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September 19, 2016

**VIA ELECTRONIC FILING**

Hon. David Jones, Chairman  
c/o Sharla Dillon  
Tennessee Regulatory Authority  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243

**RE: Petition of Tennessee-American Water Company In Support of the  
Calculation of the 2016 Capital Riders Reconciliation,  
TRA Docket No. 16-00022**

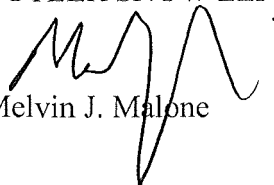
Dear Chairman Jones:

Attached for filing please find *Tennessee-American Water Company's Response in Opposition to CPAD's Motion to Reschedule Hearing to November TRA Conference* in the above-captioned matter.

As required, an original of this filing, along with four (4) hard copies, will follow. Should you have any questions concerning this filing, or require additional information, please do not hesitate to contact me.

Very truly yours,

BUTLER SNOW LLP



Melvin J. Malone

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Attachment

cc: Linda Bridwell, Tennessee-American Water Company  
Wayne Irvin, Assistant Attorney General, Consumer Protection and Advocate Division  
Vance Broemel, Assistant Attorney General, Consumer Protection and Advocate Division

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

PETITION OF TENNESSEE-AMERICAN )  
WATER COMPANY REGARDING )  
CHANGES TO THE QUALIFIED )  
INFRASTRUCTURE INVESTMENT )  
PROGRAM RIDER, THE ECONOMIC )  
DEVELOPMENT INVESTMENT RIDER, )  
AND THE SAFETY AND )  
ENVIRONMENTAL COMPLIANCE )  
RIDER AND IN SUPPORT OF THE )  
CALCULATION OF THE 2016 CAPITAL )  
RIDERS RECONCILIATION )

DOCKET NO. 16-00022

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**TENNESSEE-AMERICAN'S RESPONSE IN OPPOSITION  
TO CPAD'S MOTION TO RESCHEDULE HEARING TO NOVEMBER TRA CONFERENCE**

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Pursuant to Tennessee Regulatory Authority ("Authority" or "TRA") Rule 1220-1-2-.06, Tennessee-American Water Company ("Tennessee American," "TAWC," or "Company") respectfully submits its response in opposition to the motion of the Consumer Protection and Advocate Division of the Office of the Attorney General's ("CPAD" or "Consumer Advocate") to delay the scheduled hearing on the merits in the above-captioned matter (the "*Second Motion to Delay Hearing*"). For the reasons that follow, Tennessee American respectfully contends that the CPAD's request for delay of the hearing should be denied. In support of its Response, Tennessee American submits the following:

**I.**

**BACKGROUND**

On or about March 1, 2016, Tennessee American submitted its Petition in Support of the Calculation of the 2016 Capital Riders Reconciliation (the "*Petition*") in this matter. The CPAD was provided a copy of the *Petition* on March 1, 2016, as well. The CPAD filed a Petition to

Intervene in this case on March 21, 2016, and the Authority granted the CPAD's Petition to Intervene on April 7, 2016.

Subsequent to the granting of the CPAD's intervention, the parties were directed by the Hearing Officer to submit a jointly proposed procedural schedule in this matter. Sometime later, the parties submitted a jointly proposed procedural schedule. On June 17, 2016, the Hearing Officer issued the Order Establishing Procedural Schedule, which adopted, with no changes, the joint proposed schedule submitted by TAWC and CPAD.

On July 7, 2016, the CPAD submitted its *Motion for Extension of Time to File Pre-Filed Testimony and to Move Target Hearing Date* (the "*First Motion to Delay Hearing*"). While the *First Motion to Delay Hearing* was pending, the Hearing Officer granted the CPAD a one-week extension to submit its Pre-filed Testimony. TAWC formally opposed the CAPD's *First Motion to Delay Hearing*. Although it opposed the request to delay the hearing, TAWC voluntarily proposed that the CPAD be granted an additional extension of time - beyond the afore-referenced one-week extension - within which to submit its Pre-filed Testimony. In addition to the earlier one-week extension of time, the Hearing Officer granted the CPAD additional time to file its Pre-filed Testimony. Based on the arguments of the parties, the Hearing Officer "found that changing the target date was not warranted" and denied the CPAD's *First Motion to Delay Hearing*.<sup>1</sup> Thereafter, the Authority delayed the scheduled August 8, 2016, hearing on the merits in this matter *sua sponte*.

The Hearing Officer and the parties worked to establish a revised Procedural Schedule, and the Hearing Officer granted the CPAD's requests to submit additional discovery beyond the more than sixty (60) CPAD discovery requests that TAWC had already responded to in this

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<sup>1</sup> *Order Limiting Additional Discovery and Amending Procedural Schedule*, In Re: Petition of Tennessee-American Water Company for the Reconciliation of the 2016 Capital Riders, TRA Docket No. 16-00022 (Aug. 29, 2016).

docket.<sup>2</sup> Consistent with the Procedural Schedule, TAWC responded to the Fourth Set of Discovery Requests of the CPAD on September 9, 2016.<sup>3</sup>

## II.

### **DISCUSSION, ANALYSIS AND ARGUMENTS**

#### *The CPAD's Second Motion to Delay Hearing Fails to Demonstrate Sufficient Grounds Warranting Further Delay*

The underlying grounds for the *Second Motion for Delay* are two-fold. First, the CPAD argues that TAWC responses to the CPAD's Fourth Set of Discovery Requests "essentially results in a new request that now needs to be reviewed."<sup>4</sup> Second, the CPAD argues, in sum, that it "disagrees with the Company's formula change [12-month average versus a 13-month average] and would propose a consistent methodology in a new filing for the calculation which will further lower the surcharge."<sup>5</sup>

Tennessee American's aim is to have no errors in its filings. Towards this objective, TAWC's revised internal quality control processes are continuing to improve the Company's submissions in connection with the Capital Riders. Coupled with the checks and balances set forth within the approved Capital Riders tariffs, the agency's regulatory review and approval process has also served to guard the public interest as it relates to the Capital Riders. While TAWC respects the CPAD and regrets the corrections set forth within its responses to the CPAD's Fourth Set of Discovery Requests, the CPAD's draconian position that such revisions to a reconciliation filing should automatically constitute a "new" filing and thus start the entire

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<sup>2</sup> *Id.*

<sup>3</sup> It is very likely that if the CAPD had adhered to the original Procedural Schedule to which it agreed, the responses to the Fourth Set of Discovery Responses would have been submitted much earlier in this docket. *See Order Establishing Procedural Schedule*, TRA Docket No. 16-00022 (June 17, 2016).

<sup>4</sup> *Second Motion to Delay Hearing*, p. 2, TRA Docket No. 16-00022 (Sept. 15, 2016).

<sup>5</sup> *Id.*

procedural process all over again from the beginning is, to say the least, not supportable and certainly unreasonable.<sup>6</sup>

With respect to the CPAD's adverse contention on what it characterizes as a "formula change," this position is not a reason to further postpone the hearing. Generally speaking, one of the purposes of allowing an Intervenor to submit Pre-filed Testimony is to provide the opportunity to express and substantiate its position in a pending matter. The fact that the parties may have differing, adverse positions is no reason to delay a hearing. Moreover, at this stage in this proceeding, the CPAD's allegations that there has been a rider formula change in TAWC's submission in this docket and such without any notice are merely just that – allegations. Delaying the hearing further on the basis of the CPAD's mere allegations – even though made in good faith – would break new ground.

In sum, the CPAD's *Second Motion to Delay Hearing* should be denied. The record before the Authority is replete with instances in this pending matter in which the Hearing Officer and TAWC have worked cooperatively with the CPAD's requests for delays and extensions.<sup>7</sup>

### III.

#### CONCLUSION

Tennessee American very much respects the Consumer Protection and Advocate Division of the Office of the Attorney General. Nonetheless, in this instance, the CPAD's *Second Motion to Delay Hearing* should fail. While the Authority may certainly employ its discretion and delay

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<sup>6</sup> Since the original Procedural Schedule was established by the Hearing Officer, the time for the CPAD to submit its Pre-filed Testimony has been extended on at least three (3) occasions, and the hearing has been moved back twice, providing the CPAD more and more time. (After the August 8<sup>th</sup> hearing date was postponed, the parties were informed that the hearing would be scheduled on October 4<sup>th</sup>. The parties were later informed that the hearing would be set for October 10.).

the hearing as requested by the Consumer Advocate, the record before it does not support the request.

As set forth herein, TAWC opposes the CPAD's *Second Motion to Delay Hearing*. In the interest of good faith cooperation, however, Tennessee American would not object to the Authority postponing the hearing to a date on or before November 1, 2016. Otherwise, the motion should be denied. An extension beyond November 1 would extend this reconciliation docket to nearly ten (10) months. As the Authority is well aware, full, general rate cases are often completed in less time.

For the foregoing reasons, Tennessee American respectfully requests that the Authority deny the CPAD's Second Motion to Delay Hearing.

This the 19<sup>th</sup> day of September, 2016.

Respectfully submitted:

By: 

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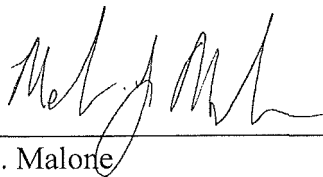
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

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This the 19<sup>th</sup> day of September, 2016.

  
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Melvin J. Malone