

June 18, 2008

Via E-Mail and USPS

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

filed electronically in docket office on 06/18/08

Re: Docket No. 08-00039
In Re: Petition of Tennessee American Water Company to Change and
Increase Certain Rates

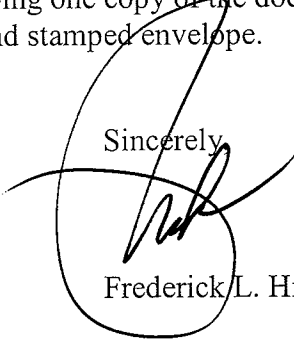
Dear Chairman Roberson:

Enclosed please find an original and five (5) copies of the City of Chattanooga's Response to Tennessee American Water Company's Renewed Motion to Compel and City of Chattanooga's Renewed Motion for Sanctions, which has been filed electronically and served today.

I would appreciate you stamping one copy of the document as "filed," and returning to me in the enclosed, self-addressed and stamped envelope.

With best regards, I am

Sincerely


Frederick L. Hitchcock

FLH:kwr
Enclosures

cc: Ryan L. McGehee, Esq. (w/encl.)
Timothy C. Phillips, Esq. (w/encl.)
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R. Dale Grimes, Esq. (w/encl.)
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**IN 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 EARN A FAIR AND ADEQUATE)
RATE OF RETURN ON ITS PROPERTY USED AND)
USEFUL IN FURNISHING WATER SERVICE TO)
SERVICE TO ITS CUSTOMERS)

Docket No. 08-00039

**CITY OF CHATTANOOGA'S RESPONSE TO TENNESSEE AMERICAN WATER
COMPANY'S RENEWED MOTION TO COMPEL AND
CITY OF CHATTANOOGA'S RENEWED MOTION FOR SANCTIONS**

The City of Chattanooga ("Chattanooga"), by and through counsel, hereby responds to TAWC's Renewed Motion to Compel, filed June 17, 2008, and renews Chattanooga's Motion for Sanctions, previously filed on June 3, 2008.

I.

Response to Renewed Motion to Compel

Chattanooga is perplexed by the renewed Motion to Compel. On June 11, 2008, Chattanooga's counsel, Rick Hitchcock, conferred with TAWC's counsel, Adam Futrell, concerning the parties' respective requests for supplementation of discovery responses. As reflected in an e-mail message from Mr. Futrell to Mr. Hitchcock, transmitted that same day, TAWC requested, and Chattanooga agreed, to supplement responses to Requests Nos. 1, 2, 3, and 4. In his e-mail, Mr. Futrell accurately reported that Chattanooga agreed to supplement its responses to Requests Nos. 1, 2, and 3 as follows: "The City will supplement its response to clarify whether the information cited in the existing response is a complete listing of response

information at this time." As to each of these requests, Chattanooga's Supplemental Response did precisely that.

As to Chattanooga's Response to Request No. 4, Mr. Futrell correctly described in his e-mail the agreement between the parties as follows: "The City will supplement its response to clarify whether it has identified potential fact witnesses." Chattanooga's Supplemental Responses to Request No. 4 did that by repeating that the only witnesses that it has considered to date are expert witnesses, and it has not decided whether to use such an expert witness. As noted in the response: "The information contained in this response is current and complete as of the date of this supplemental response."

As to Chattanooga's Response to Request No. 10, Chattanooga understood that TAWC had accepted its description of Mr. Johnson's role provided in the course of Chattanooga's discussions with TAWC. This understanding was reinforced by the fact that Mr. Futrell did not address Discovery Request No. 10 in any way in his e-mail describing the results of those discussions. Nevertheless, Chattanooga will supplement its Response to Request No. 10 to restate what was told TAWC, that Mr. Johnson did not participate in the responses to any of the Requests but had only been consulted concerning strategic issues.

As to Request No. 12, Chattanooga's attorneys again thought that any dispute had been resolved in the course of the discussions and this understanding was reinforced by the fact that Mr. Futrell did not address in any way supplementation of Response No. 12 in his June 11, 2008 e-mail. Nevertheless, Chattanooga will supplement its Response to Request No. 12 to specify that the information contained in the response is current and complete as of the date of the supplemental response.

II.
Renewed Motion for Sanctions

TAWC has again requested the imposition of sanctions in the form of an order prohibiting introduction of certain information, a remedy that is neither prescribed nor permitted by any applicable Rule of Civil Procedure. A similar request was the basis for Chattanooga's Motion for Sanctions, filed June 3, 2008, which was resolved by agreement when TAWC withdrew its previous request for sanctions.

Rule 11 sanctions are particularly appropriate in this instance, because TAWC has filed a motion to compel as to four (4) requests, even though Chattanooga's Supplemental Responses to those Requests were consistent with the parties' agreement, as reflected by written documentation of that agreement prepared by TAWC's counsel. For convenient reference, a copy of Adam Futrell's June 11, 2008 e-mail is attached as Exhibit A.

Respectfully submitted,

By: 

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Attorneys for the City of Chattanooga

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served a true and correct copy of the foregoing pleading by electronic mail and by depositing same in the United States mail, postage prepaid, and addressed to the following:

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This the 18th day of June, 2008.



Frederick L. Hitchcock



"Futrell, Adam B"
<afutrell@bassberry.com>
06/11/2008 06:17 PM

To <RHitchcock@cbslawfirm.com>,
<mcmahan@mail.chattanooga.gov>
cc
bcc

Subject This morning's discussion

History: This message has been forwarded.

Rick,

Thank you for your time this morning discussing the status of the discovery between our clients. This email summarizes the agreements we were able to reach regarding TAWC's discovery responses to the City, and the City's responses to TAWC, as well as the status of our efforts to follow-up on certain items as agreed. If any of the following statements do not accurately reflect your impression of the agreements reached, please let us know as soon as possible.

City of Chattanooga's Discovery Requests to TAWC:

City Request No. 1 - TAWC has agreed to produce a CD containing all Confidential Information produced in the 2006 rate case. That CD is being created and will be produced pursuant to the current protective order by Friday.

City Request No. 2 - TAWC confirms that its use of the term "investor information" is consistent with the full breadth of the City's request, and that the response includes every piece of information provided to any potential investor(s). The City's concerns have been satisfied by TAWC's supplemental response.

City Request No. 4 - TAWC does not have any documents that provide this information in the format requested by the City and would require TAWC to manipulate its raw data into the requested format. However, TAWC has produced all responsive data, which would allow the City to create such work product. (See CPS Study, along with the three additional projects set forth in its initial response). Paragraph 8 of the Joint Order specifically states that TAWC does not have to manipulate its data to respond to a discovery request.

City Request No. 6 - A CD containing the responsive data in the native MS Excel format should have been included in a pocket on the front cover of the book of the supplemental responses provided to the TRA Staff Data Requests 52 and 53 on April 24, 2008. The City should have received a copy of this book and CD. If the City does not have a copy of this book and CD, TAWC will work with the City to provide one.

City Request No. 7 - TAWC will produce the responsive map of CapEx project locations by Friday. The underlying data used to produce this map is contained in TAWC's responses to TRA Staff Data Requests #13, and #52, and John Watson's direct testimony in this docket (under the "Rate Base" tab), all of which TAWC previously produced to the City.

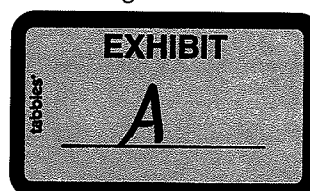
City Request No. 10 - TAWC will provide all responsive data by Friday.

City Request No. 18 - The parties have resolved any issues with respect to this request, pending review of TAWC's response by the City's consulting expert.

City Request No. 19 - The parties have resolved any issues with respect to this request.

City Request No. 22 - The parties have resolved any issues with respect to this request.

City Request No. 23 - TAWC continues to work in good faith to respond to the City's inquiries. A more



comprehensive response will be provided by Friday.

City Request No. 32 - TAWC will provide a second supplemental response to clarify its position on Friday. Data on budgeted FTE's for AWWSC for 2005 and 2006 does not exist. TAWC and AWWSC had budgets for 2005 and 2006, but those budgets did not contain and were not based on budgeted FTE's for AWWSC. Budgeted FTE's for 2007 were available as a result of a change in the budgeting process, and TAWC has provided that data to the City.

City Request No. 38 - TAWC has explained that no material changes were made to the scope of the type of services provided to TAWC by AWWSC. TAWC will provide a supplemental response further detailing its position by Friday.

City Request No. 40 - TAWC confirms that its response to the CAPD's First Discovery Requests Part IV, Question 46 contains all information responsive to the City's Request No. 40.

TAWC's Discovery Requests to the City of Chattanooga:

TAWC Request No. 1 - The City will supplement its response to clarify whether the information cited in the existing response is a complete listing of responsive information at this time.

TAWC Request No. 2 - The City will supplement its response to clarify whether the information cited in the existing response is a complete listing of responsive information at this time.

TAWC Request No. 3 - The City will supplement its response to clarify whether the information cited in the existing response is a complete listing of responsive information at this time.

TAWC Request No. 4 - The City will supplement its response to clarify whether it has identified potential fact witnesses.

Thank you,

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