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June 4, 2008

VIA HAND DELIVERY

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

filed electronically in docket office on 06/04/08

Re: *Petition of Tennessee American Water Company To Change And Increase Certain Rates And Charge 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 seven (7) sets of copies of Tennessee American Water Company's Response to Chattanooga Manufacturers Association's Motion to Compel, dated June 4, 2008. In addition, a pdf image of TAWC's Response will be emailed to the attention of Sharla Dillon at the Tennessee Regulatory Authority.

Please return three (3) copies of this Response to me, which I would appreciate your stamping as "filed," 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

Enclosures

Chairman Eddie Roberson, PhD

June 4, 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*)  
David C. Higney, Esq. (*w/enclosure*)  
Henry M. Walker, Esq. (*w/enclosure*)  
Michael A. McMahan, Esq. (*w/enclosure*)  
Frederick L. Hitchcock, Esq., (*w/enclosure*)  
Mr. John Watson (*w/o enclosure*)  
Mr. Michael A. Miller (*w/o enclosure*)

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

**IN RE:**

<b>PETITION OF TENNESSEE AMERICAN</b>	<b>)</b>	
<b>WATER COMPANY TO CHANGE AND</b>	<b>)</b>	
<b>INCREASE CERTAIN RATES AND</b>	<b>)</b>	
<b>CHARGES SO AS PERMIT IT TO EARN</b>	<b>)</b>	
<b>A FAIR AND ADEQUATE RATE OF</b>	<b>)</b>	
<b>RETURN ON ITS PROPERTY USED AND</b>	<b>)</b>	<b>Docket No. 08-00039</b>
<b>USEFUL IN FURNISHING WATER</b>	<b>)</b>	
<b>SERVICE TO ITS CUSTOMERS</b>	<b>)</b>	

**TENNESSEE AMERICAN WATER COMPANY'S RESPONSE TO CHATTANOOGA  
MANUFACTURERS ASSOCIATION'S MOTION TO COMPEL**

To date, Tennessee American Water Company ("TAWC") has produced tens of thousands pages of information in this case on March 14, 2008, April 11, 2008, and May 28, 2008. Specifically in response to the Chattanooga Manufacturers Association ("CMA") Discovery Requests, TAWC has produced nearly 100 pages of responsive material.

In spite of the massive volume of TAWC's production, the CMA now claims that TAWC Responses are insufficient and moves to compel TAWC's responses to certain of the CMA's discovery requests. TAWC has responded appropriately to each of the CMA's requests, however, and this Hearing Officer should not compel any further discovery. Accordingly, the CMA's Motion to Compel should be de denied for the reasons set forth below, as well as reasons to be discussed at the status conference scheduled for 1 p.m. today.

**I. TAWC Provided Complete Requests To The CMA's Discovery Requests.**

Among a number of its allegations, the CMA asserts that TAWC "ignores its duty to respond" and "clearly is being evasive" in its discovery responses. In support of these allegations, the CMA points to responses in which TAWC provides substantial amounts of

information in the form of tables, reports, other attached documents, as well as references to information readily accessible by the CMA from other sources, including information available for the CMA's inspection and reproduction on the TRA's website. Providing responsive information by reference to information available in other sources or making such information available for inspection is a standard, appropriate practice in responding to discovery. The CMA provides no reason why it cannot view the requested information from the sources cited in TAWC's substantial and reasonable responses.

Specifically, the CMA asserts that TAWC "ignores its duty to respond" to CMA discovery Requests Nos. 6, 9, 11 and 15. The CMA's claims fail upon examination of TAWC's substantial and reasonable responses to these Requests. For example:

- Request No. 6 sought explanations and information regarding TAWC's planned capital expenditures. TAWC responded comprehensively with explanations and detailed information on those plans.
- Request No. 9 sought all workpapers related to Dr. Michael Vilbert's testimony filed in this case. TAWC responded to Request 9 by pointing out that all such workpapers were previously produced with Dr. Vilbert's testimony, which is readily accessible on the TRA website.
- Request No. 11 sought copies of all presentations to credit analysts by TAWC and its parents or affiliates during the past two years. TAWC responded by referring the CMA to its website, where responsive documents are available for inspection and reproduction at the CMA's convenience.
- Finally, Request 15 sought copies of all of TAWC's responses to discovery propounded by each party to this docket. TAWC responded fully and reasonably

by noting that all such discovery responses have been served on all parties in this matter, including the CMA.

The CMA has no basis for alleging that TAWC has “ignored” its duty to respond to the CMA’s discovery requests. As described above, each specific instance of alleged insufficiency asserted by the CMA is unfounded. In reality, TAWC has responded appropriately and comprehensively to each of the CMA’s discovery requests.

**II. The CMA Propounded More Discovery Requests Than Permitted By TRA Rule 1220-1-2-.11(5)(a).**

Limitations on the initial number of discovery requests are a necessary mechanism to balance and facilitate the exchange of information and the progress of litigation. Here, TRA Rule 1220-1-2-.11(5)(a) is clear:

“No party shall serve on any other party more than forty (40) discovery requests, *including subparts* without first having obtained leave of the Authority or Hearing Officer . . . If a party is served with more than forty (40) discovery requests without an order authorizing the same, such party need only respond to the first forty (40) requests.”

TRA Rule 1220-1-2-.11(5)(a)(emphasis added). Accordingly, TRA Rule 1220-1-2-.11(5)(a) imposes a clear limit of the number of discovery requests that a party must answer to ensure that a particular party is not overburdened by discovery.<sup>1</sup>

Notwithstanding the express provisions of the rule, on May 12, 2008, the CMA filed in excess of forty discovery requests without first obtaining leave to do so. In accordance with the TRA Rules, TAWC responded only to the first forty of the CMA’s Requests. The CMA now moves for an order compelling TAWC to respond to its last three discovery requests, despite the clearly-defined limit of TRA Rule 1220-1-2-.11(5)(a). Pursuant to TRA Rule 1220-1-2-

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<sup>1</sup> Other forums have similar rules that are equally clear, for instance, the Local Rules of the United States District Court for the Middle District of Tennessee provides that “subparts of a question shall be counted as additional questions for purposes of the overall number.” Local Rule 33.01(b).

.11(5)(a), TAWC fully responded to the CMA's Requests, and the CMA's motion to compel should be denied.

### Conclusion

In short, the CMA gives this Hearing Officer no reason to compel further responses in addition to TAWC's already substantial and reasonable responses. TAWC has fully and appropriately responded to the CMA's discovery requests. For the reasons set forth above, and those which TAWC will communicate at today's status conference,<sup>2</sup> the CMA's motion to compel should be denied.

Respectfully submitted,



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<sup>2</sup> Due to the incredibly short time period between the filing of the City's Motion to Compel and the Hearing scheduled June 4, 2008, TAWC intends to further respond to the City's claims at the Hearing.

### 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 4<sup>th</sup> day of June, 2008, upon the following:

<input checked="" type="checkbox"/> Hand-Delivery	Timothy C. Phillips, Esq.
<input type="checkbox"/> U.S. Mail	Consumer Advocate and Protection Division
<input type="checkbox"/> Facsimile	Office of Attorney General
<input type="checkbox"/> Overnight	2nd Floor
<input checked="" type="checkbox"/> Email	425 5th Avenue North
	Nashville, TN 37243-0491
<input type="checkbox"/> Hand-Delivery	David C. Higney, Esq.
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<input type="checkbox"/> Facsimile	Grant, Konvalinka & Harrison, P.C.
<input checked="" type="checkbox"/> Overnight	633 Chestnut Street, 9th Floor
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