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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 Motion in Limine to Strike the Statement of Jerry Haddock, Strike Certain Testimony of James Lewis, and to Exclude the Testimony of Marvin Blevins. 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

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 MOTION IN LIMINE TO STRIKE
THE STATEMENT OF JERRY HADDOCK, STRIKE CERTAIN TESTIMONY OF
JAMES LEWIS, AND TO EXCLUDE THE TESTIMONY OF MARVIN BLEVINS**

Tennessee American Water Company ("TAWC"), by and through counsel, hereby moves to strike the unsworn statement of Jerry Haddock included as Exhibit UWUA-11 to Mr. James Lewis' Pre-Filed Testimony and to strike Mr. Lewis' testimony on the Company's valve operations and maintenance based on Mr. Haddock's statements. TAWC also moves to exclude the testimony of Mr. Marvin R. Blevins. Mr. Lewis' testimony regarding the Company's valve operations and maintenance, which is predicated solely on the statements of Mr. Haddock, is inadmissible because it is made without personal knowledge and because the statements themselves are rank hearsay; further, Mr. Haddock's unsworn statement should be stricken because Mr. Haddock did not submit pre-filed testimony and is not going to be subject to cross examination. Likewise, Mr. Blevins' testimony should be excluded because his entire testimony is hearsay, is not based on personal knowledge, and because Mr. Blevins did not file pre-filed testimony as is mandated by the Authority's Procedural Order.

**MR. LEWIS' TESTIMONY ON THE COMPANY'S VALVE OPERATIONS AND
MAINTENANCE AND THE STATEMENTS OF JERRY HADDOCK
SHOULD BE STRICKEN**

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' pre-filed testimony and exhibits include a discussion on the Company's valve operations and maintenance. Mr. Lewis is a national UWUA representative that has never worked for TAWC so he does not, and cannot, have personal knowledge of the Company's valve operations and maintenance. Attached to Mr. Lewis' pre-filed testimony was a statement of Jerry Haddock, on which Mr. Lewis solely relies for his testimony with respect to the Company's valve operations and maintenance.

Personal knowledge is a requirement for a witness to be competent to testify on a particular subject. Tenn. R. Evid. 602; Advisory Comm. Comments ("Basic to relevancy concepts is that a witness must know about the subject matter of testimony. This is the familiar requirement of first-hand knowledge."). Because all of Mr. Lewis' testimony related to the Company's valve operations and maintenance program is not first-hand knowledge, the Authority should strike Mr. Lewis' testimony on this topic on competency grounds.

Mr. Haddock's statements, contained in Mr. Lewis' testimony and in Exhibit UWUA-11 thereto should also be stricken. 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. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to

prove the truth of the matter asserted, and the Rules of Evidence exclude these types of statements, absent some exception, because they are unreliable and because there is no opportunity to cross-examine the declarant about the statement. *See* Tenn. R. Evid. 801-802; Neil P. Cohen et al., *Tennessee Law of Evidence* § 8.01(3)(a) (5th ed. 2005). Both Mr. Lewis' recounting of Mr. Haddock's statements and the statements themselves clearly meet the definition of hearsay. This type of testimony carries little weight and value and has no place in this Hearing. Moreover, TAWC will have no way to cross-examine Mr. Haddock on his statements because the UWUA is replacing Mr. Haddock with Mr. Blevins.¹ Also adding to the lack of weight is the fact that Mr. Haddock's "affidavit" is not an affidavit, but rather, just an unsworn statement. (*See* Exhibit UWUA 11 to Mr. Lewis' Pre-Filed Testimony.)

THE AUTHORITY SHOULD EXCLUDE MARVIN BLEVINS' TESTIMONY

As TAWC argued in its Response to the UWUA's Motion to Substitute Affiant, filed contemporaneously herewith, the UWUA has apparently recognized the inadmissibility of Mr. Lewis' testimony relating to Mr. Haddock's statements. Incredibly, 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.

Mr. Haddock's statement is an out of court statement inadmissible as hearsay, and, as admitted by the UWUA, Mr. Blevins' testimony is nothing more than an attestation/adoption of this hearsay statement. Thus, Mr. Blevins' entire testimony is hearsay and should be excluded.

¹ Even if Mr. Haddock were to testify, his testimony should be excluded because it violates the Authority's Procedural Order that required testifying intervenor witnesses to file pre-filed testimony by January 5, 2011. It is inappropriate to circumvent this requirement by only attaching an unsworn statement to another witnesses' pre-filed testimony.

Additionally, Mr. Blevins' testimony is excludable because he does not have personal knowledge of Mr. Haddock's observations. Obviously, Mr. Blevins cannot have personal knowledge of another's observations and opinions – only Mr. Haddock can have this knowledge.

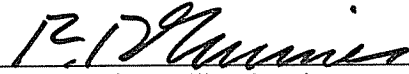
Finally, Mr. Blevins never submitted pre-filed testimony even though the TRA, pursuant to its Rules, entered the Procedural Order requiring that the intervenors' witnesses file pre-filed testimony by January 5, 2011. Again, the UWUA cannot circumvent this requirement and deadline by simply attaching a new witnesses' testimony, less than three weeks before the Hearing, to existing pre-filed testimony of a different witness.²

CONCLUSION

Accordingly, for all the reasons contained herein the Company respectfully requests that the Authority (1) strike Mr. Lewis' testimony on the Company's valve operations and maintenance and preclude Mr. Lewis from testifying on the same at the hearing; (2) strike Mr. Haddock's statement contained as Exhibit UWUA-11 to Mr. Lewis' pre-filed testimony; and (3) exclude Mr. Blevins' testimony from the hearing in its entirety.

² The UWUA will likely argue that it has met this requirement because Mr. Blevins is not offering new testimony, but rather, is just adopting the testimony of Mr. Haddock, which was filed as an exhibit to Mr. Lewis' pre-filed testimony on January 5, 2011. However, the UWUA contradicts its own argument because Mr. Blevins has gone beyond a mere total adoption of Mr. Haddock's statement and has instead pointed out several inaccuracies with Mr. Haddock's statement and has offered new, allegedly correct, information.

Respectfully submitted,

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

R. Dale Grimes (#006223)

E. Steele Clayton (#017298)

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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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