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April 11, 2007

VIA HAND-DELIVERY

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

> Petition Of Tennessee American Water Company To Change And Re: 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,

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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)

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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

NASHVILLE, TENNESSEE			
IN 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)			
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.			
<u>ARGUMENT</u>			
1. The RWE Minutes are Irrelevant to this Rate Case			
The information contained in the Minutes is entirely irrelevant to this rate case			
proceeding.			

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.

simply not relevant to this rate case.

2. The RWE Minutes are Unfairly and Unduly Prejudicial

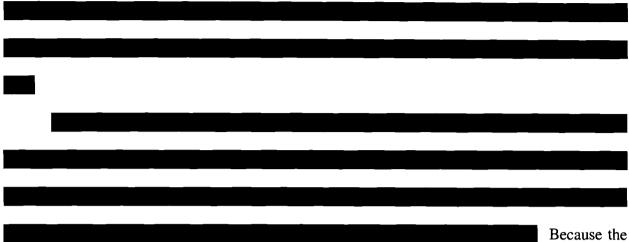
Even if the Minutes were relevant, their probative value would be dramatically outweighed by the danger of confusion and unfair prejudice. Relevant evidence may be excluded where its probative value is substantially outweighed by the risk of unfair prejudice or confusion. *See* Tenn. R. Evid. 403 (2007). 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

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).

¹ 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).



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.

² 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.

³ 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,

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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:

[] [] [x]	Mail Facsimile Overnight Email	Special Counsel City of Chattanooga (Hamilton County) Office of the City Attorney Suite 400 801 Broad Street Chattanooga, TN 37402
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