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November 19, 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 11/19/10

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 Response to Chattanooga Regional Manufacturers Association's Motion to Compel. 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.

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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Scott H. Strauss, Esq. (*w/enclosure*)
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 TO THE CHATTANOOGA REGIONAL MANUFACTURERS ASSOCIATION'S MOTION TO COMPEL

From the date of its Petition, September 17, 2010, to date, Tennessee American Water Company ("TAWC") has produced thousands of pages of information in this case. In response to the Chattanooga Regional Manufacturers Association ("CRMA") Discovery Requests, TAWC produced even more pages of responsive material.

CRMA claims that TAWC's Responses are insufficient and moves to compel further responses. TAWC has responded appropriately to each of the CRMA's requests, however, and the Hearing Officer should not compel any further discovery. Accordingly, the CRMA's Motion to Compel should be denied for the reasons set forth below.

I. TAWC Provided Complete Requests To The CRMA's Discovery Requests

In its initial Responses, TAWC either produced the material requested, provided a thorough explanation when asked for an explanation, identified any responsive material in its possession, custody or control, or asserted an objection – as the Tennessee Rules of Civil

Procedure and TRA Rules provide. If responsive documents or information did not exist in the manner requested, TAWC stated as such.

Despite this fact, in the parties' meet and confer conference the CRMA requested further explanations on many of TAWC's Responses, including responses to Requests 2, 3, 4, 5, 6 and 21. Although TAWC does not believe that it has any further obligation to expound on its answers, in a good faith effort to compromise and advance this case, TAWC agreed to follow up and respond, as appropriate and if additional information exists, to the CRMA on these specific Requests.

With respect to Requests 2 and 3, TAWC has provided everything it has in its possession, custody and control. With respect to Request 6, TAWC has requested data from other Tennessee water providers in order to respond. To date, no data has been provided to TAWC. TAWC will supplement this response if it receives the requested data. Obviously, TAWC has no ability to compel other water providers to provide this information.

Additionally, the CMA asserts that TAWC "answers only part of a question, refers to other material, or provides something other than an answer to the question the CRMA actually asked" for in Request Nos. 5, 10 and 19. TAWC responds as follows:

- As far as directing a party to materials already produced, that is a proper practice and is encouraged in discovery responses. It would be a needless waste of resources to require TAWC to recreate and reattach materials already provided in response to a separate Request.
- Request No. 5 asked for TAWC to "outline" the amount of lost and unaccounted for water on the utility system, and estimate the cost TAWC incurs related to unaccounted for water in terms of power, chemical cost, and other cost items,

identifying each separately. TAWC responded by providing the data requested as an attachment to this Request and directing the CRMA to its response to TRA Request 13. Additionally, TAWC provided a comprehensive explanation and detailed information on lost and accounted for water. Having been provided the data, the CRMA can calculate the requested result. TAWC does not track nor calculate the information requested. Clearly, TAWC has provided adequate information and data to answer this response.

- Request No. 10(a) sought data relating to tank ownership. TAWC responded to Request 10 by providing tank data in an attachment. TAWC agreed in its meet and confer conference to determine whether there are any tanks that are rented, rather than owned, and then follow up with the CRMA.
- Request No. 19 sought charges and other information relating to main breaks. TAWC responded by referring the CRMA to no less than five attachments and specifically directed the CRMA to where in those attachments responsive information can be found. It is the CRMA's responsibility to review the produced material it requested.

The CRMA has no basis for alleging that TAWC did not fully respond to these Requests. In reality, TAWC has responded appropriately and comprehensively to each of the CRMA's discovery requests.

In its Motion, the CRMA also mischaracterizes TAWC's efforts to provide confidentially-designated documents to the parties in this case. TAWC has been ready and willing to produce this information. TAWC's parent, AWWC, and the UWUA Intervenors are engaged in ongoing and contentious negotiations on a new collective bargaining agreement at the

national level. Various intervenors have requested certain data relating to TAWC's employment compensation which, if provided to the Union, could give the Union an unfair competitive advantage in its negotiations. Accordingly, TAWC approached the UWUA and the parties mutually agreed to amend the Protective Order to address this issue. During the time the amendment to the Protective Order was at the TRA awaiting entry, TAWC sought to expedite the production of confidential information by asking each intervenor to send written confirmation that it would not disclose confidential information to the UWUA in the interim. None of the intervenors accepted this offer, so TAWC could not produce the confidential information. Today, November 19, 2010, the TRA entered the amendment to the Protective Order, and accordingly TAWC is producing its confidentially-designated information. There is no need to compel production of this information.

II. The CRMA Propounded More Discovery Requests Than That Permitted By TRA Rule 1220-1-2.11(5)(a)

Limitations on the initial number of discovery requests are a necessary mechanism to balance and facilitate the exchange of information and the progress of litigation. Here, TRA Rule 1220-1-2-.11(5)(a) is clear:

> "No party shall serve on any other party more than forty (40) discovery requests, ***including subparts*** without first having obtained leave of the Authority or Hearing Officer . . . If a party is served with more than forty (40) discovery requests without an order authorizing the same, such party need only respond to the first forty (40) requests."

TRA Rule 1220-1-2-.11(5)(a)(emphasis added). Accordingly, TRA Rule 1220-1-2-.11(5)(a) imposes a clear limit of the number of discovery requests that a party must answer to ensure that a particular party is not overburdened by discovery.[1]

[1] Other forums have similar rules that are equally clear, for instance, the Local Rules of the United States District Court for the Middle District of Tennessee provides that "subparts of a question shall be counted as additional questions for purposes of the overall number." Local Rule 33.01(b).

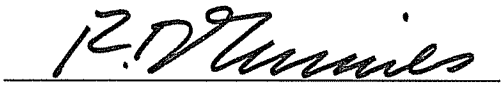
Even a cursory review of the CRMA's Requests reveals that it propounded more than the 40 limit request. In its 34 enumerated Requests, there are no less than 18 alphabetized subparts. This is not to say that "subparts" only include enumerated or alphabetized bullet points contained underneath written requests. If this were true, any party could avoid the Rule's requirement by simply drafting a chain of sentences contained in the same paragraphed request. Accordingly, TAWC responded to the CRMA's first 40 requests, as is explicitly mandated by the TRA Rules. The CRMA's request to propound additional discovery beyond the limit should be denied because it has made no effort to carry its burden of demonstrating good cause for the need to propound additional requests over the 40 request limit, as is required under TRA Rule 1220-1-2-.11(5)(a).

Finally, there is absolutely no support in the Tennessee Rules of Civil Procedure or the TRA Rules for the CRMA's "submission" that "the Company waived any objections it otherwise may have to CRMA data requests 25-34, by not responding to those questions." (*See* CRMA Motion at 4-5.) As stated above, TAWC is only required to respond to the first 40 discovery requests. Acting in accordance with a clearly stated Rule certainly is no grounds for waiving any objections TAWC has to the CRMA's Requests that it proposed over the Rule's limit.

Conclusion

TAWC has made reasonable efforts, going beyond its legal obligations, to satisfy the CRMA's Requests. For all of the reasons set forth in TAWC's Responses and this Motion, the CRMA's Motion to Compel 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 19th day of November, 2010, upon the following:

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