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November 18, 2010

Via Hand-Delivery

Chairman Mary W. Freeman
c/o 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. 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 City of Chattanooga's Motion for Leave to File a Reply in Support of Its Motion For Permission to Propound Additional Discovery Requests. 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.

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*)
T. Jay Warner, Esq. (*w/enclosure*)
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Michael A. McMahan, Esq. (*w/enclosure*)
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Mark Brooks, Esq. (*w/enclosure*)
Scott H. Strauss, Esq. (*w/enclosure*)
Katharine M. Mapes, Esq. (*w/enclosure*)
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 CITY OF CHATTANOOGA'S MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF ITS MOTION FOR PERMISSION TO PROPOUND ADDITIONAL DISCOVERY REQUESTS

Tennessee American Water Company (the "Company") hereby responds to the City of Chattanooga's ("City") Motion for Leave to File a Reply in Support of its Motion for Permission to Propound Additional Discovery Requests as follows:

The City's motion should be denied. This is nothing more than attempt to cure the City's inadequate original motion for leave, which failed to establish good cause for exceeding the discovery limit of 40 discovery questions. Likewise, the proferred "reply" brief also fails to show good cause for asking additional questions. In addition, the City now seeks to introduce a new argument apparently challenging the constitutionality of the TRA's rule limiting discovery to 40 requests per party. See TRA Rule 1220-1-2-.11(5)(a). The City's request to – literally – make a "federal case" out of the TRA's discovery limits is unnecessary, unfounded, and should be denied.

In its response to the City's motion the Company noted that the City has actually submitted ***133 discovery requests***. While the City alleges this number to be an "inaccurate

exaggeration," even an extremely conservative count of the City's requests reveals 125 subparts. What is more important, however, is the City's improper attempt in its proposed reply to shift its burden of establishing the existence of good cause to the Company. The City argues that because the Company has made no showing that the City's proposed requests are inappropriate or unnecessary, they must be approved. This is backwards. The burden under TRA Rule 1220-1-2-.11(5)(a) is clearly on the City to show that "good cause" exists for any discovery beyond the TRA's limits. Accordingly, the City's position must be rejected.

The City's attempt to shift its burden is not surprising as it has yet to demonstrate good cause for seeking more than the 40 request limit. The City cannot be entitled to additional discovery, given the burden imposed to demonstrate that necessity, when its original 40 discovery requests are needlessly duplicative. For example, in its first 40 requests alone, the City asks no less than 9 questions regarding the Schumaker report, which was provided in the pre-filed testimony of Michael Miller. While each of these questions contains minute variances in wording that causes subtle differences in meaning, much of the information sought by the City on this topic could have been asked in one or two discovery requests. This pattern repeats itself throughout the City requests.

Other City requests seek information that has already been provided in this case or was made available in previous cases. TN-COC-01-Q15 seeks information available in the City's own request in Docket No. 08-00039 and information that was provided in response to TN-CAPD-01-Part III-Q41 in this case. Likewise, TN-COC-01-Q28 seeks information already provided in the Company's pre-filed testimony and in response to TN-TRA-01-Q13.

The City's only attempt in its reply to demonstrate the appropriateness of additional requests is that its 133 requests are on "critical issues." The TRA rule limiting discovery

requests does not, however, include an exception for questions on self-identified "critical issues." In every contested proceeding there will be issues central to all the parties, but this does not obviate the requirements of TRA Rule 1220-1-2-.11(5)(a).

Careful drafting and review of the Company's previously submitted materials would have allowed the City to obtain the information it needs within the 40 request limit. The very reason for the 40 request limit is to force the parties to prioritize and draft focused discovery requests; the City's failure to do so does not justify making TAWC shoulder the additional costs and burdens of responding to the City's excessive discovery requests.

The City also attempts to introduce a new argument in its reply that denying discovery beyond the TRA's limits would result in a constitutional violation. Relying on New Mexico law, the City notes that parties are entitled to an opportunity to take meaningful discovery in order to participate fully in administrative proceedings. However, the case cited by the City only held that the "express denial of the right to conduct discovery results in a denial of procedural due process of law." New Mexico Indus. Energy Consumers v. New Mexico Pub. Serv. Comm'n, 725 P.2d 244, 247 (N.M. 1986). In fact, the court in the New Mexico case held that even though the intervenor took no discovery whatsoever there was still no procedural due process violation because the intervenor had "not demonstrated that it was, in fact, denied the opportunity to conduct discovery." Id. It is uncontested here that the City has not been denied the right to conduct discovery, and indeed has issued more than the maximum number of discovery requests. The City's argument therefore falls woefully short of stating a valid constitutional claim.

Apparently expecting its motion to be granted as a matter of course, the City made little effort to show good cause for its request to exceed the TRA's discovery limits. The City should not now be allowed to attempt to meet its burden for the first time in a reply, especially since

again it has failed to establish good cause for burdening TAWC with the added cost of more discovery. The City's motion for leave to file a reply and its motion for expanded discovery therefore should both be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by way of the method(s) indicated, on this the 18th day of November, 2010, upon the following:

[x] Hand-Delivery [ ] U.S. Mail [ ] Facsimile [ ] Overnight [x] Email	T. Jay Warner, Esq. Ryan McGehee, Esq. Mary L. White, Esq. Counsel for the Consumer Advocate and Protection Division Office of the Attorney General 425 5th Avenue North, 2nd Floor Nashville, TN 37243-0491
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