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June 4, 2008

VIA HAND DELIVERY

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

filed electronically in docket office on 06/04/08

Re: *Petition of Tennessee American Water Company To Change And Increase Certain Rates And Charge 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 seven (7) sets of copies of Tennessee American Water Company's Initial Response to the Consumer Advocate and Protection Division's Motion to Set Aside the Procedural Schedule and Extend the Date of the Final Hearing on the Merits or in the Alternative grant Leave to Seek Emergency Relief from the Hearing Panel, dated June 4, 2008. In addition, a pdf image of TAWC's Response will be emailed to the attention of Sharla Dillon at the Tennessee Regulatory Authority.

Please return three (3) copies of this Response to me, which I would appreciate your stamping as "filed," 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

Very truly yours,



R. Dale Grimes

Enclosures

Chairman Eddie Roberson, PhD

June 4, 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*)
David C. Higney, Esq. (*w/enclosure*)
Henry M. Walker, Esq. (*w/enclosure*)
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 PERMIT IT TO EARN)	
A FAIR AND ADEQUATE RATE OF)	
RETURN ON ITS PROPERTY USED AND)	Docket No. 08-00039
USEFUL IN FURNISHING WATER)	
SERVICE TO ITS CUSTOMERS)	

**TENNESSEE AMERICAN WATER COMPANY'S RESPONSE TO THE CONSUMER
ADVOCATE AND PROTECTION DIVISION'S MOTION TO SET ASIDE THE
PROCEDURAL SCHEDULE AND EXTEND THE DATE OF THE FINAL HEARING
ON THE MERITS OR IN THE ALTERNATE GRANT LEAVE TO SEEK
EMERGENCY RELIEF FROM THE HEARING PANEL**

The Consumer Advocate and Protection Division's ("CAPD") has filed a motion and memorandum in support thereof seeking to extend the procedural schedule entered in this proceeding by at least *four weeks* or alternatively, for an order granting leave to seek emergency relief before the Directors of the Tennessee Regulatory Authority ("Hearing Panel"). TAWC opposes the CAPD's motion and submits the following response:

I. The CAPD Concedes It Entered More Discovery Requests Than Permitted By The Procedural Rules.

As an initial matter, the CAPD acknowledges that it has filed far more discovery requests upon TAWC than TAWC is required to respond, and beyond that expressly permitted by the Hearing Officer in this proceeding. See Order, May 9, 2008, Docket No. 08-00039. To be specific, the CAPD filed over *one hundred additional* discovery requests *beyond* the doubled amount generously granted by the Hearing Officer. In so doing, the CAPD assumed the risk of delaying the receipt of what it deems to be all of the discovery "it needs," and thus finds itself in

a problematic position of its own creation. CAPD Motion, at 4, June 3, 2008. Further, the CAPD indicated no effort to mitigate this assumed risk by issuing more focused discovery requests or by situating those requests that were most critical as the front eighty.

II. The CAPD's Request For An Extension To The Procedural Schedule Is Inappropriate And Unnecessary.

A. The CAPD Cannot Utilize Depositions To Circumvent The Discovery Limit.

The CAPD seems to believe that it is able to circumvent the strictures of limited discovery by conducting depositions whereby it will request additional discovery. In its Memorandum, the CAPD states:

If the Hearing Officer does not grant the Consumer Advocate's Motion to Ask Additional Discovery Questions filed on May 12, 2008, or the Consumer Advocate's Motion to Compel filed June 2, 2008, the Consumer Advocate will need additional time to subpoena TAWC's witnesses for depositions, time for the company to comply with subpoenas for production of documents."

CAPD Mem. at 4-5. To accept this statement, however, would undermine the entire purpose of imposing limited discovery upon a party in the first place. More importantly, it directly violates the TRA Rule 1220-1-2-.13 regarding subpoenas, which expressly states: "This section may not be used to circumvent the provisions of 12-1-2-.11." Accordingly, the CAPD's request is inappropriate and should not be permitted in this proceeding.

B. It Is Unnecessary For The Hearing Officer To Extend The Established Deadlines.

As previously argued, TAWC's responses to the CAPD's discovery requests were complete and reasonable, removing any need for extended deadlines. Even if the Hearing Officer grants further discovery, "the fact that discovery is ongoing and TAWC continues to supplement its discovery responses is not novel to this case. Rarely are parties able to discover completely the opposing side's case and gather all of the information they would like to obtain before the filing of testimony." TRA Order, Docket No. 06-00290, dated March 1, 2007.

Thus, the CAPD's argument that the "current schedule unreasonably compresses the time the Consumer Advocate has to obtain information, perform analysis and file substantive pre-filed testimony in this docket" is unavailing. All parties, including TAWC, are subjected to the compressed procedural schedule. Indeed, the expedited pace at which these proceedings occur is the very essence of contested rate cases, as mandated by Tenn. Code Ann. § 65-3-103(b)(1), and their distinguishing characteristic from ordinary court litigation.

By maintaining the compressed schedule, the Hearing Officer can more quickly accomplish the purpose of this proceeding — to determine the cost of providing service. The CAPD should not be allowed to go beyond the purpose of the proceeding to address concerns independent of this issue. Moreover, the massive volume of information already produced by TAWC is sufficient to proceed with the submission of pre-field testimony. This is true especially in light of the fact that TAWC's testimony has been on file since March 14, 2008, and the Intervenors have had the TAWC's Responses to the TRA's initial Data Request since April 11, 2008.

Conclusion

The current procedural order has been formulated to accommodate the needs of all parties in preparing this case. All parties are well-versed in operating within this timeframe to conduct contested rate case hearings — this proceeding should be no exception. The CAPD should not be rewarded with additional time for a situation of its own making. For the reasons stated herein, the procedural schedule implemented by this Hearing Officer should not be altered in any way that would prevent this case from being decided within the statutory period. Accordingly, the CAPD's motion should be denied.

Respectfully submitted,

A handwritten signature in cursive script that reads "R. Dale Grimes" followed by a horizontal line and a small flourish.

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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 4 day of June, 2008, upon the following:

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