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November 9, 2010

Via Hand-Delivery

Chairman Mary W. Freeman
c/o Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

filed electronically in docket office on 10-00189

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. 10-00189

Dear Chairman Freeman:

Enclosed please find the original and five (5) copies of Tennessee American Water Company's Response In Opposition to The City of Chattanooga's Motion for Permission to Propound Additional Discovery Requests.

Please file the original and four copies of this document, and stamp the additional copy as "filed". Then please return the stamped copy to me by way of our courier.

This document also is being filed today by way of email to the Tennessee Regulatory Authority's Docket Manager, Sharla Dillon.

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

RDG:smb
Enclosures

cc: Hon. Sara Kyle (*w/o enclosure*)
Hon. Eddie Roberson (*w/o enclosure*)
Mr. David Foster, 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*)
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Katharine M. Mapes, Esq. (*w/enclosure*)
Donald L. Scholes, Esq. (*w/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 EARN A FAIR AND ADEQUATE RATE OF RETURN ON ITS PROPERTY USED AND USEFUL IN FURNISHING WATER SERVICE TO ITS CUSTOMERS	)	**Docket No. 10-00189**

TENNESSEE AMERICAN WATER COMPANY'S RESPONSE IN OPPOSITION TO THE CITY OF CHATTANOOGA'S MOTION FOR PERMISSION TO PROPOUND ADDITIONAL DISCOVERY REQUESTS

Tennessee American Water Company (the "Company") hereby responds to the City of Chattanooga's ("City") Motion to Propound Additional Discovery Requests as follows:

The City seeks permission to file and serve a total of 86 discovery requests on the Company. Including subparts, however, the City has actually submitted ***133 discovery requests***. This is more than triple the amount allowed under the TRA's discovery rules. See TRA Rule 1220-1-2-.11(5)(a) (limiting discovery requests to 40 per party, including subparts). The City's request is unreasonable, unduly burdensome, and lacks good cause in light of the voluminous discovery and data requests that have already been served upon the Company. The City's request should therefore be denied.

A. TRA Rules Explicitly Limit Discovery Requests and Place the Burden on the Requesting Party to Demonstrate the Appropriateness of Exceeding this Limit

Tennessee Code Annotated § 4-5-311(c) authorizes the TRA to promulgate rules to prevent oppression and abuses in discovery. Based on that statutory mandate, the TRA,

recognizing the unique nature of rate cases and the potential of intervenors to drive up the cost and burden of rate cases in the discovery process, adopted a rule limiting a party to 40 discovery requests. TRA Rule 1220-1-2-.11(5)(a). In the unusual situation where a party can show good cause for the need to propound additional discovery requests in excess of 40, the Hearing Officer has discretion to allow additional discovery.

The TRA's 40 discovery request limit recognizes that contested administrative cases differ from normal court proceedings in a number of important respects. First, they are administrative proceedings to set rates for utility services, not court actions between opposing parties. Second, the administrative agency itself conducts discovery through data requests that are not subject to the rule limit. For example, in this case the TRA has served 138 numbered data requests on the Company to date. Third, rate-making proceedings, by statute, must be completed in a relatively short period of time compared to normal court proceedings that routinely exceed more than a year from the filing of the case to disposition. Fourth, unlike a court case, where only notice pleading applies and parties therefore receive very limited information absent discovery, administrative rate cases require the petitioner to file testimony and exhibits as part of the petition, lessening the need for extensive discovery.

For these reasons, as well as the reasons set forth below, the City has failed to meet its burden of showing good cause. Accordingly, their motion should be denied.

B. The City Has Failed to Meet Its Burden of Demonstrating That Good Cause Exists to Exceed the 40 Discovery Request Limit

A fundamental flaw with the City's motion is the failure at any point to set forth why the specific requests they seek to ask, over and above the 40 request limit, are necessary. In other words, although the City talks in generalities about the need "to develop necessary information to permit an adequate review and analysis . . ." and points out that the Company has produced

more than 4,000 pages of documentation, the City fails to state why it can not "develop necessary information" with 40 well written discovery requests. The Company's initial 4,000 page filing and response to the TRA's first set of data requests should have the opposite effect of that argued by the City in its motion – because the Company provided so much initial data the City should need ***less***, certainly not more, discovery requests. The City's motion in fact fails to specifically show why any of the requests after the first 40 are necessary. In short, high level generalities about the volume of information or the need to "develop necessary information," without more, does not satisfy the City's burden of showing good cause.

The TRA discovery limitations cause the parties to prioritize and focus discovery requests on what is most important.[1] The customary 40 discovery requests should be enforced in light of the failure of the City to show good cause why the discovery limit should not apply.

C. The Company Will be Forced to Answer 614 Discovery Requests if the TRA Grants the Intervenors' Motions for Additional Discovery

The request of the City for additional discovery should not be considered in a vacuum. Rather the totality of all of the discovery served on the Company, and the corresponding burden and expense should be considered.

The intervenors combined have already served 194 numbered requests and seek to serve an additional 113 numbered requests. In reality, though, the burden of the intervenors' requests is only appreciated when one considers the subparts to the proposed 307 total numbered requests.[2] **If all of the intervenors' outstanding motions to exceed the discovery limits are granted, the Company actually will be forced to respond to a staggering *614* requests**

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[1] As the Tennessee Court of Appeals noted in Kuehne & Nagel, Inc. v. Preston, Skahan & Smith, Int'l, Inc., "there is far greater cost in complying with a discovery request than in making the discovery request. As a result, there [can be] a strong temptation to inflict harm on one's adversary by seeking additional information for which the adversary will have to incur the cost." 2002 Tenn. App. LEXIS 457, at *10 (quoting Issacharoff & Loewenstein, Unintended Consequences of Mandatory Disclosure, 73 Tex. L. Rev. 753, 755 n.8 (1995)).

[2] TRA Rule 1220-1-2-.11(5)(a) clearly states that subparts are counted towards the 40 discovery request limits: "No party shall serve on any other party more than forty (40) discovery requests including subparts . . . ."

(considering subparts) to the 307 numbered requests. This does not even take into account the 138 numbered requests already served on the Company by the TRA.

The Hearing Officer has the discretion to consider the totality of the discovery requests served and sought by all the parties when determining if good cause exists to exceed the discovery limits by any one party. Here the sheer volume of the requests already made, as well as the volume of additional requests sought, counsels against a finding of good cause to exceed the discovery limits.

Conclusion

For all of the foregoing reasons the City's motion should be denied

Respectfully submitted,

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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 9th day of November, 2010, upon the following:

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