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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

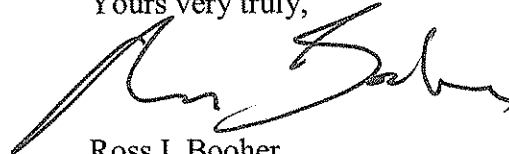
Dear Chairman Hargett:

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

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

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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*)
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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 CITY OF CHATTANOOGA 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 City of Chattanooga (“City”) on July 24, 2008. The City responded to TAWC’s requests on July 31, 2008 (the “Responses”). The City’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 City 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 TAWC is entitled to receive adequate responses to those requests. The City has a duty to respond to the maximum extent possible even where valid objections are made. Thus, the City’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, just two weeks away from the date of this motion.

II. The City’s Responses are Insufficient

The City’s Responses are insufficient in the manner and for the reasons set forth below.

TAWC Request 10

“On page 2 of his testimony, Mr. Stoffel states “I have researched and developed training that stresses benchmarking as a key component to successful management.” Please produce all documents reflecting any such research and development, including any final training product or course materials produced in whole or part by Mr. Stoffel.

RESPONSE:

The City objects to this request because production of the information sought is unduly burdensome, and the information sought is neither relevant nor calculated to lead to the discovery of relevant information.”

TAWC Request 10 seeks all documents reflecting the research and development of training that “stresses benchmarking as a key component to successful management” which Mr. Stoffel asserts he has completed. The City has objected that this request is unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of relevant information. This is plainly incorrect. The City presents Mr. Stoffel as an expert on benchmarking management performance in the regulated utility field. Mr. Stoffel’s testimony is critical of Mr. Van den Berg’s testimony and management audit, and purports to be based on Mr. Stoffel’s understanding of proper benchmarking principles.

To support his assertions and as part of the experience on which he claims expert status in this docket, Mr. Stoffel specifically cited to training programs he “researched and developed” and claims that those programs stress benchmarking as a key component of successful management. TAWC is entitled to discover Mr. Stoffel’s previous benchmarking endeavors, including his research and development of training programs, especially when Mr. Stoffel has specifically cited his work on those programs as part of his relevant experience in the field in which he offers his testimony in this docket.

TAWC Request 12

“Please explain how AWWA collected the data on which its “Benchmarking Performance Indicators for Water and Wastewater Utilities” report is based and whether the “Benchmarking Performance Indicators for Water and Wastewater Utilities” report differentiates between investor owned, multi-state utilities with service company structures and publicly owned or municipal utilities.

RESPONSE:

According to the AWWA report referenced in the Request, the data were generated from survey responses provided by each participating utilities. Information concerning the participating utilities is contained in Chapter 4 of the

“Benchmarking Performance Indicators for Water and Wastewater Utilities: Survey Data and Analyses Report” appended to Mr. Stoffel’s pre-filed testimony in this docket.”

TAWC Request 12 seeks fundamental information concerning the American Water Works Association (“AWWA”) benchmarking study repeatedly referenced by Mr. Stoffel in his testimony in this docket. Mr. Stoffel has asserted that the AWWA study provides an appropriate peer group for benchmarking the management cost and performance of American Water Works Service Company (“AWWSC”). Accordingly, TAWC has requested any data in the City’s possession regarding whether the AWWA study differentiates between the subject companies regarding whether the company is an investor-owned, multi-state operation or a publicly owned, municipal operation. The City’s response to this Request, referring TAWC to the AWWA report itself, is insufficient because this relevant information is not found in that document. TAWC is entitled to a complete response to its Request 12, either in the form of an answer to the direct question of whether the AWWA study differentiates among its subject companies by their ownership structure, or in the form of an answer that the City does not know whether the AWWA study incorporates or draws such a distinction.

TAWC Request 13

“Please provide a list of the companies in the 61 company peer group referenced on page 7 of Mr. Stoffel’s testimony and indicate whether each company is (i) municipally owned, (ii) a co-op, (iii) a public service district or public water utility district, (iv) an investor-owned, (v) an investor-owned, multi-state utility that is provided services by a centralized service company organization, or (vi) other (and if other, please describe its ownership type or structure).

RESPONSE:

The City objects to this request because it neither seeks relevant information nor is it reasonably calculated to lead to the discovery of relevant information. Without waiving this objection, see response to Request No. 12.

TAWC Request 13 seeks information about the ownership structures of the individual companies within in the 61-company peer group in the AWWA benchmarking study repeatedly

referenced by Mr. Stoffel. Mr. Stoffel has recommended to this Authority that the AWWA 61-company peer group would be a more appropriate benchmarking basis for TAWC than the peer group selected by Mr. Van den Berg. Mr. Stoffel's testimony has made the AWWA study, and all of its components, entirely relevant to this docket. TAWC is entitled to know the ownership structures of the companies within the AWWA 61-company group. The City's response, referring TAWC to the AWWA study itself, is insufficient and does not provide the requested relevant information. TAWC is entitled to either a complete response to its Request 13 detailing the requested information, or an affirmative statement that the City does not know the requested information.

TAWC Requests 14

"Please provide all information (other than that provided in appendices to the testimony of Glynn Stoffel) reviewed by Mr. Stoffel or any analysis performed by Mr. Stoffel prior to the filing of Mr. Stoffel's pre-filed testimony in this docket that addresses or compares the type and level of services provided by the 61 utilities referenced on page 7 of his testimony to those services provided by the utilities referenced in the Booz Allen Hamilton peer group contained on Exhibit 9-1, page 8 of the Booz Allen Hamilton report filed in this docket.

RESPONSE:

As noted in his testimony, in general, Mr. Stoffel compared information contained in Mr. Van den Berg's report and that contained in the AWWA report "Benchmarking Performance Indicators for Water and Wastewater Utilities" appended to Mr. Stoffel pre-filed testimony in this Docket."

TAWC Request 14 seeks "all information reviewed by Mr. Stoffel" or "any analysis performed by Mr. Stoffel" comparing the type and level of services provided by the AWWA study group and the BAH management audit peer group. The City's response, that Mr. Stoffel "in general" compared information in the BAH management audit with information contained in the AWWA study, and referring TAWC to the City's insufficient response to TAWC Request 12, is insufficient.

Mr. Stoffel's prefiled testimony asserts that the AWWA 61-company group is an appropriate peer group against which AWWSC's management operations can be benchmarked. TAWC disputes that the AWWA 61-company group is an appropriate peer group for benchmarking AWWSC's cost and performance because, among other things, the companies within the AWWA 61-company group do not provide the same type or level of services provided by AWWSC or the companies within the BAH peer group.

TAWC is entitled to underlying facts about the AWWA 61-company group that the City proposes as an appropriate peer group. TAWC has asked for information reviewed and analyses undertaken by Mr. Stoffel which would tend to support or undermine his conclusion that the AWWA 61-company group is an appropriate benchmarking peer group for AWWSC. If Mr. Stoffel did not conduct any such analyses, TAWC moves the Hearing Officer to compel the City to affirmatively state this fact.

TAWC Request 16

"For the companies that appear in the 61 company peer group referenced on page 7 of Mr. Stoffel's testimony in this docket that have "service companies," describe in detail the type, nature, number and scope of the services provided by the service companies.

RESPONSE:

The City objects to this Request because it neither seeks relevant information nor is it reasonably calculated to lead to the discovery of relevant information. Without waiving this objection, see response to Request No. 12."

TAWC Request 16 seeks detailed information regarding the type, nature, number and scope of the services provided by the service companies included in the AWWA study 61-company group. As noted above with regard to Request 15, Mr. Stoffel's prefiled testimony asserts that the AWWA 61-company group is an appropriate peer group against which AWWSC's management operations can be benchmarked. TAWC is entitled to know whether

the companies within the AWWA 61-company group provide the same type or level of services provided by AWWSC or the companies within the BAH peer group. TAWC is entitled to either a complete response to its Request 16 detailing the requested information for each of the AWWA study companies, or an affirmative statement that the City does not know the requested information.

TAWC Request 17

“Please provide all information reviewed by Mr. Stoffel or any analysis performed by Mr. Stoffel prior to the filing of Mr. Stoffel’s pre-filed testimony in this docket that attempts to determine the differences among the 61 company peer group referenced on page 7 of his testimony and the utility peer group used in the Booz Allen Hamilton report including, but not limited to: the number of and types of services included in Mr. Stoffel’s peer group compared to the Booz Allen Hamilton peer group, taxes for investor-owned versus non-taxable public or municipal systems, the size of the systems, the sophistication of the billing and accounting systems, the differences in regulation (Commission or TRA rules and regulations) between the systems or the absence of regulation in some cases, whether the systems have surface or ground water source water, etc.

RESPONSE:

See response to Request No. 12.”

TAWC Request 17 seeks “all information reviewed by Mr. Stoffel” or “any analysis performed by Mr. Stoffel” attempting to determine the differences between the companies in the AWWA study group and the BAH peer group on a number of important variables, including (1) type and level of services provided, (2) taxation and regulation of the AWWA group companies and the BAH peer group companies, and (3) the different billing and accounting systems used by the AWWA group companies and the companies within the BAH peer group. The City again responds only by referring to its insufficient response to Request 12. That response refers TAWC to the AWWA study itself, which does not contain the requested information.

TAWC is entitled to the underlying facts about the AWWA 61-company group that the City proposes as an appropriate peer group. TAWC Request 17 seeks information reviewed and

analyses undertaken by Mr. Stoffel which would tend to support or undermine his conclusion that the AWWA 61-company group is an appropriate benchmarking peer group for AWWSC. If Mr. Stoffel did not conduct any such analyses, TAWC moves the Hearing Officer to compel the City to affirmatively state this fact

TAWC Request 18

“Please identify each of the entities among Mr. Stoffel’s 61 company peer group that is subject to the Sarbanes-Oxley Act or presently engaged in the process of Sarbanes-Oxley implementation.

RESPONSE:

See response to Request No. 12.”

TAWC Request 18 seeks the identity of every entity within the AWWA benchmarking study 61-company subject group that is subject to the provisions of the Sarbanes-Oxley Act or is presently engaged in the process of Sarbanes-Oxley implementation. The City has responded by referring TAWC to its insufficient response to TAWC Request 12. Either the City has identified which companies within the AWWA 61-company group are implementing or have implemented Sarbanes-Oxley compliance measures, or the City has not identified such companies. TAWC is entitled to this highly relevant information and respectfully moves the Hearing Officer to order the City to affirmatively state whether it has or has not identified the companies as requested.

TAWC Request 23

“Produce all documents, studies, proposals, or other communications in which the City or any of its departments, offices, agencies, officials, agents or any other of its representatives of any kind communicated with any representative of Volkswagen Group of America, Volkswagen AG, or any Volkswagen affiliate concerning water use or wastewater requirements for the planned Volkswagen manufacturing facility in the Chattanooga area.

RESPONSE:

The planned Volkswagen of America, Inc. manufacturing facility is not located within TAWC’s service area. The City objects to this Request because the information sought is irrelevant to this proceeding, the Request is not reasonably calculated to lead to the discovery of relevant information, and the Request is obviously made for improper purposes. Without waiving this or its other

objections, the City has attached as collective Exhibit COC-DR2-23 documents concerning wastewater treatment that it understands were provided to representatives of Volkswagen of America, Inc.”

Instead of responding to TAWC’s relevant request seeking the City’s communications with Volkswagen representatives concerning water service for the planned Volkswagen manufacturing facility, the City objects that the request is not relevant and makes the baseless accusation that Request 23 is “obviously made for improper purposes.” This is simply untrue. TAWC is simply asking whether the City’s communications with Volkswagen involved any communications concerning TAWC’s services. Obviously, TAWC is aware of the geographic boundaries of its service area. Nevertheless, if the City made any communications or representations regarding TAWC’s infrastructure, quality of service, or other aspects of its ability to provide water service (including excess capacity) to Volkswagen at some point in the future, the communications or representations would be highly relevant to this docket. If, in fact, the City did not make any communications or representations to Volkswagen concerning TAWC, it should simply so state. If the City did make such communications or representations, TAWC is entitled to discover those communications and representations for the purpose of evaluating whether they are consistent with the positions taken by the City in this docket.

TAWC Request 25

“On page 2 of Mr. Stoffel’s testimony, he states “In my role with Snavely King, one of my duties is to benchmark the data obtained from various utilities to determine what level of best practices and potential efficiency they are attaining both internally and when compared to other utilities.” Please produce any document containing any portion of any such benchmarking activities, including the workpapers, underlying data, and results of those benchmarking activities.

RESPONSE:

The City objects to this request because collection and production of the information sought would be unduly burdensome and because the request seeks information that is neither relevant to this proceeding nor calculated to lead to the discovery of relevant information. Without waiving this objection, Mr. Stoffel has undertaken this work in connection with support provided to Mr. Majoros.”

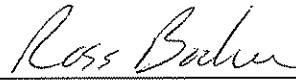
TAWC Request 25 seeks any document containing any portion of the benchmarking activities Mr. Stoffel claims to have undertaken in his role with Snavely King. The City's response, objecting that the request is unduly burdensome and seeks information that is not relevant, is unreasonable. Surely Mr. Stoffel has access to his own files at his current employer. Any benchmarking study in which Mr. Stoffel has participated is unquestionably relevant to a rate case in which Mr. Stoffel has offered expert testimony on proper regulated utility benchmarking.

Beyond its unreasonable objections, the City's response is incomprehensible. The City states that "Mr. Stoffel has undertaken this work in connection with support provided to Mr. Majoros." TAWC Request 25 does not seek information concerning the staffing of Snavely King engagements. Instead, TAWC seeks all documents containing any portion of any benchmarking activities undertaken at Snavely King by Mr. Stoffel. The City did not respond to the question being asked. TAWC is entitled to all of the benchmarking studies referenced by Mr. Stoffel in his testimony, as well as all related documents, and TAWC respectfully moves the Hearing Officer to order production of all such documents.

Conclusion

For the reasons stated herein, the City 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,

A handwritten signature in cursive script, appearing to read "Ross Booher".

R. Dale Grimes (#6223)

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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
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	Chattanooga, TN 37402
<input type="checkbox"/> Hand	Timothy C. Phillips, Esq.
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