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November 18, 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 11/18/10

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 Motion to Compel the Chattanooga Regional Manufacturers Association to Provide Complete Discovery Responses. This document also is being filed today by way of email to the Tennessee Regulatory Authority Docket Manager, Sharla Dillon.

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

Should you have any questions concerning this matter, please do not hesitate to contact me at the email address or telephone number listed above.

Sincerely,



David Killion

CDK: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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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 MOTION TO COMPEL
THE CHATTANOOGA REGIONAL MANUFACTURERS ASSOCIATION
TO PROVIDE COMPLETE DISCOVERY RESPONSES**

Tennessee American Water Company ("TAWC") served its discovery requests (the "Requests") upon the Chattanooga Regional Manufacturers Association ("CRMA") on November 1, 2010. The CRMA responded to TAWC's requests on November 15, 2010 (the "Responses"). The parties conducted a good faith meet and confer conference on November 17, 2010 but there still remain certain deficiencies in the CRMA's Responses. 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 responses to these requests and requiring the CRMA, on a rolling basis, to supplement its responses as it becomes aware of responsive documents and information rather than waiting until the day it files its witnesses' testimony.

I. Legal Standard of Discovery

As a legal matter, Rule 26.02 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). 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); *see also* Tenn. R. Civ. P. 26.02(1). When a party fails to fully answer interrogatories or 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. Tenn. R. Civ. P. 37.01(2).

Here, TAWC has propounded a limited number (14) of 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 CRMA has a duty to respond to each of TAWC’s requests to the maximum extent possible even when valid objections are asserted. Notwithstanding this duty, the CRMA has not completely answered some of TAWC’s simple requests, in contravention of the “desired effect” sought by Rule 26 and the purpose of this Hearing Officer’s discovery deadlines in the Procedural Order.

II. The CRMA Should Be Compelled To Provide Complete Responses To TAWC’s Discovery Requests

A. The CRMA Should Be Compelled to Supplement its Responses Prior to its Pre-Filed Testimony Deadline

Many of the CRMA’s Responses indicate that it will subsequently fully respond to TAWC’s Requests when responsive material becomes known or exists. Consistent with its duty under the Tennessee Rules of Procedure to supplement its discovery responses as new material or information *comes into knowledge or existence*, the CRMA should be required to provide TAWC with assurances of when, prior to the pre-filed testimony deadline, it will supplement its

responses. At some point after the CRMA filed its Petition to Intervene but *prior* to filing its pre-filed testimony, it will certainly know what facts, documents or witnesses it will utilize in presenting its opposition. It is inconceivable that a party would not know this information until the day, or even a week before, it files its pre-filed testimony. Accordingly, the CRMA should be ordered to provide this information as soon as it becomes known or exists. This obligation is consistent with the fundamental purpose of discovery, which is to avoid surprises and provide the parties with adequate time to prepare their case. *See Conger*, 2001 Tenn. App. LEXIS 205, at *14.

Because the case schedule provides for a very short time for TAWC to file rebuttal testimony after having received the six intervenors' witnesses' testimony, TAWC needs the information in its Requests as soon as it becomes available so that they can adequately respond. The prejudice of not receiving responses to these Requests until the day of, or even a few days ahead of, the pre-filed testimony can be seen by looking at the 2008 Rate Case. In that case, the City decided not to inform TAWC of its expert witnesses in advance of filing its pre-filed testimony, including witness Frank Impagliazzo. Mr. Impagliazzo was subject to a confidentiality agreement with TAWC at that time. Fortunately, another intervenor disclosed its intention to use Mr. Impagliazzo as an expert witness sufficiently prior to the pre-filed testimony deadline, which prevented TAWC from incurring irreparable harm. Had one of the other intervenors not made this advanced disclosure, TAWC would have been forced to litigate Mr. Impagliazzo's disqualification in the few weeks that remained before the hearing, which would have seriously impaired its ability to prepare its case. To prevent similar unfair prejudice in this matter, the CRMA (as well as all intervenors) should be required to supplement their discovery

responses on a rolling basis and at a time sufficiently prior to the date of their pre-filed testimony.

B. TAWC Seeks a Complete Response to Request 6.

In Request No. 6, TAWC requests for the CRMA to produce in electronic media and in hard copy “all work papers and other documents, created by or relied upon by all CRMA witnesses.” In response, the CRMA states that it will, at some future date, provide non-duplicative work papers but that it otherwise “objects to the extent this Request may be interpreted to require additional information...[as] [s]uch information would be burdensome and irrelevant.” Such a request is not unduly burdensome. Moreover, the request seeks all documents relied upon by the CRMA’s witnesses, who will be testifying assumedly in opposition to the very rate request that is the subject of this proceeding, a matter that is clearly relevant.

Importantly, the CRMA fails to provide a complete response to this request because it does not indicate that it will produce documents other than work papers created or relied upon by CRMA witnesses, despite the fact that the question directly requests this information. In the parties’ meet and confer conference, the CRMA indicated that its anticipated witnesses generally include all their created or relied upon materials in their work papers, but this assurance does not change the fact that all created or relied upon documents must be produced, regardless of what percentage of responsive materials are typically included in the witnesses’ work papers. Accordingly, TAWC seeks a complete response to this question indicating that the CRMA will produce all other documents responsive to this request that currently exist or that it will supplement its response in conformity with its obligations described herein.

C. TAWC Seeks a Complete Response to Request 10.

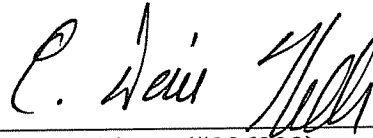
In Request No. 10, TAWC requests that the CRMA state its position as to the amount of the revenue requirement to which TAWC was entitled in Docket Nos. 08-00039 and 06-00290, and the amount actually awarded by the Tennessee Regulatory Authority in those cases. The CRMA responded by making a statement about the merits of the 2008 rate case appeal and cited “by way of example” statements allegedly made by Mr. Gorman, though without any citations.

The CRMA took a position with respect to the amount of revenue requirement TAWC should have been awarded in the 2008 and 2006 rate cases. TAWC is simply asking the CRMA to state what that position was. Such a request is not unduly burdensome or ambiguous. Furthermore, the CMA’s past history of revenue requirement proposals is directly relevant to this proceeding and, as such, should be produced.

Conclusion

For the reasons stated herein, the CRMA has failed to adequately respond to all of 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. TAWC also requests that the Hearing Officer enter an order compelling the CRMA to provide assurances that it will fulfill its duty to supplement its responses as soon as it identifies documents or learns of responsive material on a rolling basis, rather than supplementing on January 5, 2011, and requests any additional relief under Rule 37 of the Tennessee Rules of Civil Procedure deemed appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Dale Grimes", written over a horizontal line.

R. Dale Grimes (#006223)

E. Steele Clayton (#017298)

C. David Killion (#026412)

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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 18th day of November, 2010, upon the following:

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