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January 21, 2011

**VIA HAND DELIVERY**

filed electronically in docket office on 01/21/11

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

**Re: Docket No. 10-00189: *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***

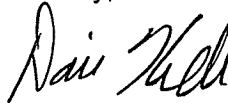
Dear Chairman Freeman:

Enclosed please find an original and five (5) sets of copies of Tennessee American Water Company's Response In Opposition to the City of Chattanooga's Motion That Witness Be Ordered To Appear For Deposition.

Please file the original and four copies of the Motion and stamp the additional copy as "filed." Then please return the stamped copy 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

Enclosures

January 21, 2011

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cc: Mr. David Foster, Chief of Utilities Division (w/o enclosure)  
Mr. Jerry Kettles, Chief of Economic Analysis & Policy Division (w/o enclosure)  
Ryan McGehee, Esq. (w/enclosure)  
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Donald L. Scholes, Esq. (w/enclosure)

9138618.1

**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**

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**TENNESSEE AMERICAN WATER COMPANY'S RESPONSE  
IN OPPOSITION TO THE CITY OF CHATTANOOGA'S  
MOTION THAT WITNESS BE ORDERED TO APPEAR FOR DEPOSITION**

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Tennessee American Water Company ("TAWC") respectfully opposes the City of Chattanooga's (the "City") Motion That Witness Be Ordered To Appear For Deposition. The City's motion to require Ms. Pat Schumaker, a principal of the TRA's selected and approved management auditor, Schumaker & Co., to appear for a deposition in Chattanooga is without any merit and should be denied. The City asserts that the possible appearance of Ms. Schumaker as a witness in this case to defend her audit is a surprise. The City also claims that it has had no opportunity to seek discovery about Ms. Schumaker's audit conclusions. The Consumer Advocate endorsed the City's motion making the same claim about a lack of discovery and mistakenly stating that the intervenors had not yet been provided Ms. Schumaker's underlying workpapers. The City's and Consumer Advocate's assertions and claims are simply wrong. There is no need for a deposition. Nor is there any reason to allow such an expensive distraction at this time. Any testimony to be provided by Ms. Schumaker will be provided by her in due course pursuant to the existing procedural schedule.

**Testimony by Pat Schumaker Cannot be Deemed a Surprise.**

None of the intervenors can claim any surprise that the Schumaker audit is highly relevant to this proceeding and that the auditor might need to be a witness to defend her firm's work now that it has been challenged by the intervenors' testimony. As the Consumer Advocate puts it: "[T]he Company has placed great evidentiary reliance on the audit from the beginning of this rate case...." *Response of the Consumer Advocate to TAWC's Motion to Call Schumaker & Company to Present Testimony Regarding Its Affiliate Audit Report*, at 1 (Docket No. 10-00189, filed January 20, 2011) ("Consumer Advocate's Response"). Indeed, the complete audit was filed as an exhibit to Company witness Michael Miller's pre-filed testimony simultaneously with the Company's initial petition in this case. Moreover, Mr. Miller testified extensively about the audit and how it supports TAWC's requested management fees.

As the Authority is well aware, the audit was the result of a process that began with the order at the conclusion of the 2008 rate case, in which TAWC was required to draft an RFP for the Authority's consideration within 60 days of the order in the 2008 case. The Authority expressed a lack of confidence in its ability to determine whether the amount of management fees requested in that case was "a just and reasonable amount based on prudent expenditures," and therefore was ordering another management audit under its supervision.<sup>1</sup> After TAWC filed

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<sup>1</sup> As Director Roberson noted in presenting the motion that was ultimately adopted as the majority position on management fees in Docket No. 08-00039:

Regarding the amount of management fees allowed, there is no doubt in my mind that legitimate expenses are incurred from the service company. The problem I had is in determining whether the amount requested by the company to pay its service company is a just and reasonable amount based on prudent expenditures. . . . The management audit ordered in 06-290 could have answered this important question if conducted properly. . . . I am anxious for the conclusion of the comprehensive audit ordered in 06-290 and restated in my motion for this docket. **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.**

Hrg. Tr. at 8-9, Docket No. 08-00039 (Sept. 22, 2008).

the draft RFP in March 2009, the Authority opened Docket No. 09-00086 to supervise the management audit procurement process. The Authority first considered, then modified, and then approved the RFP. It next considered all responses to the RFP and approved the selection of Schumaker & Company ("Schumaker") as its approved management auditor. The Authority then considered, modified, and approved the scope of the audit and the contract between TAWC and Schumaker. After Schumaker & Company completed the TRA's ordered audit, TAWC filed a copy of the audit in Docket No. 09-00086 on September 10, 2010. As mentioned above, on September 17, 2010, TAWC filed the audit in this case.

Not only has the significance of the management audit been absolutely clear since the conclusion of the last rate case, the possibility of testimony by the management auditor has also been obvious. The contract between Schumaker & Co. and TAWC, which was approved by the TRA, explicitly states that Schumaker may be required to participate, as an independent party, in a proceeding before the TRA concerning the management audit, including the preparation of rebuttal testimony and testifying before the TRA if required.<sup>2</sup>

With the audit already on file with the Authority in both Docket No. 09-00086 and this docket, there was no need for testimony from Ms. Schumaker. All her facts, findings, conclusions, and recommendations were contained in the audit, the scope of which had been specifically delineated in detail by the Authority in Docket No. 09-00086. That changed once the Intervenor filed their testimony on January 5, 2011, which included criticisms of the Schumaker audit. It was then apparent that Ms. Schumaker would need to present rebuttal testimony in defense of the audit. TAWC felt constrained, however, by the TRA's unique view of an expert's independence, which the Authority had cited in the 2008 case as a reason for

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<sup>2</sup> See Docket No. 09-00086, Tennessee American Water Company's Contract with Schumaker & Company, Ex. B, at 4.

disregarding the testimony of a different management auditor. In addition, the contract between TAWC and Schumaker, approved by the TRA, describes the auditor's role in providing testimony about the audit, specifically stating that "the Independent Management Auditor may be required to participate, as an independent party (not on behalf of any individual party) in a proceeding before the TRA concerning the management audit."<sup>3</sup> Thus, TAWC promptly filed its Motion to Call Schumaker & Company to Present Testimony Regarding Its Affiliate Audit Report on January 12, 2011, asking that either the Authority call Ms. Schumaker, or provide that TAWC could call her as a witness without compromising her "independence."

Since rebuttal testimony is not due until February 8, 2011, that motion is certainly timely and the issue has been duly raised at the appropriate time. Ms. Schumaker can prepare rebuttal testimony and file it in accordance with the established schedule. The City's motion is essentially nothing more than an attempt to depose a potential witness who may provide rebuttal testimony before the deadline to submit rebuttal testimony has even arrived. If that were the way rate case proceedings were conducted, then TAWC would have been entitled to take discovery depositions of the intervenors' witnesses before their testimony was due. The City's request is clearly improper and should be denied.

**Intervenors Have Taken Full Advantage of  
Discovery Concerning the Management Audit.**

None of the intervenors can make a legitimate claim that they have not had a meaningful opportunity for discovery regarding the audit. Not only have they had the opportunity to obtain discovery, they have in fact done so. Their assertions to the contrary are simply untrue.

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<sup>3</sup> See fn. 2 supra.

In this docket, the intervenors (including the City) have propounded no less than 21 discovery requests directly related to Schumaker's work in preparing the TRA's ordered audit.<sup>4</sup> The requests have sought, among other things, production of all workpapers and documents created, and information consulted by Schumaker during the creation of the TRA's ordered audit. The requests also required all correspondence between Schumaker and TAWC. In addition, the requests further sought the identification of all persons who ever had any written or verbal communications with Schumaker.

In response to the voluminous discovery propounded by Intervenor on the subject of Schumaker's work in preparing the TRA's ordered audit, TAWC produced: (1) all of Schumaker's workpapers;<sup>5</sup> (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.<sup>6</sup>

The City's attempt to lead the Authority into believing that the Intervenor has not had a meaningful opportunity for discovery about the audit should be rejected.

**The Requested Deposition is an Unjustified and Expensive Distraction.**

The procedural schedule provides for the filing of rebuttal testimony on February 8, 2011. That schedule has been in place since November 12, 2010, without any complaint by the City. Depositions are highly unusual in rate case proceedings, and should be extremely rare

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<sup>4</sup> See TN-COC-01-Q19, TN-COC-01-Q20, TN-COC-01-Q21, TN-COC-01-Q22, TN-COC-01-Q23, TN-COC-01-Q24, TN-COC-01-Q25, TN-COC-01-Q26, TN-COC-01-Q27, TN-CAPD-01-Q35, TN-CAPD-01-Q39, TN-CAPD-01-Q43, TN-CAPD-01-Q44, TN-CAPD-01-Q73, TN-CAPD-01-Q85, TN-COC-02-Q03; TN-COC-02-Q24, TN-COC-02-Q27, TN-CAPD-02-Q03; TN-CAPD-02-Q06; TN-CAPD-02-Q08.

<sup>5</sup> The assertion by the Consumer Advocate that TAWC had never produced these workpapers in spite of multiple requests is inaccurate. Consumer Advocate's Response, at 2. TAWC assumes this misstatement is the result of the Consumer Advocate's not having carefully reviewed the materials it has requested in discovery.

<sup>6</sup> See Response to TN-COC-01-Q19; December 1, 2010 Supplemental Response to TN-COC-01-Q19; TN-COC-01-Q21-SUPPLEMENTAL ATTACHMENT.

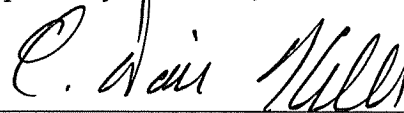
given that all witnesses must pre-file their testimony and written discovery is liberally allowed. The requested deposition would add nothing but an enormous additional expense to this case. If Ms. Schumaker provides testimony to rebut the criticisms that have been leveled against her audit by the City and the Consumer Advocate, it will be provided in accordance with the established procedural schedule.

### CONCLUSION

The claims underpinning the City's motion are baseless. There is no surprise in the possibility that Ms. Schumaker might be called either by the Authority or TAWC as a witness to support and defend her audit work. The Intervenor has had a full and meaningful opportunity to seek discovery about the management audit, and the City and the Consumer Advocate have fully availed themselves of that opportunity. Both the City and the Consumer Advocate have filed their own testimony criticizing the management audit. The procedural schedule fully protects the Intervenor's rights by setting a deadline for the filing of rebuttal testimony. If Ms. Schumaker prepares and files rebuttal testimony, it will be due at that time.

For the foregoing reasons, the Authority should deny the City's Motion and at the same time grant TAWC's pending Motion to Call Schumaker.

Respectfully submitted,



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*Attorneys for Petitioner  
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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 21<sup>st</sup> day of January, 2011, upon the following:

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<input type="checkbox"/> Overnight	and Protection Division
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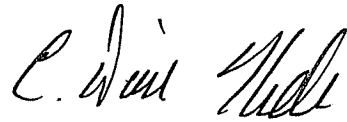
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