

April 9, 2007

electronically filed 4/9/07 @ 1:20pm

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 following documents for filing:

1. Chattanooga's Designation of Highly Confidential Documents; and
2. Chattanooga's Renewed Motion for the Imposition of Sanctions.

Copies have been sent via email and regular United States mail 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  
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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**DESIGNATION OF HIGHLY CONFIDENTIAL DOCUMENTS**

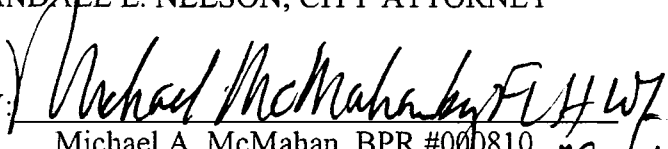
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Intervenor, the City of Chattanooga ("Chattanooga"), by and through counsel, intends to use the documents designated by Petitioner, Tennessee American Water Company ("TAWC"), as "highly confidential information" in the cross-examination of witnesses of TAWC and of other Intervenor.

Respectfully submitted,

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

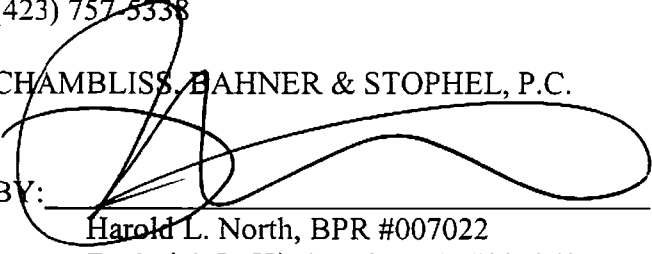
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## **CERTIFICATE OF SERVICE**

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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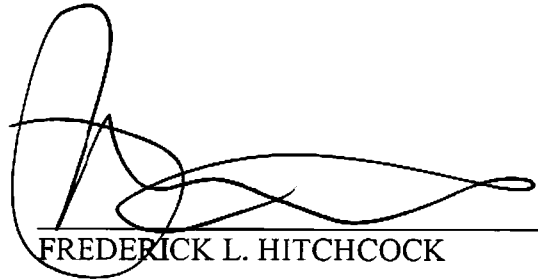
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This the 9<sup>th</sup> day of April, 2007.



FREDERICK L. HITCHCOCK

**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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**RENEWED MOTION FOR THE IMPOSITION OF SANCTIONS**

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Intervenor, The City of Chattanooga ("Chattanooga"), by and through counsel, hereby renews its motion 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"). In the Hearing Officer's Order compelling further production by TAWC, TAWC was ordered to provide responsive documents 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. 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 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).

2. 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.<sup>1</sup> 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 Presidium minutes may also reflect redactions, but TAWC has failed to produce such minutes at all. TAWC was ordered to provide RWE Supervisory Board minutes without redaction. Instead, TAWC has produced under seal the same redacted copies of the RWE Supervisory Board minutes that were already in the possession of the Intervenor. Chattanooga requests that TAWC be required to (1) to explain in detail in a supplemental pleading served on all parties the particularized basis for each assertion of work product protection or attorney-client privilege, as previously ordered, and (2) 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.

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

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<sup>1</sup> 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 refusals 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.

Accordingly, Chattanooga requests that TAWC be sanctioned for its failure to comply with the Hearing Officer's discovery Orders.

Respectfully submitted,

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

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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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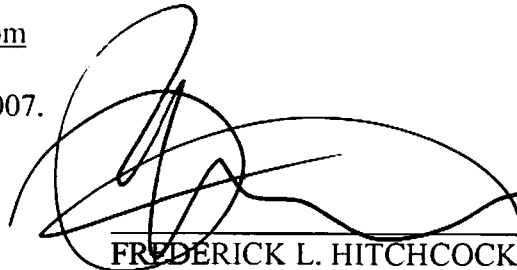


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This the 9<sup>th</sup> day of April, 2007.



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