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February 14, 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 02/14/11

**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 Response in Opposition to the Utility Workers Union of America, AFL-CIO and UWUA Local 121's Motion to Substitute Affiant. This material is being filed today by way of email to the Tennessee Regulatory Authority Docket Manager, Sharla Dillon also.

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

February 14, 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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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 UTILITY WORKERS UNION OF AMERICA, AFL-CIO AND UWUA
LOCAL 121'S MOTION TO SUBSTITUTE AFFIANT**

Tennessee American Water Company ("TAWC"), by and through counsel, hereby submits this response in opposition to the Utility Workers Union of America, AFL-CIO and UWUA Local 121's (collectively the "UWUA") motion to substitute Mr. Marvin R. Blevins for Jerry Haddock. The UWUA's request is entirely improper and has no basis under the Tennessee Rules of Civil Procedure, the Tennessee Rules of Evidence or the TRA's Rules and Procedural Order. Accordingly, the TRA should deny the UWUA's request.

The TRA's November 12, 2010 Procedural Order requires that the intervenors submit all their witnesses' testimony by January 5, 2011. (See Order, Exhibit A.) The only pre-filed testimony submitted by the UWUA in this matter was that of Mr. James Lewis. Mr. Lewis is a national UWUA representative that has never worked for TAWC. Attached to Mr. Lewis' pre-filed testimony was an unsworn statement of Jerry Haddock. Despite the fact that Mr. Lewis has no personal knowledge of the matters addressed by Mr. Haddock, the UWUA attempted to side-

step this fact by having Mr. Lewis recount a conversation he purportedly had with Mr. Haddock and then attach a statement from Mr. Haddock in support – essentially hearsay within hearsay.

Mr. Haddock never submitted pre-filed testimony even though the TRA, pursuant to its Rules, entered the Procedural Order requiring that the parties' witnesses file pre-filed testimony by January 5, 2011.¹ Additionally, the UWUA never stated that Mr. Haddock would testify. In fact, the UWUA represented that "UWUA does not intend to call Mr. Haddock as a fact witness. However, if necessary the UWUA can seek to make him available...." (UWUA Supplemental Discovery Response to TAWC Request No. 3.) There was no subsequent communication indicating that the UWUA intended to call Mr. Haddock.

Now, with less than three weeks before trial, the UWUA has apparently recognized the inadmissibility of Mr. Lewis' testimony relating to Mr. Haddock's statements. Incredibly, rather than asking the Authority to allow Mr. Haddock to testify, which would still be objectionable, the UWUA seeks to offer Marvin Blevins, who was recently terminated by the Company for cause, to "adopt[] Mr. Haddock's affidavit . . . upon which [Mr. James] Lewis relies" and testify in the place of Mr. Haddock.

The Company is not aware of any legal basis under the Rules of Procedure or the Rules of Evidence that permit a witness to "adopt the affidavit" of another individual. This is rank hearsay on three levels: (1) Mr. Lewis purports to recite his conversation with Mr. Haddock; (2) Mr. Blevins now purports to attest to Mr. Haddock's statement; and (3) Mr. Haddock's unsworn statement is an out of court statement inadmissible as hearsay. This type of testimony carries little weight and value and has no place in this Hearing. Moreover, Mr. Haddock's "affidavit" is,

¹ This is despite the fact that the UWUA represented twice that it would "present [their] case-in-chief in accordance with the ordered schedule..." (See UWUA Response to TAWC's Motion to Compel, p. 3) (quoting the UWUA's Responses to TAWC's First Discovery Requests.)

in fact, not an affidavit, but rather an unsworn statement. (See Exhibit UWUA 11 to Mr. Lewis' Pre-Filed Testimony.)

Adding to this very unusual request is the fact that while Mr. Blevins is purportedly "adopting Mr. Haddock's affidavit" and attesting "to the accuracy of the circumstances and events described," Mr. Blevins instead directly contradicts and points out several alleged inaccuracies with Mr. Haddock's affidavit before offering new, allegedly correct, information. (See Paragraph 5, Blevins' Affidavit).

Substituting a testifying witness, less than three weeks before the Hearing, with a recently terminated employee of the Company – who offers a "modified" adoption of the statement of another individual – is clearly prejudicial. This is especially true because TAWC has no opportunity to cross-examine Mr. Haddock on his statement that Mr. Blevins purports to adopt. The UWUA's argument that Mr. Haddock can be easily swapped out for Mr. Blevins also fails because obviously Mr. Blevins cannot have personal knowledge of another's observations and opinions, and Mr. Blevins did not have the same job as Mr. Haddock.

CONCLUSION

Accordingly, for all the reasons contained herein the Company respectfully requests that the Authority deny the UWUA's request to permit Mr. Blevins to testify.

Respectfully submitted,

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

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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 14th day of February, 2011, upon the following:

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