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May 16, 2008

VIA HAND-DELIVERY

Chairman Eddie Roberson, PhD
c/o Ms. Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

***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. 08-00039***

Dear Chairman Roberson:

Enclosed please find an original and sixteen (16) copies of Tennessee American Water Company's Response in Opposition to the Consumer Advocate's Motion to Ask Additional Discovery Requests.

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 Eddie Roberson, PhD

May 12, 2008

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cc: Hon. Ron Jones (*w/o enclosure*)
Hon. Sara Kyle (*w/o enclosure*)
Hon. Tre Hargett (*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*)
Timothy C. Phillips, Esq. (*w/enclosure*)
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Michael A. McMahan, Esq. (*w/enclosure*)
Frederick L. Hitchcock, Esq., (*w/enclosure*)
Mr. John Watson (*w/o enclosure*)
Mr. Michael A. Miller (*w/o enclosure*)

**BEFORE 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)	Docket No. 08-00039
PROPERTY USED AND USEFUL IN)	
FURNISHING WATER SERVICE TO ITS)	
CUSTOMERS)	

**TENNESSEE AMERICAN WATER COMPANY’S RESPONSE IN OPPOSITION TO
THE CONSUMER ADVOCATE’S MOTION TO ASK ADDITIONAL DISCOVERY
REQUESTS**

Tennessee American Water Company (the “Company”) hereby responds to the Consumer Advocate and Protection Division’s Motion to Ask Additional Discovery Questions as follows:

1. The Consumer Advocate and Protection Division (the “Consumer Advocate”) seeks permission to file and serve 217 discovery requests (including subparts) on the Company. This is more than *five* times the number of discovery requests allotted in the TRA Rules. TRA Rule 1220-1-2-.11(5)(a). This is also *nearly triple* the expanded discovery limits already granted by this Hearing Officer. (*See* Order on Joint Objection to Discovery Question Limits in May 1, 2008 Order) (“Order on Joint Objection”).¹

2. The expansive discovery sought by the Consumer Advocate epitomizes the need for discovery limits generally. Discovery limitations cause the parties to prioritize and focus

¹ The Hearing Officer’s allowance of 80 discovery requests was itself generous. The Hearing Officer went even further, explicitly permitting the Intervenors to collaborate with each other up to a total of 160 requests. (*See* Order on Joint Objection). It appears the Intervenors did not take advantage of this additional dispensation. The City of Chattanooga and the Chattanooga Manufacturer’s Association have themselves propounded *an additional* 86 discovery requests. Together with the 217 requests propounded by the Consumer Advocate, the Intervenors have exceeded the Hearing Officer’s collective discovery limit by 143 requests.

discovery requests on what is most important.² Here, however, the Consumer Advocate has eschewed the exercise of such self-restraint. Instead, with the apparent belief that there should be no discovery limitation whatsoever, the Consumer Advocate has propounded wholesale discovery requests that are both duplicative and unduly burdensome.

a. The Consumer Advocate's Discovery Requests are Duplicative

A number of the Consumer Advocate's requests are duplicative of requests made by other Intervenors or seek information already in the Consumer Advocate's possession. For example:

The Consumer Advocate's Part IV, #41 states, "Provide all NARUC accounts 601- through 675 by month, by account and show the actual or forecasted gross amount and net expense after deducting salaries and wages for the 34 months ended August 2009." The TRA Staff's Data Request #28 is nearly identical: "For all NARUC or FERC accounts 601 through 675, show the gross and net expense after deducting salaries and wages, by month, for the test year and the preceding year. Also, provide the same information projected for the attrition year."

The Consumer Advocate's Part IV, #3 states, "Provide the number of meters by meter type, by customer class, by location and the volume usage by usage rate schedule, by customer class, by location for the years ended December 31 2003-2007 and the twelve months ended March 31, 2008." Similarly, the TRA Staff's Data Request #20 states, "Provide the number of TAWC's customers by rate classification and meter size by month for the last three (3) fiscal years. Provide the volumetric usage by month for the last three (3) fiscal years for each rate classification and meter size."

² As the Tennessee Court of Appeals noted in *Kuehne & Nagel, Inc. v. Preston, Skahan & Smith, Int'l, Inc.*, "there is far greater cost in complying with a discovery request than in making the discovery request. As a result, there [can be] a strong temptation to inflict harm on one's adversary by seeking additional information for which the adversary will have to incur the cost." 2002 Tenn. App. LEXIS 457, at *10 (quoting Issacharoff & Loewenstein, *Unintended Consequences of Mandatory Disclosure*, 73 Tex. L. Rev. 753, 755 n.8 (1995)).

Unlike in a traditional court case, the Company has already produced substantial information in its Petition, including pre-filed testimony, which the Consumer Advocate has possessed for more than two months. The Company has also produced over 1300 pages of information in response to the TRA Staff's Data Requests. The Consumer Advocate has likewise possessed this information for five weeks. Had the Consumer Advocate carefully examined the Company's responses to the TRA Staff's Data Requests prior to propounding its extraordinary discovery, it would have been clear that much of the excessive discovery the Consumer Advocate now requests is unnecessary. Instead, the Consumer Advocate's act of propounding duplicative and needless requests clearly demonstrates why it should not be permitted to exceed the Hearing Officer's discovery limit.

b. The Consumer Advocate's Discovery Requests are Unduly Burdensome

Further, the 217 requests propounded by the Consumer Advocate are inherently unreasonable by the mere quantity requested and impose an undue burden on the Company. Adding to that burden, a number of the Consumer Advocates' requests demand that the Company create and produce documents, tables, reports and calculations that do not currently exist. (*See, e.g.*, First Discovery Request of the Consumer Advocate, Part II, ## 17; 43; 44; 46; 56).

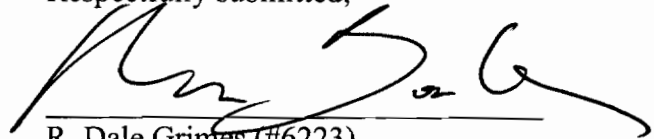
The Company could certainly prepare and serve hundreds of expansive, duplicative and onerous discovery requests on the Intervenors, requesting information the Company already possesses and demanding the creation of customized new information – but the Company has not done so. Instead, the Company has adhered to TRA Rules and served limited, highly prioritized discovery in an effort to remain focused on the elemental issues of this straightforward rate case. The Consumer Advocate has not exercised similar self-discipline. In light of this refusal, the

Consumer Advocate should not now be permitted to exceed the Hearing Officer's doubling of the TRA Rules' discovery limitation.

Conclusion

For all of the foregoing reasons, this Hearing Officer should enforce his previous decision granting a doubling of the TRA Rules' discovery limitation, and require the Company to respond only to the first 80 requests propounded by the Consumer Advocate. See Order on Joint Objection; TRA Rule 1220-1-2-.11(5)(a).³

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Dale Grimes', is written over a horizontal line.

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*Counsel for Petitioner
Tennessee American Water Company*

³ The Consumer Advocate's 80th request is Number 46 of Part II. The TRA Rules and the Order on Joint Objection gave the Consumer Advocate ample notice to prioritize and arrange its discovery requests such that the requests it deems fundamental to its case should constitute the 80 requests consistent with TRA Rule 1220-1-2-.11(5)(a).

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 May, 2008, upon the following:

<input checked="" type="checkbox"/> Hand-Delivery	Timothy C. Phillips, Esq.
<input type="checkbox"/> U.S. Mail	Consumer Advocate and Protection Division
<input type="checkbox"/> Facsimile	Office of Attorney General
<input type="checkbox"/> Overnight	2nd Floor
<input checked="" type="checkbox"/> Email	425 5th Avenue North
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