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June 4, 2008

VIA HAND DELIVERY

filed electronically in docket office on 06/04/08

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 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 City of Chattanooga's Motion to Compel or Alternative Motion for Permission to Propound Additional Discovery Requests, 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*)
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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 CITY
OF CHATTANOOGA'S MOTION TO COMPEL OR ALTERNATIVE MOTION FOR
PERMISSION TO PROPOUND ADDITIONAL DISCOVERY REQUESTS**

Tennessee American Water Company ("TAWC") hereby provides an initial response to the Motion to Compel filed by the City of Chattanooga ("City"). TRA Rule 1220-1-2-.11(5)(a) is clear:¹

"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).

Here, the City propounded more than 40 discovery requests upon the TAWC, and in accordance with the applicable rules, TAWC has only responded to the first forty requests. The City 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). Alternatively, the City moves for an order expanding discovery the City may serve upon TAWC. For the following reasons, as

¹ TAWC will have further response at the status conference scheduled on June 4, 2008.

well as reasons to be discussed at the status conference scheduled for 1 p.m. today, both requests should be denied.

I. The City Propounded More Discovery Requests Than That 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. Accordingly, the TRA's 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. On May 9, 2008, this Hearing Officer entered an Order explicitly granting the City the standard forty requests permitted by TRA Rule 1220-1-2-.11(5)(a). Order, TRA Docket No. 08-00039. Notwithstanding this Order, on May 12, 2008, the City filed in excess of the forty requests permitted. In accordance with the TRA Rules, TAWC responded only to the first forty of the City's Requests.

The Discovery Requests at issue are Requests No. 21 and 22. As each subpart to Requests Nos. 21 and 22 constitutes a stand-alone discovery request, independent of the primary question, TAWC counted each subpart as a separate question in accordance with TRA Rule 1220-1-2-.11(5)(a).² Thus, Request No. 21 constituted two requests and Request No. 22 constituted three requests. TAWC accordingly answered the City's Discovery Request through Request No. 37, in accordance with TRA Rule 1220-1-2-.11(5)(a).

II. The City Fails To Properly Seek Expanded Discovery

Moreover, the City's alternative request for an Order granting expanded discovery requests fails as a matter of procedure. The City has neither requested leave nor filed a

² 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).

memorandum establishing good cause for expanded discovery in support of its motion — all of which is required by Rule 1220-1-2-.11(5)(a). The City has unreasonably delayed in seeking enlarged discovery. TAWC's Petition was filed on March 14, 2008. TAWC's responses to the TRA's data requests were filed on April 11, 2008. It is unreasonable for the City to have waited until after the discovery deadline to seek enlarged discovery. The TRA Rules provide that a motion for discovery: "may be denied if it appears the movant has unreasonably delayed in seeking discovery and if discovery would unreasonably delay disposition of the case on its merits." TRA Rule 1220-1-2-.11(2).

In light of these failures, granting relief would be inappropriate and foster further disregard for the Rules of this Authority. Additionally, based on the volume of discovery TAWC has already produced, no good cause exists for such expanded discovery.³ The City already has received more than sufficient documents and information from the Company to fully evaluate the Company's Petition. Accordingly, the Hearing Officer should deny the City's alternative motion for an order granting it the right to serve additional discovery requests.

Conclusion

For the reasons addressed above, and those which will be communicated at the Hearing later today,⁴ the City's arguments are without merit and its Motion to Compel or Alternative Motion for Permission to Propound Additional Discovery Requests should be denied.

³ 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 City of Chattanooga's Discovery Requests, the City received over 200 pages of responsive material from TAWC.

⁴ 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.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Dale Grimes", written over a horizontal line.

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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 4 day of June, 2008, upon the following:

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