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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 Chattanooga Manufacturers Association 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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Henry M. Walker, 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*)

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**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)	Docket No. 08-00039
EARN A FAIR AND ADEQUATE RATE)	
OF RETURN ON ITS PROPERTY USED)	
AND USEFUL IN FURNISHING WATER)	
SERVICE TO ITS CUSTOMERS)	

**TENNESSEE AMERICAN WATER COMPANY’S MOTION TO COMPEL THE
CHATTANOOGA MANUFACTURERS ASSOCIATION 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”) (attached as Exhibit A) upon the Chattanooga Manufacturers Association (“CMA”) on May 12, 2008. The CMA responded to TAWC’s Requests on May 28, 2008 (the “Responses”) (attached as Exhibit B). After a review of the CMA’s Responses, it is clear that nearly all of the CMA’s Responses are either insufficient or entirely non-responsive. 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 and barring the CMA from using any information or documents withheld from TAWC without good cause.

I. Legal Standard of Discovery

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

As a legal matter, Rule 26 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). Thus, 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, *14 (Tenn. Ct. App. Mar. 29, 2001).

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. As a party to this litigation, the CMA has a duty to respond to each Request to the maximum extent possible even when valid objections have been asserted. The CMA's failure to answer a single request by TAWC is therefore contrary to the "desired effect" sought by the Tennessee Rules of Civil Procedure and undermines the purpose of this Hearing Officer's Procedural Order in this matter.

II. The CMA's General And Specific Objections Should Be Denied And The CMA Should Be Compelled To Produce All Responsive, Non-Privileged Information In The CMA's Custody Or Control.

A. The CMA Fails To Recognize A Distinction Between Its Discovery Obligations Under The Procedural Order And Its Pre-Filed Testimony Obligations.

Most critically, the CMA has responded in a manner that directly undermines the most fundamental principles of discovery. Incredibly, the CMA's Response does not contain *a single*, substantive response to *any* request posed by TAWC. The CMA did not provide or identify a single document, nor even attempt to offer limited responses to show a good-faith effort while maintaining its objections. Consequently, the CMA's Response is not simply incomplete, it is entirely absent of any substantive value.

Instead, the CMA gives unspecific, non-committal responses that it will provide or supply the requested material without any indication when that material will be provided, what that material will consist of, the identity of any individuals requested, and why the materials are not immediately being provided in response to TAWC's request. *See* CMA Responses to Requests No. 1, 2, 6, 7, 8; *see also* CMA Responses to Requests No. 11, 12, 13 (providing similarly vague responses that it "intends to timely provide testimony of any witnesses it intends to call, and will supply work papers, if any, relied upon by such witnesses relative to their testimony"); CMA Response to Request No. 4 ("CMA will timely respond as appropriate through the filing of direct testimony of CMA's witnesses, if any.").

Similarly, the CMA asserts a General Objection to producing "any document prepared by it subsequent to the filing of this litigation or contested case" is inappropriate. CMA Responses, General Objection No. 7. The fact that a document came into existence after the filing of this matter is no defense to its production and the CMA should be compelled to produce all such presently existing, responsive, non-privileged documents at this time.

Pursuant to its discovery obligations under the Procedural Order, the CMA has a duty to produce everything *already in existence* and answer the questions posed by TAWC. For instance, if the CMA is aware of a basis upon which it opposed TAWC's petition, it must state that basis or state that it has yet to identify any basis to oppose. If the CMA is aware of a non-privileged, responsive document at this time, the CMA must produce such document if it is in the CMA's custody or control. The CMA may not refuse to respond to TAWC's discovery simply because it is possible that additional evidence may be discovered later. Of course, if the CMA later discovers any new responsive information or material, it has a duty to timely supplement its responses.

Moreover, the CMA had a duty to respond to TAWC's discovery now. It is wrongful for CMA to attempt to withhold information or documentation until its June 30, 2008, pre-hearing testimony is due. To hold otherwise would undermine the fundamental purpose of discovery, which is to avoid surprises and provide the parties with adequate time to prepare their case. *See Conger*, 2001 Tenn. App. LEXIS 205, at *14. This is why there is a duty on all parties to litigation to supplement their discovery responses as new material or information *comes into knowledge or existence*.

The CMA's effort to entirely defer all discovery obligations by merging everything into its pre-filed testimony submission is improper and should fail. As a practical matter, if no responses were due from Intervenors until June 30, 2008, it would render the Procedural Order's discovery deadline meaningless. Moreover, the universe of responsive information in discovery is necessarily larger than that likely to be submitted by the CMA in the pre-filed testimony of its witnesses. That is the very essence and purpose of discovery. The CMA's failure to distinguish its obligations pursuant to discovery requests versus its obligations to file pre-hearing testimony

in no way diminishes these obligations. The CMA should be required to produce non-privileged information and material in its possession that is responsive to TAWC's Requests.

B. The CMA's General Objection No. 3 Should Be Denied And The CMA Should Produce All Information Otherwise Withheld On That Basis.

In General Objection No. 3, the CMA contends that TAWC's interrogatories "seek information relating to matters not at issue in this litigation" or are not reasonably calculated to lead to admissible evidence. Both assertions are incorrect. TAWC narrowly tailored its requests to focus on the issues central to this proceeding. For instance, TAWC's Requests Nos. 1-3, and 11-13 are specifically focused on positions taken by the CMA in its motions filed to date in this proceedings. Requests Nos. 4, and 6 through 9, deal exclusively with matters and materials that will be potentially utilized in the upcoming hearing. Requests Nos. 5 and 10 seek the identity and roles of individuals actively participating in contesting TAWC's rate increase. Accordingly, to the extent any information or material was withheld from any response on this basis, the CMA should be compelled to immediately produce that information or material.

C. The CMA's Response to Request No. 9 In Incomplete.

The CMA claims that Request No. 9 is duplicative of Request No. 3. This assertion is incorrect, however, because Request No. 3 addresses the "contention(s), positions(s), or belief(s)" of CMA in this matter whereas Request No. 9 specifically requests materials "that the CMA intends to offer as evidence at the hearing or to refer to in any way at the hearing." Accordingly, TAWC requests that the CMA be compelled to supply a complete response to Request No. 9.

D. The CMA Cannot Refuse To Produce All Responsive, Non-Privileged Information By Asserting Privilege To A More Limited Universe Of Privileged Information.

The CMA also refuses to answer TAWC Discovery Requests on the basis that the requests seek attorney-client privileged information or attorney work-product. CMA's Response to Requests Nos. 4 & 10. For instance, the CMA refuses to provide any response to the TAWC's Request No. 10 to identify individuals "who provided information or participated in the preparation of the responses to each of these discovery requests." CMA Response to Request No. 10. There is no privileged basis to withhold this information. But even if some privileged information could be construed as responsive to this request, there certainly exists *non-privileged* responsive information and material that is responsive to Requests Nos. 4 and 10. Unless the CMA can contend in good faith that it has *nothing* responsive to these Requests that is non-privileged, all such non-privileged material should be produced.

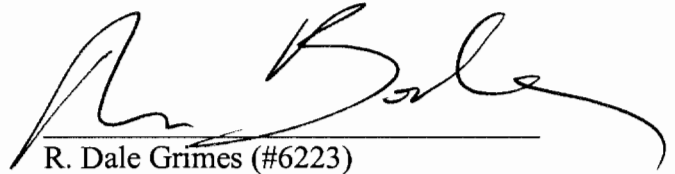
Conclusion

Notwithstanding the clear mandate of Rule 26 of the Tennessee Rules of Civil Procedure and its obligations as a party to this matter, the CMA has produced nothing but evasive and non-responsive answers. As a result, TAWC does not simply lack some of the information requested, it lacks *all* of the requested information. Without any of the information requested, TAWC will be materially prejudiced in its preparation for the hearing of this rate case. The CMA's dilatory tactics undermine TAWC's right to receive discovery responses on the schedule established by this Hearing Officer.

Consequently, without an order compelling the CMA to provide TAWC with any substantive responses to its discovery request, TAWC is materially impaired 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 of information responsive to

TAWC's Discovery Requests and barring the CMA from using, for any purpose in this proceeding, any information or documents withheld 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 'R. Dale Grimes', is 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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