

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

JOINT PETITION OF)	
TENNESSEE-AMERICAN WATER)	
COMPANY, THE CITY OF)	DOCKET NO. 12-00157
WHITWELL, TENNESSEE, AND THE)	
TOWN OF POWELLS CROSSROADS,)	
TENNESSEE, FOR APPROVAL OF A)	
PURCHASE AGREEMENT AND A)	
WATER FRANCHISE AGREEMENT)	
AND FOR THE ISSUANCE OF A)	
CERTIFICATE OF CONVENIENCE)	
AND NECESSITY)	
)	

**MOTION REQUESTING CLARIFICATION OF ORDER APPROVING PURCHASE
AGREEMENT, FRANCHISE WATER AGREEMENT AND CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

Tennessee-American Water Company ("TAWC"), by and through counsel, respectfully moves the Tennessee Regulatory Authority ("TRA" or the "Authority"), to clarify, in part, its Order Approving Purchase Agreement, Franchise Water Agreement and Certificate of Public Convenience and Necessity of October 15, 2013 ("Order"), with regards to the purchase price approved by the Authority, consistent with its findings and conclusions and the evidentiary record.

I. Procedural Background

On December 27, 2012, TAWC filed an Expedited Joint Petition along with the City of Whitwell and the Town of Powells Crossroads seeking both the approval of the acquisition by TAWC of the water system owned by Whitwell and the approval of a franchise agreement

between Powells Crossroads and TAWC.¹ In conjunction with these requests, TAWC sought a Certificate of Convenience and Necessity (“CCN”) to serve the areas currently served by Whitwell.²

Exhibit No. 2 to the Purchase Agreement executed by TAWC and the City of Whitwell, and attached to the Joint Petition, defines the purchase price relied on by the parties to the acquisition. In defining the purchase price, the Exhibit provided that the purchase price would equal the total rate base value of the acquired assets as of the closing date, calculated using the original cost method of accounting, of the Whitwell Water System and the acquired assets, as determined by TAWC, subject to the approval of the Authority, and upon which the Authority authorizes TAWC to earn a specific rate of return, but excluding the value of any cash, working capital, accumulated deferred income taxes, and accumulated deferred investment tax credits.³

II. Legal Argument and Discussion

A. Discovery Request # 35 and TAWC’s response.

In the course of discovery, the Consumer Advocate, in Data Request # 35, asked TAWC to “provide the final purchase price and any reconciliation to the purchase price provided in the petition.”⁴ TAWC responded to the first part of this request by stating that it could not determine the final purchase price until a closing date could be established, as provided in the Purchase Agreement.⁵ In a good-faith effort to be responsive, however, and for illustrative purposes only, TAWC supposed a closing date of January 1, 2013, with an estimated purchase price of \$1,557,603, for that date.

¹ *Joint Petition of Tennessee American Water Company, the City of Whitwell, Tennessee, and the Town of Powells Crossroads, Tennessee For Approval of a Purchase Agreement and a Water Franchise Agreement and for the Convenience and Necessity*, pg. 1.

² *Id.*

³ *See Exhibit 2 to Purchase Agreement pg. 5*, attached as Exhibit A to Joint Petition. (emphasis added)

⁴ *See Data Request # 35, filed by Consumer Advocate on April 3, 2013.*

⁵ *See TAWC’s Response to Data Request # 35, filed by TAWC on April 4, 2013.*

B. Consistent with the evidentiary record and the Order Approving Purchase Agreement, Franchise Water Agreement and Certificate of Public Convenience, the Authority should revise Ordering Clause No. 5 to make it consistent with the Authority's findings and conclusions and the evidentiary record.

In Ordering Clause No. 5 of the Order, the Authority unanimously approved the acquisition and granted TAWC “the purchase price amount found in the response to the Consumer Advocate’s data request Item No. 35 filed on April 4, 2013, and defined in Confidential Exhibit 2 to the Purchase Agreement.”⁶ This Clause, however, appears to contradict the findings and conclusions of the Authority by referencing and incorporating the specific purchase-price amount provided by TAWC in its illustrative response to DR # 35.⁷

Contrary to Ordering Clause No. 5, in its findings and conclusions, the Authority clearly noted that TAWC established that “the purchase price of the Whitwell System would be equal to the rate base value of the water utility assets as of the date of closing, using the original cost method of accounting.”⁸ In addition, in the findings and conclusions, after noting that the Authority was persuaded that the testimony presented by TAWC at the hearing presented a reasonable valuation of the System and the associated purchase price, the Order provides that the Authority “voted unanimously to

⁶ See *Final Order*, Page 26, ¶5.

⁷ As stated throughout this Motion, the purchase price is calculated based on the total rate base value of the acquired assets as of the date of closing using the original costs method of accounting. Therefore, the illustrative amount provided by TAWC in response to DR #35 and the purchase price are mutually exclusive. The illustrative, specific purchase price provided by TAWC was only correct for the proposed closing date of January 1, 2013, provided in response to DR #35. Using the calculation method provided by Exhibit 2 to the Purchase Agreement would likely produce a different purchase price at this time.

⁸ See *Order*, pg. 16.

approve the requested purchase price, as defined in Confidential Exhibit 2 to the Purchase Agreement.”⁹

As noted above and recognized by the Authority in its findings and conclusions, the purchase price, as defined in the Purchase Agreement, is impacted by the rate-base value of the System’s assets less depreciation and other factors at the time of closing. As stated in TAWC’s response to the DR, the Company cannot determine a certain purchase price until it establishes a closing date. Therefore, the specific purchase-price amount provided in response to DR # 35 was an illustrative example only with a supposed purchase date. This illustrative response was not intended to, nor does it, represent the actual, final purchase price. Thus, if the ordering clause is not consistent with the evidentiary record and the findings and conclusions of the Order, it is appropriate to revise the ordering clause to make it consistent with the evidentiary record and the findings and conclusions of the Order.

III. Conclusion

For the foregoing reasons, TAWC respectfully requests that the Authority revise Ordering Clause No. 5 of its Order to specify that the approved purchase price is provided by Exhibit 2 to the Petition, and not the illustrative amount provided by TAWC in response to DR # 35.

⁹ See Order, pgs. 19-20.

Respectfully submitted this 30th day of October, 2013.

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Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served electronically to the following this 30th day of October, 2013.

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