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June 2, 2008

**VIA HAND-DELIVERY**

Chairman Eddie Roberson, PhD  
c/o Ms. Sharla Dillon  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

***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. 08-00039***

Dear Chairman Roberson:

Enclosed please find an original and sixteen (16) copies of Tennessee American Water Company's Motion to Compel the City of Chattanooga to Provide Complete Discovery Responses and to Exclude the Use of All Information Withheld Without Good Cause.

Please return three copies of this, 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

Very truly yours,



R. Dale Grimes

RDG/smb  
Enclosures

Chairman Eddie Roberson, PhD

June 2, 2008

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cc: Hon. Ron Jones (*w/o enclosure*)  
Hon. Sara Kyle (*w/o enclosure*)  
Hon. Tre Hargett (*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*)  
Timothy C. Phillips, Esq. (*w/enclosure*)  
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Frederick L. Hitchcock, Esq., (*w/enclosure*)  
Mr. John Watson (*w/o enclosure*)  
Mr. Michael A. Miller (*w/o enclosure*)

6839113.1

**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. 08-00039</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 CITY OF CHATTANOOGA TO PROVIDE COMPLETE DISCOVERY  
RESPONSES AND TO EXCLUDE THE USE OF ALL INFORMATION WITHHELD  
WITHOUT GOOD CAUSE**

Tennessee American Water Company (“TAWC”) served its discovery requests (the “Requests”) upon the City of Chattanooga (“City”) on May 12, 2008. The City responded to TAWC’s requests on May 28, 2008 (the “Responses”). The City’s Responses reveals that they are insufficient. Accordingly, pursuant to the Tennessee Regulatory Authority (“TRA”) 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 Requests identified herein and barring the City from using any information or documents withheld from TAWC without good cause.

**I. Legal Standard of Discovery**

As a legal matter, Rule 26.02 of the Tennessee Rules of Civil Procedure is broad in scope, and allows parties “to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved . . . including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.” Tenn. R. Civ. P. 26.02(1).

Discovery under the Tennessee Rules of Civil Procedure “is allowed in an effort to do away with trial by ambush,” and should be allowed “to achieve its desired effect.” *Conger v. Gowder*, 2001 Tenn. App. LEXIS 205, at \*14 (Tenn. Ct. App. Mar. 29, 2001); *see also* Tenn. R. Civ. P. 26.02(1).

Here, TAWC has propounded a limited number (13) of reasonable requests for relevant information and documents, which are reasonably calculated to lead to discovery of relevant information, and is entitled to receive adequate responses to those requests. The City has a duty to respond to each of TAWC’s requests to the maximum extent possible even when valid objections are asserted – the City cannot assert a single basis to object and then withhold all materials not covered by that objection. Notwithstanding this duty, the City refuses to completely answer a single request by TAWC, in direct contravention of the “desired effect” sought by Rule 26 and the purpose of this Hearing Officer’s discovery deadlines in the Procedural Order.

Tennessee Rule of Civil Procedure 37.01(2) provides that, when a party fails to fully answer interrogatories or 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. Tenn. R. Civ. P. 37.01(2) (2007). Accordingly, TAWC seeks an order compelling complete answers and the production of all responsive documents and barring the City’s use of any information or documents withheld without good cause. TAWC also requests any other relief under Rule 37 of the Tennessee Rules of Civil Procedure this Hearing Officer deems appropriate.

**II. The City Should Be Compelled To Provide Complete Responses To TAWC's Discovery Requests.**

**A. The City Fails To Recognize A Distinction Between Its Discovery Obligations Under The Procedural Order And Its Pre-Filed Testimony Obligations In Requests Nos. 1, 2, 3, 4, 6, 7, 9, 11, 12, 13.**

Most critically, the City has responded in a manner that directly undermines the most fundamental principles of discovery. Incredibly, the City's Response does not contain any substantive responses to any Request posed by TAWC. Moreover, despite TAWC's small number of requests being focused and specific, the City did not produce a single document in response to TAWC's Requests.

Instead, the City repeatedly states that: "The procedural order in this matter provides that Pre-Filed Testimony is not due until June 30, 2008. This discovery request seeks information that the City is not required to develop until that date. This information has not in fact been developed by the City of Chattanooga and therefore cannot be answered at this time. Without waiving its objection, the City will supplement its responses to this request as the information sought becomes available." *See* City's Responses to Requests Nos. 1, 2, 3, 4, 6, 7, 9, 11, 12, 13.

Contrary to this specific objection and the City's general objections as a whole, the City has a duty to respond to TAWC's Discovery Requests now to the extent responsive, non-privileged information presently exists in the City's custody or control. It is wrongful for the City to withhold such information or documentation currently available to the City until its June 30, 2008 pre-filed testimony is due. The City's objection is akin to a party stating: "You can find out my positions in this case if and when I testify." This is not the result intended by either the Procedural Order's discovery deadlines, or the Tennessee Rules of Civil Procedure. Instead, the City has a duty to produce everything already in existence that is responsive to the request, regardless of whether it may later be included in the pre-filed testimony.

**B. TAWC Seeks Complete Responses To Requests Nos. 1 Through 3**

In Request No. 1, TAWC requests for the City to identify each material fact and every document that it relied on to support any contention, position, or belief that TAWC's request for a rate increase should not be approved. The City provided the quoted response above, but this is inappropriate given the City's ability to immediately answer, at the very least, to the extent it has any position on TAWC's requested rate increase, or alternatively, to state that it has not yet identified any reasons. By necessity then, the City should have some information or response to TAWC Request No. 2.

Similarly, TAWC Request No. 3 seeks "each document, photograph, or any other article or thing whatsoever, which refers or relates to any part of your contention(s), position(s), or belief(s) that" TAWC's requested rate increase should not be approved. The City provided only the response quoted above. In its Motion to Intervene, however, the City made explicit reference to facts and events that influenced its concerns regarding TAWC's requested rate increase. It is incongruous for the City to now claim that it has *nothing* to respond or produce in response to this request.

**C. TAWC Seeks A Complete Response To Request No. 10.**

The City additionally provides an incomplete response to Request 10 to the extent that it provided the names of individuals who participated in preparing the responses to TAWC's Requests, and yet failed to identify which responses they participated in preparing. The City further failed to "describe the information provided" by those individuals. TAWC seeks a full response to this Request, and for the reasons stated above, seeks immediate disclosure of such non-privileged information to the extent that it is presently known or available to the City.

**D. TAWC Seeks Complete Responses To Request Nos. 11 Through 13.**

TAWC is likewise entitled to the underlying documents, or answers relating thereto, to the statements made by the City in its Joint Objection of the Intervenor's to Discovery Question Limits. *See* TAWC Requests 11, 12, 13. At the very least, the City must provide answers based on what the City knows now – not a deferral – even if those answers are subject to change. For example, if the City is currently unaware of a single basis on which it opposes TAWC's petition, then it has a duty to so answer.

For the foregoing reasons, the City's effort to entirely defer all discovery obligations by merging everything into its pre-filed testimony submission should fail. As a practical matter, if no responses were due from Intervenor's until June 30, 2008, it would render the discovery deadlines in the Procedural Order meaningless. Moreover, the universe of responsive information in discovery is necessarily larger than that submitted in the pre-filed testimony. That is the very essence and purpose of discovery. Consequently, the City has a duty to presently produce the non-privileged information and material in its possession that is responsive to TAWC's Requests.

**Conclusion**

For the reasons stated herein, the City of Chattanooga has failed to adequately respond to all of TAWC's discovery requests. Pursuant to Tennessee Rule of Civil Procedure 37, TAWC respectfully requests that the Hearing Officer issue an order compelling the immediate production of material responsive to TAWC's requests and barring the City from using, for any purpose in this proceeding, any information or documents withheld by the City without good cause. TAWC also requests any additional relief under Rule 37 of the Tennessee Rules of Civil Procedure this Hearing Officer deems appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ross I. Booher', written over a horizontal line.

R. Dale Grimes (#6223)

Ross I. Booher (#019304)

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*Attorneys 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 2nd day of June, 2008, upon the following:

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