

**BASS, BERRY & SIMS PLC**  
A PROFESSIONAL LIMITED LIABILITY COMPANY  
ATTORNEYS AT LAW

R. DALE GRIMES  
TEL: (615) 742-6244  
FAX: (615) 742-2744  
dgrimes@bassberry.com

AMSOUTH CENTER  
315 DEADERICK STREET, SUITE 2700  
NASHVILLE, TN 37238-3001  
(615) 742-6200

www.bassberry.com

OTHER OFFICES

NASHVILLE MUSIC ROW  
KNOXVILLE  
MEMPHIS

April 11, 2007

**VIA HAND-DELIVERY**

Chairman Sara Kyle  
c/o Sharla Dillon  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

***Re: Petition Of Tennessee 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; Docket No. 06-00290***

Dear Chairman Kyle:

Enclosed please find an original and sixteen (16) copies of Tennessee American Water Company's Motion in Limine to Exclude as Inadmissible All Highly Confidential RWE Presidium and Supervisory Board Minutes. This version of the Motion has been redacted to remove highly confidential information. A separate, unredacted version will be filed under seal contemporaneously.

Please return three copies of the Motion, which I would appreciate your stamping as "filed," and returning to me by way of our courier.

Should you have any questions concerning any of the enclosed, please do not hesitate to contact me.

With kindest regards, I remain

Yours very truly,



R. Dale Grimes

RDG/ms  
Enclosures

Chairman Sara Kyle  
April 11, 2007  
Page 2

cc: Hon. Pat Miller (*w/o enclosure*)  
Hon. Ron Jones (*w/o enclosure*)  
Hon. Eddie Roberson (*w/o enclosure*)  
Ms. Darlene Standley, Chief of Utilities Division (*w/o enclosure*)  
Richard Collier, Esq. (*w/o enclosure*)  
Mr. Jerry Kettles, Chief of Economic Analysis & Policy Division (*w/o enclosure*)  
Ms. Pat Murphy (*w/o enclosure*)  
Michael A. McMahon, Esq. (*w/enclosure*)  
Frederick L. Hitchcock, Esq. (*w/enclosure*)  
Vance Broemel, Esq. (*w/enclosure*)  
Henry Walker, Esq. (*w/enclosure*)  
David Higney, Esq. (*w/enclosure*)  
Mr. John Watson (*w/enclosure*)  
Mr. Michael A. Miller (*w/enclosure*)

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

**IN RE:**

<b>PETITION OF TENNESSEE AMERICAN</b>	)	
<b>WATER COMPANY TO CHANGE AND</b>	)	
<b>INCREASE CERTAIN RATES AND</b>	)	
<b>CHARGES SO AS TO PERMIT IT TO</b>	)	<b>Docket No. 06-00290</b>
<b>EARN A FAIR AND ADEQUATE RATE</b>	)	
<b>OF RETURN ON ITS PROPERTY USED</b>	)	
<b>AND USEFUL IN FURNISHING WATER</b>	)	
<b>SERVICE TO ITS CUSTOMERS</b>	)	

**TENNESSEE AMERICAN WATER COMPANY’S MOTION *IN LIMINE* TO EXCLUDE  
AS INADMISSIBLE ALL HIGHLY CONFIDENTIAL RWE PRESIDIUM AND  
SUPERVISORY BOARD MINUTES**

Tennessee American Water Company (“TAWC”) respectfully moves this Hearing Officer for an order excluding certain Highly Confidential RWE Presidium and/or Supervisory Board Minutes (TAWC-HC-00664-00689, 01177-01187) (“Minutes”), produced to the City of Chattanooga (“City”) in response to its discovery requests. These Minutes are (i) irrelevant, (ii) highly and unfairly confusing and prejudicial, and (iii) both constitute and contain multiple levels of inadmissible hearsay.

**ARGUMENT**

**1. The RWE Minutes are Irrelevant to this Rate Case**

The information contained in the Minutes is entirely irrelevant to this rate case proceeding. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] they have absolutely no relevance to

this proceeding. The proper rate of return for TAWC's investment in provision of reliable, safe water service to the community is the issue properly before this Authority. [REDACTED]

[REDACTED] is simply not relevant to this rate case.

**2. The RWE Minutes are Unfairly and Unduly Prejudicial**

Even if the Minutes were relevant, their probative value would be dramatically outweighed by the danger of confusion and unfair prejudice. Relevant evidence may be excluded where its probative value is substantially outweighed by the risk of unfair prejudice or confusion. *See* Tenn. R. Evid. 403 (2007).<sup>1</sup> The substance of any relevant information contained in the Minutes would be, at best, extremely attenuated to the matters at issue in this rate case. TAWC is the party before this Authority, requesting a reasonable rate increase, not RWE. Any evidence adduced concerning [REDACTED]

[REDACTED] would only promote confusion. Consequently, admitting the Minutes as evidence in the Hearing or on the record of this rate case would be highly and unfairly prejudicial to the interests of TAWC and would create a distinct danger of confusion about the parties and matters at issue in this rate case.

**3. The RWE Minutes Constitute and Contain Unauthenticated Triple Hearsay**

In addition to being irrelevant, unfairly prejudicial, and confusing, the Minutes are inadmissible because they are and/or contain hearsay, double hearsay, and even triple hearsay. Hearsay is a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Tenn. R. Evid. 801(c).

---

<sup>1</sup> While the Hearing Officer is not strictly bound by the Tennessee Rules of Evidence under Section 65-2-109(1) of the Tennessee Code, the Tennessee Rules of Evidence do provide persuasive guidance concerning determinations of admissibility. *See* Tenn. Code Ann. 65-2-109(1) (2007); Tenn. Code Ann. 4-5-313(1) (2007).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Because the Minutes contain multiple levels of hearsay without a hearsay exception, they should be excluded as evidence from this rate case.

### Conclusion

For all of the reasons set forth above, the Minutes should be excluded as inadmissible in the Hearing and record of this rate case. The Minutes are (i) irrelevant, (ii) highly and unfairly prejudicial and confusing, and (iii) both constitute and contain multiple levels of hearsay. Considered together with the administrative burden inherent in admitting these Highly Confidential Minutes, all of these factors weigh heavily in favor of excluding the Minutes. As such, TAWC respectfully moves for an order excluding the Minutes as evidence in the Hearing and record of this rate case.

---

<sup>2</sup> Unlike domestic business records, foreign business records are not self-authenticating. *See* Tenn. R. Evid. 803(6); Tenn. R. Evid. 902(11) (describing authentication of “domestic records.”) As such, admissibility of the Minutes would require an authenticating witness.

<sup>3</sup> Even if these records were properly authenticated, which they are not, the business records exception would not apply to make them admissible. Each level of hearsay in a given piece of evidence must be admissible under an exception for the evidence to be admissible. *See* Tenn. R. Evid. 805. The business records exception does not apply to each of the multiple levels of hearsay in the Minutes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R Dale Grimes", followed by the letters "ms" in a smaller, less distinct script.

R. Dale Grimes (#6223)

J. Davidson French (#15442)

Ross I. Booher (#019304)

BASS, BERRY & SIMS PLC

315 Deaderick Street, Suite 2700

Nashville, TN 37238-3001

(615) 742-6200

*Counsel for Petitioner*

*Tennessee American Water Company*

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served via the method(s) indicated, on this the 11th day of April, 2007, upon the following:

<input type="checkbox"/> Hand	Michael A. McMahan
<input type="checkbox"/> Mail	Special Counsel
<input type="checkbox"/> Facsimile	City of Chattanooga (Hamilton County)
<input checked="" type="checkbox"/> Overnight	Office of the City Attorney
<input checked="" type="checkbox"/> Email	Suite 400
	801 Broad Street
	Chattanooga, TN 37402
<input checked="" type="checkbox"/> Hand	Timothy C. Phillips, Esq.
<input type="checkbox"/> Mail	Vance L. Broemel, Esq.
<input type="checkbox"/> Facsimile	Office of the Attorney General
<input type="checkbox"/> Overnight	Consumer Advocate and Protection Division
<input checked="" type="checkbox"/> Email	425 5th Avenue North, 2 <sup>nd</sup> Floor
	Nashville, TN 37243
<input checked="" type="checkbox"/> Hand	Henry M. Walker, Esq.
<input type="checkbox"/> Mail	Boult, Cummings, Conners & Berry, PLC
<input type="checkbox"/> Facsimile	Suite 700
<input type="checkbox"/> Overnight	1600 Division Street
<input checked="" type="checkbox"/> Email	Nashville, TN 37203
<input type="checkbox"/> Hand	David C. Higney, Esq.
<input type="checkbox"/> Mail	Grant, Konvalinka & Harrison, P.C.
<input type="checkbox"/> Facsimile	633 Chestnut Street, 9 <sup>th</sup> Floor
<input checked="" type="checkbox"/> Overnight	Chattanooga, TN 37450
<input checked="" type="checkbox"/> Email	
<input type="checkbox"/> Hand	Frederick L. Hitchcock, Esq.
<input type="checkbox"/> Mail	Chambliss, Bahner & Stophel, P.C.
<input type="checkbox"/> Facsimile	1000 Tallan Building
<input checked="" type="checkbox"/> Overnight	Two Union Square
<input checked="" type="checkbox"/> Email	Chattanooga, TN 37402

