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January 13, 2011

Via Hand-Delivery

Chairman Mary W. Freeman
c/o Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

filed electronically in docket office on 01/13/11

**Re: Tennessee American Water Company's Management Audit
Docket No. 09-00086**

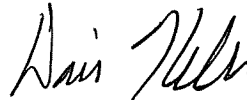
Dear Chairman Freeman:

Enclosed please find the original and five (5) copies of Tennessee American Water Company's Response in Opposition to the Consumer Advocate and Protection Division's Petition to Intervene for filing in the above docket. This document also is being filed today by way of email to the Tennessee Regulatory Authority Docket Manager, Sharla Dillon.

Please file the original and four copies of this material and stamp the additional copy as "filed". Then please return the stamped copies to me by way of our courier.

Should you have any questions concerning this matter, please do not hesitate to contact me at the email address or telephone number listed above.

Sincerely,



David Killion

CDK:smb
Enclosures

cc: Mr. David Foster, Chief of Utilities Division (w/o enclosure)
Ryan McGehee, Esq. (w/ enclosure)
Kelly Cashman-Grams, Esq. (w/o enclosure)
Rebecca Montgomery, Esq. (w/o enclosure)
Mr. John S. Watson (w/o enclosure)
Mr. Michael A. Miller (w/o enclosure)

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**TENNESSEE AMERICAN WATER
COMPANY'S REQUEST FOR
PROPOSAL FOR A MANAGEMENT
AUDIT**

Docket No. 09-00086

**RESPONSE IN OPPOSITION TO PETITION TO INTERVENE FILED BY THE
CONSUMER ADVOCATE AND PROTECTION DIVISION**

Tennessee American Water Company ("TAWC") hereby files its response in opposition to the Petition to Intervene filed by the Consumer Advocate and Protection Division ("CAPD") on January 6, 2011. The CAPD's request to intervene is untimely, directly contradicts the CAPD's past affirmations regarding intervention in this docket, and has been interposed at the eleventh hour for the express purpose of delay and to apparently attack the scope of the audit that the Authority approved almost a year ago in this docket. There is no valid reason why the Authority should delay its ruling that the audit completed by Schumaker & Company ("Schumaker") for the Authority met all requirements set forth in this docket and Docket No. 08-00039. Therefore, the CAPD's Petition to Intervene should be denied.

First, the CAPD's Petition to Intervene is untimely because it comes almost two years after TAWC filed the draft RFP and only after TAWC has now requested final action in this docket. After being ordered by the Authority to file a Request for Proposal ("RFP"), TAWC filed the draft RFP with the Authority on March 23, 2009. On June 15, 2009, the Authority voted to open this docket for consideration of the management audit procurement process. The Authority itself then set June 29, 2009 as the deadline to file any petitions to intervene in this docket. *See* Notice of Filing and Status Conference (June 24, 2009) (setting June 29, 2009 as the deadline to file comments and stating that comments "shall be accompanied by a petition to

intervene as provided for in Tenn. Code Ann. §§ 4-5-310 and 65-2-107 and Authority Rule 1220-1-2-.08.”).

The CAPD had the opportunity to intervene before the June 29, 2009 deadline but declined. Though the CAPD now claims it thought the purpose of this docket was only to approve the RFP, the large number of hearings and orders issued in this docket after the approval of the RFP clearly contradict the CAPD’s claimed understanding. The nature of each of the ensuing steps in the process made it perfectly clear that the purpose of this docket was to oversee the entire management audit procurement process.¹ The CAPD had notice of each step of the process and yet at each step decided not to provide any input regarding the audit or to intervene. As noted below, even after the audit was completed and formally filed the CAPD decided to comment in this docket only on issues related to the protective order but in doing so stated the CAPD was not intervening in this docket. Despite all of the opportunities the CAPD had to meaningfully contribute, the CAPD instead chose to keep its own counsel throughout, and now attempts to appear at the eleventh hour – over a year and a half since this docket was opened and over a year and nine months since the draft RFP was filed – to request that the Authority further delay any finality with respect to its ordered audit.

In addition to the untimeliness of the CAPD’s Petition, the Petition also directly contradicts the CAPD’s earlier statements in this docket regarding its intention not to intervene. In the CAPD’s only filing in this docket prior to its Petition to Intervene, the CAPD unequivocally stated it was choosing not to intervene: “As you know, the Consumer Advocate has not intervened in this Docket and ordinarily would not comment on orders in a Docket in which it is not formally participating. *We are not seeking to intervene in this Docket at this*

¹ The CAPD has now stated in this docket that the Authority’s ordered audit is “not the Authority’s audit” because the Authority did not participate in the audit. The facts do not bear this to be true. The Authority ordered the creation of the management audit, edited the RFP, approved the RFP, chose the auditor, edited the contract with the auditor, decided the scope of the audit, approved the cost of the audit, and approved the contract with the auditor. Although TAWC was required to bear the cost of the audit, it was the Authority that certainly controlled and guided the audit procurement process every step of the way.

time . . .” Letter from Vance L. Bromel, Esq. to J. Richard Collier, Esq. (Sept. 30, 2010) (emphasis added). The CAPD’s Petition to Intervene therefore clearly and directly contradicts the CAPD’s previous statements to the Authority regarding intervention in this docket.

Perhaps the most important reason to deny the CAPD’s Petition to Intervene, however, is that allowing the CAPD to intervene at such a late stage will only serve to unnecessarily impede TAWC’s and the Authority’s ability to obtain finality on the issue of the management audit.² The clear intent of the Authority in ordering the management audit was to reach a definitive conclusion about the prudence and reasonableness of the management fees TAWC pays to AWWSC. *See* Hrg. Tr. at 8-9, Docket No. 08-00039 (Sept. 22, 2008) (“I want to stress that if the management audit ultimately shows that the fees being allocated for services are prudent, the authority can on its own motion or the motion of a party revisit the issue of management fees.”).³

It appears that the CAPD’s intervention is no more than an improper attempt to challenge the scope of the Schumaker audit, which was approved almost one year ago by the Authority. For example, the CAPD’s expert, Terry Buckner, does not challenge Schumaker’s findings but rather argues that TAWC should use a different allocation method (specifically a cost causative factor). *See* Pre-Filed Testimony of Terry Buckner at 25-28 (Jan. 5, 2011). However, this is contrary to the scope of the audit – specifically a scope item that was drafted by the Authority itself – which provides that Schumaker was to evaluate the “accuracy and reasonableness of the allocation factors utilized to allocate AWWSC charges to regulated and non-regulated subsidiaries, and allocated regulated AWWSC charges to TAWC.” *See* Ex. 1 to Mar. 12, 2010 Order; *see also* Contract between Schumaker & Company and TAWC, Ex. E (Dec. 31, 2009).

² Delaying any action on the Authority’s ordered audit until after the conclusion of TAWC’s current rate case would mean the Authority would take no action until a half year after the audit was submitted to the Authority for its consideration.

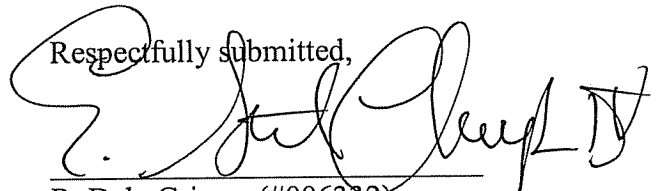
³ The CAPD’s interpretation of Director Roberson’s comments is misplaced. Director Roberson clearly stated that the TRA could reinstate the management fees of its own accord. The CAPD’s delayed complaints against the Authority’s ordered audit, and the CAPD’s statement in this docket that “it and other intervening parties question and disagree” with the audit is further grounds for the Authority to call Schumaker as a witness, as set forth in TAWC’s motion filed in Docket No. 10-00189.

Mr. Buckner also challenges the “somewhat limited” scope of the audit by stating that the audit merely contained a review of various studies provided by TAWC witness Mr. Baryenbruch, but the Authority also drafted and explicitly approved this scope item. *See id.* (“The final report will include . . . review of work previously performed regarding allocation methods which will be supplied by AWW.”).

Even if the Authority decides to allow a limited examination of Schumaker’s conclusions in Docket No. 10-00189, there is absolutely no reason that the CAPD should be allowed to intervene at this late stage to request that the Authority delay any ruling on whether the audit submitted more than four months ago met all requirements set forth in this docket and Docket No. 08-00039. TAWC therefore respectfully requests that the Authority deny the CAPD’s improper Petition to Intervene and further address TAWC’s pending motion at the next available Authority conference.

Dated: January 13, 2011.

Respectfully submitted,

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

R. Dale Grimes (#006332)

E. Steele Clayton (#017298)

C. David Killion (#026412)

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Counsel for Petitioner

Tennessee American Water Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via U.S. Mail, and electronic mail, on this the 13th day of January, 2011, upon the following:

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