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December 19, 2011

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

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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 Reply to Tennessee American Water Company's Opposition to 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

Enclosure

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

**REPLY OF THE UTILITY WORKERS UNION OF AMERICA, AFL-CIO TO
TENNESSEE AMERICAN WATER COMPANY'S OPPOSITION TO REQUEST FOR
ENFORCEMENT OF ORDER AND RELATED RELIEF**

The Utility Workers Union of America, AFL-CIO ("UWUA" or the "Union") hereby replies to the opposition of the Tennessee American Water Company ("TAWC" or the "Company") to the UWUA's request for enforcement of the Authority's directive that the Company identify, on a semi-annual basis, the expected date by which it intends to fill any staffing vacancies below the 110-full time employee ("FTE") level authorized in this proceeding. The most important aspect of the Company's opposition is what is *not* contained therein: the TAWC continues to refuse to provide the date by which it plans to fill the ten (10) open FTE positions. Instead, the Company seeks to rewrite its obligations, and to operate in a manner that is directly contrary to both the Authority's directives and the Company's sworn representations. The Union's request should be granted.¹

In support of its position, the UWUA states:

¹ The Company's opposition consists largely of speculative and irrelevant accusations about the motive behind the Union's filing. The issue presented by the Union's filing is whether the Company is complying with its obligations under orders issued by the Authority. As the Union has demonstrated that the Company is not in compliance with the Authority's directives, the requested relief should be granted.

The Authority's staffing directives were premised on the Company's sworn representations throughout the rate case. In his Direct Testimony, then-Company President John Watson testified that each of the Company's 110 requested FTEs "is directly and integrally involved in the provision of water service to the customers of TAWC." Direct Testimony of John S. Watson at 21:16-17 (Sept. 23, 2010). In response to a discovery request (attached as Exhibit No. UWUA-8 to the Direct Testimony of James Lewis (Jan. 5, 2011)), President Watson clarified that:

The Company has assessed its current operation and believes the compliment [sic] of 110 full time positions requested in this case is necessary to: i) carry out its public service obligation, ii) meet customer demands for customer service, water quality and iii) carry out the administrative functions of the Company.

For this reason, President Watson noted in Exhibit No. UWUA-10, that "[t]he Company cannot continue to adequately address service needs on a long term basis without obtaining the appropriate staffing levels that have been proposed in this rate case."

The Authority ultimately approved the Company's request, and included in rates the salaries and benefits associated with 110 full-time personnel. The Company now argues that this is ancient history, claiming that it would be "completely inappropriate" for the TRA to set "arbitrary time limits by which all open positions be filled, regardless of need or available resources." Opposition at 6.²

At the same time, the Company leaves open the possibility that the positions will be filled, referring to the "baseless claim that TAWC has already decided not to fill any open

² The Company argues, by analogy, that it should not be required to pay higher fuel costs when those costs drop below predicted levels. Opposition at 5. To be clear, while the Company may save money by cutting employee costs, customers will continue to pay rates that include the salaries and benefits associated with 110 FTEs. TAWC and its shareholders will collect those funds from ratepayers, but will not hire the employees needed to provide service to those customers.

positions although the reality is that no such decision has been made.” Opposition at 2. In fact, there are strong indications that TAWC has no plan to fill any of the ten FTE positions. First, the Opposition contains no estimate of the date by which the jobs will be filled, and seeks instead to avoid having to do so. Second, a recent press report states:

Jessica Presley, an external affairs specialist for Tennessee American Water, said the utility is operating effectively with a leaner staff and the company has no immediate plans to add more workers.

“We’re serving our customers well and we’re comfortable right now with our staffing levels,” Presley said.

Dave Flessner, *Union complains Tennessee American Water didn’t keep staff level*, Times Free Press (Nov. 29, 2011), <http://timesfreepress.com/news/2011/nov/29/-union-complains-water-company-didnt-keep-staff/>.³

Particularly in light of this comment, TAWC’s references (Opposition at 5-6) to challenges in hiring and the need to await a potential appeal of an arbitration decision ring hollow. If either of these factors were in fact in play, then the Company’s semi-annual report should have stated that the positions in question would be listed after the time for appeal had lapsed, or that the Company was in the midst of the required bidding process for filling vacant positions, or was having trouble filling listed positions. In any case, TAWC could have stated an estimated date for completion of whatever processes were underway. None of this information was provided.

Instead of simply complying with its obligations, TAWC offers vague references to, *inter alia*, the “many economic factors affecting the Company [that] constantly change after the

³ The Company claims that a press statement by current President Deron Allen has been taken out of context, and that it does not refer to “employment decisions.” Opposition at 7. Even if this claim were accurate, Ms. Pressley’s statement cannot fairly be characterized as unrelated to “employment decisions.”

conclusion of a rate case.” Opposition at 5. However, the Company’s responsibility to adequately staff its operations, and the Authority’s decision on that matter, are not conditioned on the achievement of certain financial metrics, nor does the number of staff required to provide that service change as a result of the Company’s financial situation. Instead, the TRA’s directives were predicated on concerns about the Company’s ability to meet its obligations under Tennessee law, which states

No public utility shall . . . provide or maintain any service that is unsafe, improper, or inadequate, or withhold or refuse any service which can reasonably be demanded and furnished when ordered by the authority.

Tenn. Code Ann. § 65-4-115.

This is presumably the reason that then-President Watson testified at trial that filling positions and keeping those positions filled is “part of [his] responsibility.” Vol. IV.D, Tr. 339:17-340:9. As none of the vacant positions have been filled, there is every reason to believe—based on the Company’s own testimony—that important work is not being completed and that customer service needs are failing to be met.

Moreover, and contrary to TAWC’s claims, requiring that the Company maintain its staff at a level sufficient to fulfill its statutory obligations does not constitute illegitimate micro-management of its operations. The TRA has “practically plenary authority over the utilities within its jurisdiction,” *Consumer Advocate Div. v. Greer*, 967 S.W.2d 759, 761-62 (Tenn. 1998) (citing *Tenn. Cable Ass’n v. Tenn. Pub. Serv. Comm’n*, 844 S.W.2d 151, 159 (Tenn. App. 1992)), and specific statutory “power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out” the provisions of Tennessee utility law. Tenn. Code Ann. § 65-4-104. This authority is not preempted by the National Labor Relations Board, whose jurisdiction does

not interfere with a State's authority to regulate the conduct of its utilities for legitimate state purposes. As found by the Illinois Commerce Commission, a state commission must have the authority "to touch upon matters that might also be reasonably characterized as labor-management relations matters," as

[t]o hold otherwise would be to end the regulation of public utilities. Every act of a public utility is performed by *someone*, and in countless instances that person is managed by another *someone*. While it is certain that the Commission's power to regulate the relationship between and conduct of those persons [is] not unlimited, it is equally certain that we can exercise some degree of control over those relationships and conduct, in order to fulfill our unambiguous mandate to require public utilities to promote the health and safety of employees and customers.

In Re N. Shore Gas Co., Nos. 07-0241-2, 2008 WL 631214, at *290 (Ill. Commerce Comm'n Feb. 5, 2008), *amended on reh'g*, 2008 WL 5971190 (Ill. Commerce Comm'n July 30, 2008), *appeal transferred sub nom.*

The Company's Opposition makes plain that it does not intend to staff its operations even at the levels that it swore to the Authority were minimally necessary to provide adequate service to customers. As such, the Company's failure jeopardizes its ability to provide statutorily-mandated services. This is ample cause for the Authority to enter an order directing the Company to report a date by which it intends to fill all of the ten vacancies in its employee ranks, and to be subject to sanctions for non-compliance should it fail to abide by its obligations.

Respectfully submitted,



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December 19, 2011

CERTIFICATE OF SERVICE

I, Scott H. Strauss, counsel for the UWUA, hereby certify that on the 19th day of December, 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.

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