IN THE TENNESSEE REGULATORY AUTHORITY
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	)	**DOCKET NO. 06-00290**

CONSUMER ADVOCATE'S RESPONSE TO COMPANY'S OBJECTIONS TO BRIEF

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") Objection to Consumer Advocate's Post-Hearing Brief.

The Consumer Advocate's post-hearing brief that the Company has moved to strike is argument that is based on evidence, rather than evidence itself. Moving to strike argument is a novel idea, and it clearly indicates that the Company is concerned about losing the merits of this issue. In essence, the Company is moving to strike the arguments of the Consumer Advocate simply on the basis that the Company disagrees with those arguments. The Company's filing is an obvious attempt to file a reply brief that was not contemplated or permitted by the Tennessee Regulatory Authority ("TRA") and also is an obvious attempt to circumvent the five-page limit on

the post-hearing briefs.

Regarding the merits of whether the Company changed direction and started a new project in 2000, the record is clear. Page 48 of the deposition of A. Joseph Van den Berg supports the Consumer Advocate's argument that the Company started a new project in 2000. When the Consumer Advocate's counsel asked Mr. Van den Berg if the plan changed, Mr. Van den Berg was insistent that the project that began in 2000 was a separate project. According to Mr. Van den Berg, **"The two projects were kept completely separate."** (Deposition of A. Joseph Van den Berg, page 48, line 5, emphasis added). Again, Mr. Van den Berg testified, **"So the two projects are really two separate activities and two separate projects."** (Deposition of A. Joseph Van den Berg, page 48, line 16-18, emphasis added).

Therefore, for the Company to move to strike the Consumer Advocate's brief on the basis that there clearly was only one project is contrary to the record. The Consumer Advocate's argument that the project that began in 2000 was a separate project is not based on "bald speculation," as claimed by the Company. (Objection to Brief, page 1). The Consumer Advocate's argument is based on the record as a whole, including the testimony of the Company's expert, Mr. A. Joseph Van den Berg, who insisted emphatically and under oath that the two projects were kept completely separate and that there were two separate projects.

Regarding the Company's argument that the rate base does not include the costs that already have been depreciated, the Company ignores the fact that the money at issue has been and is accounted for by the Company as a single investment. The Company's argument also contradicts the Company's insistence that E-CIS was one project. The Company has the burden of proving that its proposed rates are just and reasonable. Consumers should get the benefit of

the depreciation for which they already have paid through rates, when the determination is made of what should be built into rates for the future. To ignore the facts about the amounts that consumers already have paid for the E-CIS investment would not be just and reasonable.

Furthermore and of critical importance, as already explained in the Consumer Advocate's post-hearing brief, only a small portion of the proposed disallowance of depreciation expense is connected to the partial disallowance of rate base for E-CIS. The depreciation expense should be reduced (by $493,150) or eliminated ($1,056,344) regardless of the TRA's decision about whether to disallow part of the rate base for E-CIS.

There is one part of the Consumer Advocate's post-hearing brief that needs to be clarified. The Consumer Advocate said in its post-hearing brief that allowing in rate base the costs of the E-CIS investment for the years 2000 and later was a partial concession. The Consumer Advocate now clarifies that the Chattanooga Manufacturers' Association's ("CMA's") post-hearing brief has raised a point on this issue that has merit. The Consumer Advocate concedes the allowance of rate base for the costs of the E-CIS investment for the years 2000 and later only to the extent that the allocation to Tennessee was just and reasonable. The CMA's post-hearing brief establishes that the allocation to Tennessee was disproportionate and therefore, unjust and unreasonable. Reduced by 56%, as indicated by the CMA in its post-hearing brief, the remaining rate base for the E-CIS investment would be $444,560 rather than $792,999.

The Consumer Advocate respectfully asks the TRA to deny to Company's motion to strike the Consumer Advocate's post-hearing brief.

RESPECTFULLY SUBMITTED,

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Dated: May 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 May 11, 2007.

Stephen R. Butler
Assistant Attorney General

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