

**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 FAIR AND ADEQUATE RATE OF RETURN  
ON ITS PROPERTY USED AND USEFUL IN FURNISHING  
WATER SERVICE TO ITS CUSTOMERS**

**DOCKET NO.  
06-00290**

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**THE CITY OF CHATTANOOGA'S RENEWED MOTION TO COMPEL  
PETITIONER'S RESPONSE TO DISCOVERY REQUESTS**

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Intervenor, the City of Chattanooga ("Chattanooga"), by and through counsel, submits this Renewed Motion seeking an Order compelling the Petitioner, Tennessee American Water Company ("TAWC"), to respond fully to discovery requests submitted by Chattanooga.

This Renewed Motion to Compel ("Renewed Motion") follows Chattanooga's Motion to Compel filed February 8, 2007 ("Original Motion"), and the Status Conference held February 9, 2007, at which the Original Motion was argued. At the Status Conference, the parties engaged in extensive negotiations that were reported to the Hearing Officer as recorded on the transcript of the Status Conference ("Transcript"). As reflected in the Transcript, the parties reached agreement as to certain responses and announced those agreements to the Hearing Officer. Chattanooga's attorneys reported that agreement was not reached on certain requests and continued to stand by its Original Motion as to those requests.

Chattanooga incorporates by reference Sections I and II of the Original Motion, discussing, respectively, the subject matter of this proceeding and the TAWC's unjustified general objections. For convenience, Chattanooga sets forth below the section of its Original Motion addressing TAWC's refusal to answer specific questions. As to each question or group

of questions, Chattanooga has set out (i) the agreement, if any, announced in the Status Conference with Transcript references and (ii) whether Chattanooga's Original Motion has been resolved by agreement or TAWC's supplemental response.

**I.**

**TAWC'S CONTINUED UNJUSTIFIED REFUSAL  
TO ANSWER SPECIFIC QUESTIONS**

TAWC has provided complete answers to virtually none of the 38 discovery requests propounded by Chattanooga. The Original Motion focused on 25 of those requests, which fall into four categories of information critical to this proceeding. Each category of information is described, in turn, along with a description of the requests that are related to that category of information:

A. National Call Center Costs. In 2003, TAWC transferred its customer call functions to a national call center established by its parent or an affiliate company. TAWC has objected to requests concerning call center costs based on asserted burden and relevance. The relevance response is disingenuous. P. Baryenbrunch testifies in his prefiled testimony about the "reasonableness" of the charges for the call center on pages 2 (Q.5) and page 4 (Q.7). It appears from the response to Request No. 19 that TAWC is paying a parent or affiliate corporation almost \$900,000 per year for the operation of the call center. The Intervenor needs information about the cost of the call center not only to cross-examine Baryenbrunch, but also to evaluate whether to offer counter-testimony on this subject.

TAWC seeks to justify the very large sum that it is paying for this service by testimony claiming that the expense is comparable to the expense for certain customer service activities reported by investor-owned electric utilities in other states. The discovery submitted by Chattanooga seeks information concerning the actual cost of the call center services, which is the

appropriate measure of the reasonableness of the amount paid for those services. The excess above the reasonable cost of call center services should be disallowed as an expense to be charged to Chattanooga ratepayers. Additionally, amounts already paid in excess of reasonable costs should be accounted for as additional return to TAWC's parents, and the additional return should be considered in determining the allowable return during the test year.

Chattanooga requests that TAWC be compelled to provide answers to the following discovery requests relating to costs of call center activities:

- No. 1 (TAWC personnel costs of locally providing customer call services).
- No. 2 (changes in TAWC expense after customer call services were shifted to the call center).
- No. 13 (call center personnel cost information).

(i) *TAWC agreed to provide the information submitted in 2003 in support of its efforts to justify the National Call Center expense, updated to date. Transcript, pp. 13-14.*

(ii) *Not fully resolved. TAWC has provided a portion of the materials submitted in 2003, identifying them as a portion of the documents supporting Michael Miller's testimony and has provided annual total cost of the Call Center. TAWC has not provided Mr. Miller's testimony (which we have) but has not provided all relevant schedules and workpapers. TAWC should be compelled to do so.*

B. Capital Expenses. Chattanooga has propounded several requests that are designed to elicit more information on amounts reported as being expended for capital additions. These requests seek necessary information to determine the reasonableness of expenses incurred for

capital additions and the proportion of the capital expenses that has, in fact, been paid to TAWC parents or affiliates. The information sought is relevant to the reasonableness of reported capital expenses, whether expenses reported directly related to capital assets used and useful, and whether a portion of the capital expenses constitute additional return to TAWC's shareholders.

The requests in question include:

- No. 11 (seeking justification for expenses incurred that were inconsistent with comprehensive planning studies).
  - No. 14 (seeking a breakdown of the elements of the capital expenses).
  - No. 15 (seeking identification of outside contractors that were involved in capital projects).
- (i) *TAWC agreed to provide a schedule showing which capital projects were undertaken consistent with the CPS and which were not referenced in the CPS. TAWC is then provide documents relevant to projects Chattanooga may wish to review in greater detail. Transcript p. 14.*
- (ii) *Conditionally resolved. Assuming the schedule provided describes all capital projects relevant to this rate case, the supplemental response and the agreement for access to detailed records in Chattanooga resolves Chattanooga's Original Motion as to these three questions.*
- No. 16 (seeking identification of the portion of reported capital expenses paid to any TAWC parent or affiliate and information concerning the nature of those payments).
- (i) *TAWC agreed to provide information on moneys received by TAWC's parents or affiliates relating to the capital projects that were to have been identified in response to Request 11. Transcript p. 15.*

(ii) Not resolved. TAWC's supplemental response provides a listing of management fees that were capitalized, without tying these to the capital projects identified in the supplemental response to Request 11. The agreement announced in the Status Conference did not limit the Request to management fees, to the extent that other payments were made by TAWC to any parent or affiliate if those payments were capitalized by TAWC.

- No. 20 (seeking information concerning the basis for the very large increase in the cost of connecting new customers reported by TAWC).

(i) TAWC agreed to provide an explanation of the factors associated with the increase of the cost of connection of new customers. Transcript pp. 15-16.

(ii) Not resolved. TAWC's supplemental response includes a schedule that does not address 2006 costs, as requested.

C. Management Fees. Data attached to the prefiled testimony of Mr. Baryenbrunch clearly shows that TAWC is overpaying for management services. Mr. Baryenbrunch reported in Schedule 1, page 1, that TAWC was paid \$3,580,292 for management services (which actually understates the directly identified management fees by more than \$500,000). He reported in Schedule 2, page 2, that the \$3,580,292 purchased 31,995 hours of "management services." Just this portion of the management fees and by TAWC could have financed 15 full-time equivalent employees, each of whom could have been paid \$162,900, plus thirty percent (30%) for fringe benefits.

TAWC's prefiled testimony provides inadequate cost justification for these management fees. Chattanooga's discovery requests are specifically designed to establish the details of management fees paid and the costs actually incurred by TAWC or the TAWC parent or affiliate

providing the services. The requests also seek information relevant to the necessity of the services provided and the extent to which the excessive fees have increased the return received by TAWC's parents.

The Chattanooga discovery requests that relate to this subject are:

- No. 18 (seeking information about amounts paid by TAWC to any TAWC parent or affiliate for services, equipment, or materials).
  - No. 19 (identification of the individuals providing services identified in No. 18, along with information about their hourly rate or salaries and descriptions of the services provided).
- (i) *TAWC agreed to provide copies of the bills by which management fees were billed to it. TAWC also agreed to provide for each category of service included in the bills the employees who had provided the service, how many hours they had billed in connection with the service, and their unburdened rates. TAWC also agreed to provide a schedule showing the personnel cost overhead burden applied to these personnel costs. Transcript pp. 16-18. TAWC represented in the settlement discussions that this description of personnel costs would cover all of the amounts billed.*
- (ii) *Not resolved. The supplemental response is not responsive to the questions or to the agreement. TAWC has not provided any schedule showing the amount of time spent by each employee providing service each month (identified by employee number). Contrary to the representations made during the settlement discussions at the Status Conference, the bills include very large amounts for non-personnel expenses. As a single example, the December, 2006 bill specifies that 81.05 hours*

*of administration time was billed to TAWC, for a cost of \$4,338, at an average rate (calculated) of \$53.52 an hour. In addition, \$700,638 in administration “expense” was billed and paid by TAWC, with no explanation in the bill or the schedules TAWC has provided. Further inadequacies include: (a) Schedules reporting the amounts billed each month (identified as supplemental attachments 1 and 2) do not match the bills or the amounts reported in the schedule attached to TAWC’s original response to Request 18; (b) The overhead explanation provided explains the personnel overhead, but then fails to explain at all an additional “General Overhead” of 33.6%; (c) None of the bills identify either the personnel or the “general” overheads. The payroll totals shown on the bills apparently include unspecified overheads, as the calculated rates are higher than the average rates for employees paid to provide services within each category of service.*

- No. 24 (requesting for the period since January 1, 2000, monthly and year-to-date budgets and analyses of actual expenses incurred. TAWC has provided this information only through years 2004 through 2006, which shows management fee payments consistently in excess of amounts budgeted, forcing reduction in other expenses).

*(i) Chattanooga agreed to accept the schedules for 2004 through 2006 and to withdraw its objection to the failure to provide schedules for other periods.*

*Transcript p. 18.*

*(ii) Resolved.*

- No. 30 (financial statements of TAWC parents or affiliates that have been paid any amount by TAWC. This information is important to track revenue being received by TAWC's shareholders, which may constitute excess return).

(i) *Chattanooga agreed to withdraw its objection upon the representation that no payments were made by TAWC to any company not identified in TAWC's response. Transcript p. 18-20 .*

(ii) *Resolved.*

- No. 38 (seeking the cost basis for the automatic escalation of five percent (5%) per year in the management fee contract).

(i) *TAWC agreed to provide an explanation of its repeated use of a flat, five percent (5%) escalation of its management fee. Transcript p. 18-19.*

(ii) *Not resolved.* *TAWC has not provided adequate explanation for its repeated use of the five percent (5%) escalation. Nothing in the 1989 Management Agreement authorizes use of any sort of escalator.*

D. Effects of IPO. No agreement was reached on requests of the various parties for information concerning the planned IPO and its inevitable effects upon TAWC. Chattanooga agrees with the observation of counsel for CMA, who stated, at p. 38 of the Transcript: "If we don't find out everything we can about the IPO and how it's going to affect this company, then that is a very good argument for telling the company to come back and ask for this rate case after the IPO."

Chattanooga's Original Motion concerning questions relating to the effects of the planned IPO has not been resolved. Chattanooga has filed a Supplemental Memorandum in which it has filed a redacted copy of minutes of three meetings of the supervisory board of RWE Aktiengesellschaft providing information directly relevant to this proceeding, as explained in that Supplemental Memorandum. The Hearing Officer has taken the issues relating to the IPO

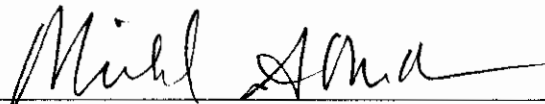


under advisement. Chattanooga urges the full production of the requested information or, as Mr. Walker suggested, that this rate case be withdrawn until after the IPO is completed.

Chattanooga respectfully requests that TAWC be compelled to respond to each of its discovery requests fully, as noted herein. Upon failure to do so, Chattanooga requests that appropriate sanctions be imposed, up to and including the dismissal of the rate case.

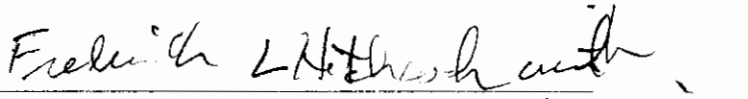
Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day served a true and correct copy of the foregoing pleading by electronic mail and by depositing same in the United States mail, postage prepaid, and addressed to the following:

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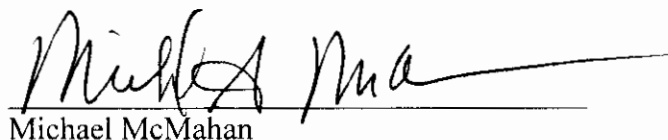
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This the 16<sup>th</sup> day of February, 2007.

  
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