

BASS, BERRY & SIMS PLC

Attorneys at Law

A PROFESSIONAL LIMITED LIABILITY COMPANY

Ross Booher

PHONE: (615) 742-7764
FAX: (615) 742-0450
E-MAIL: rbooher@bassberry.com

315 Deaderick Street, Suite 2700
Nashville, Tennessee 37238-3001
(615) 742-6200
www.bassberry.com

June 17, 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 06/17/08

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

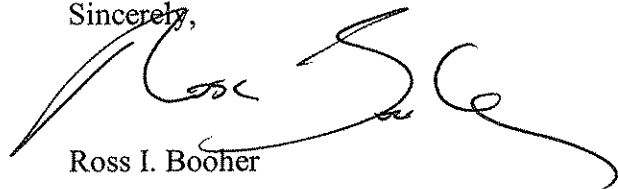
Dear Chairman Roberson:

Enclosed please find an original and seven (7) copies of Tennessee American Water Company's Renewed Motion to Compel the Consumer Advocate and Protection Division's Responses to Tennessee American Water Company Discovery Requests, dated May 12, 2008. These have been filed electronically with the Tennessee Regulatory Authority today.

Please stamp three (3) copies of these documents as "filed," and return them to me by way of our courier.

Should you have any questions concerning any of the enclosed, please do not hesitate to contact me.

Sincerely,



Ross I. Booher

RIB/smb
Enclosures

Chairman Eddie Roberson, PhD

June 17, 2008

Page 2

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*)
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 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 RENEWED MOTION TO COMPEL
THE CONSUMER ADVOCATE AND PROTECTION DIVISION TO PROVIDE
COMPLETE DISCOVERY RESPONSES**

Tennessee American Water Company ("TAWC") served its discovery requests (the "Requests") upon the Office of the Attorney General, Consumer Advocate and Protection Division ("CAPD") on May 12, 2008. The CAPD initially responded to TAWC's Requests on May 28, 2008. On June 9, 2008, the CAPD filed a Supplemental Response whereby it withdrew all of its prior responses and substituted them with responses almost completely devoid of responsive information, and strikingly similar to those previously submitted by the City of Chattanooga. To address these and other discovery deficiencies among all parties, TAWC and the Intervenor filed a Proposed Procedural Order on June 10, 2008, wherein the parties agreed to confer on outstanding discovery issues and submit supplemental responses by June 9, 2008, to resolve discovery disputes. The Hearing Officer entered the Proposed Procedural Order on June 13, 2008 ("Procedural Order No. 2").

Unlike the other Intervenor, however, the CAPD did not subsequently submit any additional responses on June 9, 2008. In fact, despite TAWC's hours of effort and significant expense providing responses to the CAPD's 217 discovery requests, the CAPD has not produced

a single substantive supplemental response to any of TAWC's 13 requests. Although Procedural Order No. 2 required the parties to engage in settlement discussions by June 13, 2008, the CAPD rebuffed TAWC's efforts to confer on TAWC's concerns about the CAPD's responses until Monday, June 16, 2008 — on which date the CAPD declined to agree to file any supplemental responses. Accordingly, the CAPD's Responses remain insufficient and 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 non-privileged information responsive to the TAWC Requests identified herein and barring the use of any information subsequently withheld without good cause.

I. The CAPD Must Update All Of Its Responses To Provide Its Complete Knowledge Of Responsive Information.

A. The CAPD's General Objection No. 3 Should Be Denied.

In General Objection No. 3, the CAPD 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. Unlike the CAPD, 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 CAPD 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.

As all of these requests are focused on the CAPD's arguments or beliefs that it has already asserted or will advance at the hearing, it cannot be credibly argued that such narrow requests are not reasonably calculated to lead to admissible evidence in this matter. Accordingly,

to the extent any information or material was withheld from any response on this basis, the CAPD should be compelled to immediately produce that information or material.

B. A More Complete Response To Request No. 2 Is Required.

In TAWC's Discovery Request No. 2, TAWC requested the CAPD to: "Identify all persons known to you, your attorney, or other agent(s) who have knowledge, information, or possess any document(s) or claim to have knowledge, information or possess any document(s) which support your answer to Discovery Request No. 1." In TAWC's definitions, to which none of the CAPD's objections apply,¹ the request to "identify" individuals "requires you to provide that individual's name, occupation, current and last known business addresses, and current or last known residential and business telephone numbers." Accordingly, TAWC requests that the CAPD either specifically "identify" the "Company's customers" that it identified "as persons known to the Consumer Advocate to have knowledge, information, or documents which support the Consumer Advocate's response to Discovery Request No. 1" or if the CAPD has not yet identified a single individual within this broad category, then so state.

C. A Compelled Update To Request Nos. 1, 3, 4, 7, 8, 9, 11, 12, And 13 Is Necessary To Prevent The CAPD From Delaying Responses Until Its Pre-Filed Testimony.

In its original objections, the CAPD issued a blanket refusal to produce "any document prepared by it subsequent to the filing of this litigation or contested case." CAPD Responses, General Objection No. 7, dated May 28, 2008. Additionally, the CAPD objected to a majority of the Requests with a specific objection that the requested responsive information or materials "will be supplied or referenced at the time the witness(es) submit pre-filed direct testimony. *See*

¹ The CAPD objected generally to TAWC's definitions to the extent they "attempt to impose on the Consumer Advocate a burden or obligation greater than that required by the Tennessee Rules of Civil Procedure and applicable statutes and regulations governing contested case hearings." CAPD General Objection No. 1, CAPD Responses dated June 9, 2008. TAWC's definition of "identify" is consistent with the Tennessee Rules of Civil Procedure and therefore this objection does not apply.

CAPD Responses to Requests Nos. 1, 3, 7, 8, 11, 12, 13, May 28, 2008. Now, recognizing that its previous objection has been ruled invalid, the CAPD claims that requested information is either “unknown” (Responses to TAWC Requests Nos. 1, 3, 9, 11) or “not identified” (Responses to TAWC Requests Nos. 4, 7, 8).

The CAPD asserts that it has not yet identified the bases for its opposition to TAWC’s petition because of TAWC’s alleged failure to fully respond to the CAPD’s discovery requests. In reality, however, TAWC has provided extensive responses to the CAPD’s extraordinary number of discovery requests and diligently continues to supplement those responses in a timely manner. The CAPD has been in possession of the Company’s Petition and responses to the TRA’s thorough Data Requests for months.

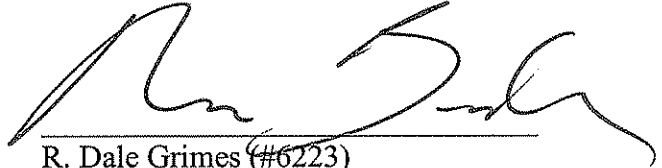
It seems unlikely that now, a mere five days before the CAPD’s pre-filed testimony is due, that the CAPD does not know of any additional documents, data, reports, studies, or individuals on which it relies as an Intervenor in this matter. Instead, it appears that the CAPD is still attempted to avoid its discovery obligations until the pre-filed testimony deadline despite the Hearing Officer’s explicit holding that refusing to produce information or material until the pre-filed testimony deadline was *not* a valid objection. TAWC accordingly requests the Hearing Officer to compel the CAPD to file Supplemental Responses immediately addressing TAWC’s outstanding requests.

Conclusion

For the reasons stated herein, the CAPD has failed to adequately respond to TAWC Discovery Request Nos. 1-4, 7-9, and 11-13. 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 CAPD from using, for

any purpose in this proceeding, any information or documents subsequently 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 "Ross I. Booher", is written over a horizontal line.

R. Dale Grimes (#6223)
Ross I. Booher (#019304)
BASS, BERRY & SIMS PLC
315 Deaderick Street, Suite 2700
Nashville, TN 37238-3001
(615) 742-6200

*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 17th day of June, 2007, upon the following:

<input type="checkbox"/> Hand	Michael A. McMahan
<input type="checkbox"/> Mail	Special Counsel
<input type="checkbox"/> Facsimile	City of Chattanooga (Hamilton County)
<input checked="" type="checkbox"/> Overnight	Office of the City Attorney
<input checked="" type="checkbox"/> Email	Suite 400
	801 Broad Street
	Chattanooga, TN 37402
<input type="checkbox"/> Hand	Timothy C. Phillips, Esq.
<input type="checkbox"/> Mail	Vance L. Broemel, Esq.
<input type="checkbox"/> Facsimile	Office of the Attorney General
<input checked="" type="checkbox"/> Overnight	Consumer Advocate and Protection Division
<input checked="" type="checkbox"/> Email	425 5th Avenue North, 2 nd Floor
	Nashville, TN 37243
<input type="checkbox"/> Hand	Henry M. Walker, Esq.
<input type="checkbox"/> Mail	Boult, Cummings, Conners & Berry, PLC
<input type="checkbox"/> Facsimile	Suite 700
<input checked="" type="checkbox"/> Overnight	1600 Division Street
<input checked="" type="checkbox"/> Email	Nashville, TN 37203
<input type="checkbox"/> Hand	David C. Higney, Esq.
<input type="checkbox"/> Mail	Grant, Konvalinka & Harrison, P.C.
<input type="checkbox"/> Facsimile	633 Chestnut Street, 9 th Floor
<input checked="" type="checkbox"/> Overnight	Chattanooga, TN 37450
<input checked="" type="checkbox"/> Email	
<input type="checkbox"/> Hand	Frederick L. Hitchcock, Esq.
<input type="checkbox"/> Mail	Chambliss, Bahner & Stophel, P.C.
<input type="checkbox"/> Facsimile	1000 Tallan Building
<input checked="" type="checkbox"/> Overnight	Two Union Square
<input checked="" type="checkbox"/> Email	Chattanooga, TN 37402

A handwritten signature in dark ink, appearing to be "R. B. H.", written over a horizontal line.