

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

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

**RESPONSE TO TENNESSEE AMERICAN WATER COMPANY'S MOTION
REQUESTING CLARIFICATION OF ORDER APPROVING PURCHASE
AGREEMENT, FRANCHISE WATER AGREEMENT AND CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

The Consumer Advocate and Protection Division ("Consumer Advocate") files this response to Tennessee American Water Company's Motion Requesting Clarification of Order Approving Purchase Agreement, Franchise Water Agreement and Certificate of Public Convenience and Necessity. The Consumer Advocate does not object to a clarification regarding the purchase price in the *Order Approving Purchase Agreement, Franchise Water Agreement and Certificate of Public Convenience and Necessity*, Docket No. 12-00157 (Oct. 15, 2013) ("*Order*"), but it does object to a clarification that adopts the definition of purchase price set forth by Tennessee American Water Company ("TAWC") in its motion because the definition is based on "rate base" and therefore inconsistent with Paragraph 10 of the *Order* stating that the Tennessee Regulatory Authority ("TRA") is deferring the rate base determination to the next rate case.

The Consumer Advocate has never objected to the purchase. *Post-Hearing Brief of the Consumer Advocate*, Docket No. 12-00157, pg. 2 (May 24, 2013). Rather, the Consumer Advocate disputed TAWC's request to determine rate base in this proceeding. *Id.* at 3. As

pointed out by the Consumer Advocate, determining the reasonableness of the purchase price but not the amount to be put in rate base is consistent with other states. *Id.* at 7 (“States that wait to determine rate base may consider the reasonableness of the purchase price as to whether the overall transaction is in the public interest or rather if it is a public detriment.”). The Consumer Advocate agrees the current language of Paragraph 5 of the *Order* could be construed as being inconsistent with or otherwise unclear as to the final purchase price. Therefore, TAWC’s request for a clarification of what purchase price the TRA finds reasonable is not unwarranted. Since the purchase price is uncertain until the time of closing, the Consumer Advocate does not object to a finding that a calculation of the purchase price is reasonable, as opposed to approving an actual amount.

TAWC requests the TRA to find the purchase price reasonable based on its definition of the purchase price, as set forth in Exhibit 2 of the Purchase Agreement (see Appendix 1), but this definition is based on “total rate base value” and inconsistent with other aspects of the *Order*. Assets are not “rate base” until the TRA issues an order determining the assets are rate base. Here, the TRA has specifically ordered to defer the determination of rate base until the next rate case. *Order*, at 27 ¶ 10. Therefore, the approval of a purchase price that defines the acquisition assets as “rate base” would be inconsistent with other aspects of the *Order*.

Because TAWC’s request would result in inconsistencies in the *Order*, the Consumer Advocate objects to the TRA modifying the *Order* to adopt TAWC’s definition of the purchase price in its Exhibit 2. Instead, the Consumer Advocate recommends the TRA clarify the *Order* to find the purchase price reasonable if it is based on historical original cost less accumulated depreciation, which is consistent with other aspects of TAWC’s definition of the purchase price

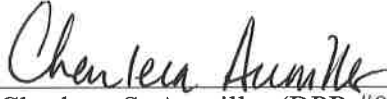
("calculated using the original cost method of accounting") and TAWC's witness Daniel Bickerton's testimony (*see Order*, at 10).

CONCLUSION

For the reasons previously stated, the Consumer Advocate respectfully requests the TRA to deny TAWC's request to adopt its definition of the purchase price and, instead, clarify the *Order* to a finding that a purchase price based on historical cost less accumulated depreciation is reasonable so such finding is consistent with Paragraph 10 of the *Order*.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

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This the 31st day of October, 2013.


Charlena S. Aumiller

Appendix 1

EXHIBIT 2

Definitions

"Accounting Methodologies" shall mean those accounting methodologies set forth in Exhibit 3. In the event of any conflict between GAAP and the Accounting Methodologies, the Accounting Methodologies shall prevail.

"Acquired Assets" means all right, title, and interest in and to all of the assets which are owned or held by Seller as of the Effective Time that constitute the System or that are used in the operation thereof, including, with respect to the System, all of its (a) Real Property now used and required in the ongoing operation of the System, (b) Tangible Personal Property, (c) intellectual property, goodwill associated therewith, licenses and sublicenses granted and obtained with respect thereto, and rights thereunder, remedies against past, present, and future interests therein under the Laws of all jurisdictions, (d) leases, subleases, easements, rights of way, and rights thereunder, (e) all rights of Seller in and to any indentures, mortgages, instruments, Encumbrances, or guaranties secured for the operation of the System, (f) claims, prepayments, refunds, causes of action, rights of recovery, rights of set-off, and rights of recoupment (including any such item relating to the payment of Taxes), (g) franchises, approvals, Permits, pending application for Permits and Permit renewals, exemptions from any Permits, licenses, Orders, registrations, certificates, variances, and similar rights obtained from governments and governmental agencies in each case to the extent assignable or transferable to Tennessee American Water Company, (h) books, data, records, ledgers, files, documents, correspondence, lists, plats, architectural plans, drawings, specifications, creative materials, studies, reports, and other printed or written materials related to Seller's construction, maintenance, and operation of the System, and (i) all of the intangible rights and property, if any, of Seller utilized in the operation of the System, provided that Acquired Assets shall not include any Excluded Assets.

"Acquisition Proposal" means any offer or proposal for the acquisition of Seller, the Acquired Assets or any portion thereof, whether by way of merger or consolidation, the acquisition of assets or similar transaction.

"Affiliate" means any Person which, directly or indirectly controls, is controlled by, or is under common control with, the Buyer.

"Audited Financial Statements" means the audited balance sheets of Seller as of FYE June 2012 and the related audited statements of income and cash flows for the twelve (12) month period ended FYE June 2012, respectively.

"Bill of Sale" means a bill of sale for all of the Acquired Assets that are Tangible Personal Property substantially in the form of Exhibit 4 (the "Bill of Sale").

"Business Day(s)" means any day other than (i) Saturday or Sunday, or (ii) any other day on which governmental offices in the State of Tennessee are permitted or required to be closed.

"Cleanup" means investigation, cleanup, removal, containment or other remediation or response actions.

"Closing" means the closing of the Contemplated Transactions.

"Closing Date" means the date on which the Closing actually occurs.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations and other guidance promulgated thereunder.

"Confidential Information" means (i) information not available to the general public concerning the System and financial affairs with respect to a Party hereto or its Affiliates, and (ii) analyses, compilations, forecasts, studies and other documents prepared on the basis of such information by the Parties or their agents, representatives, any Related Person, employees or consultants.

"Consent" means any approval, consent, ratification, waiver or other authorization.

"Contemplated Transactions" means the transactions contemplated by this Agreement and the Transaction Documents.

"Contract" means any agreement, contract, obligation, legally binding commitment or undertaking (whether written or oral and whether express or implied).

"Damages" means any and all claims, losses and other liabilities, plus reasonable attorneys' fees and expenses, including court costs and expert witness fees and costs, incurred in connection with such claims, losses and other liabilities and/or enforcement of this Agreement.

"Effective Time" means 12:01 a.m. on the Closing Date.

"Encumbrance" means any charge, claim, community property interest, condition, easement, equitable interest, encumbrance, lien, mortgage, option, pledge, security interest, right of first refusal, right of way, servitude or restriction of any kind, including any restriction on use, transfer, receipt of income or exercise of any other attribute of ownership, or any repayment obligation under any grant.

"Environment" means soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins and wetlands), groundwater, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

"Environmental, Health and Safety Liabilities" means any cost, damages, expense, liability, obligation or other responsibility arising from or under Environmental Law or Occupational Safety and Health Law and consisting of or relating to (a) any environmental, health or safety matters or conditions (including on-site or off-site contamination, occupational safety and health and regulation of chemical substances or products), (b) fines, penalties, judgments, awards, settlements, legal or administrative Proceedings, damages, losses, claims, demands and response, investigative, remedial or inspection costs and expenses arising under Environmental Law or Occupational Safety and Health Law, (c) financial responsibility under Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action, including any Cleanup required by applicable Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been required or requested by any Governmental Authority or any other Person) and for any natural resource damages, or (d) any other compliance, corrective, investigative or remedial measures required under Environmental Law or Occupational Safety and Health Law. The terms "removal," "remedial," and "response action," include the types of activities covered by the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended, and the United States Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as amended.

"Environmental Law" means any Law relating to pollution or protection of human health, safety, the environment, natural resources or Law relating to releases or threatened releases of Hazardous Materials into the indoor or outdoor environment (including, without limitation, ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport or handling of Hazardous Materials including Superfund or Super Lien law.

"Excluded Assets" means (a) all cash, cash equivalents and short-term investments of Seller, including all bank accounts, demand accounts, certificates of deposit, time deposits, marketable securities,

negotiable instruments and the proceeds of accounts receivable paid prior to the Closing Date, other than deposits and funds included in the Acquired Assets, (b) all accounts receivable of Seller for water service provided prior to the Closing Date, (c) all customer deposits (Seller shall have the responsibility to refund all customer deposits), (c) all Contracts to which the Seller is a party, other than the Contracts specifically designated in Schedule 3.8 as Contracts that will be assumed by Buyer (all other Contracts listed in Schedule 3.8 are Excluded Assets), (d) all equity interests owned or held by Seller, (e) all insurance policies of Seller and rights thereunder, (f) all causes of action, judgments, claims, reimbursements and demands of whatever nature (including rights under and pursuant to all warranties, representations and guarantees made by suppliers of products, materials or equipment, or components thereof) in favor of Seller to the extent related to any Excluded Asset, (g) all personnel Records and other Records that Seller is required by Law to retain in its possession, (h) all rights of Seller under this Agreement and the Transaction Documents and (i) all rights, properties and assets set forth on Schedule A.

"Financial Statements" means the Audited Financial Statements.

"GAAP" means United States generally accepted accounting principles as in effect on the date hereof, applied on a consistent basis.

"Governmental Authority(ies)" means any (a) nation, state, county, city, village, district or other jurisdiction of any nature, (b) federal, state, local, municipal, foreign or other government, (c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official or entity and any court or other tribunal), (d) multi-national organization or body or (e) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

"Hazardous Activity" means the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment or use (including any withdrawal or other use of groundwater) of Hazardous Materials in, on, under, about or from the System or any part thereof into the Environment, and any other act, system, operation or thing that increases the danger or risk of danger, or poses an unreasonable risk of harm to persons or property on or off the System, or that may affect the value of the System or the Business.

"Hazardous Materials" means any waste or other substance that is listed, defined, designated or classified as, or otherwise determined to be, hazardous, radioactive or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.

"Improvements" means all buildings, structures, fixtures, building systems and equipment, tanks, booster stations, water treatment plants, water intakes, and all components of the foregoing, including the roof, foundation, load-bearing walls, and other structural elements thereof, heating, ventilation, air conditioning, mechanical, electrical, plumbing, and other building systems, environmental control, remediation, and abatement systems, sewer, storm, and waste water systems, irrigation and other water distribution systems, parking facilities, fire protections, security, and surveillance systems, and telecommunications, computer, wiring, and cable installations, included in the Real Property.

"Indemnified Persons" means Buyer and Buyer's Affiliates and the past, present and future officers, directors, shareholders, partners, employees, agents, attorneys, representatives, successors and assigns of each of them in their capacities as such.

"Intangible Assignments" means the assignments of all of the Acquired Assets which are rights under Contracts that Buyer elects to assume in its sole discretion and all other intangible personal property substantially in the form of Exhibit 5.

"Knowledge" means (i) the actual knowledge of a particular fact by any of the Persons listed on Schedule B (each, a "Knowledge Party"), and (ii) knowledge that would have been acquired by any Knowledge Party acting reasonably and diligently in the performance of such person's role with and duties to Seller. The words "know," "knowing" and "known" shall be construed accordingly.

"Law(s)" means any law, rule, regulation or ordinance of any federal, foreign, state or local Governmental Authority or other provisions having the force or effect of law, including all judicial or administrative Orders and determinations, and all common law.

"Liability" or "Liabilities" means any liability, indebtedness or obligation of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise and whether or not the same is required to be accrued on the financial statements of a Person. "Liabilities" of the Seller shall include without limitation the obligation of the Seller to account for and return any deposits received by the Seller from customers of the System, and all obligations of the Seller under that certain Sewage Services Agreement dated as of November 2, 2006 among the Town of Jasper, the Town of Powell's Crossroads and the Seller.

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, Liabilities (contingent or otherwise), operations or condition (financial or otherwise) of the System, the Business and the Acquired Assets, taken as a whole; provided, however, that "Material Adverse Effect" shall not include any changes resulting from general business or economic conditions, including such conditions related to water distribution or treatment systems, which do not specifically relate to the System and which are not disproportionately adverse to the System than to other water distribution or treatment systems, or (b) the ability of Seller to consummate the Contemplated Transactions.

"Occupational Safety and Health Law" means any Law designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, and any program, whether governmental or private (including those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

"Order" means any award, decision, injunction, judgment, order, ruling, subpoena or verdict entered, issued, made or rendered by any court, administrative agency or other Governmental Authority or by any arbitrator.

"Ordinary Course of Business" means, with respect to the System, only the ordinary course of operations customarily engaged in by the System consistent with past practices, and specifically does not include (a) activity (i) involving the purchase or sale of the System, or (ii) that requires approval by the Board of Commissioners of Seller, or (b) the incurrence of any Liability for any tort or any breach or violation of or default under any Contract or Law.

"Permit" means any approval, Consent, license, permit, waiver or other authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law.

"Person" means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, cooperative, estate, trust, association, organization, labor union or other entity or Governmental Authority.

"Proceeding" means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

"Purchase Price" means the total rate base value of the Acquired Assets as of the Closing Date, calculated using the original cost method of accounting, of the System and the Acquired Assets, as determined by the Buyer, subject to approval by the Tennessee Regulatory Authority, and upon which the Tennessee Regulatory Authority authorizes Buyer 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; provided, however, that any amounts expended by the Seller or Buyer to repay grants or to cure any title deficiencies with respect to any Real Property or any other amount expended by the Seller or Buyer to cure any other breach by Buyer of the Agreement shall not be included as part of the total rate base value of the Acquired Assets as of the Closing Date for purposes of determining the Purchase Price.

"RCNLD" means the replacement cost (new) of all tangible and intangible personal property included in the Repurchased Assets, less observed depreciation, plus the value of all real property (as if vacant) or any interest therein included in the Repurchased Assets, as of the date of valuation.

"Real Property" means those parcels of real property and those easements or any right-of-way used in the operation of the System or necessary for the operation of the System, together with all fixtures, fittings, buildings, structures and other Improvements erected therein or thereon, including without limitation, the real property and easements upon which all water mains, tanks, booster stations, water treatment plants and water intakes are located.

"Records" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Related Person" means: (a) with respect to a particular individual, (i) each other member of such individual's Family, (ii) any Person that is directly or indirectly controlled by such individual or one or more members of such individual's Family, (iii) any Person in which such individual or members of such individual's Family hold (individually or in the aggregate) a Material Interest; and (iv) any Person with respect to which such individual or one or more members of such individual's Family serves as a director, officer, partner, executor or trustee (or in a similar capacity) and (b) with respect to a specified Person other than an individual, (i) any Person that directly or indirectly controls, is directly or indirectly controlled by, or is directly or indirectly under common control with such specified Person, (ii) any Person that holds a Material Interest in such specified Person, (iii) each Person that serves as a director, officer, partner, executor or trustee of such specified Person (or in a similar capacity), (iv) any Person in which such specified Person holds a Material Interest, (v) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity) and (vi) any Related Person of any individual described in clause (ii) or (iii). For purposes of this definition, (x) the "Family" of an individual includes (A) the individual, (B) the individual's spouse, (C) any other natural person who is related to the individual or the individual's spouse within the second degree, and (D) any other natural person who resides with such individual; and (y) "Material Interest" means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) of voting securities or other voting interests representing at least five percent (5%) of the outstanding equity securities or equity interests in a Person.

"Release" means any spilling, leaking, emitting, discharging, depositing, escaping, leaching, dumping or other releasing into the Environment, whether intentional or unintentional.

"Tangible Personal Property" means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies (including chemicals and spare parts), materials, vehicles and other items of tangible personal property of every kind owned or leased by Seller (wherever located and whether or not carried on Seller's books), together with any express or implied warranty by the manufacturers or lessors of any item or component part thereof, and all maintenance records and other documents relating thereto.

"Tax" or "Taxes" means all taxes, charges, withholdings, fees, duties, levies, or other like assessments including, without limitation, income, gross receipts, ad valorem, value added, excise, property, sales,

employment, withholding, social security, Pension Benefit Guaranty Corporation premium, environmental (under Section 59A of the Code) occupation, use, service, service use, license, payroll, franchise, transfer and recording taxes, fees and charges, windfall profits, severance, customs, import, export, employment or similar taxes, charges, fees, levies or other assessments, imposed by any Governmental Authority, whether computed on a separate, consolidated, unitary, combined or any other basis, and shall include any interest, fines, penalties, assessments, or additions to tax resulting from, attributable to, or incurred in connection with any such Tax or any contest or dispute thereof, and including any Liability for the Taxes of another Person under Treasury Regulation section 1.1502-6 (or any similar provisions of state, local, or foreign Law), as transferee or successor, by Contract or otherwise.

"Tax Return" or "Tax Returns" means any return, declaration, report, claim for refund, or information return or statement relating to, or required to be filed in connection with any Taxes, including any schedule or attachment thereto and including any amendment thereof.

"Third Person" means a claimant other than an indemnified person hereunder.

"Third Person Claim" means a claim alleged by a Third Person.

"Transaction Documents" means this Agreement, the Bill of Sale, the Intangible Assignments and all other documents, certificates, assignments and agreements executed and/or delivered in connection with this Agreement in order to consummate the Contemplated Transactions, as the same may be amended, restated, modified or otherwise replaced from time to time.

Rules of Construction

For purposes of this Agreement and the other documents executed in connection herewith, the following rules of construction shall apply, unless specifically indicated to the contrary: (i) wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter; (ii) the term "or" is not exclusive; (iii) the term "including" (or any form thereof) shall not be limiting or exclusive; (iv) the terms "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including the Schedules and Exhibits hereto) and not to any particular provision of this Agreement; (v) all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations as well as all rules and regulations promulgated thereunder, unless the context otherwise requires; (vi) all references in this Agreement or in the Schedules to this Agreement to sections, schedules, exhibits and attachments shall refer to the corresponding sections, schedules, exhibits and attachments of or to this Agreement; and (vii) all references to any instruments or agreements, including references to any of the documents executed in connection herewith, shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof.