

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 27, 2012

IN RE:

PETITION OF TENNESSEE AMERICAN WATER
COMPANY FOR A GENERAL RATE INCREASE

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DOCKET NO.
10-00189

CONCURRENCE AND DISSENT OF DIRECTOR ROBERSON

On April 4, 2011, the voting panel assigned to this docket convened to consider the *Petition* filed by Tennessee American Water Company ("TAWC" or the "Company"). At the conclusion of the deliberations, a majority¹ of the panel concluded that TAWC should be granted an annual revenue increase of \$5,551,013, or an overall rate increase of 14.98%. For the reasons set forth below, I respectfully dissent.

Regulation must serve in the stead of competition and market forces. The Authority is, of course, obligated to set rates that are "just and reasonable"² and a fair rate of return on a company's investments while ensuring the safety and reliability of the service offered.³ But I believe that it is incumbent upon us as regulators to reflect current market conditions and economic realities in making our decisions as to exactly what constitutes a "just and reasonable" rate or a "fair" rate of return.

¹ Chairman Freeman presented her pre-filed motion, with which Director Kyle concurred.

² See Tenn. Code Ann. § 65-5-101(a) (Supp. 2010).

³ See *Bluefield Water Works & Improvement Co. v. P.S.C. of West Virginia*, 262 U.S. 679 (1923) and *F.P.C. v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

The majority approved 110 employees for TAWC, an increase from the 109 employees approved in the 2008 rate case.⁴ I do not agree with the majority that, in these tough economic times, the Company should be allowed to increase the number of employees. I do agree, however, with the Consumer Advocate that the maximum number of employees should be 107.⁵ My conclusion is based upon the current 108 employee count⁶ and the exclusion of the government affairs specialist, who is a registered lobbyist in the state.⁷ Lobbying is not necessary for the provision of water service and, therefore, expenses relating to lobbying should not be funded by consumers of the Company and should be excluded for ratemaking purposes. In my opinion, the lobbyist is doing the bidding of the stockholders, and I cannot in good conscience conclude that any portion of this expense is appropriate for the ratepayers to bear.⁸ My conclusion is also consistent with agency precedent to exclude those expenses. Therefore, I would reduce the revenue increase adopted by the majority by \$163,944.

I believe that the finance manager recently hired by TAWC⁹ duplicates a portion of American Water Works Service Company's function for finance services that are provided to TAWC. It was appropriate when there was no finance manager at the Company to pay the management fees to the Service Company to cover that service. However, now that a local finance manager has been hired at the Company, I believe there is a duplication of services by the Company and the Service Company. The

⁴ See *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 Services to Its Employees*, Docket No. 08-00039, Order, pp. 12-13 (January 13, 2009). In adopting the then-current level of 109 employees, the Authority noted that "public utilities . . . must hold the line on expenses and employee growth during lean times." *Id.* at 13.

⁵ *Consumer Advocate and Protection Division's Post-Hearing Brief*, p. 22 (March 21, 2011).

⁶ Transcript of Proceedings (Public Record), v. I-B, p. 118 (February 28, 2011).

⁷ Transcript of Proceedings, v. III-A, pp. 72-73 (March 2, 2011).

⁸ The majority excluded 20% of the expenses for the lobbyist.

⁹ Transcript of Proceedings, v. III-A, pp 54-56 (March 2, 2011).

Company failed to convince me that the newly hired finance manager would be doing different or new duties than what the Service Company had been doing. A prudence test would not allow the double paying for the same services. In the test year that the Authority selected, there is \$573,170 allocated to the Finance services category that the Service Company provides to TAWC. I would eliminate from these management fees the cost for the finance manager of \$120,333, including salary and benefits, so that customers would not have to bear the burden of paying for such duplication.

In TRA Docket No. 08-00039, TAWC provided a capital additions forecast that it intended to fund and implement during the attrition period. Funding for these additions was included by the Authority in forecasting the attrition period rate base on which rates in the 08-00039 case were established.¹⁰ The Company, however, did not follow through on its commitment by failing to implement its scheduled capital projects, namely the Citico Treatment Plant project.¹¹ The net effect was that the Company was granted revenues for needed projects but diverted revenues to other purposes such as dividends and management fees to its service company. In this case, the Company again requests inclusion of the Citico project in its forecasted capital additions in calculating its attrition period rate base.

To assure that capital additions, specifically the Citico treatment plant project, will be implemented and in a timely manner, I would remove the capital additions for the Citico treatment plant project of \$5,301,305 from rate base calculations. Based upon my

¹⁰ The Authority adopted the Consumer Advocate's attrition year Construction Work in Progress amount of \$5,284,789, which included Citico Phase I. *See 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 Services to Its Employees*, Docket No. 08-00039, Order, p. 38 (January 13, 2009)

¹¹ The Company states it has completed Phase "IA", but not Phase "IB" of the Citico project. *See Transcript of Proceedings, v. I-B*, pp. 122-124 (February 28, 2011).

calculations, this adjustment will reduce the overall revenue requirement by \$753,736. This amount includes the reduced depreciation expense, accumulated depreciation, and the resulting tax effects, but does not include any adjustments to the accumulated deferred income taxes. I would, in essence, establish a tracker so that the company would be allowed rate recovery for this project as it is implemented. This action would assure that rates allowed by the Authority and funded by ratepayers for the needed improvements at the Citico plant would actually go for their intended purposes. Using the "trust but verify" standard, in order to receive recovery, I would require the Company to first submit documentation of its capital additions, not to exceed the projected cost of \$5.3 million related to the Citico project, including all associated depreciation and tax effects to the Authority in this docket.

I further conclude that the return on equity should be set at 9.65%. This figure is slightly higher than the Consumer Advocate witness Dr. Klein's maximum recommendation of 9.6% but below the Company's requested 11.5% equity return.¹² This figure is similar to recent equity returns awarded by other state regulatory commissions, especially the 9.75% equity return recently awarded to Kentucky American Water Company by the Kentucky Public Service Commission.¹³ Given these factors, I believe that a 9.65% equity return is just and reasonable and is sufficient for the Company to attract the necessary capital. Using the other elements of cost of capital adopted by the majority, this leads to a 7.68% overall rate of return which I also find to be just and reasonable during these economic times. The result of the adoption of this rate of return is to reduce the revenue increase approved by the majority by \$282,961.

¹² Transcript of Proceedings, v. VI-C, p. 252 (March 7, 2011); Michael A. Miller, Pre-filed Direct Testimony, p. 23 (September 23, 2010).

¹³ Michael A. Miller, Pre-filed Rebuttal Testimony, Rebuttal Exhibit MAM 5 (February 8, 2011).

For the foregoing reasons, I respectfully dissent from the majority's decisions and find that TAWC should be granted a revenue increase of \$4,242,134 or an increase of 11.28%.

I concur in the approval of the rate design for industrial customers as set forth in the *Summary of Settlement Between CRMA and TAWC* filed by the Chattanooga Regional Manufacturers Association ("CRMA") and the Company on March 28, 2011.¹⁴

I also concur in the recovery of \$275,000 in rate case expenses from TRA Docket No. 08-00039, as ordered by the Court of Appeals, through a separate line-item charge on customers' bills that will discontinue once the full amount is recovered. The amount is to be recovered over a period of six months and from all customer classes.¹⁵ I believe that it is important to note that the Court of Appeals in its Opinion did not prohibit the Authority in future cases from thoroughly reviewing rate case expenses and, using a prudence test, denying or cutting those expenses. Rather, the Court only concluded that we needed to explain the reasons for any denial or cuts more fully in the record or in our orders.¹⁶


Eddie Roberson, Director 9-30-11
Date

¹⁴ At the regularly scheduled Authority Conference held on April 18, 2011, I concurred with Chairman Freeman's motion to approve the settlement agreement between CRMA and TAWC, while Director Kyle voted against the motion.

¹⁵ At the regularly scheduled Authority Conference held on August 22, 2011, I concurred with Chairman Freeman's motion to recover the rate case expenses from Docket No. 08-00039, as mandated by the Court of Appeals, through a separate line-item charge on customers' bills, while Director Kyle voted against the motion.

¹⁶ See *Tennessee American Water Company v. Tennessee Regulatory Authority, et al.*, No. M2009-00553-COA-R12-CV, 2011 WL 334678 (Tenn. Ct. App. at Nashville, Jan. 28, 2011), *perm. app. denied*, (Tenn. May 25, 2011).