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January 21, 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 01/21/11

**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 you will find an original and five (5) copies of Tennessee American Water Company's Reply to the Consumer Advocate and Protection Division's Response to TAWC's Motion to Call Schumaker & Company to Present Testimony Regarding Its Affiliate Audit Report. This material is also 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

Chairman Mary Freeman
January 21, 2011
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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 REPLY TO THE CONSUMER
ADVOCATE AND PROTECTION DIVISION'S RESPONSE TO TENNESSEE
AMERICAN WATER COMPANY'S MOTION TO CALL SCHUMAKER & COMPANY
TO PRESENT TESTIMONY REGARDING ITS AFFILIATE AUDIT REPORT**

Tennessee American Water Company ("TAWC"), by and through counsel, hereby submits this reply to the Consumer Advocate and Protection Division's ("CAPD") response to TAWC's Motion to Call Schumaker & Company to testify. The CAPD's response is full of fatal errors and misstatements of fact that undermine its argument. Accordingly, the Authority should reject the argument propounded by the CAPD in its response and should grant the relief requested in TAWC's Motion to Call Schumaker & Company.

**THE CAPD ERRONEOUSLY CLAIMS THAT ITS DUE PROCESS RIGHTS WOULD
BE VIOLATED BY CALLING SCHUMAKER & ERRONEOUSLY CLAIMS THAT
TAWC HAS NOT PRODUCED SCHUMAKER'S WORK PAPERS**

The CAPD's claim that calling Schumaker could violate its due process rights because it does not know the facts and opinions relied upon by Ms. Schumaker in support of the audit is completely unsupported by the facts. As set forth below, regardless of whether the Authority or TAWC calls Schumaker to testify regarding the management audit, the CAPD has been well

aware of the substance of any testimony that she might provide as well as all underlying facts relied on to support that testimony.

Schumaker conducted a management audit under the TRA's purview for the purpose of determining "whether the amount requested by the company to pay its service company is a just and reasonable amount based on prudent expenditures." *See* Hr'g Tr. at 8-9, Docket No. 08-00039 (Sept. 22, 2008). After Schumaker & Company completed the TRA ordered audit, TAWC filed a copy of the audit report in Docket No. 09-00086 on September 10, 2010. The audit was also included as part of TAWC's original filing in this rate case. *See* Ex. 8 to Michael A. Miller's Pre-Filed Testimony. Clearly, the CAPD and intervenors have known of Schumaker's opinions regarding the reasonableness of TAWC's management fees for months because they all have copies of the audit report containing her conclusions. Indeed, all of the auditor's facts, findings, conclusions, and recommendations are contained in the audit. This audit report is no different than the "pre-filed testimony" submitted by other witnesses – both contain the opinions and conclusions of its author that would be used in the Hearing on the merits.

Second, the CAPD claims that it does not know the underlying facts and opinions relied upon by Schumaker and has not received a copy of Schumaker's work papers supporting the audit. The only explanation for such a claim is that the CAPD either has not read the materials provided to it or has simply misplaced what it has received in discovery. The intervenors, including the CAPD, asked no less than 21 discovery requests relating to Schumaker's work in conducting the TRA ordered management audit. These requests asked for all of Schumaker's work papers, all correspondence made and documents submitted between TAWC and

Schumaker, all documents created, all information consulted by Schumaker during her audit, and requested the identity of all persons that had written or verbal communications with Schumaker.

Accordingly, in its discovery responses TAWC provided (1) all of Schumaker's workpapers; (2) a CD of all confidential workpapers in native format; (3) a CD of all non-confidential workpapers in native format; (4) a listing of all individuals that TAWC believed ever had communications with Schumaker; and (5) over 700 pages of correspondence between TAWC and Schumaker.¹ The CAPD's argument is truly puzzling given the fact that other intervenors have propounded second round discovery requests specifically referencing such workpapers. *See, e.g.,* COC-02-Q3.

The CAPD knows the opinions and conclusions held by the TRA's expert witness, Pat Schumaker, with respect to the management audit, as well as the facts relied upon to reach her conclusions. The CAPD's claim regarding due process if Schumaker testifies as a witness is without merit.

**THE CAPD'S CLAIM THAT THE AUTHORITY MUST WAIT UNTIL THE
CONCLUSION OF THE HEARING ON THE MERITS TO DECIDE
SCHUMAKER'S INDEPENDENCE LACKS MERIT**

The CAPD appears to suggest that there are issues surrounding the selection of Schumaker as the management auditor or surrounding her involvement in this proceeding. Nothing could be further from reality. The Authority oversaw the entire auditor selection process including defining the RFP, reviewing the responses, *approving the selection of Schumaker & Company as the auditor*, defining the scope of the audit, and approving the

¹ See Response to TN-COC-01-Q19; December 1, 2010 Supplemental Response to TN-COC-01-Q19; TN-COC-01-Q21-SUPPLEMENTAL ATTACHMENT. The intervenors also have had access to all the documents related to the audit procurement process, selection of Schumaker as the auditor, and scope of the audit in the various TRA orders entered in the 09-00086 Docket.

auditor's contract with TAWC. The transparency with which the auditor was selected could not be clearer.²

Because the TRA itself oversaw the selection of Schumaker as the auditor and oversaw and approved the entire audit procurement process, it is capable of determining now that the auditor was independent. Therefore, there is no basis for arguing that the TRA is incapable of entering an order stating that the auditor is independent and that calling the auditor as a witness would not affect its independent status.

CONCLUSION

For all the reasons contained herein and in TAWC's Motion to Call Schumaker & Company, TAWC respectfully requests that the Authority call Schumaker, or in the alternative to clarify that TAWC's act of calling Schumaker would in no way affect Schumaker's status as an independent auditor.

Respectfully submitted,



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² The CAPD's incredible claim is exactly why TAWC has sought an order from the TRA stating that the audit procurement process, scope of the audit, and independence of the auditor all met the TRA's requirements and were proper. It is these types of meritless arguments that drive up rate case costs.

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 21st day of January, 2011, upon the following:

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