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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 Chattanooga Manufacturers' Association.

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*)  
Ms. Kelly Grams (*w/o enclosure*)  
Ms. Emily Knight (*w/enclosure*)  
Ryan McGehee, Esq. (*w/enclosure*)  
Timothy C. Phillips, Esq. (*w/enclosure*)  
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Henry M. Walker, Esq. (*w/enclosure*)  
Michael A. McMahan, Esq. (*w/enclosure*)  
Frederick L. Hitchcock, Esq., (*w/enclosure*)

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**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 )  
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**

**TENNESSEE AMERICAN WATER COMPANY'S MOTION TO COMPEL  
THE CHATTANOOGA MANUFACTURERS ASSOCIATION 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 Chattanooga Manufacturers Association ("CMA") on July 24, 2008. The CMA responded to TAWC's requests on July 31, 2008 (the "Responses"). The CMA'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 CMA 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 CMA has a duty to respond to the maximum extent possible even where valid objections are made. Thus, the CMA'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 CMA's Responses are Insufficient**

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

**A. DISCOVERY REQUEST NO. 5**

Please provide the Return on Equity and Profit Margin for each customer represented by the CMA. If any of those customers represented by the CMA are segments of a larger business, please provide the ROE (if applicable) and the Profit Margin for the Chattanooga-bases operation.

**RESPONSE:**

See Response to Discovery Request No. 1, above. In the last rate case, the Company also sought the same information for all CMA members. CMA did not agree with that request. CMA acknowledged it would provide the information for two CMA member company witnesses that had submitted pre-filed testimony, and the Company agreed, in TRA Docket 06-00290.

Here, there are no CMA member companies that have provided pre-filed direct testimony in this rate case and, thus, the requested information simply is not relevant. CMA further objects on the grounds that the questions in this discovery request are unduly burdensome, irrelevant, and not designed to lead to the discovery of admissible evidence. Further, TAWC seeks to require CMA to create materials from raw data, regardless of whether CMA possesses such data, even though that is the type of objection TAWC raised in its responses to discovery in this matter. If granted, the Company's nearly annual rate increase could drive up procurement costs in amounts for such large users that obviously would exceed for such entities far greater than the Company's mantra of 12¢ per day / \$3.65 per month increase for an "average" TAWC residential ratepayer. Clearly this request is an oppressive and unwarranted intrusion into the business practices of the Company's largest customers, perhaps designed to intimidate

such customers with the threat of having to reveal to the water supplier, a public service provider, highly sensitive and critical business information in a competitive environment.

**MOTION TO COMPEL:**

Composed of groundless objections and baseless assertions about TAWC's motives, the CMA's response to TAWC Request 5 is itself objectionable and unresponsive. Request 5 seeks very basic financial data concerning the members of the CMA, an intervening party in this docket. The CMA willingly intervened in this proceeding, representing its constituent companies in an effort to deny TAWC the rate relief requested in its petition. CMA member companies' Return on Equity and Profit Margin are relevant to this proceeding because they may tend to show the reasonableness of TAWC's proposed Return on Equity in this docket. The CMA cannot reasonably take the position that TAWC's requested Return on Equity is too high, while refusing to provide data concerning the Return on Equity achieved by its members.

TAWC is entitled to a complete response setting forth the Return on Equity and Profit Margin of every member of the CMA, regardless of whether representatives of those members will testify at the hearing on the merits or will participate during the public comment period. Further, the unnecessary and untrue allegations contained in the CMA's response, questioning TAWC's motives in pursuing discovery, should be disregarded.

**B. DISCOVERY REQUEST NO. 6**

Please provide the engagement letter, contract, any other correspondence and a schedule of fees paid by CMA to Michel Gorman or Brubaker Associates, Inc. during the last five years.

**RESPONSE:**

CMA objects to the question as unduly burdensome, overbroad, and irrelevant. CMA will provide documents or correspondence, if any exist, retaining Mr. Gorman's employment in this case. Notwithstanding the objections, any business prior to this case between Michael Gorman and Brubaker & Associates, Inc. and CMA conducted over the last five years did not result in the development of positions taken in this case, nor produce discoverable evidence for this proceeding. Notwithstanding the objections, for purposes of this case, BAI has an oral agreement with CMA concerning its activities in this proceeding, and BAI will bill for its services based on hourly billing rates, time spent, and out-of-pocket expenses. Hourly billing rates of BAI employees Michael Gorman, Greg Meyer, and Maggie Ackenhausen are \$205, \$135, and \$110, respectively, and the hourly billing rates of BAI's Analyst Department range from \$130 or less.

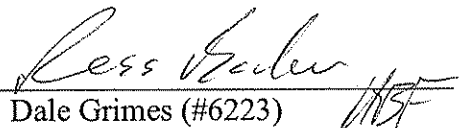
**MOTION TO COMPEL:**

TAWC Request 6 seeks relevant information regarding the CMA's engagement of Brubaker Associates, Inc. and Michael Gorman during the last five years. The CMA response states that Brubaker Associates and the CMA have an oral contract (but does not disclose the terms of that contract) and lists the hourly rates charged by Mr. Gorman and other Brubaker personnel. The terms of any engagement agreement or oral contract between the CMA and Brubaker Associates, including the total amount of compensation paid to Brubaker Associates by the CMA, is relevant to potential motive or bias on the part of Brubaker Associates or its personnel. TAWC is entitled to know the terms of the oral contract described in the response to Request 6, as well as the total amount paid to Brubaker Associates by the CMA over the last five years.

**Conclusion**

For the reasons stated herein, the CMA 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,

  
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*Attorneys for Petitioner  
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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:

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