

BASS, BERRY & SIMS PLC
A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

R. DALE GRIMES
TEL: (615) 742-6244
FAX: (615) 742-2744
dgrimes@bassberry.com

AMSOUTH CENTER
315 DEADERICK STREET, SUITE 2700
NASHVILLE, TN 37238-3001
(615) 742-6200

www.bassberry.com

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February 23, 2007

VIA HAND-DELIVERY

Chairman Sara Kyle
c/o Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

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. 06-00290

Dear Chairman Kyle:

Enclosed please find an original and seventeen (17) copies of Petitioner Tennessee American Water Company's Response to the City of Chattanooga's Renewed Motion to Compel dated February 16, 2007.

Please return three copies of the Response, which I would appreciate your stamping as "filed," and returning to me by way of our courier.

Should you have any questions concerning any of the enclosed, please do not hesitate to contact me.

With kindest regards, I remain

Yours very truly,



R. Dale Grimes

RDG/ms
Enclosures

Chairman Sara Kyle
February 23, 2007
Page 2

cc: Hon. Pat Miller (*w/o enclosure*)
Hon. Ron Jones (*w/o enclosure*)
Hon. Eddie Roberson (*w/o enclosure*)
Ms. Darlene Standley, 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*)
Ms. Pat Murphy (*w/o enclosure*)
Michael A. McMahon, Esq. (*w/enclosure*)
Frederick L. Hitchcock, Esq. (*w/enclosure*)
Vance Broemel, Esq. (*w/enclosure*)
Henry Walker, Esq. (*w/enclosure*)
David Higney, Esq. (*w/enclosure*)
Mr. John Watson (*w/o enclosure*)
Mr. Michael A. Miller (*w/o 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. 06-00290

**TENNESSEE AMERICAN WATER COMPANY'S RESPONSE
TO THE CITY OF CHATTANOOGA'S RENEWED MOTION TO COMPEL**

Petitioner Tennessee American Water Company respectfully responds to the Renewed Motion to Compel filed by the City of Chattanooga on February 16, 2007. The City's renewed motion comes upon the heels of a February 9 status conference addressing Tennessee American's objections to a number of the City's and other intervenors' discovery requests, at which the parties reached agreements, subject to correction upon review of the transcript, on supplemental answers that Tennessee American would provide on all issues except those relating to the change of control and anticipated initial public offering of American Water Works Company. At the conclusion of the status conference, the Hearing Officer instructed the intervenors to advise him by February 16 "in the event the Intervenor are of the opinion that the [supplemental] responses provided by February 14, 2007 do not comply with the agreements reached regarding the discovery requests." Hearing Officer Order, at 4 (February 15, 2007).

Tennessee American provided extensive supplemental responses by the deadline in compliance with the agreements. However, the City filed its renewed motion without giving Tennessee American Water any prior indication that it was dissatisfied with the supplemental responses or attempting to confer informally to see if any further dialog would resolve any

lingering disputes. Moreover, instead of simply notifying the Hearing Officer of any inadequacies in the agreed supplemental responses, the City apparently attempts to turn back time as if the parties and TRA Staff had not spent hours in the status conference working to resolve the objections and seems to have requested the reinstatement of their original highly objectionable discovery requests and demands that Tennessee American respond fully.

Tennessee American Water has produced voluminous information to the TRA Staff and the intervening parties in response to their more than 218 data and discovery requests, and what has been provided should be more than sufficient for the legitimate discovery needs of this docket. Both before and since the status conference, Tennessee American has made a good faith effort to provide information and documents where reasonably possible. Tennessee American also, in good faith and with the heavy expenditure of additional time and expense, has produced and is producing supplemental responses, second supplemental responses and a third supplemental response. In short, Tennessee American has now provided waves of voluminous information, much of it sought by no other party but the City. Tennessee American's responses to the City's requests should be deemed sufficient.

It appears that the City's interests in discovery may extend beyond the actual issues of this rate case, and so it is not surprising that the City has repeatedly attempted to introduce otherwise unnecessary issues and disputes, and can be expected to continue to do so. For the reasons set forth herein, the City's renewed motion should be denied.

I. Tennessee American's Response to the City's Perfunctory General Demand

The City's renewed motion includes a perfunctory request that Tennessee American be compelled to *answer, in full, all* the City's *original* discovery requests, as if the parties and the TRA staff had not already engaged in an hours-long "meet and confer" session negotiating a

narrower scope to the City's questions. Even if this is intended as a serious demand, the City, however, fails to address *any* of Tennessee American's stated objections to those original requests, must less to show that any of Tennessee American's objections are unwarranted. Instead, the City's motion again brings into focus the City's use of remarkably overbroad language, including boilerplate general definitions, that renders almost all of its discovery requests objectionable and not reasonably susceptible to full responses. As Tennessee American demonstrated at the status conference, *see* Transcript (Tr.), at 45-48 (February 9, 2007), the City's general definitions alone make the City's requests so overbroad and unduly burdensome that they are indefensible. As a result, the City's original and renewed motion should be denied in its entirety

The fact of the matter, however, is that we have moved beyond the question of the original discovery requests. The parties and TRA staff devoted considerable time and effort in an attempt to negotiate and narrow those questions, and the last almost two weeks have been dedicated to providing answers to the narrower requests. That the City may not be satisfied with Tennessee American's supplemental answers to the narrowed questions is no reason for the City to choose to revert to its original overbroad and objectionable requests.

II. Tennessee American's Responses to the City's Specific Demands

The City seeks to compel production with respect to eight specific requests (1, 2, 13, 16, 18, 19, 20 and 38) that the parties tentatively resolved in agreements set forth at the status conference on February 9, 2007, and subsequent correspondence, through the procedure agreed to by all parties and the Hearing Officer. The City now is not satisfied by the supplemental responses, claiming that Tennessee American has failed to produce the information upon which the parties agreed. Instead, in every instance cited by the City, Tennessee American has

provided exactly what was agreed, or as much as existed, while the City takes some liberties with the record to improve upon its bargain. The City supports its positions by citing its counsel's lengthy characterizations of the parties' purported agreements in the record of the status conference. However, counsel for Tennessee American was concerned that some vagueness and possible confusion could arise from the City's oral descriptions of agreements on so many issues and requested the right to review the transcript and submit corrections by supplemental. *See e.g.*, Tr. 20, 32-33, 57-58, 60. In fact, the City expressly agreed to such a procedure:

MR. GRIMES: Okay. Well we can just look at the transcript --

MR. BROEMEL: Yeah.

MR. GRIMES: -- and advise of any discrepancies that we see or misunderstandings.

MR. MCMAHAN: We're willing to work on that basis. ...

See Tr. 60. The City must also acknowledge that Tennessee American submitted such a letter, *see* Tennessee American Letter to the Hon. Richard Collier, dated February 12, 2007 ("Agreement Letter"), and that the Hearing Officer entered an Order authorizing this procedure. *See* Hearing Officer Order, at 4 (February 15, 2007). The City's motion to compel specific requests, as set forth below, are without merit and should be denied.

City Requests No. 1, 2 and 13

Tennessee American has reasonably responded to Requests 1, 2 and 13. The City mischaracterizes Tennessee American's agreement with respect to these requests. The City claims that Tennessee American "agreed to provide information submitted in 2003 in support of its efforts to justify the National call center expense, updated to date." In fact, Tennessee American "agreed to provide the schedules and backup schedules that were provided in its 2003

rate case *relevant to the subjects of the requests.*” TAWC Agreement Letter, ¶A (emphasis added).

Tennessee American in fact provided all such relevant schedules and back-up. Nonetheless, in the interest of moving the case along, on February 21, 2007, Tennessee American produced all remaining schedules and working papers, even though they were not relevant to the original requests.

City Request No. 16

Tennessee American agreed to provide in response to Request 16, “information on expenditures that were made to TAWC parents or affiliates that relate to those capital expenditures... for ’05 and ’06.” Tr. 15. Tennessee American has provided such information. The City admits that Tennessee American provided that information but complains that Tennessee American did so “without tying these to the capital projects identified in the supplemental response to Request 11.” Tennessee American did not agree to tie such fees to capital projects, nor is that what the City’s original question asked. Regardless, in addition to the large amount of information Tennessee American provided in response to the narrowed request 16, it has gone even further to provide a great volume of additional information in a third supplemental response on February 22, 2007, which does tie the expenditures to specific capital projects. This should be more than satisfactory.

City Requests No. 18 and 19

Tennessee American has reasonably responded to Requests No. 18 and 19. With respect to these items, the City claims that, “[c]ontrary to representations made during the settlement discussions at the Status conference, the [affiliated Service Company] bills include very large amounts for non-personnel expenses.” Tennessee American did not make any such

representations about non-personnel expenses. Instead the focus was on the personnel expenses themselves, and Tennessee American agreed to provide supplemental responses to requests 18 and 19 that contain the following information:

copies of bills [and] a copy of a monthly analysis showing employees who worked on TAWC matters and who were billed for that are sorted by type of employee.... [including] a description of the overhead rate... how that is calculated... and what it is ... [T]his analysis is a rather large spreadsheet.... [and the] time period for all of that was ... January of '04 through December of '06.

Tr. 17. Tennessee American has provided this information. The City now appears to reframe the agreement by insinuating off-the-record discussions that preceded the transcribed description of the agreement. But the hearing record and subsequent correspondence sets forth the agreement, and Tennessee American reasonably provided the agreed upon information. And since receiving the renewed motion to compel indicating that the City wants even more, Tennessee American has devoted numerous hours of employee time to a manual data project to develop additional voluminous information that is not produced by its normal system programming, but which would more specifically provide the details requested by the City. On February 21, 2007, Tennessee American reported the results of that undertaking to the City, with a tender of the information that could be provided on certain time frames. Although these actions go beyond those required of a party responding to a discovery request, Tennessee American has agreed to provide spreadsheets for twenty-five months of information ending January 2007 in a format the City has now said is acceptable.

City Request No. 20

Tennessee American has reasonably responded to this request. The City inaccurately claims that Tennessee American “agreed to provide an explanation of the factors associated with the increase in the costs of connection of new customers.” In fact, the parties agreed as follows:

MR. GRIMES: At least on number 20. I think actually what was said was we [Tennessee American] were going to check to see what we could do about providing information. And I believe we were trying to provide enough information for you [the City] to understand why the – why the expenses increased.

MR. HITCHCOCK: Correct. ...

Tr. 16. Tennessee American has fulfilled this agreement by providing the City with sufficient information to understand why expense increases occurred since 2003. Contrary to the City's claim, Tennessee American's response includes information from 2006 as well as some information for 2007.

City Request No. 38

Tennessee American has reasonably responded to this request. The City claims that Tennessee American has not "provided adequate explanation for its repeated use of the five percent (5%) escalation. Nothing in the 1989 Management Agreement authorizes the use of any sort of escalator." Tennessee American has not suggested that the 1989 Management Agreement "authorizes the use of any sort of escalator." In fact, in the hearing, when the City's counsel first introduced this red herring, Tennessee American's counsel disagreed stating, "I don't think we said anything about the 5 percent being automatic." Tr. 19. Tennessee American has fully described how it arrived at its estimated management fee costs for the attrition year at filing. The City may not like Tennessee American's answer to Request 38, but it is unreasonable for the City to claim that Tennessee American has not answered.

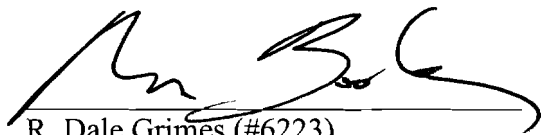
III. Conclusion

Despite the City's claims, Tennessee American Water has been responsive to all reasonable, non-objectionable discovery. Tennessee American has provided supplemental responses to all the discovery requests discussed at the status conference and in its continuing attempts to be responsive to the City has provided further supplemental responses to requests 1,

2, 13, and 16, and has undertaken a special project to develop additional information to answer 18 and 19.

Given the scope of the issues in this rate case and Tennessee American's satisfaction of all reasonable discovery requests – as well as its responses to multiple City requests that go beyond the reasonable – Tennessee American Water respectfully submits that the Hearing Officer should contain discovery within the bounds of what is truly relevant to those issues, and deny the City's renewed motion to compel and its attempt to import irrelevant side issues into these proceedings through overbroad, burdensome, and otherwise objectionable discovery demands.

Respectfully submitted,

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

R. Dale Grimes (#6223)

J. Davidson French (#15442)

Ross I. Booher (#019304)

BASS, BERRY & SIMS PLC

315 Deaderick Street, Suite 2700

Nashville, TN 37238-3001

(615) 742-6200

Counsel for Petitioner

Tennessee American Water Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via the method(s) indicated, on this the 23rd day of February, 2007, upon the following:

<input type="checkbox"/> Hand	Michael A. McMahan
<input type="checkbox"/> Mail	Special Counsel
<input type="checkbox"/> Facsimile	City of Chattanooga (Hamilton County)
<input checked="" type="checkbox"/> Overnight	Office of the City Attorney
<input checked="" type="checkbox"/> Email	Suite 400
	801 Broad Street
	Chattanooga, TN 37402
<input type="checkbox"/> Hand	Frederick L. Hitchcock, Esq.
<input type="checkbox"/> Mail	Shareholder
<input type="checkbox"/> Facsimile	Chambliss, Bahner & Stophel, P.C.
<input checked="" type="checkbox"/> Overnight	1000 Tallan Building
<input checked="" type="checkbox"/> Email	Two Union Square
	Chattanooga, TN 37402
<input checked="" type="checkbox"/> Hand	Vance Broemel
<input type="checkbox"/> Mail	Stephen Butler
<input type="checkbox"/> Facsimile	Consumer Advocate and Protection Division
<input type="checkbox"/> Overnight	Office of Attorney General
<input checked="" type="checkbox"/> Email	2nd Floor
	425 5th Avenue North
	Nashville, TN 37243-0491
<input checked="" type="checkbox"/> Hand	Henry M. Walker, Esq.
<input type="checkbox"/> Mail	Boult, Cummings, Conners & Berry, PLC
<input type="checkbox"/> Facsimile	Suite 700
<input type="checkbox"/> Overnight	1600 Division Street
<input checked="" type="checkbox"/> Email	P.O. Box 340025
	Nashville, TN 37203
<input type="checkbox"/> Hand	David C. Higney, Esq.
<input type="checkbox"/> Mail	Grant, Konvalinka & Harrison, P.C.
<input type="checkbox"/> Facsimile	633 Chestnut Street, 9 th Floor
<input checked="" type="checkbox"/> Overnight	Chattanooga, TN 37450
<input checked="" type="checkbox"/> Email	

