

**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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NASHVILLE MUSIC ROW  
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April 10, 2007

**VIA HAND-DELIVERY**

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

filed electronically in docket office on 04/10/07

***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 sixteen (16) copies of Tennessee American Water Company's Motion to Compel the Chattanooga Manufacturers Association to Provide Complete Discovery Responses.

Please return three copies of the Motion, 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*  
R. Dale Grimes

RDG/ms  
Enclosures

*if permission*

Chairman Sara Kyle

April 10, 2007

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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/enclosure*)  
Mr. Michael A. Miller (*w/enclosure*)

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

**IN RE:**

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

**TENNESSEE AMERICAN WATER COMPANY’S MOTION TO COMPEL THE  
CHATTANOOGA MANUFACTURERS ASSOCIATION TO PROVIDE COMPLETE  
DISCOVERY RESPONSES**

Tennessee American Water Company (“TAWC”) served its discovery requests (the “Requests”) upon the Chattanooga Manufacturers Association (“CMA”) on March 14, 2007. The CMA responded to TAWC’s Requests on March 30, 2007 (the “Responses”). Ten days later, on April 9, 2007, TAWC received certain attachments promised in the Responses. After a review of the CMA’s Responses and the later-received attachments, it is clear that a number of the CMA’s Responses are insufficient. Accordingly, pursuant to the Tennessee Regulatory Authority Rules and Rule 37.01 of the Tennessee Rules of Civil Procedure, TAWC respectfully moves the Hearing Officer to enter an order compelling production of all information responsive to the TAWC’s Discovery Requests.

**Discovery Standards**

Rule 37.01(2) of the Tennessee Rules of Civil Procedure provides that, when a party fails to fully answer interrogatories or fails to fully respond to requests for production of documents, the discovering party may move for an order compelling an answer and inspection in accordance with the request. As set forth below, the CMA has failed to fully and properly respond to

TAWC's Discovery Requests, and TAWC now seeks an order compelling complete answers and the production of all responsive documents, excluding the testimony of CMA witnesses, or granting any other relief under Rule 37 of the Tennessee Rules of Civil Procedure this Hearing Officer deems appropriate.

Discovery under the Tennessee Rules of Civil Procedure "is allowed in an effort to do away with trial by ambush," and should be "allowed liberally in order to achieve its desired effect." *Conger v. Gowder*, 2001 Tenn. App. LEXIS 205, \*14 (Tenn. Ct. App.). TAWC has propounded reasonable requests for relevant information and documents, as well as those reasonably calculated to lead to discovery of relevant information.

#### **The CMA's Inadequate and Incomplete Responses**

The attachments to the CMA's Responses to TAWC Requests 25 and 26, named CMA Exhibit Callaghan-001 and CMA Exhibit Nuckolls-001 (the "Callaghan and Nuckolls Attachments"), are incomplete and inadequate, and the CMA's reliance on these attachments in its Responses to a number of TAWC Requests renders each such Response insufficient.

TAWC requested all workpapers and other documents generated or relied upon by CMA witnesses (Request 9), documents addressing the impact of cost of water on CMA member businesses (Request 15), the balance sheets and profit and loss statements for each TAWC customer represented by the CMA (Request 19), utility and property tax cost information for both R.L Stowe Mills and Koch Foods (Request 21), and detailed, complete information on the cost structures of R.L. Stowe Mills and Koch Foods (Requests 25 and 26). The CMA refers to the Callaghan and Nuckolls Attachments in its Responses to each of these Requests.

Instead of the requested information, the Callaghan and Nuckolls Attachments include only limited information on the utility and property tax costs and the overall operations costs for

R.L. Stowe Mills, and very limited information on the utility costs for Koch Foods. Because the Callaghan and Nuckolls Attachments lack substantial portions of requested information, the Responses in which the Callaghan and Nuckolls Attachments are referenced are of little or no use and utterly fail to fairly address the TAWC's reasonable Requests.

Without all of the information requested, TAWC will be materially prejudiced in its preparation for the hearing of this rate case. Because the Callaghan and Nuckolls Attachments lack requested information, TAWC has been denied the opportunity to fully prepare for cross-examination of the CMA's witnesses.

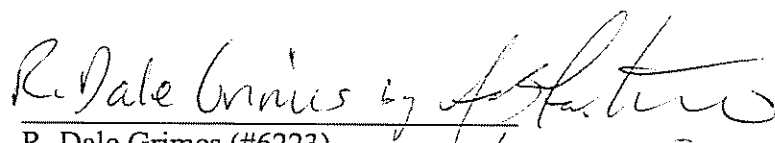
Additionally, the CMA's Responses to Requests 4, 11 and 20 refer to further promised attachments, none of which have been produced to TAWC. These attachments include, respectively: a list of all prior proceedings in which the CMA's expert witness, Michael Gorman has provided testimony pertaining to a regulated utility (Response 4); a list of all publications written or co-written by Michael Gorman (Response 11); and all documents and correspondence concerning Michael Gorman's employment in this case (Response 20). As a result of the CMA's failure to produce these promised responsive attachments, TAWC has been denied the opportunity to fully prepare for cross-examination of Mr. Gorman.

### **Conclusion**

Without all requested information, the proffered Responses and the Callaghan and Nuckolls Attachments fail to respond to the TAWC Requests. As a result of these failures to respond, TAWC has been materially prejudiced in its preparation for this rate case. For all of the foregoing reasons, TAWC respectfully requests this Hearing Officer to enter an order compelling immediate production information responsive to TAWC's Discovery Requests, excluding the

testimony of CMA witnesses, or granting any other relief under Rule 37 of the Tennessee Rules of Civil Procedure this Hearing Officer deems appropriate.

Respectfully submitted,



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

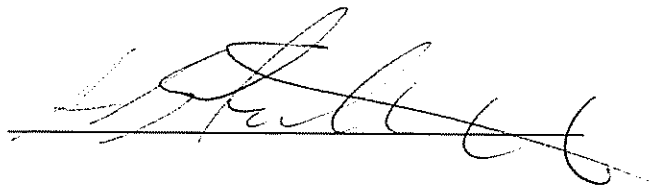
*Counsel for Petitioner*

*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 10th day of April, 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 checked="" type="checkbox"/> Hand	Timothy C. Phillips, Esq.
<input type="checkbox"/> Mail	Vance L. Broemel, Esq.
<input type="checkbox"/> Facsimile	Stephen Butler
<input type="checkbox"/> Overnight	Office of the Attorney General
<input checked="" type="checkbox"/> Email	Consumer Advocate and Protection Division
	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 <sup>th</sup> Floor
<input checked="" type="checkbox"/> Overnight	Chattanooga, TN 37450
<input checked="" type="checkbox"/> Email	
<input type="checkbox"/> Hand	Frederick L. Hitchcock, Esq.
<input type="checkbox"/> Mail	Chambliss, Bahner & Stophel, P.C.
<input type="checkbox"/> Facsimile	1000 Tallan Building
<input checked="" type="checkbox"/> Overnight	Two Union Square
<input checked="" type="checkbox"/> Email	Chattanooga, TN 37402

A handwritten signature in dark ink, appearing to be "D. Higney", written over a horizontal line.

