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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 Initial Response to the Consumer Advocate and Protection Division'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:

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

**TENNESSEE AMERICAN WATER COMPANY'S INITIAL RESPONSE TO THE
CONSUMER ADVOCATE AND PROTECTION DIVISION'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 Consumer Advocate and Protection Division's ("CAPD") Discovery Requests, TAWC has produced thousands of pages of responsive material.

In spite of the massive volume of TAWC's Responses, the CAPD now claims that *one* TAWC Response is insufficient. The CAPD also claims that TAWC failed to respond to the 137 discovery requests that the CAPD propounded in excess of the discovery limit ordered by the Hearing Officer. Not only did TAWC sufficiently respond to the one Request specifically identified by the CAPD, but TAWC also appropriately responded to the 80 discovery requests permitted by the Hearing Officer and, in accordance with TRA Rule 1220-1-2-.11(5)(a), declined to answer discovery requests that were not permitted by the Hearing Officer. Accordingly, for the reasons set forth below, as well as reasons to be discussed at the status conference scheduled for 1 p.m. today, the CAPD's Motion should be denied.

I. TAWC Provided A Complete Response To The CAPD's Request No. 7 Of Part II.

Among the TAWC's voluminous responses, the CAPD cites only one response that it deems insufficient: CAPD Requests, Part II, Question No. 7. The CAPD argues that this response is "unresponsive and incomplete" because "the Consumer Advocate believes that the files referenced in the Company's response do not contain all of the [responsive information]." *See* CAPD Motion to Compel, p. 4. The CAPD offers no basis for its belief that TAWC's response is incomplete. In fact, the files attached to TAWC's response to Part II, Question No. 7 are complete, reasonable, and fully meet the substance of the request to the best of TAWC's knowledge, belief, and ability. The only other conceivable information is not in the possession, custody or control of TAWC and that is the proprietary database owned by Gannett Fleming. TAWC understands that this is housed on a mainframe and cannot reasonably be re-created or replicated for production purposes.

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

On May 1, 2008, the Hearing Officers granted the CAPD twice the ordinary discovery requests ordinarily permitted under the TRA's Rules. *See* TRA Rule 1220-1-2-.11(5)(a). Notwithstanding this generous expansion of discovery, the CAPD proceeded to propound 217 discovery requests upon TAWC on May 12, 2008. Pursuant to the Rules governing the TRA, TAWC was under no obligation to respond to the 137 additional requests propounded and the CAPD's motion with regard to these requests should fail.

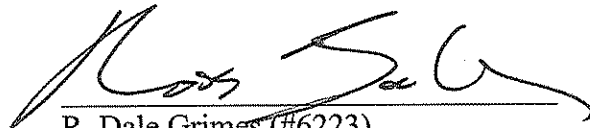
TRA Rule 1220-1-2-.11(5)(a) is clear:

"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). Such limitations, including the counting of subparts as separate requests, on the initial number of discovery requests are a routine, necessary, well-accepted, and well-understood mechanism to balance and facilitate the exchange of information and the progress of the proceeding.¹

Here, the CAPD was generously authorized to issue 80 discovery requests in this proceeding, but instead propounded more than 200 discovery requests upon TAWC. Ignoring the Hearing Officer's Order and TRA Rules, the CAPD now seeks to compel TAWC to respond to the remaining 137 Requests. Under the clearly-defined limit of TRA Rule 1220-1-2-.11(5)(a), however, TAWC only had a duty to respond to the 80 requests permitted by this Hearing Officer. Consequently, the CAPD has no basis to compel further responses by TAWC and its motion should be denied for all of the foregoing reasons, and for those reasons to be further discussed at the status conference scheduled for 1 p.m. today.²

Respectfully submitted,



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¹ 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).

² 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 4th 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
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