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VIA EMAIL AND USPS

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

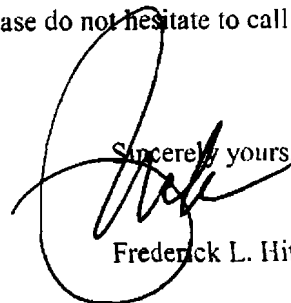
Re: Docket No. 06-00290

Dear Chairman Kyle:

I have enclosed the original and six (6) copies of the Memorandum of The City of Chattanooga in Reply to Petitioner's Responses to Pending Motions to Compel and For Modification of the Scheduling Order. A copy has also been sent via email to everyone listed on the Certificate of Service.

If there are any questions, please do not hesitate to call me.

With best regards, I am

Sincerely yours,  
  
Frederick L. Hitchcock

FLH/sjw

Enclosures

cc: The Honorable Sara Kyle, Chairman  
Mr. J. Richard Collier  
Mr. Jerry Kettles  
Mr. R. Dale Grimes  
Mr. J. Davidson French  
Mr. Robert E. Cooper, Jr.  
Mr. Vance L. Broemel  
Mr. Stephen R. Butler  
Mr. David C. Higney  
Ms. Catharine Giannasi  
Mr. Henry W. Walker  
Mr. Michael A. McMahan  
Mr. Harold L. North

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

<b>IN RE:</b>	)	
	)	
<b>PETITION OF TENNESSEE AMERICAN WATER</b>	)	<b>DOCKET NO.</b>
<b>COMPANY TO CHANGE AND INCREASE CERTAIN</b>	)	<b>06-00290</b>
<b>RATES AND CHARGES SO AS TO PERMIT IT TO</b>	)	
<b>EARN FAIR AND ADEQUATE RATE OF RETURN</b>	)	
<b>ON ITS PROPERTY USED AND USEFUL IN FURNISHING</b>	)	
<b>WATER SERVICE TO ITS CUSTOMERS</b>	)	

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**MEMORANDUM OF THE CITY OF CHATTANOOGA IN REPLY TO PETITIONER'S  
RESPONSES TO PENDING MOTIONS TO COMPEL AND FOR MODIFICATION OF  
THE SCHEDULING ORDER**

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Intervenor, The City of Chattanooga ("Chattanooga"), by and through counsel, submits this Memorandum in reply to responses previously filed by Petitioner, Tennessee American Water Company ("TAWC"), in response to Chattanooga's initial and renewed Motions to Compel and separate joint Motion for modification of the Scheduling Order.

It is fundamental that TAWC has the obligation to provide responses to discovery requests that are reasonably calculated to lead to the discovery of admissible evidence. Tenn.R.Civ.P. §26.02(1). It is also fundamental that TAWC has the burden of proving that its proposed rates are just and reasonable. T.C.A. §65-5-103. TAWC's discovery obligations and its substantive burden of proof in this case both require the disclosure to the Intervenor and to the Authority of information relevant to the extraordinary rate demand that the Petitioner is making in this case.

TAWC argues that it has fulfilled its discovery obligations, and undoubtedly will argue that it has fulfilled its substantive burden of proof, by measuring the weight and height of the pieces of paper that it has produced, regardless of the responsiveness to the issues in this case.

Fulfillment of TAWC's obligations is not measured by heft and height, it is measured by the rules of discovery and the rules of law and logic.

Each of the twenty-five (25) discovery requests that TAWC initially refused to answer are appropriate under applicable discovery rules and are important to resolution of the substantive issues on which TAWC has the burden of proof. As set forth in Chattanooga's Renewed Motion to Compel, most of those twenty-five (25) requests remain unanswered.

An examination of Chattanooga's discovery requests illustrate their relevance to the evaluation of TAWC's request for an increase in rates of nearly Twenty Percent (20%). In summary, the unanswered Chattanooga discovery requests:

- Seek justification for remote call center costs that have exceeded by hundreds of thousands of dollars the amounts promised by TAWC in the last rate case;
- Seek more detailed information about the justification of amounts classified as capital expenses that have been paid to TAWC affiliates;
- Seek information on the components of the huge management fees TAWC has paid to its affiliates, fees that have increased an average of Twenty-Seven Percent (27%) per year since the last rate case; and
- Seek information about the impacts of the proposed initial stock offering of TAWC's parent on the operations, investment, rates, and service of TAWC.


Even when TAWC has provided partial information responsive to the Chattanooga requests, TAWC has often delayed its delivery. In the latest example, TAWC emailed late on February 27<sup>th</sup> and delivered on February 28<sup>th</sup> more than Five Hundred (500) pages of material due by February 6<sup>th</sup> and promised by February 14<sup>th</sup> in response to Chattanooga's initial Motion to Compel. Yet, TAWC argues that no adjustment in the schedule should be made in response to

its continued refusal to provide requested information and its late delivery of incomplete responses.

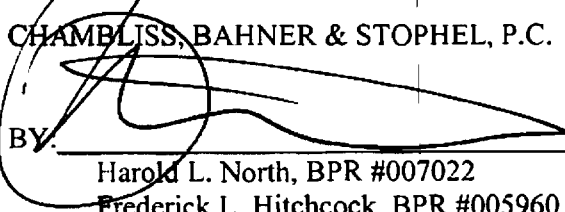
Appropriate sanctions for failure to fulfill discovery responsibilities include establishment of evidentiary presumptions and the dismissal of the Petitioner's claims. Such sanctions should be imposed in this case.

Respectfully submitted,

CITY OF CHATTANOOGA, TENNESSEE  
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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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This the 14 day of March, 2007.

  
FREDERICK L. HITCHCOCK