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July 13, 2016

**VIA ELECTRONIC FILING**

Hon. Herbert H. Hilliard, 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 Hilliard:

Attached for filing please find *Tennessee-American Water Company's Response in Opposition to CPAD's Motion to Delay the Hearing* 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

clw

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 DELAY THE HEARING**

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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. 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 motion, 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.

## II.

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

#### *a. The CPAD Failed to Comply with the Procedural Schedule*

As the record reflects, it is not in dispute that the Hearing Officer considered "the preferences of the parties" in establishing the Procedural Schedule set forth in **Exhibit A** to the TRA's June 17, 2016 Order Establishing Procedural Schedule (the "*Procedural Order*").<sup>1</sup> It is likewise not disputed that the CPAD's discovery requests, which form the underlying basis of its motion to delay the hearing, was submitted nearly one month after the scheduled deadline for Intervenor's Discovery Requests and a mere two days<sup>2</sup> before the deadline for the submission of Intervenor's Pre-filed Testimony.

In its motion to delay the hearing, the CPAD alleges that "on an *initial* review of the Company's filing, the Consumer Advocate has reason to believe there *may* be an error regarding

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<sup>1</sup> *Order Establishing Procedural Schedule*, In Re: Petition of Tennessee-American Water Company for the Reconciliation of the 2016 Capital Riders, TRA Docket No. 16-00022 (June 17, 2016).

<sup>2</sup> It should be noted that the First Informal Discovery Requests were submitted to TAWC by the CPAD on July 5<sup>th</sup>, while the Second Informal Discovery Requests were not submitted by the CPAD to TAWC until July 7, 2016.

depreciation expense that would require an extensive revision of the filing by the Company.”<sup>3</sup>

Under the approach put forth by the Consumer Advocate, an intervenor may intervene in a case, not adhere to the agency’s Procedural Schedule, or timely request a modification thereof, issue untimely discovery on the heels of the date on which its pre-filed testimony is due alleging the possibility of a substantial error in the petition<sup>4</sup> and thus sufficiently justify a request to delay a scheduled hearing date.

b. *The CPAD’s Motion Conflicts with State Law and the Intervention Order*

Tennessee Code Annotated Section 4-5-310 provides that a petition for intervention shall be granted if there is a determination that the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.<sup>5</sup> Acknowledging applicable, and in fact controlling, state law, in the Order Granting the Petition to Intervene Filed By the Consumer Advocate in this matter (the “*Intervention Order*”), the Authority made the determination required pursuant to Tenn. Code Ann. § 4-5-310.<sup>6</sup> More specifically, in granting the CPAD’s Petition to Intervene, the Authority found, among other things, that the petition, as submitted, “should not impair . . . the orderly and prompt conduct of the proceedings.”<sup>7</sup> Having applied the statutorily required standard at the outset with respect to the CPAD’s unopposed intervention, the agency should continue the appropriate application of that same standard. As the *CPAD’s Motion* conflicts with both state law and the Authority’s *Intervention Order*, the motion to delay the hearing should be denied.

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<sup>3</sup> *Motion for Extension of Time to File Pre-filed Testimony and to Move Target Hearing Date*, In Re: Petition of Tennessee-American Water Company for the Reconciliation of the 2016 Capital Riders, TRA Docket No. 16-00022, p. 1 (July 7, 2016) (the “*CPAD’s Motion*”) (*italics added*).

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Order Granting the Petition to Interview filed by Consumer Advocate*, In Re: Petition of Tennessee-American Water Company for the Reconciliation of the 2016 Capital Riders, TRA Docket No. 16-00022, p. 2 (April 7, 2016).

<sup>6</sup> *Intervention Order* at 3.

<sup>7</sup> *Id.*

c. *TAWC's Responses to the CPAD's Discovery Will Be Part of the Evidentiary Record*

Although Tennessee American reserves its right to submit appropriate and good faith objections within its soon-to-come, voluntary responses to the CPAD's late-filed discovery requests, Tennessee American — in the spirit of cooperation — does not here object to CPAD's discovery requests due to the CPAD's failure to submit the same in compliance with the *Procedural Order*. In keeping with the cooperative, good faith working relationship that TAWC and the CPAD have worked to cultivate over the years, Tennessee American intends on filing responses to the CPAD's discovery requests as soon as is practicable. Rather, the aim of Tennessee American's opposition here is the CPAD's premature attempt to delay the hearing. As Tennessee American intends on responding to the CPAD's pending discovery requests, the information sought by the CPAD will become a part of the evidentiary record, and as such will be available for review by the Authority. Further, in the event that the Consumer Advocate's allegation proves accurate, and such error requires a virtual re-filing of the entire petition, the agency can then at such time consider whether it is appropriate to postpone and re-set the hearing date. On the other hand, if the Consumer Advocate's allegation is inaccurate, then a postponement of the hearing would have been premature.

As TAWC's voluntary responses to the CPAD's untimely discovery requests will become a part of the evidentiary record, denying the Consumer Advocate's motion to delay the hearing will present no harm to the public interest.

d. *On the Totality of the Circumstances, the CPAD's Motion Must Fail*

Tennessee American realizes that from time to time parties, including TAWC, incur challenges — foreseen and unforeseen — that may impact their respective abilities to comply with scheduling orders. With this in mind, and with good faith at the forefront, Tennessee American

is not seeking a hard and fast approach from which no relief should ever be granted. In fact, conditioned upon the scheduled hearing date not being delayed, TAWC would not oppose a further extension of time for the CPAD to submit its pre-filed testimony to July 19, 2016.<sup>8</sup> Tennessee American is asking, however, that the Authority refrain from endorsing circumstances in which an intervenor, on the eve on which its pre-filed testimony is due, submits untimely discovery requests as the basis to delay a hearing on the merits. On the whole of the circumstances presented, the Authority should, at this time, deny the Consumer Advocate's premature request to the delay the hearing.

### 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 motion should fail. While the agency may certainly employ its discretion and delay the hearing as requested by the Consumer Advocate, the record before it is absent unambiguous grounds to do so. For the foregoing reasons, Tennessee American respectfully requests that the

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<sup>8</sup> In the event the Authority grants the Consumer Advocate an extension to July 19<sup>th</sup>, TAWC would request that the date for the submission of its rebuttal testimony be moved from July 19<sup>th</sup> to July 26<sup>th</sup>, conditioned upon the hearing date remaining August 8<sup>th</sup>. As a further show of good faith, TAWC will make every reasonable effort to submit its responses to the Consumer Advocate's discovery requests no later than Friday, July 15<sup>th</sup>.

Authority deny the CPAD's request to delay the hearing on the merits.

This the 13th day of July, 2016.

Respectfully submitted:

By: 

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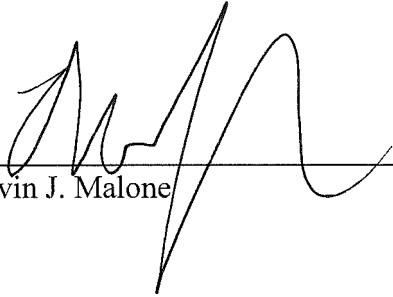
CERTIFICATE OF SERVICE

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 13th day of July, 2016.

  
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Melvin J. Malone