

March 14, 2007

VIA EMAIL AND USPS

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

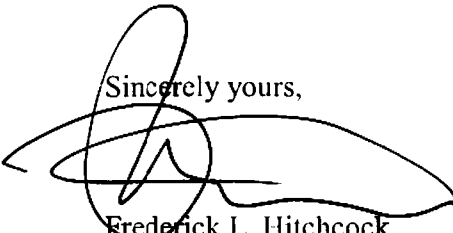
Re: Docket No. 06-00290

Dear Chairman Kyle:

I have enclosed the original and six (6) copies of the City of Chattanooga's Motion for Sanctions. 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
Mr. Henry W. Walker
Mr. Michael A. McMahan
Mr. Harold L. North

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

IN RE:)	
)	
PETITION OF TENNESSEE AMERICAN WATER)	DOCKET NO.
COMPANY TO CHANGE AND INCREASE CERTAIN)	06-00290
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)	

MOTION FOR SANCTIONS

Intervenor, The City of Chattanooga ("Chattanooga"), by and through counsel, hereby moves for the imposition of sanctions upon Petitioner Tennessee American Water Company ("TAWC"), pursuant to Rule 37.02 Tenn. R. Civ. P., for TAWC's failure to comply with the Hearing Officer's discovery Orders.

On March 1, 2007, the Hearing Officer granted Motions to Compel filed by Intervenor Chattanooga and the Attorney General's Consumer Assistance and Protection Division ("CAPD"). On that date, the Hearing Officer also entered a Supplemental Protective Order providing certain enhanced protection for "Highly Confidential Information". The Supplemental Protective Order entered by the Hearing Officer did not include certain of the unduly burdensome language requested by TAWC, including provisions restricting access by counsel of record.¹ The Hearing Officer also granted in part motions of Chattanooga and the Chattanooga Manufacturers Association ("CMA") to extend certain deadlines. In the Hearing Officer's Order compelling further production by TAWC, TAWC was ordered to provide responsive documents

¹ Chattanooga has separately filed a Notice that it is joining in the CAPD's Motion to reconsider certain provisions of the Supplemental Protective Order.

and information by March 8, 2007. The revised Scheduling Order established certain subsequent dates assuming compliance by TAWC.

TAWC has failed to comply with the Hearing Officer's Order compelling production, and Chattanooga moves, pursuant to Rule 37.02, Tenn. R. Civ. P., that sanctions be imposed upon TAWC for its failure. TAWC's actions that justify imposition of sanctions include:

1. Instead of providing many documents the Hearing Officer ordered to be produced, TAWC has filed these documents under seal and has failed and refused to deliver them to Chattanooga. TAWC's counsel has wrongly asserted that the Supplemental Protective Order requires counsel of record to personally execute the affidavit attached to the Supplemental Protective Order and to provide two (2) days advance notice and the opportunity for TAWC to object to the disclosure of the compelled information to counsel of record.² TAWC has withheld production of documents to Chattanooga's counsel of record called for by at least Chattanooga's Requests Nos. 3 (by reference to CAD-1-6), 5, 7, 8 (by reference to 7), 9, 26, 27, 28, and 34 (by reference to 9). See TAWC Supplemental Responses filed March 8 and 9, 2007. The Hearing Officer's Order compelling production required TAWC to produce the documents by March 8, 2007, to counsel of record. Neither the Order compelling responses nor the Supplemental Protective Order authorized TAWC's withholding of any documents from counsel of record pending any sort of notice or affidavit.
2. In a number of its responses, TAWC has refused to provide responses compelled by the Hearing Officer's Order except for information that has been produced in other

² In an attempt to obtain the withheld materials in order to determine their responsiveness to the Hearing Officer's Order, Chattanooga attorney Michael A. McMahan has completed the Affidavit as demanded by TAWC and submitted it to TAWC's counsel. Nevertheless, the documents covered by this Motion still have not been delivered to Mr. McMahan or to other counsel of record.

cases before other state regulatory authorities. The refusal of TAWC to comply with the Hearing Officer's Order by stating that it has only produced information produced in other states demonstrates contempt for the Tennessee Regulatory Authority and should be punished by severe sanctions. See TAWC Supplemental Responses filed March 8, 2007, to Chattanooga Requests Nos. 3, 5, 7, 8, 9, 26, 27, and 34 (by reference to 9).

3. The Order granting the Intervenor's motions to compel mandated: "To the extent that the Company asserts attorney-client privilege or work product privilege as to this information, such assertions must be made with specificity". Ignoring this requirement, TAWC has withheld documents and has redacted other documents based upon generalized assertions of work product and/or attorney-client privilege.³ The documents withheld include documents prepared by non-attorneys, including the Treasurer and Comptroller of the company, Mr. Michael Miller. E.g. Supplemental Response filed March 8, 2007, to Chattanooga Requests Nos. 3, 7, and 9. There is a suggestion in the March 8, 2007, partial response to Request No. 28 that the Presidium minutes may also reflect redactions, but TAWC has filed these under seal instead of delivering them as ordered. Chattanooga requests that TAWC be required to (1) submit complete copies of all documents withheld or redacted because of asserted work product protection or attorney-client privilege to the Hearing Officer for review in camera and (2) to explain in detail in a supplemental pleading served on all parties the particularized basis for any assertions of work product protection or attorney-client privilege, as previously ordered.

Chattanooga moves pursuant to Rule 37.02, Tenn. R. Civ. P., for the imposition of sanctions upon TAWC's refusal to comply with the Order of the Hearing Officer compelling

³ TAWC referred in its response to Request No. 7 to something it calls the "anticipation of litigation privilege" separate from the work product protection.

production. Pursuant to Rule 37.02, the Hearing Officer may impose a range of sanctions, including dismissal of TAWC's Petition. Because the latest refusal of TAWC principally involves information related to the planned public offering of capital stock of TAWC's parent, the most appropriate sanction would be the dismissal of TAWC's Petition without prejudice to its filing a new Petition following completion of the public stock offering, such renewed Petition to be accompanied by complete information concerning the new capital structure of TAWC's parent and affiliated companies. To the extent that other sanctions short of dismissal are deemed appropriate, Chattanooga respectfully requests that the parties have an opportunity to brief the scope of such sanctions.

Chattanooga further requests that the Hearing Officer order TAWC to pay the reasonable expenses incurred by Chattanooga caused by TAWC's failure and to ensure that such expenses are paid solely by the shareholders of TAWC. Rule 37.02, Tenn. R. Civ. P., specifies that:

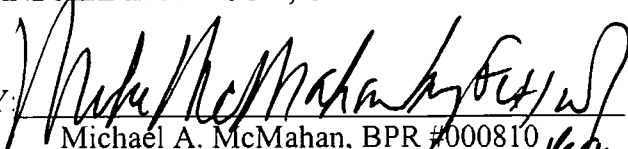
[T]he court shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Should the sanctions imposed upon TAWC not include dismissal of TAWC's Petition, Chattanooga further respectfully requests that the Hearing Officer modify the Scheduling Order to provide that Chattanooga may further supplement its discovery requests no later than five (5) days after delivery to counsel of record for Chattanooga of all information required to be produced by the Hearing Officer's Order compelling production, including documents found by the Hearing Officer's in camera review not to be protected by the work product protection or the attorney-client privilege. Chattanooga further requests that TAWC will be deemed to have waived any objections to such supplemental discovery, because of its unjustified refusal to comply.

Respectfully submitted,

CITY OF CHATTANOOGA, TENNESSEE
RANDALL L. NELSON, CITY ATTORNEY

BY:


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Valerie L. Malueg, BPR #023763

Special Counsel

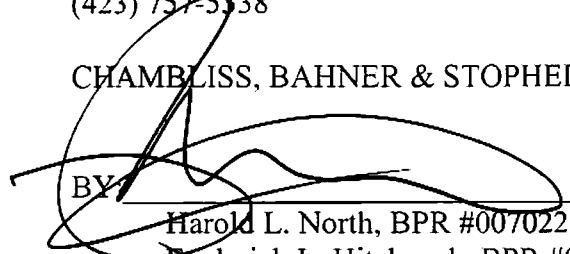
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CERTIFICATE OF SERVICE

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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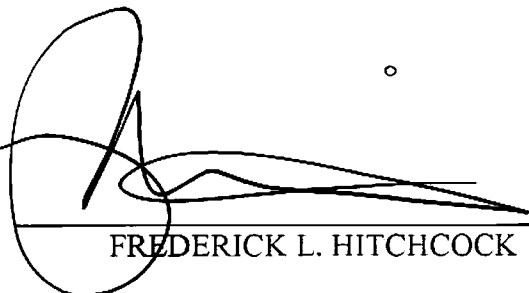
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This the 14th day of March, 2007.



FREDERICK L. HITCHCOCK