pension obligations.

On information and belief, and notwithstanding the decision of the arbitration panel, the UWUA’s understanding is that the ten vacancies have been open for months and that the Company has informed its employees that TAWC does *not* intend to fill any of the ten open

positions. This is consistent with statements made by the current president of the Company to the press. An August 24, 2011, article in the Chattanooga Times Free Press states:

Tennessee American implemented its biggest water rate increase in history this spring, but the hike was still only about half what Tennessee American requested. The utility has pared its staff to about 100 employees, even though regulators authorized the utility to employ 110 workers.

"We had to make some changes within our budget given that we were granted less than what we thought was appropriate," Allen said.

Available at <http://timesfreepress.com/news/2011/aug/24>.

This course of action is a violation of the Company's obligations to the Authority, and is contrary to the sworn testimony TAWC provided at hearing. On cross-examination, then-Company President John Watson testified as to the importance of hiring sufficient personnel, and to the TAWC's commitment to maintaining its staffing at a level consistent with the authorization received from the TRA:

Q. I believe you said with respect to valve maintenance, the secret is you have to have the people. I believe you said that this afternoon. Now, you've asked for authorization to hire more people in this case; is that correct?

A. Yes, I have.

Q. And if you get that authorization, you will hire those people; is that correct?

A. I would look forward to it, and I'm almost there. But I'd look forward to doing the rest.

Q. And you'll -- and when you get them, you'll do your best to keep them in their jobs; is that correct?

A. Yes, sir. I think that's part of my responsibility.

Q. Okay. And if folks leave, you'll do your best to fill the positions; is that correct?

A. Yes, sir, I'll do my best.

Vol. IV.D, Tr. 339:17-340:9. The Company should not be permitted to renege on the sworn commitments it made to the Authority, nor should TAWC be allowed to skirt obligations imposed on the Company as part of an Authority decision to award substantial rate relief.³ The failure to staff operations adequately has potential impacts on the provision of high quality and reliable water services, and should therefore be a cause for significant concern.

³ The West Virginia Public Service Commission recently found that another subsidiary of the American Water Works parent company--West Virginia-American Water--was engaging in staffing practices that were contrary to its sworn representations. In an order enjoining West Virginia-American from laying off 10% of its workforce pending Commission investigation, the Commission stated:

that the sudden reduction of approximately ten percent of the WVAWC workforce, following within a few months of contrary management staffing representations [made to the Commission in a recently-completed rate proceeding] and without underlying justification, may implicate the statutory obligation of WVAWC to render safe and reasonable service and the Commission's statutory obligations to assure the maintenance of quality water service and to investigate the reasonableness of the actions of WVAWC.

Utility Workers Union of America, AFL-CIO and UWUA Local 537 v. West Virginia American Water Company, Case No. 11-0740-W-C, Commission Order dated May 31, 2011, at 2-3. The Order can be accessed at <http://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=322176&NotType='WebDocket'>

WHEREFORE, for the foregoing reasons, the UWUA respectfully requests that the Authority enter an Order in this proceeding directing Tennessee American to report a date by which it intends to fill all of the ten vacancies in its employee ranks, and to undertake promptly to fill those vacancies. In addition, and in light of the Company's conduct, UWUA urges that the Commission state in any order enforcing these obligations that a continued failure by the Company to abide by its obligations will be grounds for the imposition of a sanction.

Respectfully submitted,



Mark Brooks
Attorney at Law
521 Central Avenue
Nashville, Tennessee
(615) 259-1186
TN BPR #010386



Scott H. Strauss
Katharine M. Mapes
Spiegel & McDiarmid LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036

Attorneys for Utility Workers Union of America,
AFL-CIO

November 23, 2011

CERTIFICATE OF SERVICE

I, Scott H. Strauss, counsel for the UWUA, hereby certify that on the 23rd day of November, 2011, caused a true and correct copy of the foregoing pleading to be served upon all parties of record via U.S. mail or facsimile.

Michael A. McMahan
Valerie L. Malueg
Special Counsel
100 East 11th Street Suite 200
Chattanooga, TN 37402

Frederick L. Hitchcock
Harold L. North, Jr.
1000 Tallan Building
Two Union Square
Chattanooga, TN 37402

Mr. Vance L. Broemel
Mr. T. Jay Warner
Mr. Ryan L. McGehee
Office of the Attorney General
Consumer Advocate and Protection
Division
Cordell Hull Building, Ground Floor
425 5th Avenue North
Nashville, TN 37243

Mr. David C. Higney
Grant, Konvalinka & Harrison, P.C.
Ninth Floor, Republic Centre
633 Chestnut Street
Chattanooga, TN 37450-0900

Mr. R. Dale Grimes
Bass, Berry 7 Sims PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201

Mr. Henry M. Walker
Boult, Cummings, Conners & Berry
PLC
1600 Division Street, Suite 700
Nashville, TN 37203

Chairman, Tennessee Regulatory
Authority
c/o Sharla Dillon, Dockets and Records
Manager
460 James Robertson Parkway
Nashville, Tennessee 37243

Donald L. Scholes
Branstetter, Stranch & Jennings PLLC
227 Second Avenue North
Fourth Floor
Nashville, TN 37201



Scott H. Strauss