



Wade A. Hinton  
City Attorney

# City of Chattanooga

Office of the City Attorney

Phillip A. Noblett  
Deputy City Attorney

August 28, 2014

Allen Willingham  
Taylor English Duma LLP  
1600 Parkwood Circle, Suite 400  
Atlanta, GA 30339

RE: **False Claims Act**

Dear Mr. Willingham:

Thank you for taking the time yesterday to present your client's observations and opinions. After consideration, I would like to first share with you an outline of what steps the City of Chattanooga ("City") has taken to address any outstanding rate / billing issues with the Electric Power Board ("EPB"). Further, this letter will provide the City's current position on these issues and serves as a response to the False Claim Act petition your client filed on the City's behalf.

For several months, the City has actively worked to address the issue of whether EPB's misclassification of lighting equipment caused the City to be overbilled, as evidenced by City Internal Auditor Stan Sewell's findings for the years of 2010-2012. EPB's response to City inquiries regarding overbilling stated that EPB's accounting method allowed any energy-consumption overbilling caused by misclassified lighting equipment to be offset by underbilling for new lighting equipment. This position was stated formally in a report dated May 5, 2014, completed by Mauldin and Jenkins ("M&J") on EPB's behalf.

Additionally, in a letter dated May 31, 2014, Mayor Andy Berke requested that EPB board members address any issue of overbilling of the City by EPB. A copy of this letter is attached for your information. As a result of Mayor Berke's letter, EPB requested M&J to review this issue further and provide a response to the City. On July 22, 2014, both the City's Internal Auditor and M&J released their findings. While each report contains different scopes, there was enough overlap in the two reports to warrant additional discussions to address unresolved and newly raised issues.

Based on these issues, in a letter dated July 22, 2014, Mayor Berke tasked an internal working group to consider the following issues: (1) whether EPB's misclassification of lighting equipment resulted in the City being overbilled; (2) whether EPB's failure to account for non-EPB installed lighting equipment resulted in the City being overbilled for facility charges; (3) whether EPB's

accounting method allowed for any overbilling to be offset by underbilling for more expensive lighting equipment; and (4) whether EPB's failure to adhere to TVA regulations will result in a correction to previous bills and, therefore, cause the City to cure any past underbillings. A copy of this letter is attached for your information.

This internal working group consisted of members of the Mayor's staff, Finance, Purchasing, Sustainability, and Legal. The working group conducted several meetings to discuss the issues outlined above. The group received presentations from M&J, along with EPB personnel, and met with the City's Internal Auditor in separate meetings. Yesterday, this same internal work group heard from you, your client, and members of your firm. As a result of the hard work of this group, the City believes we have achieved significant clarity on these issues and are diligently working to resolve this matter.

Based on the internal working group, the City's positions on the issues discussed are as follows:

(1) Whether EPB's misclassification of lighting equipment resulted in the City being overbilled.

It is clear that EPB misclassified lighting equipment and accordingly charged the City a higher energy rate. This has been the case for years, and it is the position of the City that a refund is due the City. In our opinion, this has been acknowledged by EPB.

(2) Whether EPB's failure to account for non-EPB lighting equipment installed in 2013 resulted in the City being overbilled for facility charges.

It is clear that EPB did not account for all of non-EPB lighting equipment installed in 2013, and this resulted in the City being overbilled for facility charges for a portion of 2013. There are several accounting errors that contributed to this issue. Notwithstanding these errors, the correction of this facility charge billing does not result in a material change in the overall amount.

(3) Whether EPB's accounting method allowed for any overbilling for energy to be offset by more expensive lighting equipment.

There is a reasonable method of accounting that allows for such an offset; however, it is the position of the City that this methodology was not being utilized by EPB. Therefore, the installation of new equipment does not materially offset the overbilling for energy. The City and EPB have come to an agreement that this is the case, but are still in discussions about the specific amount owed to the City for overbilling. This is an extremely complex issue which took place over a number of years and calculating an exact number would likely be cost prohibitive. However, both entities have expressed commitment to resolving the issue in good faith to both ratepayers and City of Chattanooga taxpayers.

(4) Whether EPB's failure to adhere to TVA regulations will result in a correction to previous bills and, therefore, cause the City to cure any past underbillings.

There appears to be competing perspectives on whether the TVA regulations would apply to previous bills. Much of this has to do with conflicting statements from various agencies. Until such time that there can be some additional information and documentation provided, this issue remains open. The working group is actively seeking information and clarity from all relevant agencies.

The internal working group has done a large amount of work on these issues and will continue to do so until a fair resolution is reached that is in the best interest of ratepayers and tax payers.

The internal working group has made tremendous progress on complex issues in a short period of time. Your client filed this litigation on an issue that has already been discovered and is close to resolution. It is our desire to resolve these issues with EPB without the additional expense inevitably incurred in attorney and accountant fees should this matter move to litigation. With that in mind, the internal working group will continue to work with EPB to address street light overbilling and not engage in litigation at this time. If the discussions with EPB are not fruitful, we reserve the right to intervene at a later date.

The City requests you and your client refrain from moving forward with litigation for 90 days to allow the City to come to a settlement with EPB, as the City strongly prefers any settlement benefit taxpayers in its entirety rather than be reduced by your attorneys' fees and the recovery fee that would be paid to your client. If indeed you choose to proceed, the City will cooperate by providing you any information requested.

Regards,



Wade A. Hinton

Enclosure

cc: Andy Berke, Mayor  
Chip Henderson, City Council Chair



# City of Chattanooga

Mayor Andy Berke

May 31, 2014

EPB Board Members  
10 West MLK Boulevard  
Chattanooga, TN 37402

Dear Board Member,

Since taking office last year, I have worked each day to ensure our city government is more transparent, more efficient, and more effective in providing our citizens the services they fund. Whether through our Chattanooga Violence Reduction Initiative, Budgeting for Outcomes, pension reform, or our sweeping reorganization of government, our administration has focused on making sure our taxpayers get their money's worth. I know you hold similar values and apply them to your service on EPB's board.

In 2011, EPB management issued a letter to City Hall staff stating that overbilling had occurred for electricity, but concluded that due to other charges not being included, no net overbilling had actually occurred. Earlier this month, confusion and controversy again arose over this issue. EPB recently released an independent report acknowledging overcharges for electrical service to city government but concluded again that they did not result in net inflated payments by the City of Chattanooga to EPB. The report asserted that the misclassifications resulted in undercharges for hardware that were greater than overcharges for power consumption.

I urge you and the management at EPB to address these issues in a clear and financially responsible manner. Through my discussions with EPB management and the City Auditor, it is my understanding that the utility has been working closely with the Internal Audit office to assess the report's conclusions. I strongly encourage this collaboration and would like to request that you take this work a step further.

Management should (1) calculate specific amounts for any undercharges for hardware as well as any overcharges for energy consumption, (2) calculate any effect of such charges on EPB customers who reside within Chattanooga, and (3) recommend action steps should a report conclude that city government has been overcharged. This undertaking should be made to audit standards and publicly released.

Please undertake these steps and respond as quickly as possible but no later than July 1, 2014.

My goal is to ensure taxpayers are protected. We will pay for the energy we consume -- no more and no less. I truly appreciate the effort that EPB management has put into providing information and cooperating with regards to this information.

I appreciate your attention and look forward to receiving this information. Please let me know if my office can be of assistance.

Sincerely,



Andy Berke



**City of Chattanooga**  
Mayor Andy Berke

July 22, 2014

EPB Board Members  
10 West MLK Boulevard  
Chattanooga, TN 37402

Dear Board Member,

As you know, there has been ongoing dialogue about potential over billing of the City of Chattanooga by the Electric Power Board for running the city's street lighting infrastructure. I wrote you a letter on May 31<sup>st</sup> that urged you to work closely with the City Auditor to do the following:

- Calculate specific amounts for any overcharges for electricity and under charges for hardware
- Calculate the effects of those billing differences
- Recommend action steps should that analysis conclude that City government has been overcharged

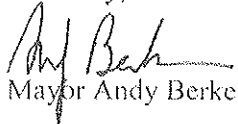
It was brought to my attention earlier today by our City Auditor that EPB has overbilled the City of Chattanooga approximately \$59,000 per year during 2010, 2011, and 2012 (assuming the validity of a 5% additional charge for non-metered lighting had an adjustment for average operation hours). It is also my understanding that EPB's auditors have concluded that the City was under billed during this time period. It is critically important to citizens and ratepayers to have confidence in EPB's billings. Therefore, after consultation with Council Chairperson, Chip Henderson, I plan to appoint members of a working group to work with EPB to accomplish two goals:

- To resolve any discrepancies between EPB's audit and the City Auditors report
- To put in place a process to ensure billings are accurate and transparent going forward

Once this work is done, we will consult with both the City Auditor and the City Council to ensure these goals have been accomplished. If the working group finds that the City was in fact overbilled, I will expect EPB to rectify the situation in full, either through cash payment or billing credit.

Thank you for your cooperation during this process.

Sincerely,

  
Mayor Andy Berke