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April 16, 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 Response to Consumer Advocate's Motion to Allow Supplemental Testimony.

Please return three copies of the Response, 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 16, 2007

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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 RESPONSE TO CONSUMER  
ADVOCATE’S MOTION TO ALLOW SUPPLEMENTAL TESTIMONY**

On April 13, 2007, ten days after attempting to untimely file the supplemental testimony of Terry Buckner (the “Supplemental Testimony”) and *after* the April 12, 2007 Pre-Hearing Conference at which Tennessee American Water Company’s (“TAWC”) Motion to Strike this supplemental testimony was considered, the Consumer Advocate and Protection Division (“CAPD”) now attempts to move the Hearing Officer for leave to late file the Supplemental Testimony. For the reasons stated herein and for the reasons previously asserted in TAWC’s Motion to Strike and in TAWC’s oral argument during the April 12, 2007 Pre-Hearing Conference, the CAPD’s motion should be denied.

**The CAPD Testimony is Untimely**

By Order of March 1, 2007, the Hearing Officer set forth a Second Modified Procedural Schedule, which modified the existing Procedural Schedule at the request of the intervenors in this case. The Second Modified Procedural Schedule clearly required all intervenors’ pre-filed testimony to be filed by March 5, 2007. On April 3, 2007, the CAPD attempted, without explanation or even a request for leave, to file the Supplemental Testimony of Mr. Buckner. Coming nearly a month after the deadline for its submission, and only two weeks prior to the

hearing of this rate case and without good reason, this Supplemental Testimony is simply untimely.

**The CAPD's Motion is Untimely**

Not only is the Supplemental Testimony itself untimely, but the CAPD's Motion to Allow Supplemental Testimony is also. The CAPD attempted to file Mr. Buckner's testimony almost one month after the deadline without requesting leave from the Hearing Officer to do so. Filing the belated motion does not cure the fact that the Supplemental Testimony is late and the CAPD did not seek the Hearing Officer's permission to file it.

**Mr. Buckner's Supplemental Testimony Injects an Entirely New Issue Into this Rate Case**

In addition to the fact that CAPD's attempt to file the Supplemental Testimony flouts the Second Modified Procedural Schedule, the supplemental testimony of Mr. Buckner injects a wholly new material issue into this rate case just as the parties are preparing for the Hearing. Counsel for the CAPD admitted that Mr. Buckner's testimony "injected a subissue of rate base into the case. That is new." (Transcript, April 12, 2007 Pre-Hearing Conference, p.47, lines 15-16.)

It is fundamentally unfair to TAWC to permit Mr. Buckner to submit any Supplemental Testimony regarding the E-CIS system.<sup>1</sup> The requirement that direct testimony be pre-filed on a date certain is, in part, intended to lessen the risk of surprise to both the parties and the TRA staff and to ensure that all parties have a complete opportunity to fully address contested issues. It is particularly unfair that the CAPD raised this new issue at the eleventh hour since the E-CIS is a cost that the TRA approved as part of TAWC's rate base in 2004. Given the late date at which

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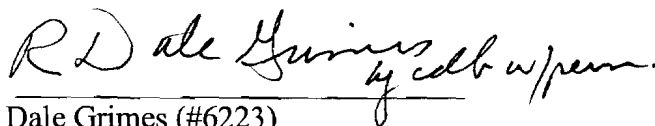
<sup>1</sup> The CAPD's Motion to Allow Supplemental Testimony includes testimony from Dr. Steve Brown and Mike Chrysler, in addition to that of Mr. Buckner. Although the same timeliness concerns apply to this testimony, TAWC has only objected to the filing of the supplemental testimony of Mr. Buckner because his testimony injects new material issues into this rate case.

Mr. Buckner's Supplemental Testimony was filed, TAWC was only able to provide an extremely limited amount of rebuttal testimony which is primarily focused on some of the circumstances surrounding the untimeliness of Mr. Buckner's discussion of the E-CIS costs. In short, TAWC has not had an adequate opportunity to rebut the substance of Mr. Buckner's allegation regarding the E-CIS. Had the CAPD made an issue of the E-CIS in a timely manner, TAWC could have more fully refuted the CAPD's inaccurate claim that the E-CIS should be considered an "imprudent decision."<sup>2</sup>

### Conclusion

For all the reasons stated above, in TAWC's Motion to Strike, and in TAWC's oral argument during the April 12, 2007 Pre-Hearing Conference, TAWC respectfully requests that the Hearing Officer deny the CAPD's Motion to Allow Supplemental Testimony as it pertains to the supplemental testimony of Terry Buckner related to the E-CIS.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "R Dale Grimes" followed by a flourish.

R. Dale Grimes (#6223)  
J. Davidson French (#15442)  
Ross I. Booher (#019304)  
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*Counsel for Petitioner  
Tennessee American Water Company*


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<sup>2</sup> As counsel for TAWC pointed out during the Pre-Hearing Conference, Mr. Buckner's Supplemental Testimony regarding the E-CIS is entirely premised on a mistaken statement of the 2004 decision of the Indiana Utility Regulatory Commission. (See Transcript, April 12, 2007 Pre-Hearing Conference, pp. 34-38.)

### 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 16th day of April, 2007, upon the following:

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