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July 20, 2012

VIA EMAIL AND USPS

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

filed electronically in docket office on 07/20/12

Re: In re: TRA Docket No. 12-00049

Dear Ms. Dillon:

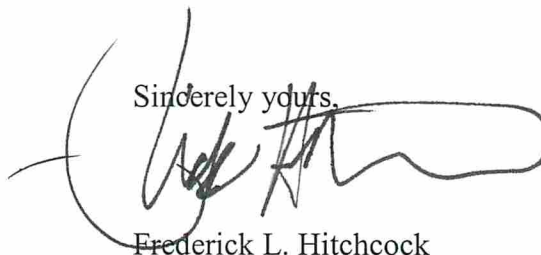
Enclosed are an original and five (5) copies of the City of Chattanooga's Response to Tennessee American Water Company's Renewed Opposition to Petition Concerning Public Safety Issues.

Please file these appropriately in the referenced docket.

I would appreciate you stamping the extra copies of the documents as "filed," and returning them to me in the enclosed, self-addressed, stamped envelope.

With best regards, I am

Sincerely yours,



Frederick L. Hitchcock

FLH:pgh
Enclosures

cc: Mr. Melvin Malone
Mr. Lindsey W. Ingram, III
Mr. Ryan L. McGehee
Mr. Phillip A. Noblett
Mr. William H. Horton
Mr. Michael A. McMahan
Mr. Tom Greenholtz

IN RE:

**PETITION FOR A GENERAL RATE
INCREASE, IMPLEMENTATION OF A
DISTRIBUTION SYSTEM
INFRASTRUCTURE CHARGE AND THE
ESTABLISHMENT OF TRACKING
MECHANISMS FOR PURCHASED
POWER, PENSIONS AND CHEMICAL
EXPENSES**

Docket No. 12-00049

**CITY OF CHATTANOOGA'S RESPONSE TO TENNESSEE AMERICAN WATER
COMPANY'S RENEWED OPPOSITION TO PETITION CONCERNING PUBLIC
SAFETY ISSUES**

The City of Chattanooga (“Chattanooga” or “City”), by and through counsel, offers this brief response to the late-filed, restated opposition of Tennessee American Water Company (“TAWC”) to Chattanooga’s Petition concerning public safety issues. In its latest pleading, TAWC asserts that the dispute should be resolved by TAWC promising to talk further with the City and to consider further the City’s request for critical public safety information. Respectfully, that “resolution” would constitute nothing more than a denial of the City’s Petition.

THE CONTEXT FOR THE CITY'S PETITION

The Nashville water system is served by two treatment plants. *TAWC has only one.* In the 2010 Nashville flood, one of Nashville's two water treatment plants was flooded and rendered unusable. Only after an extended struggle, including the labor of hundreds of state prisoners placing sandbags, was the second plant saved from the flood waters. Had the second of Nashville's two water treatment plants been flooded and rendered useless, its citizens, its

hospitals, its manufacturers, its critical public offices and infrastructure would have been crippled for days or weeks. *TAWC has only one treatment plant.*

It is the responsibility of the City of Chattanooga and of this Authority to evaluate, plan for, and seek to avoid catastrophic harm that would follow the loss of TAWC's treatment plant or other critical elements of its water storage or distribution system. The City's pending Petition simply seeks the information necessary to evaluate the steps needed for interconnection of TAWC's system with a second, and a third, treatment plant to be used if a manmade or natural disaster rendered unusable TAWC's single treatment plant or other critical portions of TAWC's system.

The motivation for TAWC's opposition to the City's petition is not known, as the "reasons" set forth in TAWC's papers provide no justification. While the City can speculate about true motives, the "reasons" articulated by TAWC offer no counterweight when balanced against the public safety of the citizens, businesses, manufacturers, and public institutions of the City.

Regardless of its undisclosed motivation, TAWC's opposition to the City's petition evidences TAWC's lack of concern with the catastrophic risks that Chattanooga seeks to address.

THERE IS NOTHING EXTRAORDINARY ABOUT THE TRA'S OVERSIGHT OF THE SAFETY AND EFFICIENCY OF A UTILITY SUBJECT TO ITS REGULATION

TAWC asserts that the City's Petition is an extraordinary request. If TAWC by that characterization argues that the Authority does not have the authority to entertain and grant the City's request for an order requiring cooperation as to public safety issues, TAWC is mistaken.

As the City discussed in its previous response to TAWC's opposition to the Authority's review of the public safety issues raised by the City, this Authority has practically unlimited

authority to oversee the safety and efficiency of TAWC in this proceeding. *Tennessee Cable Television Ass'n v. Tennessee Public Service Commission*, 844 S.W.2d 151, 159 (Tenn. Ct. App. 1992), *req. perm. app. den'd id.* (holding that the Authority has "practically plenary authority over the utilities within its jurisdiction"); *see, e.g.*, Tenn. Code Ann. § 65-4-104 ("The authority has general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises . . ."); Tenn. Code Ann. § 65-4-106 (Chapter shall be given liberal construction as to the power granted to the Authority "to the end that the authority may effectively govern and control the public utilities placed under its jurisdiction . . ."). The Authority is required to "take into account the safety, adequacy and efficiency or lack thereof of the service or services furnished by the public utility" in determining whether the rates requested are just and reasonable. Tenn. Code Ann. § 65-5-103(a). Review by this Authority of TAWC's refusal to cooperate with the City on critical public safety initiatives is appropriate and essential to evaluate the safety, adequacy, and efficiency of the services provided by TAWC in relation to the setting of TAWC's rates in this proceeding.

The Authority has regularly exercised its broad jurisdiction to oversee the operations of TAWC and other utilities. For example, the TRA has required TAWC to complete a management audit in compliance with Sarbanes-Oxley requirements. TRA Final Order, Docket No. 06-00290. When TAWC did not adequately comply with the TRA's instructions concerning the management audit, the TRA ordered that another be completed. TRA Final Order Docket No. 08-00039. The TRA had previously instructed TAWC to submit regular reports concerning its customer service, and TAWC is required to submit regular surveillance reports to permit the TRA to monitor its operations.

**THE FEDERAL CRITICAL INFRASTRUCTURE INFORMATION ACT DOES NOT
PREVENT INFORMATION SHARING WITH THE CITY**

TAWC is incorrect in its suggestion that the federal Critical Infrastructure Information Act of 2002 ("CII Act") prevents or restricts the City from access to TAWC's maps and other information about TAWC's system. While the CII Act provides certain restrictions for critical infrastructure information (CII) voluntarily disclosed to the Department of Homeland Security (DHS) that DHS then shares with state or local governments, the CII Act does not prevent or limit the ability of a state or local government to obtain CII from TAWC or any other utility. *See* 6 U.S.C. § 133(c) ("Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a) of this section . . ."). Consistent with the statutory provisions, the implementing regulations for the CII Act only provide that state or local governments may not disclose protected CII that has been submitted voluntarily to the Department of Homeland Security, and which is then shared with state and local governments. *See, e.g.,* 6 C.F.R. § 29.2(g); 6 C.F.R. § 29.3(b).

Of course, the information that the City seeks, even if it could be classified as CII, would not be obtained from DHS, but would be obtained directly from TAWC pursuant to the order sought by the City's Petition.

**TENNESSEE LAW BROADLY PROTECTS UTILITY INFRASTRUCTURE
INFORMATION FROM PUBLIC DISCLOSURE.**

Although the federal Critical Infrastructure Information Act of 2002 cited by TAWC does not have direct applicability, Tennessee law provides similarly broad confidentiality protection for critical infrastructure information. Tenn. Code Ann. 10-7-504(a)(21) provides:

(21)(A) The following records shall be treated as confidential and shall not be open for public inspection:

- (i) Records that would allow a person to identify areas of structural or operational vulnerability of a utility service provider or that would permit unlawful disruption to, or interference with, the services provided by a utility service provider;
- (ii) All contingency plans of a governmental entity prepared to respond to or prevent any violent incident, bomb threat, ongoing act of violence at a school or business, ongoing act of violence at a place of public gathering, threat involving a weapon of mass destruction, or terrorist incident.

(B) Documents concerning the cost of governmental utility property, the cost of protecting governmental utility property, the cost of identifying areas of structural or operational vulnerability of a governmental utility, the cost of developing contingency plans for a governmental entity, and the identity of vendors providing goods or services to a governmental entity in connection with the foregoing shall not be confidential. However, any documents relating to these subjects shall not be made available to the public unless information that is confidential under this subsection (a) or any other provision of this chapter has been redacted or deleted from the documents.

(C) As used in this subdivision (a)(21):

- (i) "Governmental entity" means the state of Tennessee or any county, municipality, city or other political subdivision of the state of Tennessee;
- (ii) "Governmental utility" means a utility service provider that is also a governmental entity; and
- (iii) "Utility service provider" means any entity, whether public or private, that provides electric, gas, water, sewer or telephone service, or any combination of the foregoing, to citizens of the state of Tennessee, whether or not regulated by the Tennessee regulatory authority.

(D) Nothing in this subdivision (a)(21) shall be construed to limit access to these records by other governmental agencies performing official functions or to preclude any governmental agency from allowing public access to these records in the course of performing official functions.

The City applies these provisions to protect covered information about its utility infrastructure and will, of course, apply the provisions to protect covered information received from TAWC.

**TAWC'S RELEASE OF THE INFORMATION REQUESTED BY THE CITY WILL
REDUCE, NOT INCREASE, HOMELAND SECURITY THREATS**

The City will apply Tenn. Code Ann. § 10-7-504(a)(21) to protect TAWC covered infrastructure information, just as it applies it to protect its own covered infrastructure information. TAWC's cooperation with the City to provide requested information that will permit identification of backup water supply options will *reduce* the threat of disruption of water supplies, not increase it.

As the TRA well knows, TAWC's treatment plant is bisected by one of Chattanooga's busiest four-lane highways. It is located beside the Tennessee River at its intersection with a major creek, all fully visible to anyone. TAWC's pumping facilities and storage tanks throughout the community are obvious to all who care to look. If the location of TAWC's mains were of interest, they generally can be located by reference to water valves visible in the streets. If more precise information was desired, a call to Tennessee One Call will result in marking the exact location of TAWC's mains at any particular location. All of this information, conceivably of interest to someone with harmful intent, is completely visible to the public.


The information the City has sought from TAWC, as explained in the letter submitted by TAWC as Exhibit B to its latest filing, consisted of maps that would show the location and size of mains and valves and hydraulic information necessary to evaluate alternatives for interconnection and flow. If any of the information provided by TAWC is of the type covered by Tenn. Code Ann. § 10-7-504(a)(21), the City will apply that statute and other applicable law to protect its confidentiality. It is not credible to argue that access by the City and its engineers to this information poses any security risk to the integrity of the water supply whatsoever.

CONCLUSION

TAWC asks this Authority to sanction its refusal to cooperate with the City of Chattanooga on critical public safety issues. For reasons that it does not articulate, TAWC is willing to place the citizens of Chattanooga at risk of catastrophic harm. The City of Chattanooga is not willing to do so. The City is confident that this Authority will reject TAWC's unreasonable and irresponsible refusal of cooperation.

Respectfully Submitted,

OFFICE OF THE CITY ATTORNEY

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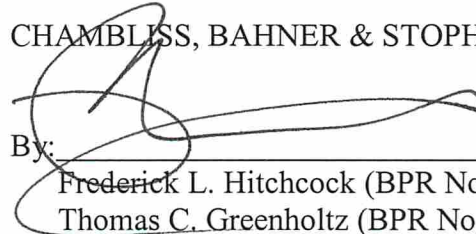
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing pleading was emailed and was served upon the following person(s) via ☐ hand delivery or ☒ United States first class mail with proper postage applied thereon to ensure prompt delivery:

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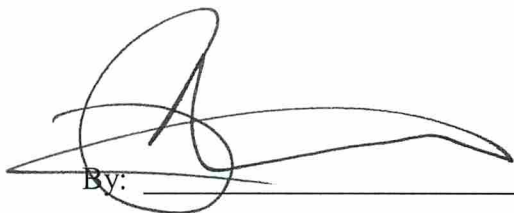
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This 20th day of July, 2012.

By:  _____