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June 19, 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 06/19/08

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:

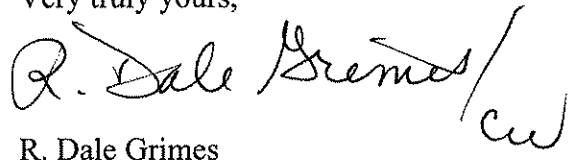
Enclosed please find an original and seven (7) sets of copies of Tennessee American Water Company's Opposition to the City of Chattanooga's Renewed Motion for rule 11 Sanctions.

Please return three (3) copies of this Motion to me by way of our courier, which I would appreciate your stamping as "filed."

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 19, 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 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 OPPOSITION TO THE CITY OF
CHATTANOOGA’S RENEWED MOTION FOR RULE 11 SANCTIONS**

On June 18, without *any* prior communication to TAWC of its intention to do so, the City filed a Renewed Motion for Sanctions (“Renewed Sanctions Motion”).¹ In response, TAWC submits that it has done nothing that is sanctionable, but rather has acted in a completely appropriate manner in accordance with applicable rules. The City’s impulsive, unwarranted and trigger-happy action does nothing more than divert resources from the actual matters at issue in this proceeding and should not be countenanced. For the following two reasons, the City’s Renewed Sanctions Motion should be denied:

Law and Argument

I. TAWC’s Motion To Compel Was Perfectly Lawful, Appropriate and Customary.

In its Renewed Sanctions Motion, the City seeks Rule 11 sanctions against TAWC asserting that TAWC’s Renewed Motion to Compel² has “requested the imposition of sanctions in the form of an order prohibiting introduction of certain information.” (*See* Renewed Sanction

¹ This is the second Motion for Sanctions filed by the City claiming violations of Tennessee Rule of Civil Procedure 11 without the notice required by that Rule. The first such motion was filed by the City on June 3, 2008 (“Sanctions Motion”). That Motion for Rule 11 Sanctions was mooted by the Agreed Order entered by this Hearing Officer on June 13.

² The pending Renewed Motion to Compel is styled “Tennessee American Water Company’s Motion to Compel The City of Chattanooga to Provide Complete Discovery Responses” (“Renewed Motion to Compel”) and was filed on June 17, 2008.

Motion, p. 3). As is clear in the Renewed Motion to Compel, TAWC is requesting that the Hearing Officer order the City to fully **respond** to properly propounded discovery requests. It is only in the event that the Hearing Officer enters such an order, and the City “subsequently” withholds responsive documents “without just cause”, that TAWC asks for exclusion of such evidence. Requesting that a party not be permitted to use information which it has withheld without just cause in the face of an order compelling its production is a perfectly lawful, appropriate, customary, and standard practice in discovery, in keeping with the clear terms of Tennessee Rule of Civil Procedure 37.02 and relevant case law. *See, e.g., American Steinwinter Investment Group v. American Steniwinter, Inc.*, 964 S.W.2d 569, 574 (Tenn. Ct. App. 1997). As such, the Renewed Motion to Compel is nothing more than a plain-vanilla motion whereby TAWC is seeking the discovery to which it is entitled.

II. The City’s Rule 11 Sanctions Motion Is Inconsistent With Rule 11.

Further, it is ironic that the City’s Motion for Sanctions relies on Rule 11, yet flagrantly ignores its dictates. Rule 11.03(1)(a) specifically provides that the movant [the City] is to provide notice to the nonmovant [TAWC] of any Rule 11 motion prior to filing and give the nonmovant twenty-one days to review the document. This is commonly referred to as the “safe harbor” provision of Rule 11. While TAWC would not have needed to change or withdraw its Renewed Motion to Compel (for the reasons discussed above), it is very possible that TAWC could have corrected the City’s misinterpretation of TAWC’s pleading, its apparent misapprehension of the previous discussions among counsel, and its misunderstanding of Rule 11 and the standards for filing sanctions motions.³ Instead, the City filed a hasty and ill-

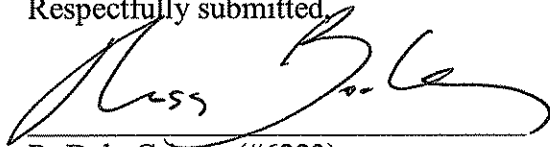
³ The City’s Response to TAWC’s Motion to Compel, filed together with the Renewed Sanctions Motion, mischaracterizes the discussions between counsel for the City and counsel for TAWC. Specifically, the City’s Renewed Sanctions Motion alludes to Mr. Futrell’s email as supporting the City’s arguments, when in fact it directly undermines those arguments in two ways: (i) The City asserts correctly that the email memorializes agreements reached by counsel on Requests 1-4. The City’s Response ignores, however, the fact that the City’s subsequent Supplemental Responses did not live up to those agreements, a fact revealed by a careful review of the terms of the agreements and the text of the City’s Supplemental Responses; and (ii) The City claims that some agreement was reached with regard to the sufficiency of the City’s Responses to Requests 10 and 12, citing the absence of

considered motion, mischaracterizing the discussions among counsel and seeking relief to which it is not entitled. The City's failure to provide the required notice period is, standing alone, a proper basis to deny the City's Renewed Sanctions Motion. In fact, this would seem to provide a sound basis for granting a motion for sanctions against the City, especially since this is its second offense in 15 days. The Renewed Sanctions Motion does nothing more than burden the resources of the Authority and TAWC.

Conclusion

The City's Renewed Motion for Sanctions is simply not fitting for any forum, much less the civil and professional tenor that prevails in the Authority's proceedings. The City's Motion for Sanctions is baseless and it violates the very authority it cites. Accordingly, the Renewed Sanctions Motion should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ross I. Booher", written over a horizontal line.

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any mention of those Requests from the email as evidence of these supposed agreements. Even a cursory review of the email itself directly contradicts this argument. By its own terms, the email purports to be a comprehensive summary of all agreements reached between the City and TAWC. The absence of Requests 10 and 12 from the email is further evidence that no such agreement was reached.

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 19th day of June, 2008, 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
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