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December 12, 2011

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VIA HAND DELIVERY

Chairman Kenneth C. Hill
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 Hill:

Enclosed please find an original and five (5) copies of Tennessee-American Water Company's Response in Opposition to the UWUA's Request for Enforcement of Order and Related Relief.

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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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**

TENNESSEE AMERICAN WATER COMPANY'S RESPONSE IN OPPOSITION TO UWUA'S REQUEST FOR ENFORCEMENT OF ORDER AND RELATED RELIEF

Tennessee American Water Company ("TAWC"), by and through counsel, hereby responds in opposition to the "Request for Enforcement of Order and Related Relief" filed by the Utility Workers Union of America, AFL-CIO ("UWUA").

In an attempt to win concessions from American Water Works Inc. ("AWW"), TAWC's parent company, during pending labor negotiations over AWW's national benefits plan, the UWUA has launched a multi-prong campaign against AWW and some of its corporate affiliates. To date, the UWUA has waged loud protests outside the homes of AWW corporate executives, attempted to block AWW from entering new markets in Arnold, Missouri and Rialto, California,[1] and made filings with a number of state regulatory agencies designed to win concessions. The UWUA's desire to seek all advantages in labor negotiations is understandable from the UWUA's perspective, but not from TAWC's or its customers' perspective.

The UWUA's motion should be denied for many reasons. First, as described above, the motion is an improper attempt to drag the Authority into ongoing labor negotiations between

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[1] *See* http://uwua.net/american-water/an-update-on-american-water-and-uwua.html.

AWW and the UWUA, thereby usurping the authority vested in the National Labor Relations Board ("NLRB") to oversee these negotiations and the employee grievance process. Second, the UWUA is attempting to entice the Authority to use its power to micro-manage TAWC's day-to-day management decisions while completely ignoring the numerous obstacles involved in filling vacant positions. Third, the motion mischaracterizes the status of the employee grievance process and therefore could result in double-hiring. Fourth, the motion makes the baseless claim that TAWC has already decided not to fill any open positions although the reality is that no such decision has been made. Finally, the motion should be denied because it requests relief that the Authority has considered and denied previously in this matter.

FACTS AND PROCEDURAL HISTORY

The UWUA's motion constitutes yet another attempt to make the Authority condition TAWC's rates on filling all open Company positions by an arbitrary date regardless of evolving market conditions. The UWUA first made this argument throughout the Hearing on the Merits. *See* UWUA Post-Hearing Brief, at p.18 ("[T]he UWUA urges that any rate relief provided in this proceeding be conditioned upon a requirement that the Company fill all open hourly positions immediately, and that it maintain an authorized FTE level of at least 82 hourly FTEs throughout the period in which the approved rates are in effect."). On April 1, 2011, Director (then Chairman) Freeman issued a proposed motion in this docket. The motion included a requirement 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." Director Freeman's Motion, at 2 (Apr. 1, 2011). The motion did not, as the UWUA had requested

throughout this case, make TAWC's rates contingent upon the information contained in these reports. On April 4, 2011, Director Freeman's motion was approved by a 2-1 vote.

After Director Freeman's motion was adopted, TAWC filed its amended tariffs. On April 7, 2011, the UWUA filed an objection to TAWC's amended tariffs, arguing that the reporting obligations contained in Director Freeman's motion must be included in TAWC's actual tariffs because the reporting obligations constituted "explicit conditions on the imposition of the rates [TAWC] seeks to collect." UWUA Objection, at 2 (Apr. 7, 2011). On April 18, 2011, the Authority approved TAWC's amended tariffs as filed, thereby dismissing the UWUA's objection.

Pursuant to the reporting obligation contained in Director Freeman's motion, TAWC field its first "Semi-Annual Valve Inspection and Headcount Report" with the Authority on October 21, 2011. In response, on November 23, 2011, the UWUA filed a "Request for Enforcement of Order and Related Relief." In the filing, the UWUA states that regardless of the information contained in TAWC's report, the UWUA believes TAWC does not intend to fill any vacant positions. Although the UWUA does not allege that TAWC has failed to meet any reporting obligations, the UWUA nonetheless alleges that TAWC is "skirt[ing] obligations imposed on the Company as part of an Authority decision to award substantial rate relief." UWUA motion, at 5. The UWUA concludes by requesting that the Authority enter an order directing TAWC "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." *Id.*, at 6. The UWUA also requests that TAWC be sanctioned for any "continued failure by the Company to abide by its obligations." *Id.*

ARGUMENT

The UWUA's motion is nothing more than the UWUA's latest attempt to use the TRA for leverage in ongoing negotiation of a national collective bargaining agreement between the UWUA and AWW. Indeed, the fact that the UWUA Local 121 appears to have declined to join in this motion shows that the motion is not about TAWC or its customers. These negotiations are conducted under the auspices of the NLRB and subject to its ultimate authority and jurisdiction. The UWUA's request (once again) that the TRA order TAWC to fill all vacant positions by a date certain not only usurps the authority vested in the NLRB by virtue of federal law, but also ignores undisputed facts about the appeal rights of recently terminated employees. Being dragged into ongoing labor negotiations between AWW and the UWUA is neither necessary nor helpful for the Authority in fulfilling its statutory obligations regarding regulated utilities. The appropriate forum for the UWUA's grievances is and should remain the NLRB.

The UWUA's motion, which only looks to protect the narrow interests of UWUA members without consideration of the Company or rate payers, should also be denied because it essentially requests that the Authority oversee the day-to-day management and staffing decisions of the Company. Unless TAWC's management is engaging in actions that threaten the safety or reliability of service, the Company clearly should be given the leeway to make all day-to-day decisions in the normal course of business, including the timing and determining the immediate need for filling vacant positions. Moreover, the micro-management requested by the UWUA ignores both the complicated and lengthy process required to fill vacancies under the collective bargaining agreement and ignores the economic realities that constantly evolve after rate case awards have been issued.

The UWUA's failure to realize the complicated and lengthy process associated with filling vacant positions is significant. John Watson, retired President of TAWC, testified numerous times in this case regarding the obstacles involved in filling vacant positions. These obstacles include the arbitration process for terminated employees referenced in TAWC's recent headcount report, a lengthy internal bid procedure for hiring that is mandated by the collective bargaining agreement, and challenges generally associated with finding qualified individuals with specialized skill sets and training. *See* Vol. 3A, Tr. 76:16 – 76:20; 100:12 – 100:18; 100:25 – 101:8. Mr. Watson testified that due to the numerous steps and obstacles involved in filling a vacant position, the entire procedure for filling a single vacancy can take up to six months. *See* Vol. 3A, Tr. 101:1 – 102:2. Moreover, Mr. Watson testified that the Company's efforts to maintain full employment have also been hampered by the fact that TAWC has been dealing with an extremely high rate of turnover in Company positions due in part to an aging workforce. John Watson, Rebuttal testimony, at 8 (Feb. 8, 2011). Accordingly, the UWUA should recognize that the hiring process for these types of positions simply takes time.

The UWUA's request also ignores the fact that economic realities can and do evolve after the filing of a rate case. Just as the Authority made their decision in April of 2011 to base expected salaries and wages on the best information available at the time, the Company has an obligation to base its day-to-day hiring decisions on present-day circumstances and information. It is undeniable that many economic factors affecting the Company constantly change after the conclusion of a rate case. For example, the cost of power or fuel may go down but the Company is not required to continue purchasing fuel at the higher projected level of cost. The same is true for employee costs, as fixed pension or healthcare costs could rise well above projected levels or new technologies could unlock efficiencies not foreseen in a rate case. In light of the substantial

evidence presented during this case regarding obstacles to filling Company vacancies and the fact that these hiring decisions are clearly day-to-day management decisions, it would be completely inappropriate for the Authority to use its general regulatory power to engage in micro-management of the Company and demand arbitrary time limits by which all open positions be filled, regardless of need or available resources.

Yet another reason the UWUA's motion should be denied is because the requested relief, if granted, could easily result in a mandate that creates double-hiring for many positions. It is undisputed that the eight union employees who were terminated have challenged that decision through grievance procedure contained in the collective bargaining agreement signed by TAWC and the Utility Workers of America, Local 121. Arbitration of their claims was conducted and did not conclude until October 14, 2011. The UWUA's claim that "there is no longer any question that those positions will not be filled by any of the terminated employees" is simply incorrect. The time for appeal of the arbitration panel's decision has not yet run and will not run until mid-January. *See* Tenn. Code Ann. § 29-5-313(b) (2011). Accordingly, if the Authority were to require TAWC to fill certain positions by certain arbitrary dates before applicable appeal periods have run this mandate can result in double-hiring for numerous positions in the event the NLRB or a court orders reinstatement after the positions are already filled pursuant to a TRA Order.

Despite the UWUA's unfounded allegations in its filing regarding its belief that "TAWC does *not* intend to fill any of the ten open positions," no decision has been made not to consider candidates or hire for any particular vacant position. First, as explained above, any decision regarding hiring would be premature for the eight positions most recently filled by employees who still have appeal rights arising from their employment arbitrations. Second, once all appeals

are concluded the Company will obviously need to base its hiring decisions on numerous circumstances that can only be considered at that time, including whether the Company believes it needs more manpower to continue to meet and exceed its expected quality standards and service metrics. Third, while the UWUA claims that TAWC President Deron Allen's statement in the Chattanooga Times Free Press indicates a decision has been made not to hire for certain positions, this is clearly not the case. Mr. Allen's statement only indicated that the Company engaged in budget adjustments after the final decision was rendered in this docket. Mr. Allen made no reference to employment decisions whatsoever and any implication to the contrary clearly takes Mr. Allen's statement out of context. The Company was clear in this case regarding its commitment to staffing all positions necessary to maintain Company service levels, and TAWC stands by its testimony in this docket.

Finally, it is important to note that the Authority's rate award in this matter was not contingent on the Company's hiring a specific number of employees. Although the UWUA's motion appears to infer that the Authority's decision somehow made TAWC's rates contingent upon meeting certain headcount quotas, this is not the case. Director Freeman's motion only required TAWC to file semi-annual informational reports with the Utility Division Chief regarding TAWC's current employee count and the status of its valve program. TAWC has complied with this reporting obligation by filing the first of its semi-annual reports on October 21. Because the UWUA's request has already been considered and denied, any action to suddenly make rates contingent on meeting headcount quotas eight months after the rate award was issued would necessarily entail opening a new docket for the single purpose of setting employee quotas. Simply setting quotas without consideration of other factors such as proven rising employee pension costs, needed capital expenditures, rising energy costs, etc. would result

in single-issue ratemaking. Accordingly, for all of these reasons, the UWUA's motion should be denied.

Respectfully submitted,

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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 12th day of December, 2011, upon the following:

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