

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

August 4, 2008

Via Hand-Delivery

Chairman Tre Hargett
c/o Ms. Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

filed electronically in docket office on 08/04/08

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

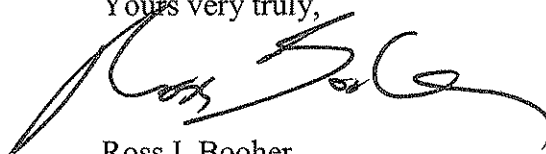
Dear Chairman Hargett:

Enclosed please find an original and seven (7) copies of Tennessee American Water Company's Second Motion to Compel the Consumer Advocate and Protection Division.

Please return three copies of this document, which I would appreciate your stamping as "filed," and returning to me by way of our courier.

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

Yours very truly,



Ross I. Booher

RIB/smb
Enclosure

Chairman Tre Hargett

August 4, 2008

Page 2

cc: Hon. Mary Freeman (*w/o enclosure*)
Hon. Sara Kyle (*w/o enclosure*)
Hon. Eddie Roberson (*w/o enclosure*)
Richard Collier, Esq. (*w/o enclosure*)
Ms. Shilina Chatterjee (*w/o enclosure*)
Ms. Kelly Grams (*w/o enclosure*)
Ms. Emily Knight (*w/enclosure*)
Ryan McGehee, Esq. (*w/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*)

6942363.1

**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 MOTION TO COMPEL
THE CONSUMER ADVOCATE AND PROTECTION DIVISION TO PROVIDE
COMPLETE DISCOVERY RESPONSES TO TAWC'S SECOND SET OF DISCOVERY
REQUESTS**

Tennessee American Water Company ("TAWC") served its second set of discovery requests (the "Requests") upon the Office of the Attorney General, Consumer Advocate and Protection Division ("CAPD") on July 24, 2008. The CAPD responded to TAWC's requests on July 31, 2008 (the "Responses"). The CAPD's Responses are insufficient. Accordingly, 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.

I. Legal Standard of Discovery

Rule 37.01(2) of the Tennessee Rules of Civil Procedure provides that, when a party fails to fully answer interrogatories or fails to fully respond to requests for production of documents, the discovering party may move for an order compelling an answer and inspection in accordance with the request. As set forth below, the CAPD has failed to fully and properly respond to

TAWC's Discovery Requests, and TAWC now seeks an order compelling complete answers and the production of all responsive documents and granting any other relief under Rule 37 of the Tennessee Rules of Civil Procedure the Hearing Officer deems appropriate.

As a legal matter, Rule 26 of the Tennessee Rules of Civil Procedure is broad in scope, and allows parties "to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved . . . including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter." Tenn. R. Civ. P. 26.02(1). Thus, discovery under the Tennessee Rules of Civil Procedure "is allowed in an effort to do away with trial by ambush," and should be allowed "to achieve its desired effect." *Conger v. Gowder*, 2001 Tenn. App. LEXIS 205, at *14 (Tenn. Ct. App. Mar. 29, 2001).

Here, TAWC has propounded reasonable requests for relevant information and documents, which are reasonably calculated to lead to discovery of relevant information, and is entitled to receive adequate responses to those requests. The CAPD has a duty to respond to the maximum extent possible even where valid objections are made. Thus, the CAPD's failure to provide complete answers to TAWC's Requests is contrary to the "desired effect" sought by the Tennessee Rules of Civil Procedure and risks substantial prejudice to TAWC's preparation for the hearing on the merits.

II. The CAPD's Responses Are Insufficient.

The following CAPD Responses are insufficient for the reasons set forth below.

A. DISCOVERY REQUEST NO. 9:

Provide all source documents, notes of interviews, and any other data supporting Mr. Buckner's testimony, including but not limited to: any workpapers supporting all adjustments made to the TAWC rate filing; any documents related to all adjustments; data and calculations

related to the test period ending November 30, 2007 (and for any other periods used by CAPD including a 12 month period ending March 31, 2008).

RESPONSE:

See enclosed documents. See also documents posted at:

<http://www.state.tn.us/tra/dockets/0300118.htm>;

<http://www.state.tn.us/tra/dockets/0400288.htm>, and

<http://www.state.tn.us/tra/dockets/0400288.htm>

MOTION TO COMPEL:

CAPD attached 3 sheets in response to this request, which appear to be notes regarding the water usage of the four major customers within TAWC's Sale for Resale group. The attachment does not address the question being asked. Furthermore, referring to documents posted on the TRA website, without specifying which documents are responsive to the request, is insufficient. Mr. Buckner proposes significant adjustments to TAWC's rate filing in his testimony and also modifies the test year applicable to many of the line items. In order to rebut Mr. Buckner's testimony, adequate information concerning the basis of his assertions is vital. TAWC is entitled to all documents supporting Mr. Buckner's testimony and therefore respectfully moves the Hearing Officer to compel production of responsive documents.

B. DISCOVERY REQUEST NO. 12:

On pages 28-31 of his direct testimony, Mr. Buckner discusses operating revenues for the Sale for Resale classification. Provide all workpapers, notes of interviews, e-mails and other documents that support or form the basis for each conclusion asserted.

RESPONSE:

See enclosed documents. The Consumer Advocate reserves the right to further supplement this response.

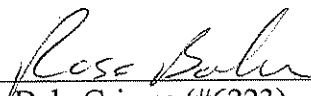

MOTION TO COMPEL:

TAWC Request 12 seeks documents that support Mr. Buckner's conclusions regarding the operating revenue for the Sale for Resale classification, which includes the following four major customers: Fort Oglethorpe, Catoosa, Signal Mountain and Walden's Ridge. In response, CAPD referenced enclosed documents, which include 345 pages of news articles regarding the requested rate increase. Only one of the numerous news articles even references any of the four major customers and none of them supports Mr. Buckner's conclusions regarding the operating revenue of these customers. Thus, these documents are unresponsive to this request.

Conclusion

For the reasons stated herein, the CAPD has failed to adequately respond to TAWC's discovery requests. 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 granting any additional relief under Rule 37 of the Tennessee Rules of Civil Procedure the Hearing Officer deems appropriate.

Respectfully submitted,



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 4th day of August, 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



RBF