

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

IN RE:)	
)	
PETITION OF TENNESSEE)	DOCKET NO. 06-00290
AMERICAN WATER COMPANY TO)	
CHANGE AND INCREASE CERTAIN)	
RATES AND CHARGES SO AS TO)	
PERMIT IT TO EARN A FAIR AND)	
ADEQUATE RATE OF RETURN ON)	
ITS PROPERTY USED AND USEFUL IN)	
FURNISHING WATER SERVICE TO)	
ITS CUSTOMERS)	
)	

**CONSUMER ADVOCATE'S RESPONSE TO COMPANY'S MOTION TO STRIKE
AND/OR EXCLUDE TERRY BUCKNER'S SUPPLEMENTAL TESTIMONY RELATED
TO COMPANY'S IMPRUDENT DECISION REGARDING INFORMATION SYSTEMS**

Robert E. Cooper, Jr., the Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of Attorney General ("Consumer Advocate"), respectfully submits this response to Tennessee American Water Company's ("the Company's") motion to strike and/or exclude Mr. Terry Buckner's supplemental testimony related to the Company's imprudent decision regarding information systems.

Although the Company complains about the filing of the supplemental testimony as too late, the Company has a significant amount of time (two weeks) between the date that the supplemental testimony was filed and the first day of the hearing on the merits. The Company filed a four-page motion plus exhibits and schedules, which must have

taken time to research, draft, organize and finalize. Also, the Company filed five single-spaced pages of testimony on the substance of the issue. (Michael Miller's Rebuttal, page 34, line 27 through page 39, line 22). Thus, the Company by its own actions has refuted its argument that it does not have time to work on this issue, and there is no real prejudice to the Company caused by the unintentional delay in filing the supplemental testimony.

Although the Consumer Advocate arguably could have raised this issue impacting the Company's rate base in a prior 2004 case, that does not mean that the Tennessee Regulatory Authority ("TRA") and the Consumer Advocate are barred forever from referring to this information or from considering the merits of this issue. While it is true that Mr. Buckner was generally aware of the existence of the Indiana commission decision in late 2004, he was focused on a different issue (employees). Also, the Indiana commission decision was not supported by the decision of the Indiana Court of Appeals until 2006. Thus, the weight of the decision increased subsequent to Mr. Buckner's 2004 testimony.

Although it is true that Mr. Buckner did not discover the significance of the Indiana case for the E-CIS system issue until after he filed his original testimony in this case, this was a mere oversight, fully understandable in light of the volume of material in this case and the tight schedule. When Mr. Buckner is on the witness stand at the hearing on the merits, he will be asked to give his opinion of the Company's rate base under oath. Since the time that Mr. Buckner filed his original testimony, he has changed his opinion

regarding the Company's rate base, which is reflected in his supplemental testimony. Mr. Buckner should be allowed to provide his true opinion about the Company's rate base, when he testifies under oath at the hearing of this case.

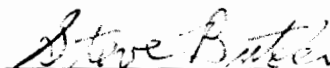
Furthermore, the Indiana Court of Appeals affirmed the Indiana commission's decision regarding the E-CIS system in a reported case, *Indiana-American Water Company v. Indiana Office of Utility Consumer Counselor*, 844 N.E.2d 106 (Ind. Ct. App. 2006). A reported decision of a state court of appeals is not evidence; it is legal authority that can be relied on without being introduced as evidence.

What really matters is the substance of the issue. Was the Company's decision imprudent? The cost overrun for the E-CIS system is more than 1000%. The Company's position that the TRA and the Consumer Advocate are barred from addressing the substance of this issue is incorrect. The Company has addressed its side of the substance of the issue in its rebuttal testimony, and it is now left only with the argument that the supplemental testimony was filed after the deadline set by the hearing officer. Ironically, the Company quoted the following language of the hearing officer in this case: "Rarely are parties able to discover completely the opposing side's case and gather all of the information they would like to obtain before the filing of testimony." (Company's motion, p. 3). This language obviously supports the ability the Consumer Advocate to supplement its testimony on this issue.

The Consumer Advocate filed all of the testimony that it had ready on the date that it was due and then continued to analyze the case. As the result of additional research

and analysis, the Consumer Advocate filed supplemental testimony two weeks before the hearing on the merits. The TRA should not be barred from considering Mr. Buckner's true opinion of the Company's rate base and should not be barred from considering the reported Indiana Court of Appeals decision. The Consumer Advocate respectfully requests denial of the Company's motion.

RESPECTFULLY SUBMITTED,

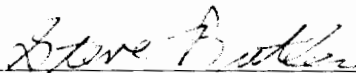


STEPHEN R. BUTLER B.P.R. #14772
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-8722

Dated: April 11, 2007

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or facsimile to the parties of record on April 11, 2007.



Stephen R. Butler
Assistant Attorney General

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