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November 9, 2010

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 11/09/10

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. 10-00189

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's Motion for Leave to Issue More Than Eighty Discovery Requests.

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

This document also is being filed today by way of email to the Tennessee Regulatory Authority's Docket Manager, Sharla Dillon.

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

RDG:smb
Enclosures

cc: Hon. Sara Kyle (*w/o enclosure*)
Hon. Eddie Roberson (*w/o enclosure*)
Mr. David Foster, 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*)
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Donald L. Scholes, Esq. (*w/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 PROPERTY USED AND USEFUL IN FURNISHING WATER SERVICE TO ITS CUSTOMERS	)	**Docket No. 10-00189**

TENNESSEE AMERICAN WATER COMPANY'S RESPONSE IN OPPOSITION TO THE CONSUMER ADVOCATE'S MOTION FOR LEAVE TO ISSUE MORE THAN EIGHTY DISCOVERY REQUESTS

Tennessee American Water Company (the "Company") hereby files its response in opposition to the Consumer Advocate and Protection Division's Motion for Leave to Issue More than Eighty Discovery Requests.

Under the rules promulgated by the Tennessee Regulatory Authority ("TRA"), an intervenor such as the Consumer Advocate and Protection Division (the "CAPD") shall not file more than 40 discovery requests absent a showing of good cause to file additional requests. See TRA Rule 1220-1-2-.11(5)(a) (limiting discovery requests to 40 per party). In spite of having been granted leave by the Hearing Officer, Chairman Mary Freeman, to propound 80 discovery requests on the Company, doubling the amount allowed by rule from 40 to 80 requests, the CAPD has filed a motion seeking permission to file yet even more discovery requests. In fact, if the CAPD's motion is granted, it will have served a total of 303 discovery requests including the voluminous subparts set forth in its 126 numbered requests. Place in context with the additional

over-limit requests proposed by the other intervenors, the CAPD and its collaborators seek to subject the Company to 614 requests, including subparts.

For the reason set forth below, the CAPD has failed to meet its burden of showing good cause to justify the need for 303 discovery requests. In addition, allowing the CAPD to serve more than the 80 discovery requests already granted will needlessly increase the cost of this rate case.

A. TRA Rules Explicitly Limit Discovery Requests and Place the Burden on the Requesting Party to Demonstrate the Appropriateness of Exceeding this Limit

Tennessee Code Annotated § 4-5-311(c) authorizes the TRA to promulgate rules to prevent oppression and abuses in discovery. Based on that statutory mandate, the TRA, recognizing the unique nature of rate cases and the potential of intervenors to drive up the cost and burden of rate cases in the discovery process, adopted a rule limiting a party to 40 discovery requests. TRA Rule 1220-1-2-.11(5)(a). In the unusual situation where a party can show good cause for the need to propound additional discovery requests in excess of 40, the Hearing Officer has discretion to allow additional discovery. Accordingly, the CAPD's argument that its motion to exceed the discovery limits must be approved unless its discovery requests violate Tennessee Rule of Civil Procedure 26.02 is simply misplaced and contrary to the TRA Rule 1220-1-2-.11(5)(a).

The TRA's 40 discovery request limit recognizes that contested administrative cases differ from full-fledged court proceedings in a number of important respects. First, they are administrative proceedings to set rates for utility services, not court actions between opposing parties. Second, the administrative agency itself conducts extensive discovery into the merits of the Utility's requested rate increase through voluminous data requests that are not subject to the

rule limit. For example, in this case the TRA has served 138 numbered data requests on the Company to date and the Company has produced thousands of pages to date. Third, rate-making proceedings, by statute, must be completed in a relatively short period of time compared to normal court proceedings that routinely exceed more than a year form the filing of the case to disposition. Fourth, unlike a Court case, where only notice pleading applies and parties therefore receive very limited information, administrative rate cases require the petitioner to file testimony and exhibits as part of the petition, lessening the need for extensive discovery.

B. The CAPD Fails to Meet its Burden of Demonstrating that Good Cause Exists to Exceed the TRA's Order Limiting the Number of Discovery Requests

The CAPD has failed to make a showing of good cause even under the theory set forth in its brief. According to the CAPD, in making the required good cause showing, Rule 26.02 of the Tennessee Rules of Civil Procedure directs that "good cause" only exists "where the party requesting discovery shows that the likely benefit of the proposed discovery outweighs the likely burden or expense, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the importance of the requested discovery in resolving the issues." Tenn. R. Civ. P. 26.02. Without agreeing that this is the proper standard, under its theory, the CAPD has the burden of demonstrating how each additional discovery request meets this standard, and why that discovery could not have been included in its original 80 requests.

Here, the CAPD has failed to make any specific showing of good cause in its motion. The CAPD makes no effort to analyze the appropriateness of adding any of the specific discovery requests over the 80 request limit, and otherwise fails to meet the high burden of proving that any ***likely*** benefit from adding more discovery outweighs the significant added burden and expense that the Company will be forced to incur in responding to such added

discovery. The generalized and unsupported argument that an 80 request limit will prevent it from presenting its case certainly does not satisfy its burden of showing good cause.

Moreover, the CAPD's attempt to give specifics as to why this case warrants additional discovery because of "new issues" that supposedly have arisen falls woefully short. First, while the TRA issued one data request to the Company regarding an issue the CAPD calls "decoupling," the fact remains that the Company never raised this issue in its pre-filed testimony and petition. The CAPD fails to demonstrate the likely benefit of further discovery on this issue or how the supposed benefit would outweigh the burden and expense of responding to the request.

Second, the CAPD alleges that an additional "new issue" is the alleged failure of the Company to be forthcoming about its intent to file a study of cost allocation factors. The CAPD alleges that it only learned of this potential filing from testimony filed in a West Virginia rate case. These allegations are unfounded. Mr. Miller clearly states in his pre-filed testimony in this case that the Company is conducting and will provide the study when completed. *(See Direct Testimony of Michael A. Miller, p. 32, "Recommendation II-2").* Further, given that the study has not even been completed yet, it is heard to understand how the CAPD could show good cause to serve discovery related to the study sight unseen.

Third, the CAPD also states that it has retained a "new expert" entitling it to further discovery. Of course, the Company is not responsible for the fact that the CAPD is just now retaining this expert. More importantly The CAPD fails to state whether the new expert has proposed questions included in the additional set, why the expert specifically needs the information and why the expert cannot rely on the information already requested in the CAPD's 80 requests.

Finally, the CAPD's additional requests demonstrate a failure on the part of the CAPD to review the materials already provided and certainly demonstrate a lack of good cause. For example, in its proposed discovery request #120, the CAPD requests the work papers for the Company's weather normalization witness. The Company already provided the 27 pages of weather normalization work papers in response to the TRA's data requests. The CAPD received copies of these work papers.

For all these reasons, the CAPD has not met its burden of showing good cause to exceed 80 discovery requests. Accordingly, its motion should be denied.

C. The Company Will be Forced to Answer 614 Discovery and Data Request, if the TRA Grants the Intervenors' Motions for Additional Discovery

The request of the CAPD for additional discovery should not be considered in a vacuum. Rather the totality of all the discovery served on the Company, and the corresponding burden and expense should be considered.

The intervenors combined have already served 194 numbered requests and seek to serve an additional 113 numbered requests for a total of 307 numbered requests. In reality, though, the burden of the intervenors requests is only appreciated when one considers the number of subparts to the proposed 307 total numbered requests. **If all of the intervenors' outstanding motions to exceed the discovery limits are granted, the Company actually will be forced to respond to a staggering 614 requests when considering subparts to the 307 numbered requests.** This does not even take into account the 138 numbered requests already served on the Company by the TRA.

The Hearing Officer has the discretion to consider the totality of the discovery requests served to date and sought by all the parties when determining if good cause exists to exceed the discovery limits by any one party. Here the sheer volume of the requests already made, as well

as the volume of additional requests sought counsels against a finding of good cause to exceed the discovery limits.

D. The CAPD's Voluntarily Assumed Role Of Presenting A Completely Alternative Rate Case Is Misplaced

The CAPD has proposed in its motion that it has a duty to "present a complete case" to the TRA and that doing so necessarily involves preparing and filing "a virtually parallel case that sets forth an alternative number for every number presented by the company." (Motion, at 5.) The CAPD's argument evidences a fundamental misunderstanding of the CAPD's role in a rate case. Tenn. Code Ann. § 65-5-103(a) clearly sets forth that "[t]he burden of proof to show that the increase, change, or alteration is just and reasonable ***shall be upon the public utility*** making the same." The statute setting forth the procedure by which rate requests are made makes no mention of the CAPD. Indeed, the CAPD is only generally empowered to "represent the interests of Tennessee consumers of public utilities services." Tenn. Code Ann. § 65-4-118 (2010). The CAPD has not been directed by the legislature to prepare and file competing rate requests and possesses only those powers granted to it by the legislature." See e.g. Op. Att'y Gen. No. 95-044 (April 25, 1995). This rate case already features four intervening parties that are probing and testing the Company's proposed rates. The CAPD's voluntarily assumed "duty" to present a complete alternative rate case regardless of the appropriateness of the Company's position has no basis in the controlling statues and certainly does not establish good cause for exceeding the TRA discovery limits.

E. The CAPD's Reliance on Out-of-State Rate Cases Does Nothing to Advance its Burden of Demonstrating Good Cause

The CAPD's reference to discovery requests propounded and responded to by the Company's sister entities in Kentucky and West Virginia rate cases is a red herring. First and

most importantly, there are no discovery limits like those contained in TRA Rule 1220-1-2-.11(5)(a) in regulatory rate cases in either Kentucky or West Virginia. Accordingly, the fact that the sister entities were forced to answer voluminous discovery requests should not be confused with acquiescence or agreement that such discovery was appropriate or proper. Second, even if there were limits in those states, which there are not, the CAPD fails to provide any meaningful detail on the substance of the discovery sought in these cases versus this case. Accordingly, it would be improper, if not impossible, to draw any meaningful conclusions on the appropriateness of the number of the CAPD's requests based on those other cases. The Company believes that the TRA Rule limiting discovery to 40 requests is the appropriate approach.

Conclusion

For all of the foregoing reasons, the CAPD's motion should be denied and the Company should only be required to respond to the first 80 requests propounded by the CAPD.

Respectfully submitted,

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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 9th day of November, 2010, upon the following:

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