BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 26, 2000

IN RE:	)	
	)	
TARIFF FILING TO REDUCE FIRE HYDRANT ANNUAL CHARGES AS PART OF A SETTLEMENT AGREEMENT BETWEEN THE CITY OF CHATTANOOGA AND TENNESSEE-AMERICAN WATER COMPANY	)	**Docket No. 99-00891**

DISSENTING OPINION OF DIRECTOR GREER

Since its inception, the Tennessee Regulatory Authority (the "Authority") has endeavored to balance the interests of consumers and utilities. In this case, several factors complicate and frustrate this balancing act. In its tariff filing, counsel for Tennessee American Water Company (the "Company"), states that "[t]he Company believes that the settlement of the lawsuit and the reduction of the fire hydrant charges over a two-year period as proposed in the tariff are necessary and proper and in the best interest of the Company and the customers it serves." Despite this assurance, I am not convinced that this tariff is necessary, proper, or in the best interest of the Company or its customers.

Under rate of return regulation, to which the Company is subject, most tariff applications to lower rates are filed when a utility is responding to a threat of by-pass or some other competitive threat. In those types of cases, the interests of both the utility and its customers are best served by a rate reduction if the reduction is sufficient to retain a customer with competitive

supply options and if that customer represents a significant share of the utility's revenues that otherwise could not be recouped easily.

Here, in contrast, the Company's tariff to lower rates is not a response to a competitive threat in the traditional sense, but rather is part of the settlement agreement to a lawsuit in which the City of Chattanooga (the "City") was seeking to purchase the Company.[1] This tariff reduces the fire hydrant rates paid by the City, which will reduce the Company's revenue by $1,127,964. Relative to the Company's current revenues, this is a substantial reduction. In addition, the settlement agreement provides that the company will pay its own litigation expenses and cooperate with the City in efforts to improve the City's fire rating.

To recoup revenue, a company must increase its revenue in excess of any additional expenses, including the expenses incurred to increase revenue. In describing its anticipated plan for recouping the lost revenue from this tariff, the Company claims it "has experienced and anticipates additional growth that will potentially offset a portion of the proposed rate adjustment."[2] (Emphasis supplied.) This statement clearly falls short of an assurance that this tariff will not create a financial strain for the Company. Moreover, although the Company states that it has budgeted funds to improve the City's fire rating,[3] these improvements will create new and additional costs to the Company. Thus, although the Company has been ordered, with my support,[4] to force its shareholders to bear the lost revenue from this settlement, the Company's

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[1] Unfortunately, the parties' filings in this docket do not present the merits of the lawsuit that produced the settlement.

[2] See the Company's response to Authority Data Request, December 20, 1999, at 1. See also Transcript of Authority Conference, January 11, 2000, at 17-19.

[3] Transcript of Authority Conference, January 11, 2000, at 23.

[4] Regardless of the merits of the dispute between the City and the Company, part of the investment risk facing the company's shareholders involves the potential for lawsuits such as the one precipitating this settlement. In this case, given the legal limitations on what the Authority can require of the City, I support the Authority's decision to require the Company's shareholders to bear the cost of this settlement agreement and the proposed tariff filing. Nonetheless, I am concerned that the shareholders are being forced to bear some costs that are more appropriate for the City to bear.

ratepayers ultimately may pay higher rates at least partly as a result of this settlement.[5]

Without information about the bargaining posture of the City and the Company, it appears that many, if not all, of the terms of the settlement agreement could have been reached outside of a condemnation lawsuit. After all, the settlement provisions other than those in the tariff largely seem to benefit both the City and the Company. Assuming that less costly negotiations could have produced the same results, the lawsuit and the related actions of the City and the Company created socially wasteful costs in addition to the actual and potential costs discussed above. Moreover, fairness and efficiency generally dictate that "cost causers" should shoulder the costs they create. Thus, the problems previously mentioned are exacerbated to the extent that the City, as a principle cost causer in this matter, will not shoulder an appropriate share of the socially wasteful costs it has created.

Significantly, the settlement agreement provides that if the fire hydrant rate reduction is not approved by the Authority, "the remainder of the agreement shall remain in full force and effect."[6] Further, when given the opportunity at the January 11, 2000 Authority Conference to discuss hypothetically the ramifications of the Authority denying approval of the tariff, neither the City nor the Company represented that there would be any repercussions had the Authority denied approval of the tariff.[7] Nonetheless, the City and the Company – entities dedicated to serving many of the same consumers – reached an agreement, part of which was approved by the majority's decision. I encourage them to respect the majority's decision by cooperating in order to create revenue growth and cost efficiencies for the Company so that benefits from the settlement may accrue to both the Company and its customers. Unfortunately, however,

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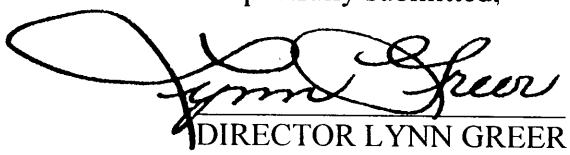
[5] Unless a higher court provides definitive directions on how to treat the lost revenues from this settlement, the issue of the lost revenues will likely be argued in future rate cases brought by the Company. Regardless, the Authority's eternal vigilance likely will be required to ensure that the Company's ratepayers ultimately do not shoulder the burden of the lost revenues.

ensuring such cooperation is largely beyond the Authority's control.

In sum, the challenge presented by this and every other case before the Authority is rendering a decision that balances the interests of both the utilities and their customers. For the foregoing reasons, it is my opinion that approval of this tariff is not necessary or proper; and does not best serve the interests of the Company or its customers.[8] Therefore, I respectfully disagree with the majority's decision.

Respectfully submitted,



DIRECTOR LYNN GREER

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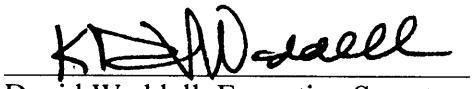

David Waddell, Executive Secretary

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6 Settlement Agreement between the City and the Company, October 25, 1999, at 2.

7 Transcript of Authority Conference, January 11, 2000, at 26.

8 It is interesting to note a possible ambiguity contained in the Order approving this tariff. On the third page, the Order states, "In effect, Chattanooga taxpayers could potentially be better off while Chattanooga ratepayers could potentially be worse off." (Emphasis supplied.) Meanwhile, the next page contains this cryptically generic comment: "It is, furthermore, recognized that a Tariff filing containing potential, long-term benefits while producing no immediate or long-term injury is clearly within the public interest; and, additionally nothing was identified herein in contravention of state law." (Emphasis added.) If "a Tariff" refers to the tariff at issue, the latter quote seems inconsistent with the former, unless Chattanooga ratepayers are not assumed to be among those avoiding immediate and long-term injury in the latter quote. If, on the other hand, "a Tariff" does not refer to the subject tariff, the latter quote provides little substantive support for the majority's decision. Thus, with respect to the net effects of the subject tariff, the majority who approved this tariff may share some of my uncertainty, but apparently not my level of concern for that uncertainty.