

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 7, 2007

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

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) DOCKET NO.
) 06-00290
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**ORDER DENYING CITY OF CHATTANOOGA'S RENEWED MOTION TO COMPEL
PETITIONER'S RESPONSE TO DISCOVERY REQUESTS AND CHATTANOOGA
MANUFACTURERS ASSOCIATION'S REQUEST FOR ADDITIONAL RESPONSE**

This matter is before the Hearing Officer upon several filings by the parties, including a renewed motion to compel filed by the City of Chattanooga (the "City"). On February 15, 2007, the Hearing Officer issued an *Order Resolving, in Part, Objections to Discovery Requests* that documented the parties' resolution of certain disputed discovery requests at the February 9, 2007 Status Conference ("Status Conference") and required the parties' compliance therewith. Petitioner, Tennessee American Water Company ("TAWC" or the "Company"), filed supplemental responses to discovery, providing an extensive amount of documentation to the requesting parties.

In *City of Chattanooga's Renewed Motion to Compel Petitioner's Response to Discovery Requests* ("Renewed Motion to Compel"), filed thereafter on February 16, 2007, the City requested an Order compelling TAWC to respond fully to certain agreed-upon discovery requests submitted by the City. Additionally, on February 16, 2006, the Chattanooga

Manufacturer's Association ("CMA") filed a letter to the Hearing Officer providing notice of certain deficiencies in the supplemental responses it received from TAWC ("*Notice Letter*"). On February 23, 2007, TAWC filed a *Response to the City of Chattanooga's Renewed Motion to Compel* ("*TAWC's Response*").

In its *Renewed Motion to Compel*, the City contends, "TAWC has provided complete answers to virtually none of the 38 discovery requests propounded by [the City]."¹ The City delineates its discovery requests into four categories: (a) national call center costs, (b) capital expenses, (c) management fees, and (d) effects of initial public offering ("IPO"). The *Renewed Motion to Compel* seeks answers or more complete responses to the following discovery items in the respective categories: Category (a) - Requests 1, 2, and 13; Category (b) - Requests 11, 14, 15, 16, and 20; Category (c) - Requests 18, 19, 24, 30 and 38. Discovery Requests in Category (d) pertain to the effects of the Initial Public Offering ("IPO").

In its *Notice Letter*, CMA states that TAWC's supplemental responses to its discovery requests 5, 7, and 21 are or may be incomplete. The *Notice Letter* attempts to clarify what additional information CMA seeks from TAWC.

On March 1, 2007, the Hearing Officer issued an *Order Granting Motions to Compel Discovery Relating to Initial Public Offering (IPO) Information and Materials* which addresses the parties' discovery requests and objections regarding the IPO (Category (d) in the *Renewed Motion to Compel*). TAWC's responses in compliance with that Order are not yet due.

In *TAWC's Response*, the Company argues that it has made a good faith effort to comply with the agreements it made to provide supplemental responses, documents, and information to

¹ *The City of Chattanooga's Renewed Motion to Compel Petitioner's Response to Discovery Requests*, p. 1 (February 16, 2007). As recently as March 1, 2007, the City, in its *Memorandum of the City of Chattanooga in Reply to Petitioner's Responses to Pending Motions to Compel and for Modification of the Scheduling Order*, acknowledges receipt of numerous pages of material from TAWC, yet claims that TAWC's responses to discovery remain incomplete and that TAWC unreasonably delayed its delivery of those documents and information.

the City's discovery requests. TAWC asserts that it "has provided what was agreed, or as much as existed..." to the narrowed requests, and in some cases, has gone even further to produce information with greater and more specific detail.²

The record reflects that TAWC, through multiple filings, has produced a substantial amount of information in response to the discovery requests noted herein. The multiple supplemental responses provided by TAWC since the February 9, 2007 Status Conference appear to resolve deficiencies cited by the City and CMA in their respective motion and letter. The requests for additional information and documentation from TAWC were initiated February 16, 2007, and since that time TAWC has produced a substantial amount of additional information/documentation to the parties. A review of the documentation produced by TAWC indicates that the alleged deficiencies in discovery responses cited by the City and CMA have been corrected, thereby rendering the motion and request moot. The Hearing Officer finds that the supplemental responses provided by TAWC are sufficient in response to the discovery requests cited by the City and CMA in their respective motion and letter. Should there remain any specifically identifiable deficiency in the discovery responses of TAWC, the parties may file a specifically detailed motion on any such request.

IT IS THEREFORE ORDERED THAT:

1. The City of Chattanooga's *Renewed Motion to Compel Petitioner's Response to Discovery Requests* is **denied**.
2. To the extent that Chattanooga Manufacturers Association's *Notice Letter* of February 16, 2007 may be construed as a motion to compel, such is **denied**.

² *Tennessee American Water Company's Response to the City of Chattanooga's Renewed Motion to Compel*, p. 4 (February 23, 2007).

3. Any party, after determining that there remains a specifically identifiable deficiency in the discovery responses of TAWC to the first round of discovery, may file a concise motion citing, with specificity, such deficiency in the response(s) of the Company.


J. Richard Collier
Hearing Officer