

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**August 15, 2008**

<b>IN RE:</b>	)	
	)	
<b>PETITION OF TENNESSEE AMERICAN WATER</b>	)	<b>DOCKET NO.</b>
<b>COMPANY TO CHARGE AND INCREASE CERTAIN RATES</b>	)	<b>08-00039</b>
<b>AND CHARGES AS TO PERMIT IT TO EARN A FAIR AND</b>	)	
<b>ADEQUATE RATE OF RETURN ON ITS PROPERTY USED</b>	)	
<b>AND USEFUL IN FURNISHING WATER SERVICE TO ITS</b>	)	
<b>CUSTOMERS</b>	)	

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**ORDER ON MOTIONS TO COMPEL FILED BY THE PARTIES  
FOR CONSIDERATION DURING THE AUGUST 4, 2008 STATUS CONFERENCE**

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This matter came before the Hearing Officer for a Status Conference held on August 4, 2008 at which time the Hearing Officer considered the motions to compel discovery filed in this docket by Tennessee American Water Company ("TAWC" or "the Company"), the Office of the Attorney General Consumer Advocate and Protection Division ("Consumer Advocate"), the City of Chattanooga (the "City"), and Chattanooga Manufacturer's Association ("CMA"). TAWC, the Consumer Advocate, the City, and CMA are collectively referred to herein as the "Parties."

**RELEVANT PROCEDURAL BACKGROUND**

In accordance with the *Second Amended Procedural Schedule* issued by the Hearing Officer on July 11, 2008, the Parties commenced the second round of discovery on July 24, 2008, and on July 31, 2008, the Parties filed responses and objections to specific discovery requests. As provided in the *Second Amended Procedural Schedule*, a Status Conference was scheduled for August 4,

2008.<sup>1</sup> The Parties filed motions to compel discovery on August 4, 2008 prior to the Status Conference.

**AUGUST 4, 2008 STATUS CONFERENCE**

The Hearing Officer convened the Status Conference on August 4, 2008 in the Hearing Room on the Ground Floor of the Tennessee Regulatory Authority at 460 James Robertson Parkway, Nashville, Tennessee. The following Parties and representatives were in attendance on August 4, 2008:

**Tennessee American Water Company** – R. Dale Grimes, Esq., Ross I. Booher, Esq. and Adam Futrell, Esq., Bass, Berry & Sims, PLC, 315 Deaderick Street, Suite 2700, Nashville, TN 37238-3001, Mr. Michael Miller (By Telephone) and Mr. John S. Watson, Tennessee American Water Company, 1101 Broad Street, Chattanooga, TN 37402;

**Consumer Advocate** – Timothy Phillips, Esq., Joseph Shirley, Esq. and Ryan McGehee, Esq., Office of the Attorney General, Consumer Advocate and Protection Division, 425 5<sup>th</sup> Ave. N, John Sevier Building, P.O. Box 20207, Nashville, TN 37243;

**City of Chattanooga** – Frederick L. Hitchcock, Esq., Chambliss, Bahner, & Stophel, P.C., 1000 Tallan Building, Two Union Square, Chattanooga, TN 37402; Michael A. McMahan, Esq. (By Telephone), Office of the City Attorney, 801 Broad Street, Suite 400, Chattanooga, TN 37402; and

**Chattanooga Manufacturers Association** – Henry M. Walker, Esq., Boulton, Cummings, Conners & Berry, PLC, 1600 Division Street, Suite 700, Nashville, Tennessee 37203; David C. Higney, Esq., Grant, Konvalinka & Harrison, P.C., Ninth Floor, Republic Centre, 633 Chestnut Street, Chattanooga, Tennessee 37450-0900.

The Hearing Officer began the proceeding by inquiring whether there had been any settlement discussions among the Parties and whether the Parties have reached any agreements regarding specific issues in this docket. Counsel for TAWC indicated that the Company and the Consumer Advocate had engaged in settlement discussions, however, there was nothing to report at this time.

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<sup>1</sup> On July 29, 2008, the Hearing Officer issued a *Notice of Status Conference* to hear any issues concerning discovery disputes, the status of settlement negotiations, and any other prehearing matters at the Status Conference on August 4, 2008.

Thereafter, the Hearing Officer addressed the discovery disputes arising from the second round of discovery. The following motions to compel were filed by the Parties on August 4, 2008 prior to and during the Status Conference.

- *City of Chattanooga's Motion to Compel Regarding Second Discovery Requests*
- *Motion to Compel Tennessee American Water Company to Answer the Second Round of Discovery Requests of the Consumer Advocate and Protection Division*
- *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'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's Motion to Compel the Chattanooga Manufacturers Association to Provide Complete Discovery Responses to TAWC's Second Set of Discovery Requests*
- *Chattanooga Manufacturers Association's Motion to Compel Tennessee American Water Company to Provide Appropriate & Complete Responses to CMA's Second Set of Data Requests*

In light of the number of motions and the proximity in time of the filings to the Status Conference, the Hearing Officer decided to allow the Parties time to review the filings and to discuss any possible informal resolutions of the discovery disputes. The Hearing Officer recessed the Status Conference to give the Parties the opportunity to meet with each other.

Upon reconvening the Status Conference, the Parties advised the Hearing Officer that they had resolved a number of discovery disputes. Each Party outlined the details of the agreements as to their respective motions to compel. Even with confirmation of agreement from the responding party, the need arose for additional discussions between the Parties to clarify the precise resolution of some of the remaining discovery issues. For this reason, the Hearing Officer granted another recess to the Parties and asked the Parties to devote some of the time during the recess to a preliminary discussion of presentation of evidence and order of witnesses during the Hearing on the merits. Upon

reconvening the Status Conference, the Parties announced the final resolution to the pending discovery disputes.

### **TAWC'S DISCOVERY REQUESTS**

On July 24, 2008, TAWC propounded its second set of discovery requests upon the Consumer Advocate, the City, and CMA. Thereafter, the Consumer Advocate, the City, and CMA filed their responses and objections to such discovery. On August 4, 2008, TAWC filed its motions to compel responses from the Consumer Advocate, the City, and CMA.

#### ***TAWC Discovery to Consumer Advocate***

***Request Nos. 9 and 12*** - TAWC and the Consumer Advocate agreed that the answer to Request No. 9 should be the answer to Request No. 12 and the answer to Request No. 12 should be the answer to Request No. 9. The Consumer Advocate agreed to review responses to determine whether documents have been omitted and, if so, to supplement the responses.

#### ***TAWC Discovery to the City***

***Request No. 10*** - The City will check to determine if requested documentation exists and, if so, produce it. If not, the City will make a statement to that effect. To the extent any material is confidential, it will be subject to the *Amended Protective Order*.

***Request Nos. 12-18*** - The City will file a statement that the opinion of its witness Glynn Stoffel is based on information that is within the bounds of the American Water Works Association Report.

***Request No. 23*** - The City will file a statement that it had no communications with Volkswagen of America concerning service by TAWC.

***Request No. 25*** - The City will inquire whether witness Glynn Stoffel contributed to end products related to benchmarking deficiencies as set forth on page 2 of Mr. Stoffel's testimony and will provide materials if the documents are not subject to protection that is inconsistent with

production. TAWC reserved its right to renew the motion with regard to Request No. 25 in the event that the City's supplemental response does not resolve the dispute.

***TAWC Discovery to CMA***

***Request Nos. 5 and 6*** - The Parties agreed that because CMA is not offering any evidence regarding return on equity, CMA does not have to respond to Request No. 5. With regard to Request No. 6, CMA will supplement discovery response by providing the terms of the oral contract with the expert and stating the amount paid to expert in last rate case.

**CONSUMER ADVOCATE'S DISCOVERY REQUESTS**

On July 24, 2008, the Consumer Advocate propounded its *Second Discovery Requests of the Consumer Advocate and Protection Division to the Tennessee American Water Company*. On July 31, 2008, TAWC filed *Tennessee American Water Company's Responses to the Second Discovery Request of the Consumer Advocate and Protection Division to Tennessee American Water Company* with the Authority. On August 4, 2008, the Consumer Advocate filed its motion to compel TAWC to answer the Consumer Advocate's second discovery requests.

***Request Nos. 1, 5, 6, 9, 11, 12, and 13*** – TAWC and the Consumer Advocate agreed that as responsive information becomes available, TAWC will supplement its discovery responses and will not rely on rebuttal testimony as a substitute to providing responsive information.

***Request Nos. 24-27<sup>2</sup>*** – TAWC agreed to provide supplemental responses that answer “yes” or “no” as to whether American Water Works (“AWW”) has any documents that are listed in the requests. The Consumer Advocate noted, however, that in the event that TAWC objects to producing AWW documents the Consumer Advocate would have to seek a ruling from the Hearing Officer on that objection,

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<sup>2</sup> These requests are similar to the Consumer Advocate's first requests, Part III, Request Nos. 7 through 10.

***Request Nos. 7–10, Part III of the First Discovery Requests*** - The Consumer Advocate stated that Request Nos. 7 through 10 in Part III of the first round of discovery have not been resolved and that it had not withdrawn those questions. The Consumer Advocate stated that those requests are still pending as they relate to RWE. According to the Consumer Advocate, during the June 20, 2008 Status Conference, the Hearing Officer determined that in the context of this docket and specifically as to Part III, No. 7, information requested as to RWE or RWE Aqua Holdings GmbH and/or AWW is relevant and took the motion to compel as to those requests under advisement. However, the Hearing Officer did not make a ruling on whether TAWC was compelled to respond because TAWC indicated that it had filed supplemental responses related to Request Nos. 7 through 10. On June 27, 2008, TAWC filed supplemental responses to Request Nos. 7 through 10 stating generally that RWE or RWE Holdings GmbH is no longer the sole shareholder and TAWC is not in possession, custody, or control of information held by RWE. Thus, the Hearing Officer deemed the supplemental responses were sufficient for the Consumer Advocate because no filing was made by the Consumer Advocate concerning a deficiency in TAWC supplemental responses.

During a telephone conference between the Parties and the Hearing Officer on July 11, 2008, the Parties briefly addressed certain outstanding discovery motions. TAWC stated that it had filed supplemental responses to Request Nos. 7 through 10 and deemed those responses to be responsive. The Consumer Advocate indicated that those responses were still not responsive but acknowledged that it had not filed any further motion concerning Request Nos. 7 through 10 because TAWC had filed its supplemental responses. On July 11, 2008, the Consumer Advocate filed a *Notice that Discovery Responses to the CAD's Discovery Requests 7, 8, 9 and 10 Remain Unsatisfactory*. The Consumer Advocate reiterated during this Status Conference that as to RWE the responses to Request Nos. 7 through 10 were still not resolved. Nevertheless, upon review of the first discovery requests from the Consumer Advocate to TAWC, there is no request in Part III, Request Nos. 7 through 10 that seeks to obtain documents from RWE. The requests, as clarified in the second round

of discovery, seek only documentation that contains information regarding RWE and that is in the possession of AWW or TAWC. Therefore, with the agreement of the parties whereby TAWC will inquire of AWW regarding documentation and will respond to Request Nos. 24 through 27, the Hearing Officer finds that this dispute is resolved.

#### **THE CITY'S DISCOVERY REQUESTS**

On July 24, 2008, the City propounded *City of Chattanooga's Second Discovery Requests to Petitioner Tennessee American Water Company*. On July 31, 2008, TAWC filed with the Authority its responses. On August 4, 2008, the City filed its motion to compel.

**Request No. 16** – During the discussion on this Request, TAWC agreed first to review information previously provided to determine whether it is responsive. In the event that such information has already been provided, TAWC agreed to point the City to the information. Second, TAWC agreed to provide a table that will correlate business units with service company agreement functions. Third, TAWC agreed to provide a write-up of what specific items of expense would be included in each category of the service company agreement. Fourth, TAWC agreed to come up with some level of detail for 2007. The City agreed to review the information to be provided by TAWC, but reserved the motion to compel pending its review.

#### **CMA'S DISCOVERY REQUESTS**

CMA filed its second round of discovery requests on July 24, 2008. TAWC filed its responses on July 31, 2008. CMA filed a motion to compel on August 4, 2008.

**Request No. 6** – TAWC agreed to update testimony after receiving updated information from CMA.

**Request Nos. 7-10** – CMA and TAWC reached an agreement that TAWC will file supplemental responses.

**IT IS THEREFORE ORDERED:**

The parties shall act in accordance with the agreements reflected in this order with all supplemental responses being due on **Friday, August 8, 2008**.

  
J. Richard Collier, Hearing Officer