

HORTON, BALLARD & PEMERTON

ATTORNEYS AT LAW

A PROFESSIONAL LIMITED LIABILITY COMPANY

WILLIAM H. HORTON
Direct: (423) 826-2641
Cell: (423) 400-2741
Email: whorton@whorton-law.com
Admitted in Tennessee, Georgia

CAROL M. BALLARD
Direct: (423) 826-2645
Email: cballard@whorton-law.com
Admitted in Tennessee, Georgia

BILL W. PEMERTON
Direct: (423) 826-2643
Email: bpemerton@whorton-law.com
Admitted in Tennessee, Alabama

735 BROAD STREET, SUITE 306
CHATTANOOGA, TENNESSEE 37402

TELEPHONE: (423) 826-2640
FACSIMILE: (423) 826-2639

Susan A. Crocker, Paralegal
Direct: (423) 826-2642
scrocker@whorton-law.com

Claire G. Horton
Bookkeeper
Direct: (423) 826-2644
chorton@whorton-law.com

Dayna Smith, Assistant
Direct: (423) 826-2646
dsmith@whorton-law.com

July 18, 2012

Via E-Mail and US Mail

Chairman Kenneth C. Hill, Ed. D.
c/o Ms. Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

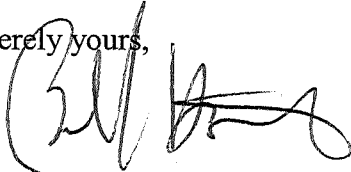
filed electronically in docket office 07/18/12

Re: Tennessee American Water Company, Docket No. 12-00049
Petition of Walden's Ridge Utility District to Intervene

Dear Chairman Hill:

I am enclosing an original and five (5) copies of the Petition of Walden's Ridge Utility District for Leave to Intervene. Please file this electronically. I would appreciate if you could stamp the extra copy of the document as "filed," and return it to me in the enclosed, self-addressed, stamped envelope.

Sincerely yours,



William H. Horton
For Horton, Ballard & Pemerton

WHH/cmb

Enclosures

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION FOR A GENERAL RATE)	
INCREASE, IMPLEMENTATION OF A)	Docket No. 12-00049
DISTRIBUTION SYSTEM INFRASTRUCTURE)	
CHARGE AND THE ESTABLISHMENT OF)	
TRACKING MECHANISMS FOR)	
PURCHASED POWER, PENSIONS AND)	
CHEMICAL EXPENSES)	

PETITION OF WALDEN’S RIDGE UTILITY DISTRICT FOR LEAVE TO INTERVENE

Walden’s Ridge Utility District, through counsel and pursuant to Tenn. Code Ann. § 65-2-107 and Rule 12220-1-2-.08 of the Tennessee Regulatory Authority (“the Authority”), respectfully petitions to intervene in this docket as a party of record. In support of its petition to intervene, the Petitioner states as follows:

1. Walden’s Ridge Utility District is a utility district in Hamilton County, Tennessee which provides water service to its customers in Hamilton and Sequatchie Counties in Tennessee. The District purchases all of its water for distribution to its customers from Tennessee-American Water Company (the “Company”) pursuant to a special contract approved by the Authority, attached hereto as Exhibit A.

2. The proceeding is a contested case in which the Company seeks to increase the wholesale water rate charges. It is not clear to Petitioner whether the rate increase request attempts to obtain rate increases for special contracts. If the Company is requesting such an increase, the request would violate the parties’ contract, which requires the Company to negotiate any rate changes with Petitioner in good faith. Under these circumstances the rate

increase requested would adversely affect the Petitioner and their customers and would be contrary to the contract previously approved. This matter is the subject of a pending lawsuit in Hamilton County Chancery Court in which Petitioner is requesting injunctive relief against the application of any increase permitted by the Authority, and a copy of the amended complaint and motion for restraining order is attached as Exhibit B.

3. Given the issues raised by the Company's filing, the Petitioner's legal rights, duties, immunities, or other legal interests may be determined in this proceeding and presently are not, or may not be, adequately represented by another party in this docket.

4. The Petitioner avers that the Company's present request seeking to increase rates is not fair and reasonable and is not in the best interest of the Petitioner and its customers, and the rate increases to the Petitioner should be rejected by the Authority. Accordingly, the Petitioner requests to intervene and participate in this case pending the Authority's rejection, modification or approval of the petition presently filed by the Company before the Authority.

5. Granting the Petition to Intervene will not impair the interests of justice or the orderly conduct of these proceedings. If this Petition to Intervene is granted, all notices, correspondence, pleadings, copies of orders and other materials should be addressed to the counsel for the Petitioner as follows:

William H. Horton
Horton, Ballard & Pemerton
735 Broad Street, Suite 306
Chattanooga, TN 37402
(423) 826-2641
Facsimile: (423) 826-2639

WHEREFORE, the Petitioner respectfully requests that the Authority grant this Petition to Intervene and enter an Order allowing it to become an intervening party of record in this docket.

Respectfully submitted this 18 day of July, 2012.

Respectfully submitted,

HORTON BALLARD & PEMERTON

By: 

William H. Horton, BPR No. 1935
735 Broad Street, Suite 306
Chattanooga, TN 37402
(423) 826-2641
Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served on counsel for all parties at interest in this cause by depositing a copy of same in the United States Mail with sufficient postage thereon to carry same to its destination, addressed as follows:

Melvin J. Malone
Butler, Snow, O'Mara, Stevens & Cannada,
PLLC
1200 One Nashville Place
150 Fourth Avenue, North
Nashville, TN 37219-2433

Ryan McGehee
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P. O. Box 20207
Nashville, TN 37202-0207

Michael A. McMahan
Office of City Attorney
100 East 11th Street, Suite 200
Chattanooga, TN 37402

Lindsey W. Ingram, III
Stole Keenon Ogden PLLC
300 West Vine Street
Suite 2100
Lexington, KY 40507

Phillip A. Noblett
Signal Mountain Town Attorney
100 East 11th Street, Suite 200
Chattanooga, TN 37402

Frederick L. Hitchcock
Chambliss, Bahner & Stophel, P.C.
1000 Tallan Building
Two Union Square
Chattanooga, TN 37402

This 18 day of July, 2012.

HORTON, BALLARD & PEMERTON

By: 

WATER PURCHASE AGREEMENT

THIS AGREEMENT, made this 14th day of July 2003 by and between

Tennessee-American Water Company ("Tennessee-American"), located at 1101 Broad Street, Chattanooga, Tennessee

and

Walden's Ridge Utility District ("Walden's Ridge"), located at 3900 Taft Highway, Signal Mountain, Tennessee

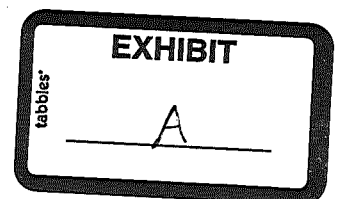
WHEREAS, Tennessee-American, a Tennessee corporation, is a public utility which owns and operates a water utility system in and around the City of Chattanooga, Tennessee including the contiguous cities of Red Bank, East Ridge, Ridgeside, and Lookout Mountain, plus the cities of Rossville and Lookout Mountain, Georgia and areas in the Georgia counties of Dade, Walker and Catoosa; and

WHEREAS, Walden's Ridge wishes to purchase all of its water supply from Tennessee-American; and

WHEREAS, Tennessee-American has the capability to provide all of the water supply currently required by Walden's Ridge and is willing to construct a water supply pipeline and booster station, which will provide a sufficient volume of water in order to serve as WRUD's sole source of supply; and

WHEREAS, Walden's Ridge and Tennessee-American are desirous of establishing an Agreement for the purchase and sale of water for a fixed period of time; and

WHEREAS, the parties have reached an Agreement for the sale and purchase of water which they now desire to record in writing:



NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION I
EXCLUSIVE SUPPLIER

Tennessee-American agrees to sell and Walden's Ridge agrees to buy, during the term of this Agreement and any extension hereof, all of the potable and raw water requirements of Walden's Ridge, as it now exists or may hereafter be expanded, in conformity with the provisions hereof.

SECTION II
CONSTRUCTION OF FACILITIES

(A) Tennessee-American shall construct, at an estimated cost of \$2.4 million, a water supply pipeline and booster station from its existing distribution system to the Walden's Ridge water tank near Taft Highway, which will provide a sufficient volume of water in order to serve as Walden's Ridge sole source of supply. This water supply pipeline will be capable of delivering up to 2.9 million gallons of water per day at the top of the mountain. The estimated construction time, from the time of a final non-appealable order from the Tennessee Regulatory Authority ("TRA") granting approval of the project, until the connection to the system and delivery of water, is eighteen (18) months. In the event that the construction bid price exceeds \$2.4 million by 5% or more, Tennessee-American shall have the right to negotiate an adjustment in the price for the sale of water as provided in Section III hereof or terminate this Agreement.

(B) If any conditions or requirements are imposed by any regulatory authority, or court, which make this project economically unfeasible, Tennessee-American has the right to withdraw and terminate the Agreement.

(C) As part of this consideration, Walden's Ridge agrees that Tennessee-American will be the sole and exclusive supplier of potable and raw water to Walden's Ridge, as it now exists or

hereafter be changed, except as noted below in this Section, and that Walden's Ridge will not, without prior written consent of Tennessee-American, receive potable or raw water service from any person or entity (including Walden's Ridge and its own customers), for the period of time under the Agreement including any extensions or renewals. The parties agree that the approximately eighty (80) current Walden's Ridge customers in the Falling Water Community located on Levi Road, Ferry Road, Pickett Gulf Road, Levi Cemetery Road, Courtney Road and Godsey Road, will be an exception, which allows Walden's Ridge to seek an alternative source for these customers.

(D) In the event Walden's Ridge terminates the Agreement prior to the expiration of forty (40) years from the Date of Service, as defined below, or fails to renew the agreement for a period of time adequate to allow Tennessee-American an opportunity to recover its investment, or if Tennessee-American is no longer the sole and exclusive provider of potable and raw water to Walden's Ridge, or fails to pay Tennessee-American as provided herein, then Walden's Ridge, and its successors and assigns, agree to pay Tennessee-American, within thirty (30) days following such termination or event, the balance of the undepreciated costs, on a straight-line basis, of Tennessee-American's pipeline and all other facilities that are constructed to serve Walden's Ridge.

(E) Walden's Ridge will decommission and terminate its existing source of supply and treatment facilities upon completion of the Tennessee-American water supply pipeline extension and connection to the Walden's Ridge system and no later than ninety (90) days following the Date of Service, as defined below. As part of this consideration, and upon completion of the Tennessee-American water supply pipeline and booster station, Walden's Ridge agrees to exclusively lease to Tennessee-American, for a period of forty (40) years from the Date of Service as defined below, the 6" and 8" welded steel water supply lines, along with perpetual easements, from its Mountain Station at the end of Levi Cemetery Road to top of the mountain.

SECTION III **SALE OF WATER**

(A) The water from the Tennessee-American pipeline shall be provided to Walden's Ridge at a rate of \$1.25/1000 gallons, except for the pass-through cost as identified in Section III (B) herein, for the first three (3) years, beginning with the date that water service is first taken from these facilities ("Date of Service"). Any proposed change in the rate after this initial period will be accompanied by supporting data and computations, which will be based on industry accepted cost of service methodology. Walden's Ridge has the right to agree to this rate or to propose an alternative rate with the understanding that the TRA will be the ultimate authority in determining the rate.

(B) From the date this Agreement is executed and during the first three (3) years from the Date of Service under this Agreement, in the event that electric costs, which can be directly identified with this project, increase, Walden's Ridge agrees to meet with Tennessee-American to discuss an equitable pass-through of those cost increases if so requested by Tennessee-American.

(C) Walden's Ridge will permit Tennessee-American to use the Walden's Ridge distribution system as a conduit through which Tennessee-American may wheel water to other water utility districts and other customers as agreed to by the parties, which agreement by Walden's Ridge shall not be unreasonably withheld. The parties agree to meet within ninety (90) days after execution of this Agreement to define the territory that will be served by Walden's Ridge. The wheeling charge from Walden's Ridge to Tennessee-American shall be at a rate of \$.39/1000 gallons. This rate is guaranteed for three (3) years from the Date of Service. Any proposed change in the rate after this initial period will be accompanied by supporting data and computations, which will be based on industry accepted

cost of service methodology. Tennessee-American has the right, within ninety (90) days, to agree to this rate or to propose an alternative rate. If the Parties do not agree on the rate change, then the Parties will refer the matter to a neutral mediator. If mediation does not resolve the matter, either of the Parties may take the matter to the TRA, if applicable, or Utility Management Review Board or seek Judicial Review as necessary for resolution. As part of the consideration under this agreement, Tennessee-American shall have the right, at the cost specified above or at a rate that may change from time to time as agreed by the parties, even after termination of the agreement, to transfer water through Walden's Ridge facilities.

(D) Walden's Ridge will not be charged by Tennessee-American for any water supplied through its system that is transferred to other water utility districts and/or customers outside the Walden's Ridge service area. Tennessee-American shall install a meter or meters on the Walden's Ridge distribution system where appropriate in order to measure the volume of water that is transferred. Walden's Ridge will have reasonable access to such meters at all times.

SECTION IV **FLUORIDATION OF WATER SUPPLY**

Tennessee-American will fluoridate the water supply to Walden's Ridge, in accordance with the Tennessee Department of Environment and Conservation Rule 1200-5-1-17 (20), which requires the maintenance of a monthly average concentration of fluoride between 0.9 mg/l and 1.3 mg/l, unless required to do otherwise by applicable law or regulations.

SECTION V **OPERATIONAL REQUIREMENTS**

(A) In order to minimize utilization of the peaking capacity of Tennessee-American, Walden's Ridge will provide, by the Date of Service, adequate storage to provide for its own

maximum hour needs. Walden's Ridge shall maintain a minimum of one-day of water supply storage on its distribution system.

(B) Walden's Ridge agrees to cooperate with Tennessee-American in making improvements as needed to its distribution system in order to efficiently facilitate the wheeling of water through its system to other water utility district customers of Tennessee-American or other customers of Tennessee-American outside the Walden's Ridge service area. Any such improvements, which are deemed necessary by Tennessee-American to adequately wheel water through the Walden's Ridge system for the benefit of Tennessee-American, shall be done at Tennessee American's expense.

(C) Tennessee-American will conduct a one-time comprehensive leak survey along Walden's Ridge transmission mains that are located in Taft Highway between Walden's Ridge twin storage tanks (located at the old Walden's Ridge office) and the end of the line near Grandview subdivision. This leak survey will be at no cost to Walden's Ridge. However, Walden's Ridge will be responsible for uncovering and repairing any identified leaks. The purpose of the survey will be to identify and locate leaks to help Walden's Ridge reduce its unaccounted for water.

SECTION VI **CUSTOMERS AT BOTTOM OF MOUNTAIN**

In the event that Walden's Ridge, at any time in the future, decides to divest itself of the approximately eighty (80) customers, and as that number of customers may change from time to time, at the base of the mountain near the Soddy-Daisy system, Tennessee-American will be granted the right of first refusal to purchase from Walden's Ridge the facilities necessary to serve these customers at a price not to exceed the actual, bona fide offer made to Walden's Ridge for the facilities.

SECTION VII

METERING

Metering of the water sold under this Agreement shall be at the point where Tennessee-American's water supply pipeline is connected to the Walden's Ridge water tank near Taft Highway.

SECTION VIII

BILLING

During its normal billing cycle each month, Tennessee-American will issue an invoice to Walden's Ridge for Walden's Ridge metered usage during the prior month. Payment of such invoice will be made by Walden's Ridge on or before eighteen (18) days after receipt of the invoice. Interest and penalties shall accrue on the unpaid balance at the rate and amounts provided in Tennessee-American's filed tariff for its customers.

SECTION IX

APPROVALS BY TENNESSEE REGULATORY AUTHORITY

It is understood and agreed that this Agreement is conditioned on approval by the TRA. Promptly upon execution of this Agreement, Tennessee-American shall file an application for approval with the TRA and take such action in good faith as may be necessary to obtain the appropriate approval. Service provided hereunder will be pursuant to the rules and regulations of the TRA as may be changed from time to time during the term of this Agreement. Walden's Ridge agrees to provide all reasonable support for such regulatory approval.

SECTION X

TERM OF AGREEMENT

The term of this Agreement shall be for a period of forty (40) years, beginning on the Date of Service. In consideration of the requirement for Walden's Ridge to have a

reliable source of supply at all times, if the Company should desire to terminate this Agreement after the Date of Service and prior to the end of the term, except for breach of this Agreement by Walden's Ridge, the Company will provide Walden's Ridge with three (3) years advance written notice of such desire to terminate.

SECTION XI **FORCE MAJEURE**

Neither Walden's Ridge or Tennessee-American shall be liable for damages to the other for any act, omission, or circumstance occasioned by or in consequence of strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, acts of terrorism, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, civil disturbances, explosions, breakage, or accident to machinery or lines of pipe, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the party claiming suspension. Such causes or contingencies affecting such performance shall not relieve Walden's Ridge from its obligation to make payment of amounts due hereunder.

SECTION XII **RENEWAL OF AGREEMENT**

This agreement may be renegotiated for additional periods of time beyond the term of this Agreement. Negotiations to extend the term of this Agreement shall commence no later than six (6) months prior to the expiration date of this Agreement.

However, the rates to be charged during any renewal period shall also be subject to prior approval by the Tennessee Regulatory Authority.

SECTION XIII
MISCELLANEOUS PROVISIONS

(A) Assignment

This Agreement shall be binding on the successors and assigns of Tennessee-American. Upon obtaining written approval from Tennessee-American, which will not be unreasonably withheld, this Agreement may be assigned by Walden's Ridge to any successor in the operation of the distribution facilities currently owned by Walden's Ridge.

(B) Notices

Any notice required or permitted to be given by one of the parties to this Agreement shall be given by U.S. mail, personal delivery or by overnight carrier to the other party at the address set forth below:

Tennessee-American Water Company
1101 Broad Street
P. O. Box 6338,
Chattanooga, Tennessee 37377
Attn: President

Walden's Ridge Utility District
3900 Taft Highway
Signal Mountain, Tennessee 37377
Attn: General Manager

Any notice so given shall be deemed given upon its deposit in the U.S. mail, upon personal delivery or upon its delivery to the overnight carrier.

(C) Governing Law

This Agreement shall be governed by the laws of the State of Tennessee.


(D) Severability

In the event that any provision hereof is found to be invalid or unenforceable, such invalidity or unenforceability shall not impair or limit the validity or enforceability of any other provision hereof, each of which shall continue in full force and effect, and this Agreement shall be construed as if such invalid or unenforceable provisions were omitted from the Agreement.


(E) Entire Agreement

This Agreement constitutes the entire Agreement between Walden's Ridge and Tennessee-American with respect to the subject matter contained in the Agreement, except that Walden's Ridge is subject to the rules, regulations and other applicable conditions and provisions set forth in Tennessee-American's tariff on file with the Tennessee Regulatory and as from time to time amended. This Agreement shall not be amended without the prior written consent of both parties. No modification of this Agreement or waiver of any of its terms and conditions will be effective unless set forth in a written document signed by both parties.

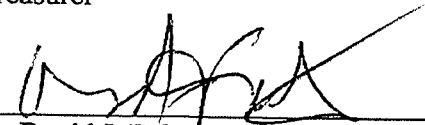
WALDEN'S RIDGE UTILITY DISTRICT

By: 
Frank Groves, Jr.

Its: President

By: 
Robert McKenzie

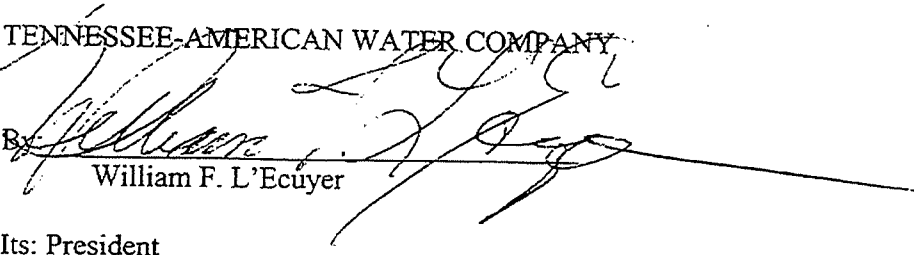
Its: Treasurer

By: 
David J. Fulton

Its: Secretary

District Seal Here

TENNESSEE-AMERICAN WATER COMPANY

By: 
William F. L'Ecuier

Its: President

ACKNOWLEDGEMENT
FOR WALDEN'S RIDGE UTILITY DISTRICT

STATE OF TENNESSEE)
)
COUNTY OF Hamilton)

The foregoing instrument was acknowledged before me this 14 day of July
_____, 2003, by **Frank Groves, Jr., as President** of Walden's Ridge Utility District.

My Commission expires: July 11, 2005

Katherine Lonergan
NOTARY PUBLIC, Chattanooga, TN

STATE OF TENNESSEE)
)
COUNTY OF Hamilton)

The foregoing instrument was acknowledged before me this 14th day of July
_____, 2003, by **Robert McKenzie, as Treasurer** of Walden's Ridge Utility District.

My Commission expires: March 11, 2006

Nancy A. Boy
NOTARY PUBLIC, Chattanooga, TN

STATE OF TENNESSEE)
)
COUNTY OF Hamilton)

The foregoing instrument was acknowledged before me this 14th day of July
_____, 2003, by **David J. Fulton, as Secretary** of Walden's Ridge Utility District.

My Commission expires: March 11, 2006

Nancy A. Boy
NOTARY PUBLIC, Chattanooga, TN

ACKNOWLEDGEMENT
FOR TENNESSEE-AMERICAN WATER COMPANY

STATE OF TENNESSEE)
)
COUNTY OF Hamilton)

The foregoing instrument was acknowledged before me this 14th day of July
 , 2003, by **William F. L'Ecuier**, as President, of Tennessee-American Water Company.

My Commission expires: April 7, 2004

Virginia Rosemary Scaap
NOTARY PUBLIC, Chattanooga, TN

WALDEN'S RIDGE UTILITY DISTRICT

3900 TAFT HIGHWAY
SIGNAL MOUNTAIN, TENNESSEE 37377

COMMISSIONERS:

FRANK GROVES, JR., PRESIDENT
ROBERT MCKENZIE, TREASURER
DAVID J. FULTON, SECRETARY

DAVID STREETER, MANAGER
DEE HOBBS, ATTORNEY

WATER PURCHASE AGREEMENT

AMENDMENT A

This is an amendment to the Water Purchase Agreement between Tennessee-American Water Company and Walden's Ridge Utility District signed the 14th day of July 2003. This Amendment (the "Amendment") to the Agreement is, made this 14th day of January, 2004, between and among WALDEN'S RIDGE UTILITY DISTRICT (hereinafter "WRUD"), and TENNESSEE-AMERICAN WATER COMPANY (hereinafter "TAWC").

Upon reviewing our records, it appears that WRUD and TAWC did not formally recognize the renegotiated purchase rate for which WRUD will charge TAWC for water purchased by TAWC from WRUD during the interim period (approximately 18 months) until TAWC has the new water transmission main installed to deliver water to WRUD.

At this time, the only detail found omitted is that WRUD will charge \$2.05 per 1000 gallons for all water sold to TAWC to supply the Lone Oak and Suck Creek Utility District areas and other areas as TAWC may expand its system in the future.

If for any reason TAWC exercises their option to withdraw from the planned water transmission main installation, then, WRUD reserves the right to bill at the original \$2.98 per 1000 gallons retroactive to the activation of water supply to the Lone Oak and Suck Creek Utility District areas and other areas as TAWC may have expanded its system up to the time of withdrawal.

IN WITNESS WHEREOF, WRUD and TAWC, have agreed to this Amendment A to be signed by the proper officers thereunto duly authorized, all as of the day and year first above written.

(423) 886-2683 OFFICE • (423) 886-1940 FAX

OFFICE HOURS: 8:00 A.M. - 12:00 NOON AND 12:45 - 4:30 P.M. MONDAY THROUGH FRIDAY

WALDEN'S RIDGE UTILITY DISTRICT

3900 TAFT HIGHWAY

SIGNAL MOUNTAIN, TENNESSEE 37377

COMMISSIONERS:

FRANK GROVES, JR., PRESIDENT

ROBERT MCKENZIE, TREASURER

DAVID J. FULTON, SECRETARY

DAVID STREETER, MANAGER

DEE HOBBS, ATTORNEY

WALDEN'S RIDGE UTILITY DISTRICT

BY: _____

Frank Groves, Jr.

Its: President

WITNESS:

BY: _____

David Streeter

Its: General Manager

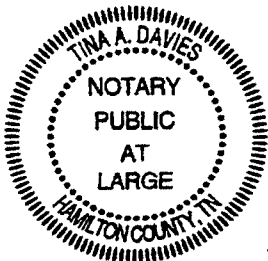
Acknowledgment for Walden's Ridge Utility District

STATE OF TENNESSEE)

COUNTY OF Hamilton)

The foregoing instrument was acknowledged before me this 09 day of January, 2004, by Frank Groves, Jr., as President of Walden's Ridge Utility District.

My Commission expires: 12 August 2007



Tina A. Davies

NOTARY PUBLIC, Chattanooga, TN.

(423) 886-2683 OFFICE • (423) 886-1940 FAX

OFFICE HOURS: 8:00 A.M. - 12:00 NOON AND 12:45 - 4:30 P.M. MONDAY THROUGH FRIDAY

WALDEN'S RIDGE UTILITY DISTRICT
3900 TAFT HIGHWAY
SIGNAL MOUNTAIN, TENNESSEE 37377

COMMISSIONERS:
FRANK GROVES, JR., PRESIDENT
ROBERT MCKENZIE, TREASURER
DAVID J. FULTON, SECRETARY

DAVID STREETER, MANAGER
DEE HOBBS, ATTORNEY

TENNESSEE-AMERICAN WATER COMPANY

BY: David B. Schultz
David Schultz
Its: President

Acknowledgment for Tennessee-American Water Company

STATE OF TENNESSEE)
COUNTY OF Hamilton)

The foregoing instrument was acknowledged before me this 14th day of January, 2004, by David Schultz, as President of Tennessee-American Water Company.

My Commission expires: April 7, 2004

Virginia D. Searf
NOTARY PUBLIC, Chattanooga, TN.

IN THE CHANCERY COURT OF HAMILTON COUNTY, TENNESSEE

WALDEN'S RIDGE UTILITY DISTRICT,)
)
Plaintiff,)
)
v.) No. 12-0504
)
) Part II
TENNESSEE-AMERICAN WATER)
COMPANY,)
)
Defendant.)

AMENDED COMPLAINT FOR DAMAGES, DECLARATORY JUDGMENT,
INJUNCTIVE AND OTHER RELIEF

Plaintiff, Walden's Ridge Utility District, sues the Defendant, Tennessee-American Water Company, and respectfully shows the Court the following:

PARTIES

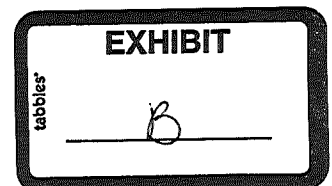
1. Plaintiff, Walden's Ridge Utility District ("Walden's Ridge"), is a public utility which supplies water to residents in and around Walden's Ridge, Tennessee.
2. Defendant, Tennessee-American Water Company, is a Tennessee corporation that operates a water utility in and around Chattanooga, Tennessee. It may be served with process through its registered agent, Deron E. Allen, 1101 Broad Street, Chattanooga, TN 37402.
3. This Court has jurisdiction, and venue is proper.

FACTS

4. Defendant supplies water to Walden's Ridge pursuant to a Water Purchase Agreement dated July 14, 2003 and "Amendment A" dated January 14, 2004, copies of which were attached to the original Complaint as Exhibit A.

2012 JUL 10 PM 3:49

FILED
S. LEE AKERS, C&M



5. The Agreement was approved by the Tennessee Regulatory Authority ("TRA") as a special contract pursuant to Rule 1220-4-1-.07.

6. Pursuant to the Agreement, Defendant agreed to construct a water supply pipeline and booster station from its existing distribution system to the Plaintiff's water tank near Taft Highway. Defendant constructed such system and obtained easement rights from several property owners in connection with such construction.

7. After construction, Defendant imposed rate increases contrary to the terms of the Agreement and breached such Agreement by failing to negotiate in good faith, as required by the Agreement, for increases with Plaintiff.

8. Defendant sought and obtained an increase to its general customers with the TRA and inappropriately used this approval for a general rate increase to its general customers to impose an increase of the contractual rate to Plaintiff. Defendant did not even provide notice to Plaintiff of the rate increase request. Thus, Defendant has overcharged Plaintiff for water in breach of the Agreement.

9. Plaintiff has learned that Defendant recently filed a new petition with the TRA to increase certain rates and charges, Docket No. 12-00049. Contrary to its obligations in the Agreement, Defendant did not communicate with Plaintiff prior to filing this request.

10. Defendant also breached the Agreement in other respects, including by billing Walden's Ridge in CCF, when Section III of the Agreement clearly called for the rate to be per 1000 gallons, and then rounding off the conversion rate to the detriment

of Walden's Ridge. Defendant refused to correct the billing errors when Walden's Ridge brought them to Defendant's attention.

11. Defendant's breaches caused expenses and damages to Plaintiff, eventually leading to Plaintiff exercising its rights to terminate the Agreement and demand title to the improvements.

12. Pursuant to Section II(D) of the Agreement, if "Walden's Ridge terminates the agreement prior to the expiration of forty (40) years from the Date of Service, as defined below, or fails to renew the agreement for a period of time adequate to allow Tennessee-American to recover its investment, . . . then Walden's Ridge, and its successors and assigns, agree[s] to pay Tennessee-American, within thirty (30) days following such termination or event, the balance of the undepreciated costs, on a straight-line basis, of Tennessee-American's pipeline and all other facilities that are constructed to serve Walden's Ridge."

13. Walden's Ridge has provided notice to Defendant of its intent to terminate the Agreement due to Defendant's failure to comply with the terms of the Agreement.

14. Walden's Ridge has requested a calculation from Defendant of the balance of the undepreciated costs pursuant to Section II(D) and requested conveyance of the easement rights for the pipeline and other facilities. Defendant has not furnished accurate information as to the undepreciated costs.

15. Defendant originally advised the TRA that the cost to construct the pipeline and other facilities was \$2.4 million and later advised Walden's Ridge that the

actual cost was \$4.5 million. Defendant later informed Walden's Ridge that the amount was \$4.1 million, and Defendant has included inappropriate charges in its calculation.

CLAIMS FOR RELIEF

I - Breach of Contract

16. Defendant has breached the Agreement in multiple respects, including by the improper rate increases and otherwise overcharging Plaintiff.

17. Plaintiff is entitled to damages, attorney fees and pre-judgment interest for Defendant's breaches of the Agreement.

II - Declaratory Judgment

18. Under the Agreement, Walden's Ridge is entitled to the infrastructure constructed pursuant to the Agreement and related property rights upon termination of the Agreement and payment of the balance of the undepreciated costs under the terms of the Agreement.

19. Walden's Ridge seeks a declaratory judgment, pursuant to T.C.A. §29-14-101, et seq., and an order of specific performance that Defendant is obligated to convey all rights that Defendant has in the pipeline and other facilities constructed in connection with the Agreement, including easement rights in the property upon which the improvements were constructed.

20. Walden's Ridge is also entitled to a declaratory judgment regarding the amount that Walden's Ridge owes to Defendant for the pipeline and other facilities under the terms of the Agreement. A bona fide controversy exists between the real

parties in interest in this cause because, among other items, Defendant apparently seeks internal overhead costs and other expenses contrary to the terms of the Agreement.

III – Injunctive Relief

21. Walden's Ridge and its customers will suffer irreparable harm if Defendant terminates water services to Walden's Ridge prior to its securing service from another provider or if Defendant precludes Walden's Ridge from utilizing the facilities constructed by Defendant during the pendency of this proceeding. Plaintiff provides water to numerous business and residential consumers in and near Walden's Ridge, Tennessee. The end-user consumers, through no fault of their own, would lose their water service. The business consumers could be put out of business without water.

22. Walden's Ridge is entitled to temporary injunctive relief restraining and enjoining Defendant and its agents, servants, employees, representatives, attorneys, and any person(s) in active concert with it, from (i) terminating the water service provided to Walden's Ridge until Walden's Ridge secures other water service or (ii) interfering with Plaintiff's right to use the pipeline and other facilities during the pendency of this proceeding.

23. Walden's Ridge and its customers will suffer irreparable harm if Defendant is permitted to obtain a rate increase through its current TRA petition and apply such increase to Walden's Ridge without complying with the terms of the Agreement.

24. Walden's Ridge is entitled to temporary injunctive relief restraining and

enjoining Defendant and its agents, servants, employees, representatives, attorneys, and any person(s) in active concert with it, from applying any increase to the rates and charges to Walden's Ridge during the pendency of this suit.

PRAYER

WHEREFORE, Plaintiff respectfully prays that the Defendant, Tennessee-American Water Company, be served with this Complaint on its agent and, after all due proceedings, judgment be entered in Plaintiff's favor and against Defendant for the following relief:

(a) For a temporary restraining order and preliminary injunction prohibiting, restraining and enjoining Defendant, as well as its agents, servants, employees, representatives, attorneys, and any person(s) in active concert with it, from (i) terminating the water service provided to Walden's Ridge until Walden's Ridge secures other water service or (ii) interfering with Plaintiff's right to use the pipeline and other facilities during the pendency of this proceeding if Defendant threatens the same retaliation;

(b) For a temporary restraining order and preliminary injunction prohibiting, restraining and enjoining Defendant, as well as its agents, servants, employees, representatives, attorneys, and any person(s) in active concert with it, from applying any increase to the rates and charges to Walden's Ridge during the pendency of this suit;

(c) For a declaratory judgment and an order of specific performance

requiring Defendant to convey to Plaintiff all rights that Defendant has in the pipeline and other facilities constructed in connection with the Agreement, including easement rights in the property upon which the improvements were constructed;

(d) For a declaratory judgment regarding the amounts Plaintiff owes to Defendant for only the actual undepreciated costs for pipeline and facilities constructed in connection with the Agreement;

(e) For damages for breach of contract, including pre-judgment interest;

(f) For attorney fees and all costs of these proceedings; and

(g) For such other legal and equitable relief to which Plaintiff may be entitled.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CAUSE. NO OTHER JUDGE HAS DENIED THE RELIEF SOUGHT HEREIN.

Respectfully submitted,

HORTON BALLARD & PEMERTON

By: 

William H. Horton, BPR No. 1935
Bill W. Pemerton, BPR No. 024654
735 Broad Street, Suite 306
Chattanooga, TN 37402
(423) 826-2641
Attorneys for Plaintiff

STATE OF TENNESSEE)
COUNTY OF HAMILTON)

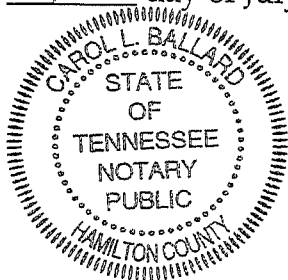
I, Ron West, General Manager of Walden's Ridge Utility District, plaintiff in the above action, after first being sworn according to law make oath that the facts and matters stated in the foregoing Sworn Complaint are true to the best of my knowledge, information, and belief.

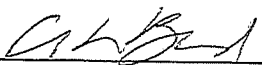
WALDEN'S RIDGE UTILITY DISTRICT

By: 

Before me, a Notary Public, duly appointed, commissioned and qualified in and for the State and County aforesaid, personally appeared Ron West, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be General Manager of Walden's Ridge Utility District, a public utility, and that he, being authorized to do so, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as General Manager.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal on this the 7th day of July, 2012.




NOTARY PUBLIC

My commission expires: 3-3-15

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been serviced upon counsel for all parties at interest in this case by delivering a true and exact copy of said pleading to the office of said counsel or by placing a true and exact copy of said pleading in the United States Mail, addressed to said counsel at his/her office, with sufficient postage thereupon to carry the same to its destination.

Tennessee-American Water Company
c/o Deron E. Allen
1101 Broad Street
Chattanooga, TN 37402

This 10th day of July, 2012.

HORTON, BALLARD & PEMERTON

By: ALB

IN THE CHANCERY COURT OF HAMILTON COUNTY, TENNESSEE

WALDEN'S RIDGE UTILITY DISTRICT,)
)
Plaintiff,)
)
v.)
)
TENNESSEE-AMERICAN WATER)
COMPANY,)
)
Defendant.)

No. 12-0504

Part II

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

The Plaintiff, through counsel and pursuant to Rule 65 of the Tennessee Rules of Civil Procedure, moves the Court for a temporary restraining order preventing Defendant from applying any increase to the water rates and charges to Plaintiff pending further hearing of the Court.

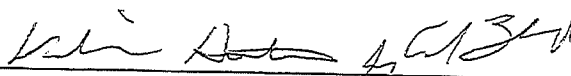
In support of this motion, Plaintiff would show that Defendant recently filed a new petition with the Tennessee Regulatory Authority to increase certain water rates and charges, Docket No. 12-00049. Defendant has applied prior TRA-approved increases to Plaintiff without notice to Plaintiff in violation of the terms of the parties' agreement. Plaintiff relies on the sworn allegations in its Amended Complaint in support of this motion.

2012 JUL 10 PM 3:49

FILED
S. LEE AKERS, C&M

Respectfully submitted,

HORTON BALLARD & PEMERTON

By: 

William H. Horton, BPR No. 1935
735 Broad Street, Suite 306
Chattanooga, TN 37402
(423) 826-2641
Attorneys for Plaintiff

NOTICE OF HEARING

This motion will be heard on July 23, 2012 at 8:00 a.m.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served on counsel for all parties at interest in this cause by depositing a copy of same in the United States Mail with sufficient postage thereon to carry same to its destination, addressed as follows:

Tennessee-American Water Company
c/o Deron E. Allen
1101 Broad Street
Chattanooga, TN 37402

This 15th day of July, 2012.

HORTON, BALLARD & PEMERTON

By: 