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April 11, 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 Response, Pursuant to the Amended Supplemental Protective Order, to the Requests to Use Highly Confidential Information During the Hearing of and as Part of the Record of this Case Filed by the City of Chattanooga, the Consumer Advocate and Production Division and the Chattanooga Manufacturers' Association.

Please return three copies of the Response, 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

RDG/ms  
Enclosures

Chairman Sara Kyle

April 11, 2007

Page 2

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 RESPONSE TO THE CITY OF  
CHATTANOOGA’S RENEWED MOTION FOR SANCTIONS**

For its Response to the City of Chattanooga’s Renewed Motion for Sanctions (“Renewed Motion for Sanctions” or “Renewed Motion”), the Tennessee American Water Company (“TAWC”), as it did when the City filed its first Motion for Sanctions, respectfully submits that sanctions of any nature, particularly those requested by the City of Chattanooga (“City”) which appear to be designed primarily to forestall this rate case,<sup>1</sup> are completely unwarranted because TAWC has reasonably complied in all material respects with each and every order issued by the Hearing Officer.

The City’s decision to file the Renewed Motion for Sanctions is particularly outrageous because the Renewed Motion is almost identical in substance (and text) to the first Motion for Sanctions, and the City had the opportunity to orally argue all of the issues presented in the

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<sup>1</sup> The ultimate sanction of dismissal of TAWC’s rate case is completely unwarranted. *See Shahrddar v. Global Housing, Inc.*, 983 S.W.2d 230, 236 (Tenn. Ct. App. 1998) (default judgment as a sanction for failure to comply with a discovery order is appropriate only where “there has been a clear record of delay or contumacious conduct.”); *cf. Henry v. Goins*, 104 S.W.3d 475, 481 (Tenn. 2003) (in reviewing dismissal for failure to prosecute, stating “[b]oth dismissals and default judgments are drastic sanctions. Neither dismissals nor default judgments are favored by the courts.”) (citations omitted).

Sanctions Motions at the status conference held on March 27, 2007. The City did not do so. Instead, in the face of a detailed Response filed by TAWC, the City chose to withdraw its Motion for Sanctions on that day only to re-file it three and a half weeks later on April 9, 2007 – with virtually unchanged claims and with no explanation for why it is at all appropriate for the City to re-file a motion it had withdrawn. In fact, lead counsel for the City has already previously conceded that the first Motion for Sanctions was withdrawn because there had been “**substantial compliance** in production of Highly Confidential Documents.” (E-mail from Michael McMahan to Frederick Hitchcock, March 30, 2007 (emphasis added) (Attached as Exhibit A).) Independent of the fact that TAWC has fully complied with all Orders issued by the Hearing Officer, the City’s vexatious and baseless Renewed Motion for Sanctions should be denied as waived. For all of these reasons and those stated herein, TAWC respectfully requests that the Hearing Officer deny the City’s Renewed Motion for Sanctions.

**The City is Renewing a Motion for Sanctions that it Withdrew Because of  
“Substantial Compliance” by TAWC in Producing the Highly Confidential Documents**

On March 14, 2007, the City of Chattanooga filed its first Motion for Sanctions, asserting that TAWC’s document production in response to the Order Granting Motions to Compel Discovery Relating to Initial Public Offering Information and Materials (“IPO Order”) was so deficient that sanctions were warranted. In the face of TAWC’s detailed Response, Michael McMahan, counsel for the City, withdrew the City’s Motion at the status conference held on March 27, 2007. (Transcript of March 27, 2007 Status Conference, pp. 51-52 (Excerpts attached as Exhibit B).) On March 30, 2007, Frederick L. Hitchcock, co-counsel for the City, filed a letter to the Hearing Officer noting that the City reserved its right to supplement its *pending* Motions to Compel if TAWC’s responses to the City’s second discovery requests was deficient. (Letter from Frederick Hitchcock to Richard Collier, March 30, 2007 (Attached as Exhibit C).)

Later that same day, Mr. McMahan informed his co-counsel, via an email to which R. Dale Grimes was copied, that:

I withdrew the Motion to Compel or for Sanctions in the status conference in light of fact there had been **substantial compliance** in production of Highly Confidential Documents that you have not seen.

We will need to renew any Motions to Compel once we receive the latest discovery from TAWC.

(E-mail from Michael McMahan to Frederick Hitchcock, March 30, 2007 (emphasis added).)

Now, a full two weeks after withdrawing its first Motion for Sanctions and in spite of the City's own admission that there has been substantial compliance by TAWC in producing the Highly Confidential Documents,<sup>2</sup> the City has inexplicably filed a Renewed Motion for Sanctions on the exact same bases (and with, mostly, the exact same text) as the original Motion.<sup>3</sup> As it did in responding to the City's first Motion, TAWC states that it has reasonably complied in every material respect with the terms of the Hearing Officer's Orders. TAWC further asserts that the Hearing Officer should refuse to consider or should deny as waived the City's Renewed Motion for Sanctions because the City had the opportunity to discuss all of the issues raised in the Renewed Motion for Sanctions during the March 27 status conference. (*See* Transcript of March 27, 2007 Status Conference, pp. 51-52.) The City declined that opportunity by withdrawing the Motion, choosing instead to wait until three days before the final pre-Hearing Conference in this case to attempt to resurrect these closed issues.

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<sup>2</sup> The filing, withdrawal based on substantial compliance, and renewal of the Motion for Sanctions is not the first time in this case that counsel for the City has made assertions or taken positions that are directly contradicted by the statements of co-counsel for the City. (*See* Order Granting, In Part, Tennessee American Water Company's Objections, Pursuant to the Supplemental Protective Order, To Delivery of Highly Confidential Information to Dan Johnson, Marlin L. Mosby, W. Kevin Thompson and/or PFM, at pp. 4-7.)

<sup>3</sup> The City has abandoned two other claims from its original motion: (i) that the Supplemental Protective Order (now the Amended Supplemental Protective Order) did not require counsel of record to personally execute the Non-disclosure Statement; and (ii) that the timing of TAWC's production of Highly Confidential Information to counsel for the City was unjustified.

### **Material Compliance with the Terms of the Orders**

TAWC has reasonably complied in every material respect with the terms of the Hearing Officer's Orders. On March 1, 2007, after a protracted dispute concerning the confidentiality and relevance of certain proprietary and legally protected information requested by the intervenors in this matter, the Hearing Officer entered both the IPO Order and a companion Supplemental Protective Order ("SPO"). The IPO Order narrowed the scope of the requested information and compelled its production within seven calendar days, but only in accordance with the terms of the SPO. (IPO Order, 11.) ("The Production of confidential information will be in accordance with . . . the Supplemental Protective Order to be issued contemporaneously with this Order."). The IPO Order and the SPO, now the Amended SPO ("ASPO"), can only be read together, providing a framework for the production of Highly Confidential Information under the umbrella of the ASPO's protections.

#### **1. The Scope of TAWC's Production Complies with the IPO Order**

As did the first Motion for Sanctions, the Renewed Motion for Sanctions contends that 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." (Renewed Mot. for Sanctions, 1.) As TAWC pointed out in its response to the City's first Motion for Sanctions, this statement is factually incorrect. TAWC has provided all of the documents it was required to produce under the language of the IPO Order, including numerous documents that have not been produced in any other state proceeding.

As in its previous motion to compel and its previous Motion for Sanctions, the City has not specified in the Renewed Motion for Sanctions any particular documents that it believes have not been produced. The City has also failed to, and cannot, explain how TAWC would have

violated the IPO Order if it were true, which it is not, that TAWC had only produced Highly Confidential Documents that have been produced in other cases.

In sum, TAWC has diligently complied with the IPO Order<sup>4</sup> and, over the course of this rate case, has produced thousands of pages of documents to the City. The City's renewed request for sanctions on the grounds that TAWC has not produced enough documents, therefore, should be denied.

## **2. TAWC's Assertions of Privilege Comply with the IPO Order**

The City has also chosen to renew its claim that TAWC's assertions of privilege were not made "with specificity." The fact that the City has renewed its claim on this issue is particularly outrageous because the City's assertions of privilege in its responses to TAWC's discovery requests are **less** descriptive than the TAWC assertions that the City claims to be *sanctionable*. In redacting a portion of its testifying expert's engagement letter, the City merely stated that "[t]his document has been redacted to prevent disclosure of attorney work product." (See City of Chattanooga's Discovery Responses to TAWC, p. 6 (Attached as Exhibit D).) In fact, the City reasserted its general objection to providing information protected by the attorney-client privilege or work product doctrine in response to *nineteen* of TAWC's requests. (*Id.*, General Objection No. 1; Response Nos. 1, 2, 3, 4(i), 4(j), 4(k), 5, 6, 7, 8, 9, 10, 12, 13, 16(a), 16(b), 16(c), 28, and 30.) In spite of this volume of privilege assertions, the redacted portion of the engagement letter was the only document or portion of a document specifically identified by the City as having been withheld. In sum, the City is asking the Hearing Officer to *sanction* TAWC for providing assertions of privilege that are more specific and descriptive than what the City, itself, has provided to TAWC.

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<sup>4</sup> TAWC takes strong exception to the City's renewed assertion that TAWC has "demonstrate[d] contempt" for the Tennessee Regulatory Authority ("TRA"). TAWC intends to comply and believes it has complied with all orders issued by the Hearing Officer and all requests made by the TRA staff.

As it stated in its response to the City's first Motion for Sanctions, TAWC has complied with the requirement set forth in the IPO Order that attorney-client and work product objections be asserted with specificity. The supplemental responses identified in the City's Renewed Motion for Sanctions describe the nature and subject matter of the withheld documents or redacted portions of documents in full compliance with both the IPO Order and the Tennessee Rules of Civil Procedure. *See* Tenn. R. Civ. P. 26.02(5) (claims of privilege should be made "expressly and shall describe the nature of the documents . . . not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege protection."). The documents for which TAWC asserts the attorney-client or work product privilege are particularly identified and sufficiently described to allow the City to assess the applicability of the claimed privilege. The City again fails to identify what information about the privileged documents it believes to be lacking in the supplemental responses, instead relying on the vague, pro forma claim that TAWC's assertions of privilege are "generalized." Because TAWC's assertions of privilege comply with the IPO Order and because the City has, for a second time, failed to explain the basis for its objection, the assessment of sanctions or the granting of any other relief to the City is not warranted.

Despite having three and a half weeks between the filing of the first Motion for Sanctions and the Renewed Motion, the City still does not explain the basis for its objection regarding TAWC's privilege assertions. Rather, the City points to the fact that some of the documents withheld are documents prepared by non-attorneys, including the Treasurer and Comptroller of the Company. (Renewed Mot. for Sanctions, 2.) That TAWC has withheld certain documents prepared by TAWC in anticipation of litigation is fully consistent with Tennessee law governing the work product privilege, and it is unclear why the City believes the withholding of such



documents is sanctionable or even objectionable. Tennessee Rule of Civil Procedure 26.01(3) describes the documents subject to work product protection as ones “prepared in anticipation of litigation or for trial by or for another party or by or for that other party’s representative (including an attorney, consultant, surety, indemnitor, insurer, or agent).” Tenn. R. Civ. P. 26.01(3) (emphasis added). The text of Rule 26.01(3) makes clear that the work product privilege is not limited to documents prepared by attorneys and includes documents prepared by the party claiming the privilege. The text of TAWC’s Fifth Supplemental Response to the City’s Request No. 3, the response specifically mentioned in the Motion for Sanctions, makes it clear that the withheld documents were prepared by or for TAWC in anticipation of rate case litigation.

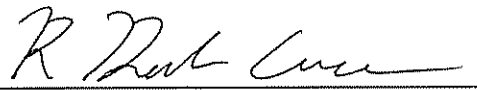
Because TAWC has complied with the IPO Order with regard to assertions of privilege, because the City has, once again, failed to present anything but a vague, conclusory objection to the sufficiency of TAWC’s supplemental responses, and because TAWC’s assertions of privilege are more specific and descriptive than those provided by the City in its discovery responses, the City’s requested relief, designed to delay the completion of this case on the merits, should be denied.

### **Conclusion**

It is unreasonable for the City to renew its request for sanctions against TAWC in the circumstances present here. The City had the opportunity to state its position to the Hearing Officer on each of the issues set forth in the Renewed Motion for Sanctions on March 27, but the City chose not to do so. Further, counsel for the City has already expressly conceded that “there has been substantial compliance in production of Highly Confidential Documents . . . .” (E-mail from Michael McMahan to Frederick Hitchcock, March 30, 2007.) As it has throughout

this rate case, TAWC has reasonably and respectfully complied in good faith with all orders of the Hearing Officer. Accordingly, the City's Renewed Motion for Sanctions should be denied.

Respectfully submitted,

 /ms

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

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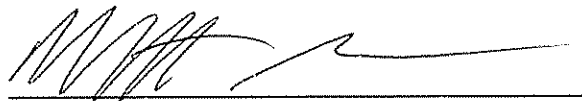
*Counsel for Petitioner*

*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 11th 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            | Office of the Attorney General             |
| <input type="checkbox"/> Overnight            | Consumer Advocate and Protection Division  |
| <input checked="" type="checkbox"/> Email     | P.O. Box 20207                             |
|   | Nashville, TN 37202                        |
|   |  |
| <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                      |



## Grimes, Dale

---

**From:** McMahan Michael [mcmahan@mail.chattanooga.gov]  
**Sent:** Friday, March 30, 2007 2:03 PM  
**To:** RHitchcock@cbslawfirm.com; Grimes, Dale  
**Cc:** HNorth@cbslawfirm.com  
**Subject:** RE: Nondisclosure statement

Rick, I withdrew the Motion to Compel or for Sanctions in the status conference in light of fact there had been substantial compliance in production of Highly Confidential Documents that you have not seen.

We will need to renew any Motions to Compel once we receive the latest discovery from TAWC.

-----Original Message-----

**From:** RHitchcock@cbslawfirm.com [mailto:RHitchcock@cbslawfirm.com]  
**Sent:** Friday, March 30, 2007 2:43 PM  
**To:** dgrimes@bassberry.com  
**Cc:** McMahan Michael; HNorth@cbslawfirm.com  
**Subject:** Nondisclosure statement

Dale,

Please see the attached letter and notice.

Rick

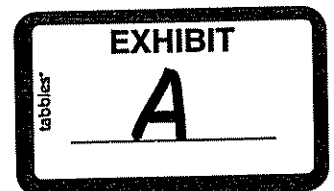
(See attached file: LTR to Attorney R Dale Grimes enclosing  
Nondisclosure  
Statement for Highly Confidential Information DTD 03-30-07.pdf)

Frederick L. Hitchcock  
Chambliss, Bahner & Stophel, P.C.  
1000 Tallan Building  
Two Union Square  
Chattanooga, TN 37402  
Tel 423.757.0222  
Fax 423.508.1222  
rhitchcock@cbslawfirm.com

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not to be attributed to Chambliss, Bahner & Stophel, P.C..

## BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE:

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

## TRANSCRIPT OF PROCEEDINGS

Tuesday, March 27, 2007

## APPEARANCES:

For Tennessee American  
Water Company:

Mr. Ross I. Booher  
Mr. Matthew J. Sinback  
Mr. R. Dale Grimes  
Mr. Mike Miller  
(By telephone)  
Mr. John Watson  
(By telephone)

For the City of Chattanooga: Mr. Michael A. McMahan  
(By telephone)For the Chattanooga  
Manufacturers Association:

Mr. Henry Walker  
Mr. David Higney  
(By telephone)

For Consumer Advocate:

Mr. Vance L. Broemel  
Mr. Steve Butler  
Mr. Timothy Phillips

Reported By:

Patricia W. Smith, RPR, CCR

EXHIBIT

B

1                   Other than the concern that the  
2   supplemental protective order was becoming unraveled,  
3   there is an argument that rehashes the relevancy of the  
4   documentation that was requested pursuant to the  
5   request for IPO information. And I don't find that any  
6   of the arguments have changed, and I have reconsidered  
7   my decision on that information being relevant to  
8   discovery. So I'm going to deny the motion to  
9   reconsider that order compelling discovery.

10                  Along with that, there's an order --  
11   excuse me -- along with that, there's a motion to stay  
12   the order compelling discovery. In light of what has  
13   happened here in the last two status conferences, I'm  
14   going to deny that motion as well. I think the  
15   protections are in place under the supplemental  
16   protective order, and I think that protections will  
17   remain in place based upon what I rule today.

18                  At this time there is a motion for  
19   sanctions that was filed by the City of Chattanooga  
20   against Tennessee American Water for failure to comply  
21   with the hearing officer's discovery orders.

22                  MR. MCMAHAN: If it please,  
23   Mr. Collier, Mike McMahan. We withdrew that motion on  
24   Friday.

25                  MR. COLLIER: I'm sorry. I didn't

1 remember that happening, but I thank you for  
2 withdrawing it.

3 I like taking care of that that way.

4 Okay. At this time there is before  
5 the hearing officer the objections to allowing certain  
6 persons to view the highly confidential information.  
7 Those objections were filed on Friday afternoon. The  
8 City of Chattanooga has filed a response today.

9 On Friday I had asked the petitioner,  
10 Tennessee American Water, to specify which sections of  
11 the highly confidential information could, in their  
12 opinion, be shown to the particular persons. And we  
13 received a letter today, filed in the docket, which  
14 basically excluded all of the information other than a  
15 very minute portion.

16 And then I'm not sure whether the City  
17 of Chattanooga filed their response after having  
18 received that letter or prior to receiving that letter.  
19 But in any event, I don't know that that alters the  
20 City of Chattanooga's position.

21 But it's your objection, Mr. Booher.  
22 And if you would argue that, I would appreciate it.

23 MR. BOOHER: Yes, sir.

24 This morning -- first of all, we  
25 provided that letter late yesterday to the City via





1000 Tallan Building  
Two Union Square  
Chattanooga, TN 37402  
Tel 423.756.3000  
www.cbslawfirm.com

Frederick L. Hitchcock  
Tel 423.757.0222  
Fax 423.508.1222  
rhitchcock@cbslawfirm.com

March 30, 2007

VIA EMAIL AND USPS

The Honorable J. Richard Collier  
General Counsel  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

filed electronically in docket office on 03/30/07

Re: Docket No. 06-00290

Dear Mr. Collier:

The City of Chattanooga ("Chattanooga") hereby notifies you of the status of its objections to the discovery requests served upon it by the Tennessee American Water Company ("TAWC").

Chattanooga believes that its responses to TAWC's request will be properly responsive, consistent with *Tennessee Rules of Civil Procedure* and the Authority's rules. Chattanooga will review TAWC's responses to Chattanooga's Second Discovery Requests to determine whether they are properly responsive and are consistent with such rules. Chattanooga reserves the right to supplement its pending Motions to Compel if necessary.

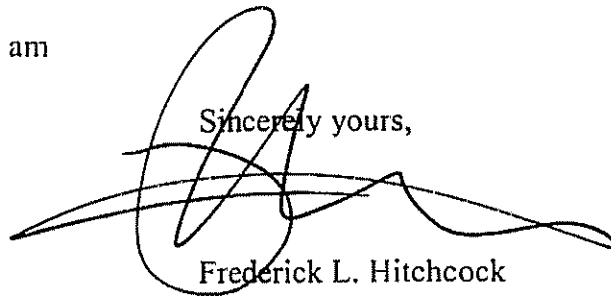
In the absence of specific agreements and to avoid any waiver of its objections, Chattanooga continues to assert all of the objections set forth in the City of Chattanooga's Objections to Petitioner Tennessee American Water Company's discovery requests, filed on March 19, 2007.



The Honorable J. Richard Collier  
Page Two  
March 30, 2007

With best regards, I am

Sincerely yours,

A handwritten signature in black ink, consisting of a large, stylized 'F' followed by a long, horizontal, wavy line that ends in a small loop.

Frederick L. Hitchcock

FLH/sjw

cc: The Honorable Sara Kyle, Chairman (via email and USPS)  
Mr. Jerry Kettles (via email and USPS)  
Mr. R. Dale Grimes (via email and USPS)  
Mr. J. Davidson French (via email and USPS)  
Mr. Robert E. Cooper, Jr. (via email and USPS)  
Mr. Vance L. Broemel (via email and USPS)  
Mr. Stephen R. Butler (via email and USPS)  
Mr. David C. Higney (via email and USPS)  
Mr. Henry W. Walker (via email and USPS)  
Mr. Michael A. McMahan (via email and USPS)  
Mr. Harold L. North (via hand delivery)

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

TENNESSEE AMERICAN WATER COMPANY, :  
PETITION TO CHANGE AND INCREASE : DOCKET NO. 06-00290  
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 SERVICES TO ITS :  
CUSTOMERS. :

**CITY OF CHATTANOOGA'S DISCOVERY RESPONSES TO TAWC**

City of Chattanooga ("City") responds to the Tennessee American Water Company's ("TAWC") discovery requests as follows:

**GENERAL OBJECTIONS**

(1) Chattanooga objects to all requests that seek information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or restriction on disclosure.

(2) Chattanooga objects to the definitions and instructions accompanying requests to the extent definitions and instructions contradict, are inconsistent with, or impose any obligations beyond those required by the Tennessee Rules of Civil Procedure or the rules, regulations, and orders of the Tennessee Regulatory Authority.

(3) Chattanooga objects to the definitions of the words "document" or "documents" or "documentation" that accompany the requests, because such definitions are overbroad and unduly burdensome.

(4) Chattanooga is providing its objections herein without waiver of, or prejudice to, its right at any later time to raise objections to: (a) the competence, relevance, materiality, privilege,



or admissibility of the response, or the subject matter thereof; and (b) the use of any response or subject matter thereof, in any subsequent proceedings.

(5) Chattanooga objects to each request to the extent that it is unreasonably cumulative or duplicative or seeks information obtainable from some other source that is more convenient, less burdensome or less expensive.

(6) Chattanooga objects to each request to the extent it is premature such that it seeks information concerning matters about which discovery is ongoing and/or seeks information to be provided by expert witnesses.

(7) Chattanooga's specific objections to each request shall be in addition to the General Objections set forth in this section. These General Objections form a part of each discovery response, and they are set forth here to avoid the duplication and repetition of restating them for each discovery response. The absence of a reference to a General Objection in response to a particular request does not constitute a waiver of any General Objection with respect to that discovery request. All responses are made subject to and without waiver of Chattanooga's general and specific objections.

(8) Chattanooga objects to TAWC's discovery requests that seek information concerning rates, costs or charges or municipal services or municipally-owned utilities owned and/or operated by the City of Chattanooga or any of its boards or agencies, as such discovery seeks information that is totally irrelevant to these proceedings and cannot reasonably be expected to lead to the discovery of admissible evidence.

(9) Chattanooga objects to TAWC's discovery requests that seek information concerning tax rates or expenditures of the City of Chattanooga or any other local government, as such discovery seeks information that is totally irrelevant to these proceedings and cannot reasonably be expected to lead to the discovery of admissible evidence.

(10) Chattanooga objects to TAWC's discovery requests that seek information concerning fees charged or received by the City of Chattanooga or any of its boards or agencies, as such discovery seeks information that is totally irrelevant to these proceedings and cannot reasonably be expected to lead to the discovery of admissible evidence.

**DISCOVERY REQUEST NO. 1:**

State each fact that you rely on to support your contention(s), position(s) or belief(s) that any of the request(s) for relief, including any increase in rates, made by TAWC in TRA Docket No. 06-00290 should not be approved by the Tennessee Regulatory Authority ("TRA").

**RESPONSE:**

See General Objections 1 through 7. Without waiving these objections, the City of Chattanooga relies upon the pre-filed testimony and exhibits it has filed on this case and upon the pre-filed testimony and exhibits filed by the Chattanooga Manufacturer's Association and the Consumer Advocate.

**DISCOVERY REQUEST NO. 2:**

Identify all persons known to you, your attorney, or other agent who have knowledge, information or possess any document(s) or claim to have knowledge, information or possess any document(s) which support your answer to Interrogatory number one (1) above.

**RESPONSE:**

See General Objections 1 through 7. Without waiving these objections, the City of Chattanooga relies upon the pre-filed testimony and exhibits it has filed on this case and upon the pre-filed testimony and exhibits filed by the Chattanooga Manufacturer's Association and the Consumer Advocate.

**DISCOVERY REQUEST NO. 3:**

Identify each document, photograph, or any other article or thing whatsoever, which you rely on to corroborate any part of your contention(s), position(s) or belief(s) that any of the request(s) for relief, including any increase in rates, made by TAWC in TRA Docket No. 0600290 should not be approved, whether as to the issues of credibility or any other issue, or which is adverse to these same contention(s), position(s) or belief(s).

**RESPONSE:**

See General Objections 1 through 7. Without waiving these objections, the City of Chattanooga relies upon the pre-filed testimony and exhibits it has filed on this case and upon the pre-filed testimony and exhibits filed by the Chattanooga Manufacturer's Association and the Consumer Advocate.

**DISCOVERY REQUEST NO. 4:**

With respect to each person you expect to call as a witness, including any expert witness, regarding this matter, state or provide:

- a. the witness's full name and work address;

**RESPONSE:**

See the pre-filed testimonies of:

1. Mayor Ron Littlefield, City of Chattanooga, City Hall, East 11<sup>th</sup> Street, Chattanooga, TN 37402;
2. David Bennett, Maintenance Supervisor, City of Chattanooga, Department of Parks and Recreation, Watkins Street, Chattanooga, TN 37402;
3. Mark Keil, Chief Information Officer, City of Chattanooga, City Hall, East 11<sup>th</sup> Street, Chattanooga, TN 37402;
4. Harold J. Smith, Vice President of Raftelis Financial Consultants, Inc. (RFC), 511 East Blvd., Charlotte, NC 28203 ;

5. Joachim Volz, Financial Coordinator, Waste Resources Division, City of Chattanooga's Department of Public Works, Moccasin Bend Wastewater Treatment Plant, Moccasin Bend Road, Chattanooga, TN 37402; and
  6. The pre-filed testimonies filed on behalf of the Chattanooga Manufacturer's Association and the Consumer Advocate.
- b. each subject matter about which such witness is expected to testify;

**RESPONSE:**

See Response to No. 4(a).

- c. the *substance* of the facts and opinions to which any expert is expected to testify;

**RESPONSE:**

See Response to No. 4(a).

- d. a summary of the grounds or basis of each opinion to *which* any such expert witness is expected to testify;

**RESPONSE:**

See Response to No. 4(a).

- e. whether or not the expert has prepared a report, letter or memorandum of his findings, conclusions, or opinions;

**RESPONSE:**

Only pre-filed testimonies as submitted.

- f. the witness's complete background information, including current employer, educational, professional and employment history, and qualifications within the field in which the witness is expected to testify, and identify all publications written or presentations made in whole or in part by the witness;

**RESPONSE:**

See pre-filed testimony and resume of Harold J. Smith being produced herewith.

g. an identification of any matter in *which* the expert has testified (through deposition or otherwise) by specifying the name, docket number and forum of each case, the dates of the prior testimony and the subject of the prior testimony, and identify the transcripts of any such testimony;

**RESPONSE:**

See pre-filed testimony and resume of Harold J. Smith being produced.

h. the identity of any person with whom the witness consulted or otherwise communicated in connection with his expected testimony;

**RESPONSE:**

Leta Hals, William Stannard, Patrick Smyth, and George Raftelis of Raftelis Financial Consultants, Inc. and the City of Chattanooga legal team.

i. the terms of the retention or engagement of each expert including but not limited to the terms of any retention or engagement letters or agreements relating to his/her engagement, testimony, and opinions as well as the compensation to be paid for the testimony and opinions;

**RESPONSE:**

See General Objections 1, 4, and 6. Without waiving these objections, see Bates Nos. 1-11. This document has been redacted to prevent disclosure of attorney work product.

j. the identity of all documents or things shown to, delivered to, received from, relied upon, or prepared by any expert witness, which are related to the witness' expected testimony in this case, whether or not such documents are supportive of such testimony, including without limitation all documents or things provided to that expert for review in connection with testimony and opinions; and

**RESPONSE:**

See General Objections 1 through 7. Without waiving these objections, the witness was provided a variety of documents produced by TAWC in the discovery of this case. The witnesses



may have also been provided documents from the 2003 TAWC rate case. No log has been maintained as to what documents were shared with this witness. Specific documents relied upon are identified in Harold J. Smith's testimony.

k. the identity of any exhibits to be used as a summary of or support for the testimony or opinions provided by the expert.

**RESPONSE:**

See General Objections 1, 2, 4, and 6. Without waiving these objections, see exhibits submitted in Harold J. Smith's testimony.

**DISCOVERY REQUEST NO. 5:**

Provide any and all documents identified or specified in your answers or responses to the discovery requests served upon you in this matter.

**RESPONSE:**

See General Objections 1 through 10. Without waiving these objections, documents specific to other discovery requests are being produced as identified therein.

**DISCOVERY REQUEST NO. 6:**

Provide any and all documents and things relied upon, referenced, created or reviewed by any City witness in providing testimony in this matter. Without waiving these objections, documents specific to other discovery requests are being produced as identified therein.

**RESPONSE:**

See General Objections 1 through 10. Without waiving these objections, documents specific to other discovery requests are being produced as identified therein.

**DISCOVERY REQUEST NO. 7:**

Provide any and all expert reports which have been obtained from any expert.

**RESPONSE:**

See General Objections 1, 2, 5, and 6. Without waiving these objections, see Response to Discovery Request No. 4.

**DISCOVERY REQUEST NO. 8:**

Provide each document, photograph, or any other article or thing whatsoever, upon which you rely in support of your contention(s), position(s) or belief(s) that any of the request(s) for relief, including any increase in rates, made by TAWC in IRA Docket No. 06-00290 should not be approved.

**RESPONSE:**

See General Objections 1 through 10. Without waiving these objections, see discovery responses to other requests herein, particularly, Discovery Request No. 4.

**DISCOVERY REQUEST NO. 9:**

Provide in electronic media (Word, Excel, or other Microsoft Office compatible format) and in hard copy all workpapers and other documents, generated by or relied upon by all City witnesses.

**RESPONSE:**

See General Objections 1 through 10. Without waiving these objections, documents specific to other discovery requests are being produced as identified therein. The documents are being produced in PDF to accommodate Bates Stamping. The documents with a ".lis" extension can be opened in wordpad with the wordwrap function turned off. Although produced in PDF, some documents may be available in Word if specifically requested.

**DISCOVERY REQUEST NO. 10:**

Please produce a copy of all trade articles, journals, treatises and publications of any kind in any way utilized or relied upon by any of City's proposed expert witnesses in evaluating, reaching conclusions or formulating an opinion in the captioned matter.

**RESPONSE:**

See General Objections 1, 2, and 6. Without waiving these objections, a list of such articles and presentations are being produced.

**DISCOVERY REQUEST NO. 11:**

Please produce a copy of all articles, journals, books or speeches written by or co-written by any of City's expert witnesses, whether published or not.

**RESPONSE:**

See General Objections 2 and 6.

**PRESENTATIONS OF HAROLD J. SMITH**

*"Financing Water Infrastructure Projects"* Rhode Island Water Works Association meeting 2007.

*"Sustainability – How can we make sure we have sufficient and affordable water supplies for the future?"* New England Water Works Association training session 2006.

*"Building Consensus Around the Internal/Outsource Decision"* American Water Works Association Annual Conference 2001.

**DISCOVERY REQUEST NO. 12:**

Please produce any and all documentation, items, reports, data, communications, and evidence of any kind that City intends to offer as evidence at the hearing or to refer to in any way at the hearing.

**RESPONSE:**

See General Objections 1 through 10. Without waiving these objections, the City of Chattanooga is producing a variety of documents in respect to specific discovery requests herein.

**DISCOVERY REQUEST NO. 13:**

Please produce copies of any and all documents referred to or relied upon in responding to these discovery requests.

**RESPONSE:**

See General Objections 1 through 10. Without waiving these objections, the City of Chattanooga is producing a variety of documents in respect to specific discovery requests herein.

**DISCOVERY REQUEST NO. 14:**

Please identify each person who provided information or participated in the preparation of the responses to each of these discovery requests, and for each such person specify the responses to which he or she provided information or participated in preparing, and describe the information provided or the participation in preparation.

**RESPONSE:**

1. William C. Payne, City Engineer, provided information relating to Request Nos. 16 and 19;
2. Joachim Volz provided information relating to Request No. 15;
3. Mark Keil provided information relating to Request Nos. 21 through 27;
4. Carol O'Neal, Clerk to City Council, provided information relating to ordinances, resolutions, and minutes of the City Council;
5. Priscilla Simmons, Accounting Supervisor, provided documents relating to costs of 311 and Sanitary Sewer System;
6. Carol Poll, Administrative Secretary, Sanitary Sewer System, provided documents relating to charges and increases;
7. Gary Hilbert, Director, Land Development Office, provided documents responsive to Request No. 16;
8. Some documents are provided by the City Attorney's Office from information it maintains; and
9. Some documents have been obtained by counsel from the Electric Power Board.

**DISCOVERY REQUEST NO. 15:**

Given that increases in the wastewater disposal rates charged by the Waste Water Division of the Public Works Department of the City of Chattanooga ("Waste Water Division") for sewer or waste water services are passed to TAWC as a customer of that system, and those increases must be recovered in the rates of TAWC as approved by the TRA, please provide:

a. The percentage of rate increases each year issued by the City of Chattanooga Waste Water Division for sewer or waste water services from 1996 through 2006. Please provide this information in a table format that indicates the date of each increase, the overall percentage increase, the percentage increase to each class of customers (i.e. residential, commercial, industrial, etc.) and the specific increase to TAWC if different than the percentage increase for its customer classification.

**RESPONSE:**

See General Objections 2, 4, 8, and 10. Without waiving these objections, the City of Chattanooga produces a summary spreadsheet and supporting documents, Bates Nos. 1 through 463.

b. Any studies, reports, correspondence, Waste Water Division Minutes, City Council or Committee Minutes, resolutions or ordinances, or other documents of any kind addressing such rate increases, including any documents addressing the basis for the increase in sewer rates, and the allocations of such increases between the various customer classifications or specific customers.

**RESPONSE:**

See General Objections 2, 4, 8, and 10. Without waiving these objections, the City of Chattanooga produces documents of the Waste Water Regulatory Board and the Wastewater Division of the Department of Public Works Bates Nos. 1 through 463, as well as, City Council minutes and ordinances.

c. A description of the process and basis the City uses to determine whether to increase sewer or wastewater rates and the amount of any such increase.

**RESPONSE:**

See General Objections 2, 4, 8, and 10. Without waiving these objections, the staff of the Waste Resources Division regularly monitors the revenues and expenses, the need for capital improvements, repair and replacement, general operating expenses, and determines from time to time that it is necessary to raise rates. The proposed rates are discussed with the Wastewater Regulations Board and then with the Chattanooga City Council which in its legislative discretion determines what rate increases should be adopted. Informally the representative of the Waste Resources Division discuss the need for rate increases with CMA, regional users, and other interested persons or groups prior to the rates being adopted.

d. The Chattanooga Waste Water Division annual reports or financial statements for fiscal years 2001-2006.

**RESPONSE:**

See General Objections 2, 4, 8, and 10. Without waiving these objections, the City of Chattanooga produces a variety of documents in respect to specific discovery requests herein. Also see Budget Fiscal Years 2001 through 2006 and Comprehensive Annual Financial Reports (CAFR) for these years produced. Additionally, the accounting records for the Interceptor Sewer Division for Fiscal Years 2001 through 2006 are being produced.

e. The Chattanooga Waste Water Division Utility Plant Balances for the fiscal years 2001-2006 and provide the Capital Budgets each year for the same periods for the City sewer or wastewater operations.

**RESPONSE:**

See General Objections 2, 4, 8, and 10. No account named, "Utility Plant Balances" exists nor to counsel's understanding of the phrase does this concept exist in the City of Chattanooga's accounting records.

- f. A list of any deferred capital improvements or projects for the years 2001-2006.

**RESPONSE:**

See General Objections 2, 4, 8, and 10. The City does not maintain a list of deferred capital improvements.

**DISCOVERY REQUEST NO. 16:**

Given that increases in street opening and other construction permit fees imposed by the City of Chattanooga have been identified as one of the drivers for the increased cost of new services, please provide:

- a. A schedule showing all street opening and other construction permits applicable to TAWC for each year from 2001-2006. Please provide this information in a table format that indicates each fee type, the fee cost, the date of any change in the fee amount, and the percentage increase from year to year.

**RESPONSE:**

See General Objections 1 and 8. Without waiving these objections, see the following:

Street Cut Permits issued to TAWC for the calendar years 2001-2006 as shown below:

| Date Range       | Number of Permits | Permit Fees  |
|------------------|-------------------|--------------|
| 1/1/01-12/31/01  | 1097              | \$23,829.05  |
| 1/1/02-12/31/02  | 670               | \$182,506.00 |
| 1/1/03-12/31/03  | 609               | \$152,115.00 |
| 1/1/04-12/31/04  | 604               | \$157,004.00 |
| 1/1/05-12/31/05  | 638               | \$163,484.00 |
| 1/1/06-4/30/06   | 316               | \$83,973.00  |
| 5/1/06-8/31/06   | *                 | *            |
| 9/1/06-9/30/06   | 21                | \$5,460.00   |
| 10/1/06-10/31/06 | 184               | \$46,550.00  |
| 11/1/06-11/30/06 | 59                | \$14,336.00  |
| 12/1/06-12/31/06 | 42                | \$10,720.00  |

\*Due to the conversion from one computerized permitting system to another and software performance, we do not have accurate records for this period. Because of this, two checks from TAWC totaling \$67,190.00 have not been processed.

b. Any studies, reports, correspondence, City Council Minutes, committee minutes, and resolutions or other documents of any kind addressing the fee increases, including any documents addressing the basis for the increase in the permit fees identified in the table provided in response to the previous sub-part of this question.

**RESPONSE:**

See General Objections 1 and 8. Without waiving these objections see the following response:

Effective August 1, 1991, the Street Cut-in Permit fees were as follows:

1. Utility cut in street pavement or boring perpendicular to center line: \$15.00
2. Driveway or curb cut: \$10.00
3. Five cents (\$0.05) per linear foot for cut in ROW parallel to centerline with a minimum fee of \$5.00.

On September 11, 2001, Budget Ordinance No. 11175 changed the fees to:

1. Utility cut in street pavement or boring perpendicular to centerline: \$300.00
2. Driveway or curb cut: \$100.00
3. One Dollar (\$1.00) per lineal foot for cuts in ROW parallel to centerline with a minimum fee of \$300.00.



On October 21, 2002, Ordinance No. 11333 changed the fees as follows:

1. Permit fee of \$250.00 for transverse cuts in pavement.
2. Permit fee of \$1.00 per foot for longitudinal cuts in pavement (\$250.00 minimum).
3. Permit fee of \$50.00 for cuts in the sidewalk.

c. Identify all other utilities that are required to pay the street opening and construction permits and any utilities that are exempt or that pay reduced amounts.

**RESPONSE:**

See General Objections 1 and 8. Without waiving these objections, see the following response:

The Land Development Office invoices, on a monthly basis, the following utilities:

1. Tennessee American Water Co.
2. Chattanooga Gas Company
3. BellSouth
4. Comcast
5. Hixson Utility District
6. Electric Power Board of Chattanooga

No utilities are exempt from paying permit fees, and no utilities pay reduced fees. For circumstances where fees are waived, refer to Ordinance No. 11333.

d. Identify any utilities that have contested or refused to pay the street opening and construction permit fees, and identify what enforcement action, if any, the City has taken to collect the fees, and produce all documents referring or relating thereto.

**RESPONSE:**

To the best of our knowledge and belief, no utility has refused to pay the required fee. During the period from 5/1/06 to 8/31/06, fees were not paid by TAWC because of the change in the permitting system and the inability to reconcile invoices and payments.

**DISCOVERY REQUEST NO. 17:**

Given that increases in the rates charged by the City of Chattanooga Electric Power Board ("EPB") for electric service are passed to TAWC as a customer of that system, and those increases just be recovered in the rates of TAWC as approved by the IRA, please provide:

a. The percentage of rate increases each year issued by the City of Chattanooga EPB for electrical service from 1996 through 2006. Please provide this information in a table format that indicates the date of each increase, the overall percentage increase, the percentage increase to each class of customers (i.e. residential, commercial, industrial, etc.) and the specific increase to TAWC if different than the percentage increase for its customer classification.

**RESPONSE:**

See General Objections 6, 9, 10. The City Council does not regulate electric rates. Copies of the City's CAFRs for 1999 through 2006 are being produced on CD, which provide information relating to EPB, but a hard copy is available for inspection in the offices of the City Attorney.

Unlike TAWC, which pays nothing for the water that it removes from the Tennessee River and then sells, Electric Power Board of Chattanooga ("EPB") paid 82% of its total revenue to TVA for the purchase of the power that it sells to its customers. The 2006 EPB Annual Report summarizes the revenues and costs for EPB for that fiscal year as follows:

The Electric System sales were \$39.6 million greater than budget. However, this increase in sales is offset by \$37.6 million greater than budgeted operating costs, due mainly to \$36.6 million higher than plan for purchased power. Sales and purchased power expense were higher due to two factors: First, TVA raised their rates on October 1, 2005 and again on April 1, 2006. Both of these rate increases were passed through to the customer. However, in neither instance did EPB raise its rates to the customer. In fact, the last EPB rate increase was in July 1997. The second factor increasing sales and purchased power expense was the higher KWh sales to customers due to warmer than expected weather in the EPB service area. Degree days were 4.4% greater than budget and KWh sales to customers were 2.6% greater than budget in FY 2006.

2006 Annual Report, page 15.

Copies of the annual reports for EPB for the fiscal years ending June 30, 2005 and June 30, 2006 are provided in electronic format.

b. Any studies, reports, correspondence, EPB Minutes, City Council or Committee Minutes, ordinances, resolutions, or other documents of any kind addressing such rate increases, including any documents addressing the basis for the increase in electric rates, and the allocations of such increases between the various customer classifications or specific customers.

**RESPONSE:**

See (a).

c. The City of Chattanooga EPB annual reports or financial statements for fiscal years 2001-2006.

**RESPONSE:**

See (a).

d. The City of Chattanooga EPB Utility Plant Balances for the fiscal years 2001-2006 and provide the Capital Budgets for each year for the same periods.

**RESPONSE:**

See (a).

**DISCOVERY REQUEST NO. 18:**

Given that increases in tax rates and assessments from the City of Chattanooga are passed to TAWC as a tax payer in the City, and those increases must be recovered in the rates of TAWC as approved by the TRA, please provide:

a. The percentage of tax increases each year by the City of Chattanooga from 1996-2006. Please provide this information in a table format that indicates the type of tax, the tax rate, the valuation method, percentage used for valuation (if applicable), the date of any change in tax rate or valuation percentage (if applicable), and the percentage increase from year to year.

**RESPONSE:**

See General Objections 2 and 9. Without waiving these objections, see tax rate adopted by the City each year referenced in the annual budget ordinances which are being produced. The City does not value the real or personal property for taxation but instead relies upon assessments by the Hamilton County Tax Assessor's Office, business tax returns filed or other returns by taxpayers. A table reflecting the tax rate and budgeted property tax revenues follows:

| FY    | Tax Rate | Budgeted Property Taxes* |
|-------|----------|--------------------------|
| 96-97 | 2.70     | 67,442,071               |
| 97-98 | 2.31     | 62,207,932               |
| 98-99 | 2.31     | 64,037,216               |
| 99-00 | 2.31     | 65,553,784               |
| 00-01 | 2.31     | 66,601,312               |
| 01-02 | 2.516    | 83,637,449               |
| 02-03 | 2.516    | 85,940,162               |
| 03-04 | 2.516    | 88,229,048               |
| 04-05 | 2.516    | 88,758,674               |
| 05-06 | 2.202    | 89,594,407               |
| 06-07 | 2.202    | 90,505,309               |

\*The property tax appraisals are established by the Assessor of Property for Hamilton County or by the Tennessee Regulatory Authority for certain utilities. The major change in appraisal for Fiscal Year 97-98 and Fiscal Year 01-02 appears to be the result of a periodic re-appraisal by the Assessor of Hamilton County.

b. Any studies, reports, correspondence, City Council Minutes, committee minutes, ordinances, resolutions, or other documents of any kind addressing the tax increases, including any documents addressing the basis for the increase in the tax or valuation percentages identified in the table provided in response to the previous request.

**RESPONSE:**

See General Objections 2, 3, and 9. Without waiving these objections, the City of Chattanooga is producing the minutes of the City Council relating to tax increases.

c. Any studies, reports, correspondence, City Council Minutes, committee minutes, ordinances, resolutions, or other documents of any kind containing discussion of any adjustments to the various tax rates as a result of the savings the City has experienced from the elimination of the public fire hydrant fees in TAWCs tariffs.

**RESPONSE:**

See General Objections 2, 3, and 9. Counsel has been unable to date to locate any documents which may be in response to this request. Further inquiries will be made, and this request may be supplemented.

**DISCOVERY REQUEST NO. 19:**

Please provide any studies, reports, correspondence, City Council Minutes, committee minutes, ordinances, resolutions, or other documents of any kind reflecting discussions or requests to TAWC to make capital improvements between 2001-2006. *This* discovery request would apply but is not limited to capital improvements for such items as fire protection, downtown renovations, service problems, economic development, or street improvements.

**RESPONSE:**

See General Objections 2 and 3. Without waiving these objections, the City of Chattanooga is producing the document "Major Construction Project 2001-2006". The City's practice is to notify all utilities of such major construction projects and to project the dates of construction so that the utilities may make their own plans for any necessary relocations.

**DISCOVERY REQUEST NO. 20:**

Please provide any studies, reports, correspondence, City Council Minutes, committee minutes, ordinances, resolutions, or other documents of any kind in *which* the City or any representative of the City has discussed the level of service provided by TAWC between 2001-2006.

**RESPONSE:**

See General Objections 2 and 3. Counsel has not located any documents which may be responsive to this request.

**DISCOVERY REQUEST NO. 21:**

Please provide the hours of operations and the days of the week which the City of Chattanooga 311 Call Center referenced in *the* testimony of Mark Keil is open.

**RESPONSE:**

Monday through Friday, 7:30 a.m. to 5:00 p.m.

**DISCOVERY REQUEST NO. 22:**

Is the City of Chattanooga 311 Call Center Open on Holidays?

**RESPONSE:**

No.

**DISCOVERY REQUEST NO. 23:**

Please provide the following information for the City of Chattanooga 311 Call Center for the years 2005 and 2006:

a. A detailed break down of costs (i.e. labor, benefits, building costs or rent, utility expenses, telephone expense, information technology (IT costs), contractor services, office supplies, etc.)

**RESPONSE:**

The accounting records for the 311 call center are being produced. No accounting is made for building costs or rent.

b. The average hourly rate for each service representative.

**RESPONSE:**

This information is not separately maintained but may be deduced from records produced.

- c. The salaries of any management employees.

**RESPONSE:**

See Response to 23(a).

- d. How much of Mr. Keil's salary, benefits and expenses are allocated to the 311 Call Center?

**RESPONSE:**

None.

- e. The total number of customer contacts received each year.

**RESPONSE:**

See Mark Keil's pre-filed testimony.

- f. The average cost per customer contact.

**RESPONSE:**

This figure is not maintained but may be estimated from the pre-filed testimony and accounting records produced.

- g. Copies of all customer satisfaction surveys referenced in Mr. Keil's testimony for both years.

**RESPONSE:**

The City of Chattanooga is producing the results of the Summer 2005 Telephone Survey. An analysis of a recent survey is underway but no report has been received.

- h. Key performance indicators and results used to measure performance.

**RESPONSE:**

See attached June 10, 2005, survey.

- i. Describe all services provided by 311 call centers.

**RESPONSE:**

See pre-filed testimony of Mark Keil.

**DISCOVERY REQUEST NO. 24:**

Do the 311 Call Center employees address service or billing problems or simply pass those to the service provider (i.e. Waste Water Division, EPB, etc.)?

**RESPONSE:**

They address service issues; address property tax questions, city court cost and fees, and financial questions about other City services. Some calls are forwarded to direct service providers such as the Waste Resources Division.

**DISCOVERY REQUEST NO. 25:**

Do the 311 Call Center employees produce the bills or perform meter reading edits and billing edits for the various City Departments for which it provides services (i.e. Waste Water Division, EPB, etc.)?

**RESPONSE:**

No.

**DISCOVERY REQUEST NO. 26:**

Do the 311 Call Center employees handle bill collection efforts for the various City Departments for which it provides services?

**RESPONSE:**

Not presently but the hardware and software are designed to handle this function.



**DISCOVERY REQUEST NO. 27:**

Do the 311 Call Center employees close (i.e., enter the results of the field work) service orders for the various City Departments for which it provides services?

**RESPONSE:**

All service requests are tracked and the results of the field work are maintained within the system; however, the people actually doing the field work enter the completion data. There is seamless electronic connection between intake and completion.

**DISCOVERY REQUEST NO. 28:**

Please provide the engagement letter, contract and any other correspondence between the City of Chattanooga and Raftelis Financial Consultants, Inc. for any engagement with the City of Chattanooga during the last five years, and identify the total costs and/or fees incurred or paid by the City of Chattanooga to Raftelis Financial Consultants, Inc.

**RESPONSE:**

See General Objections 1, 2, and 6. Without waiving these objections, a redacted copy of the engagement letter with Raftelis is being produced. The expenses paid to date are \$33,580.00.

**DISCOVERY REQUEST NO. 29:**

Please provide a schedule showing all franchise fee revenue received by the City from Comcast or its predecessors for each year from 2001-2006. Please provide an estimate of the expected increase in revenue resulting from Ordinance No. 11940 or any other ordinances passed in the past year granting a franchise to Comcast and; the expected percentage increase on Comcast customer bills and; any City Council or Committee minutes, studies, correspondence, memoranda, ordinance, resolutions, or other documents which refer or relate in any way to such increase in franchise fees.

**RESPONSE:**

See General Objections 2 and 4. Without waiving these objections, the Comcast franchise fee is based upon the five (5%) percent of gross revenues. The estimated annual franchise fee is contained within the annual budgets being produced. It is unknown how much the franchise fee will increase as a result of the latest franchise ordinance.

**DISCOVERY REQUEST NO. 30:**

Please provide copies of the deposition or hearing testimony identified in response to any of these requests.

**RESPONSE:**

See General Objections 1 and 2. Without waiving these objections, the City of Chattanooga will rely upon pre-filed testimonies which have been filed by the City and other parties herein.

Respectfully submitted,

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

BY: 

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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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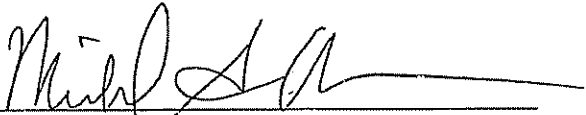
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This the 30<sup>th</sup> day of March, 2007.

  
Michael McMahan

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

TENNESSEE AMERICAN WATER COMPANY, :  
PETITION TO CHANGE AND INCREASE : DOCKET NO. 06-00290  
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 SERVICES TO ITS :  
CUSTOMERS. :

**AFFIDAVIT OF MAYOR RON LITTLEFIELD**

**STATE OF TENNESSEE**

**COUNTY OF HAMILTON**

I, RON LITTLEFIELD, Mayor for the City of Chattanooga, Tennessee, do hereby certify that the foregoing responses to the Discovery Requests to the City of Chattanooga were prepared under my general supervision and are true and accurate to the best of my knowledge and information.

DATED this \_\_\_\_ day of March, 2007.

\_\_\_\_\_  
**RON LITTLEFIELD**

Sworn to and subscribed before me this \_\_\_\_ day of March, 2007.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

TENNESSEE AMERICAN WATER COMPANY, :  
PETITION TO CHANGE AND INCREASE : DOCKET NO. 06-00290  
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 SERVICES TO ITS :  
CUSTOMERS. :

AFFIDAVIT OF L. DAN JOHNSON

STATE OF TENNESSEE

COUNTY OF HAMILTON

I, L. DAN JOHNSON, Chief of Staff for Mayor Ron Littlefield, City of Chattanooga, Tennessee, do hereby certify that the foregoing responses to the Discovery Requests to the City of Chattanooga were prepared under my general supervision and are true and accurate to the best of my knowledge and information.

DATED this \_\_\_\_ day of March, 2007.

\_\_\_\_\_  
L. DAN JOHNSON

Sworn to and subscribed before me this \_\_\_\_ day of March, 2007.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_