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February 24, 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 02/25/11

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*

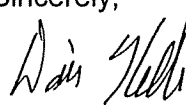
Dear Chairman Freeman:

Enclosed please find an original and five (5) sets of copies of Tennessee American Water Company's Motion in Limine to Strike the Rebuttal Testimony of Terry Buckner.

Please file the original and four copies of this material 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

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)
Mary L. White, Esq. (w/ enclosure)
David C. Higney, Esq. (w/ enclosure)

Chairman Mary Freeman
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Henry M. Walker, Esq. (w/ enclosure)
Michael A. McMahan, Esq. (w/ enclosure)
Valerie L. Malueg, Esq. (w/ enclosure)
Frederick L. Hitchcock, Esq. (w/ enclosure)
Harold L. North, Jr., Esq. (w/ enclosure)
Mark Brooks, Esq. (w/ enclosure)
Scott H. Strauss, Esq. (w/ enclosure)
Katharine M. Mapes, Esq. (w/ enclosure)
Donald L. Scholes, Esq. (w/ enclosure)

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**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 REBUTTAL TESTIMONY OF TERRY BUCKNER AND ATTACHMENT**

Tennessee American Water Company ("TAWC"), by and through counsel, hereby moves to strike the "Rebuttal Testimony" of Terry Buckner (and attachment) filed by the Consumer Advocate and Protection Division of the Attorney General ("CAPD") on February 24, 2011.

On February 11, 2011 the Tennessee Regulatory Authority issued an order requiring Ms. Patricia Schumaker to appear for a deposition on February 18, 2011. The TRA's order incorporated a January 28, 2011 letter agreed to by all parties. Included in the letter was the agreement that "Any witness who seeks to respond to Ms. Schumaker's testimony, as provided in the deposition, will submit that response in writing prior to the evidentiary hearing." (emphasis added). Following the deposition of Ms. Schumaker, TRA General Counsel Richard Collier directed that any written response must be filed by 12:00 pm on February 24, 2011.

On February 24, 2011 the CAPD submitted the "Rebuttal Testimony" of Terry Buckner. Instead of responding to Ms. Schumaker's testimony as provided in the deposition, however, Mr. Buckner attempts to submit testimony regarding unrelated tax issues and an audit report of New Jersey American Water Company that has yet to be considered, approved or modified by the

the New Jersey Board of Public Utilities. Neither issue that Mr. Buckner covers was substantively addressed in Ms. Schumaker's deposition. Because Mr. Buckner's filing is not responsive to Ms. Schumaker's testimony given at the deposition, it is little more than an impermissible attempt at additional sur-rebuttal that violates the Procedural Schedule in this matter. Therefore, TAWC moves to strike the "Rebuttal Testimony" in its entirety as well as the attached audit of New Jersey American Water Company.

There are numerous problems with allowing Mr. Buckner's "Rebuttal Testimony." First, the New Jersey Audit Mr. Buckner quotes from and relies upon is clearly hearsay. The consultant who completed the audit is not a witness in this proceeding and is therefore not available to authenticate the audit or submit to cross-examination.

Second, from the face of the audit it appears that the audit's purpose was entirely different than the audit ordered by the TRA in Docket No.09-00089. The New Jersey Audit purports to address the cost-efficiency of New Jersey American Water Company. Indeed, page I-1 of the audit states: "The objectives of the Comprehensive Management Audit of NJAW were to assist the Board of Public Utilities (BPU or Board) in determining if the management practices, functions, operations procedures, and other internal workings of NJAW are cost-effective." This is in contrast to the management audit ordered by the TRA, which was designed to audit "the affiliate relationship between TAWC and American Water Works Service Company." Docket No. 09-00089, Request for Proposal, at 2.

In addition to having different purposes, the New Jersey audit does not appear to have been attested to, and has not even been considered by the New Jersey Board of Public Utilities, who will – after consideration – accept, modify or will have the discretion to reject the findings of the auditor in whole or in part. In other words, at this point, the New Jersey Audit can only be

deemed preliminary. The process in New Jersey provides for the utility and the Division of Rate Counsel to file comments on the audit, which will not even occur before March 11, 2011. See Letter from New Jersey Board of Public Utilities (Feb. 10, 2011) (attached as Exhibit A). Then the staff of the New Jersey Board of Public Utilities will consider the audit and comments, and will issue a report. Subsequently, the New Jersey Board of Public Utilities will review the entire matter and issue an order that may agree with the audit's findings and conclusions or may not. That is simply not able to be known at this point.

Third, Mr. Buckner's "Rebuttal Testimony" clearly does not rebut any testimony Ms. Schumaker gave during her deposition. Throughout the course of the entire deposition only one mention of the New Jersey Audit was made, as follows:

BY MR. MCGEHEE:

Q. I have just got a couple more questions. You are doing an audit for the New Jersey Commission; is that correct?

A. That's correct.

Q. Are you aware of a similar audit that has taken place for New Jersey American Water on affiliate transactions?

A. I'm aware of it. I don't know any of the specifics of it.

MR. MCGEHEE:

Thank you very much. I appreciate it.

Deposition of Patricia Schumaker, 109:18 – 110:3 (Feb. 11, 2011). Simply asking Ms. Schumaker whether she was aware that an audit is taking place does not open the door for Mr. Buckner to submit the audit in this docket and give his interpretation of its findings two business days before the Hearing on the Merits. The audit is hearsay, does not appear to cover the same scope as the TRA's ordered Audit, and was not substantively addressed in Ms. Schumaker's

deposition. Mr. Buckner's testimony regarding the New Jersey Audit should therefore be stricken.

In addition, nothing even resembling the topic of income tax amounts was addressed in Ms. Schumaker's deposition, and Mr. Buckner's testimony on that topic should be stricken as well.

CONCLUSION

Accordingly, for all the reasons contained herein the Company respectfully requests that the Authority strike Mr. Buckner's "Rebuttal Testimony" and the attached audit of New Jersey American Water Company in their entirety.

Respectfully submitted,



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E. Steele Clayton (#017298)
C. David Killion (#026412)
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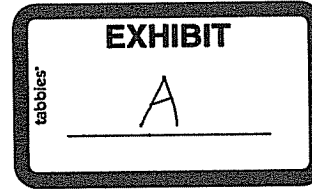
*Attorneys for Petitioner
Tennessee American Water Company*



STATE OF NEW JERSEY
Board of Public Utilities
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Newark, NJ 07102
www.nj.gov/bpu/

Chris Christie
Governor

Kristi Izzo
Secretary of the Board
Tel. # (973) 648-3426



February 10, 2011

Mr. John R. Bigelow
President
New Jersey American Water
131 Woodcrest Road
Cherry Hill, NJ 08034

Ms. Stefanie A. Brand, Director
Division of Rate Counsel
31 Clinton Street – 11th Floor
PO Box 46005
Newark, NJ 07101

Re: In the Matter of a Comprehensive Management Audit of
New Jersey American Water Company Pursuant to
N.J.S.A. 48:2-16.4 and N.J.A.C. 14:3-12.1 – Docket No. WA09070510

Dear Mr. Bigelow and Ms. Brand:

At its February 10, 2011 Agenda meeting, the New Jersey Board of Public Utilities ("Board") voted to accept "for filing purposes only" the NorthStar Consulting Group Audit Report ("Audit Report") in the above referenced matter. The Board also approved the release of the Audit Report to the public. The Board determined that comments on the report should be filed with the Board and the Division of Audits by March 11, 2011.

If you have any questions, please contact Dennis Moran at (973) 648-7664.

Sincerely,

Kristi Izzo
Secretary of the Board

/ac

c Ms. Debra Robinson, Assistant Deputy Public Advocate, Division of Rate Counsel

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 24th day of February, 2011, upon the following:

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<input type="checkbox"/> Facsimile	Counsel for the Consumer Advocate
<input type="checkbox"/> Overnight	and Protection Division
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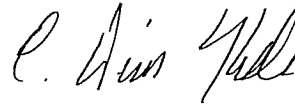
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