

# BUTLER SNOW

July 19, 2012

## VIA HAND DELIVERY

Hon. Kenneth C. Hill, Chairman  
c/o Sharla Dillon  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

**RE: Petition Of Tennessee American Water Company To Change And Increase  
Certain Rates And Charges So Far 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, TRA Docket No. 12-00049**

Dear Chairman Hill:

Enclosed please find the original plus thirteen (13) copies of *Tennessee-American Water Company's Proposed Resolution Concerning Public Safety Issues*. An extra copy is also attached to be filed-stamped for our records.

Should you have any questions concerning this filing, or require additional information, please do not hesitate to let me know.

Very truly yours,

BUTLER, SNOW, O'MARA, STEVENS &  
CANNADA, PLLC

Melvin J. Malone

clw  
Enclosures

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

<b>PETITION OF TENNESSEE AMERICAN</b>	)	
<b>WATER COMPANY TO CHANGE AND</b>	)	
<b>INCREASE CERTAIN RATES AND</b>	)	
<b>CHARGES SO FAR AS TO PERMIT IT TO</b>	)	<b>DOCKET NO. 12-00049</b>
<b>EARN A FAIR AND ADEQUATE</b>	)	
<b>RATE OF RETURN ON ITS PROPERTY</b>	)	
<b>USED AND USEFUL IN FURNISHING</b>	)	
<b>WATER SERVICE TO ITS CUSTOMERS</b>	)	

**TENNESSEE-AMERICAN WATER COMPANY'S PROPOSED RESOLUTION  
CONCERNING PUBLIC SAFETY ISSUES**

In order to ensure that the Tennessee Regulatory Authority ("TRA" or "Authority") has complete information before ruling on the City of Chattanooga's ("City") extraordinary request to order TAWC to cooperate with the City concerning critical public safety issues, Tennessee-American Water Company ("TAWC") respectfully submits this filing.<sup>1</sup> Due to the extraordinary nature of the relief requested by the City, and as the requested information is protected critical infrastructure information, TAWC continues to respectfully request that the TRA affirm the scope and purpose of a rate case by denying the City's extraordinary request, or alternatively, defer the City's request for consideration in a separate proceeding to be conducted following the conclusion of this proceeding. Notwithstanding the foregoing, the Authority could also defer this matter to TAWC and the City for further private discussions, such as those outlined in TAWC's proposed resolution set forth herein.

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<sup>1</sup> Normally, pursuant to TRA Rule 1220-1-2-.06(3) no reply to a response is permitted absent leave of the Authority. As the City submitted such a response without obtaining leave of the Authority to do so, TAWC has no reason to expect that the City will object to this filing.

## I.

### DISCUSSION

#### a. TAWC Has Not Refused To Cooperate With The City

The underlying premise of the City's claim is TAWC's alleged "refusal to cooperate" with the City concerning critical public safety issues related to emergency and disaster preparedness. The City's claim that TAWC has refused to cooperate continues to perplex TAWC. In addition to the information provided in the *Response to the Petition of the City of Chattanooga to Intervene and Opposition to an Order Requiring Cooperation Concerning Public Safety Issues* ("Initial Response In Opposition"), TAWC notes the following.

First, as evidenced by the attached affidavit of TAWC engineer Kate Narthey, TAWC was approached in early 2011 by Randy Taylor, a former TAWC engineer. See **Exhibit A**, attached hereto. Mr. Taylor referenced a study being conducted by Jacobs Engineering on behalf of the City and requested that Ms. Narthey provide TAWC maps of all the interconnections with water utility districts in the area. Mr. Taylor also requested TAWC's hydraulic model as well. Pursuant to this request, Ms. Narthey provided Mr. Taylor with the requested maps. Ms. Narthey did not provide the hydraulic model because she was not authorized to do so. TAWC provided this information even though the City's request and study appear to not be in concert with, or at the direction of, either the Federal Department of Homeland Security or the Tennessee Department of Safety & Homeland Security. So, contrary to the City's claim, TAWC has been cooperative.

Second, in early May 2011, TAWC received a letter from the City regarding a "Request for Information – Water System Interconnect Study." See **Exhibit B**, attached hereto. It should be noted that the letter does not seek TAWC's active involvement and full participation in the

study. Rather, it only contains a request for information. And, although the letter provides that the City Engineer is “available to meet with you or your staff to discuss the project in more detail,”<sup>2</sup> TAWC’s efforts to attend meetings related to this study were rebuffed, and it was not invited. Again, given these circumstances, it is hardly appropriate to characterize TAWC as uncooperative.

Third, it cannot be refuted that the information requested by the City is, to say the least, extremely sensitive and proprietary. Nonetheless, a review of the afore-referenced May 2, 2011 letter (Exhibit B) reveals that the letter contains no representation or commitment that any information produced would be held confidentially. In addition to being sensitive and proprietary, TAWC holds its maps and hydraulic model in the strictest of confidence for significant public safety and security reasons as well. It cannot be credibly contended that TAWC’s efforts to protect such sensitive information renders it uncooperative.

**b. TAWC Has Cooperated With State And Federal Authorities**

As noted in its *Initial Response In Opposition*, TAWC has, at all times, complied with the applicable public safety regulations and requirements, including those related to emergency and disaster preparedness. It is noteworthy that the City has not made a single allegation to the contrary.

By way of example, TAWC has voluntarily participated in a Site Assistance Visit and in an Enhanced Critical Infrastructure Program/Survey Tool by the Federal Department of Homeland Security. In fact, in connection with such participation, and as evidence of TAWC’s legitimate concerns regarding the disclosure of its sensitive and proprietary information, TAWC requested that the information produced be protected from disclosure by the Federal Department

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<sup>2</sup> Exhibit B.

of Homeland Security pursuant to the provisions of the Critical Infrastructure Information Act of 2002, 6 U.S.C. §§131-134.

**c. TAWC Has Long Deemed Its Maps Confidential For Safety And Security Reasons**

Immediately subsequent to the terrorist attacks on September 11, 2001, American Water Works Company, Inc. and its regulated subsidiaries, including TAWC, instituted procedures and standards designed to prohibit the release of system maps and related sensitive information. At that time, the public's safety mandated that such information be deemed sensitive and confidential, as the release of the same poses a substantial security risk. To aid municipalities with respect to emergency planning and response activities, modified, sanitized versions of the maps were developed.

While the City is rightly concerned about the safety and welfare of its citizens and others in the surrounding area in the event of an emergency or disaster, TAWC is no less concerned that the release of its sensitive information in any respect may result in such information falling into the wrong hands and being used for untoward purposes, including causing harm to the public. In sum, TAWC has not provided all of the information requested by the City due to TAWC's own heightened, post-911 concerns about public safety and security. Under the Critical Infrastructure Information Act of 2002, the requested information is considered protected critical infrastructure information. As TAWC understands the study, coupled with what it has learned in relation to the study from the public domain, had TAWC provided maps of its entire system, along with its proprietary hydraulic model, it is highly likely, if not a certainty, that such would have been fairly widely distributed beyond Jacobs Engineering. This is an unacceptable risk that TAWC was not willing to take.

## **II.**

### **PROPOSED VOLUNTARY RESOLUTION**

As demonstrated above, TAWC's unwavering position remains that the City's request should be summarily denied. Nonetheless, in the spirit of cooperation, TAWC submits a reasonable, voluntary resolution, which would require no affirmative action, order or directive by the TRA with respect to the City's request.

As set forth herein, TAWC has, among other things, already provided the requested maps of all the interconnections with water utility districts in the area. To resolve the City's request, and in aid of the study, TAWC will do the following: (a) consider and evaluate – in good faith – going forward requests for selected mapping (as opposed to a map of its entire system) related to interconnection areas and where appropriate produce the same to Jacobs Engineering, subject to the execution of a non-disclosure agreement submitted by TAWC; and (b) permit Jacobs Engineering, subject to the execution of a non-disclosure agreement submitted by TAWC, to view TAWC's maps and its hydraulic model at TAWC's office or other TAWC designated locations.

Under the circumstances presented, TAWC is persuaded that this voluntary proposal offers the City a good faith resolution to its extraordinary request. TAWC proposes that on or before July 25, 2012, TAWC and the City notify the agency whether TAWC and the City have agreed to this, or a substantially similar, voluntary resolution.

## **III.**

### **CONCLUSION**

Although the TRA may examine, as part of this proceeding, whether TAWC is currently providing safe service to its customers, this proceeding should not be unduly broadened to

encompass the relief the City has requested with regard to public safety. TAWC very much respects the City of Chattanooga and its desire to protect the citizens in the Greater Chattanooga area. TAWC takes no issue whatsoever with efforts by the City to ensure the safety of its citizens. Even still, TAWC itself has a duty and responsibility to protect its sensitive and proprietary information. In doing so, TAWC likewise protects the citizens in the Greater Chattanooga area.

For the foregoing reasons, TAWC respectfully asks the TRA to deny the City's request with regard to public safety issues, or alternatively, to either defer this request to TAWC and the City for further private discussions or to defer the issues for consideration in a separate proceeding.

This the 19<sup>th</sup> day of July, 2012.

Respectfully submitted,

By: 

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Attorneys for Tennessee American Water  
Company

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

PETITION OF TENNESSEE AMERICAN )  
 WATER COMPANY TO CHANGE AND )  
 INCREASE CERTAIN RATES AND )  
 CHARGES SO FAR AS TO PERMIT IT TO ) **DOCKET NO. 12-00049**  
 EARN A FAIR AND ADEQUATE )  
 RATE OF RETURN ON ITS PROPERTY )  
 USED AND USEFUL IN FURNISHING )  
 WATER SERVICE TO ITS CUSTOMERS )

**AFFIDAVIT OF KATE NARTEY-QUAYE**

Comes the affiant, Kate Nartey-Quaye, and after being duly sworn states, upon knowledge, information and belief, as follows:

1. My name is Kate Nartey-Quaye, and I am the Engineering Project Manager for Tennessee-American Water Company ("TAWC").
2. In early 2011, Randy Taylor, a former TAWC engineer, called me at TAWC. Mr. Taylor was not employed by TAWC at this time. During this telephone call, Mr. Taylor informed me that the City of Chattanooga was conducting an interconnection study and that he was calling on behalf of Jacobs Engineering in relation to the study. Mr. Taylor requested TAWC maps of all the interconnections with area water utility districts and TAWC's hydraulic model. I provided the requested maps to Mr. Taylor, but I did not provide TAWC's hydraulic model.
3. Further the affiant sayeth naught.

**Kate Narley-Quaye**

STATE OF TENNESSEE  
COUNTY OF HAMILTON

Subscribed, acknowledged, and sworn to before me by Kate Nartey-Quaye on this 19<sup>th</sup>  
day of July 2012.

My commission expires 8/25/2012.

NOTARY PUBLIC







## City of Chattanooga

Department of Public Works

Engineering Division

Development Resource Center

1250 Market Street, Suite 2100 • Chattanooga, TN 37402-2713

(423) 643-6190 • Fax (423) 643-6008

May 2, 2011

Mr. Deron Allen, President  
Tennessee American Water Company  
P. O. Box 6338  
Chattanooga, TN 37401

RE: Request for Information- Water System Interconnect Study

Dear Mr. Allen:

The City of Chattanooga is conducting a study to assure water service is available to all citizens should an emergency or catastrophic event occur. The study will evaluate the potential and feasibility for the establishment of water system interconnections between various water systems. The City has contracted with Jacobs Engineering to conduct the study.

This project will provide an engineering review of any existing system interconnects, identify system constraints that restrict supply and estimate volumes that can be supplied via existing and proposed interconnects. I am available to meet with you or your staff to discuss the project in more detail if you prefer. Specifically, Jacobs would need high level hydraulic information such as system distribution maps of significant transmission mains and tank overflow elevations. We would also request a copy of the system hydraulic model so that Jacobs can perform a limited hydraulic analysis of the major transmission mains, pump stations and storage facilities.

In light of this important study for our citizens, please extend your cooperation to Jacobs Engineering in assisting them with gathering information concerning your water system. Should you require any additional information or have questions, please feel free to contact me at (423) 643-6160 or Mike Marino at Jacobs Engineering at (423) 779-3075.

Sincerely,

A handwritten signature in black ink, appearing to read "W. C. Payne".

William C. Payne, P.E.  
City Engineer

cc: Marty D. Hawkins, City of Chattanooga  
Mike Marino, P.E. Jacobs Engineering  
Kate Nartey, TAWC

Water Quality Management  
(423) 643-5877  
FAX: (423) 643-5862

Technical Information Center  
(423) 643-6033  
FAX: (423) 643-6027

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served either via U.S. Mail or electronically on this 19th day of July, 2012, to:

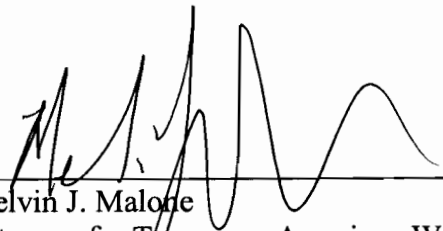
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