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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

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 the City of Chattanooga'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*)
T. Jay Warner, Esq. (*w/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 TO CITY OF CHATTANOOGA'S MOTION TO COMPEL

In its Motion to Compel, the City of Chattanooga (the "City") seeks to compel additional responses to no less than 19 of its discovery requests, including subparts, and complains of an additional five alleged general deficiencies in Tennessee American Water Company's ("TAWC") responses. For all of the following reasons, the City's Motion to Compel should be denied. In addition to the positions set forth in this Response, TAWC relies on every objection and argument set forth in its Discovery Responses, to the extent each of those objections and arguments applies to the Requests set forth below.

INTRODUCTION

TAWC, to date, has produced thousands of pages of documents in response to the various parties' discovery requests, the TRA staff's data requests, and in its own filings to support its request for a rate increase in this case. Despite TAWC's voluminous productions, the City challenges the majority of TAWC's Responses to its discovery requests.

Even though a motion to compel is not a forum for airing out the merits, the City begins its motion with an argumentative mischaracterization of TAWC's rate request; accordingly,

TAWC feels compelled to briefly respond. As a regulated utility, TAWC is constitutionally guaranteed the opportunity to earn a reasonable rate of return. If TAWC needs to implement a rate increase due to increased expenses or investments, decreased revenues, or other reasons, it is required to file a revision to the existing tariffs and a petition asking the TRA to approve the revision to existing rates. *See* Tenn. Code Ann. § 65-5-103 (2009); Tenn. Comp. R. & Regs. 1220-4-1--03 to -.06 (2009). Currently, TAWC is earning a minimal rate of return (2.94%) and is in danger of operating at a loss if a rate increase is not implemented. TAWC's request for a twenty-eight percent (28%) increase is due, in part, to the fact that TAWC was not granted a rate increase in its last rate cases that would allow it the opportunity to earn a reasonable rate of return because the projection of TAWC's was too high ($3.293 million) and $800,000 in management fees were not awarded pending a management audit. Therefore, TAWC had to file its Petition in this case.

The City's boisterous opposition to TAWC's Petition to increase rates by only **$4.28 per month** for the average customer is ironic because the City itself has imposed enormous rate increases on its own citizens – without any regulatory oversight – in the form of increased sewer chargers, electric charges and property taxes.

Regardless, TAWC supported its request by supplying numerous documents in its Petition and in its responses to the TRA and the intervenors' discovery requests in conformity with the Tennessee Rules of Civil Procedure and TRA Rules. TAWC has made reasonable efforts to respond to the City's Requests and therefore the City's Motion to Compel is without merit.

TAWC COMPLIED WITH ITS DISCOVERY OBLIGATIONS

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

Rule 1220-1-2.11(5)(a) prohibits parties from propounding more than 40 discovery requests ***including subparts*** without first obtaining permission. Contrary to the City's suggestion, subparts do not only include enumerated or alphabetized bullet points 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. For example, City Request 8 states: "For each Capital Expense identified in response to Request Nos. 4, 5, and 6, produce all Documents indicating, referring to, or regarding the date that the addition to plant associated with the Capital Expense was put in service and explain how the addition to plant was used and useful to TAWC ratepayers as of that date." Requests 4, 5 and 6 correspond to the 2006, 2008 and 2010 rate cases. No matter how the City characterizes it, this is at least three distinct requests, requiring three times the effort to uncover and produce the responsive material. City Requests 7 through 10 are identical in form to this example. TAWC responded to the first 40 requests propounded by the City, as authorized by Rule 1220-1-2.11(5)(a), and therefore the Hearing Officer should deny the City's request.

B. Forcing All The Parties To Provide Privilege Logs Would Needlessly Increase Costs And Create An Undue Burden On All The Parties

Forcing TAWC, and necessarily all the parties, to produce a privilege log would only serve to drive up the costs of litigating this rate case and would do nothing to advance the rate-making process. All six intervenors would ultimately expend considerable amounts of money compiling and producing privilege logs, which are exceedingly burdensome and time-consuming to create. The possibility of uncovering something that will affect the determination as to the

appropriate rate increase is remote, at best. After conducting the meet and confer conferences it appears that other intervenors wish to avoid this unnecessary step as well. The City, which complains about the cost of rate case proceedings, is certainly aware of the financial burden and time constraints that its request will create for the parties. Accordingly, in the interests of advancing this rate case and avoiding unnecessary and burdensome steps, TAWC requests that the Hearing Officer deny this request.

C. TAWC Properly Objected To The City's Exceedingly Broad Definitions

The City defined "Schumaker & Company" to include not only the company, but also its named subcontractor, Work & Greer, and any employees, agents, or subcontractors of either of these companies. Similarly, the City defined "Baryenbruch" to include Patrick Baryenbruch, the company, and all associates, employees, contractors, and agents of either of them. These excessively broad definitions warrant an objection, particularly in light of the fact that the City seeks in its various Requests ***all*** documents, communications, etc. relating to or going to and from these defined parties. TAWC cannot possibly be tasked with finding every single document that might fall under the expanse of this broadly-drafted definition. There is no obligation to respond to overbroad requests and, accordingly, TAWC properly objected to the City's definitions in its General Objections.

D. Request to Produce Information in Native Format

Contrary to the City's contentions, its Discovery Request does not specifically request TAWC to produce documents in native format, although TAWC did produce all of its responses in MS Word format. Regardless, in an effort to compromise and advance this proceeding, TAWC will provide the City with a copy of the Excel files for these Requests in its possession. Additionally, the City asserts that TAWC did not produce any attachments to produced emails,

both in Section II.D. of their Motion and in Section II.M (Request Nos. 21-27). In fact, TAWC did produce two drafts of the Schumaker report, which were the two most relevant attachments to the emails provided in TAWC's production, and indicated that most of the other attachments, if not all, were included in the Schumaker workpapers filed in Case #09-00086 and provided to the City.

E. TAWC Has No Obligation To Create Work Product In Responding To The City's Discovery Requests

TAWC properly objected to the extent that the City's Requests ask TAWC to create, categorize, manipulate, customize, or otherwise organize data outside the historical test year. TAWC produced responsive data if it was available, in conformity with its discovery obligations. Asking TAWC to create or otherwise manipulate data for the benefit of the City is an undue burden that TAWC is not required to bear. TAWC went to great effort to prepare its rate case filing for the attrition year. Nowhere do the Rules obligate TAWC to create alternatives for the benefit of intervening parties. Where not otherwise objectionable, TAWC has produced the data which the City can certainly use to create categorizations or customizations. Notwithstanding the above, TAWC is not presently aware of any documents withheld on this basis.

F. TAWC Has Not Withheld Confidential Information – Requests 2, 18 and 19

The City's Motion misstates TAWC's efforts to produce confidential information. TAWC has had its confidential attachments ready to produce and has made numerous efforts to provide this information to all the intervenors. The City has no one to blame but its own attorneys for its lack of possession of this information.

TAWC's parent, AWWC, and the UWUA Intervenors are engaged in on-going and contentious negotiations of 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 to the intervenors 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 the offer, but the City was the only party to adamantly refuse. 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.

G. Request No. 3

The City's Request No. 3 asks TAWC to "explain any addition, subtraction, acceleration, delay, deferral, or change" in TAWC's planned Capital Expenditure projects identified in any Comprehensive Planning Study completed since 2000. The burden of deriving or ascertaining the answer to the City's onerous discovery Request No. 3 warrants the objections contained in the Response. Notwithstanding this valid objection, TAWC went beyond its discovery obligations and actually provided a thorough explanation of the process by which changes to Capital Expenditure plans are made and also enumerated the projects added to or subtracted from the Capital Spending Plan since the previous rate case.

H. Request No. 4

TAWC provided a complete answer to this Request in its Response. In the City's Motion, however, and in the parties' meet and confer conference, the City requested that TAWC provide further assurance that no information was withheld in response to this Request.

Although TAWC's responses speak for themselves, TAWC agreed to oblige the City in an effort to compromise and advance this proceeding. TAWC confirms that it did not exclude or withhold any responsive information.

I. Request Nos. 4, 5, 6 and 9

In Request No. 9, the City objects that TAWC did not produce data on payments made to affiliates other than AWWSC. The City's request to compel further information on this Request should be denied because TAWC provided responsive information in the column labeled "Service Company Charges" contained in its Responses to Requests Nos. 4, 5 and 6 and directed the City to this information in its Response. The service company invoices included in its Response are all affiliate charges that were charged to capital projects. AWCC and AWR costs are expensed and therefore would not appear on these schedules.

Additionally, as stated in I.D. above, TAWC agrees to produce Excel files in its possession for Requests 4, 5 and 6.

J. Request No. 7

The City's Request No. 7 requests that TAWC "[i]dentify the location, by latitude and longitude or by census tract and block number, of each addition to plant reflected by a Capital Expense identified in response to Requests Nos. 4, 5, and 6 in excess of Five Hundred Dollars." This request seeks extraneous information that is not relevant for a rate case. Moreover, TAWC does not possess a GPS system or longitude and latitude, census track, or block number data to respond to this Request as written.

In an effort to respond to this otherwise objectionable Request, TAWC offered to open its business records, in which responsive data are contained, for inspection and copying by the City at a mutually agreeable time. The Tennessee Rules of Civil Procedure specifically provide that

"[w]here the answer to an interrogatory may be derived or ascertained from the business records" of the party on whom the discovery request is served, "it is a sufficient answer" to that discovery request to "specify the records from which the answer may be derived or ascertained and to afford the party serving the [discovery request] reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries." *See* Tenn. R. Civ. P. 33.03. The City is in as good of a position as TAWC to go through these records and find the data they seek, but the City has yet to make any effort to inspect TAWC's records. Providing access to responsive business records is, standing alone, an entirely appropriate and sufficient response and therefore the Hearing Officer should not compel any further response.

K. Request No. 8

City Request 8 seeks: "For each Capital Expense identified in response to Request Nos. 4, 5, and 6, produce all Documents indicating, relating to, or regarding the date that the addition to plant associated with the Capital Expense was put in service and explain how the addition to plant was used and useful to TAWC ratepayers as of that date." As proffered in its Response, it would take TAWC thousands of work hours to recapture the information requested in this Request, creating extreme costs and burden. It would be equally burdensome to describe how each capital project was used and useful as there are thousands of individual additions to UPIS each year. Notwithstanding these valid objections, TAWC made an effort to respond to this Request by explaining that its outside auditor has confirmed that plant additions and plant balances each year are used and useful. In a further effort to provide the City with information, TAWC offered the City access to its business records. As discussed in Request No. 7 above, providing access to business records is a sufficient response. Accordingly, TAWC provided a complete response to this Request and the Hearing Officer need not compel anything further.

L. Request No. 11

City Request 11 seeks financial statements for TAWC parent and affiliates that receive payments from TAWC. In response, TAWC provided the unaudited balance sheets and income statements for both AWWSC and AWCC. TAWC objected to the response to the extent it sought information on other affiliate companies. The affiliate companies' financials have no relevance to this rate making proceeding as TAWC receives no cost or service from those other subsidiaries. In its Motion, the City argues that it is entitled to this information because part of TAWC's request for a rate increase includes recovery for payments made to affiliates and parents. Information regarding these payments has been produced in discovery responses and TAWC filings. The City has no reason to seek financial statement of the affiliates that have no direct relationship to TAWC and that do not provide or receive service from TAWC. Moreover, collecting this data from all the affiliates would be unduly burdensome. Accordingly, TAWC fully responded to this Request.

N. Request No. 28

In Request No. 28, the City has requested "all Documents referring to, relating to, discussing, responding to, or transmitting to any person or entity the Baryenbruch Report." TAWC properly responded to this request by directing the City to Mr. Baryenbruch's testimony and Report, which was already filed in this case, and objecting to the request for additional related documents to the extent that it seeks materials protected from discovery by the work product doctrine.

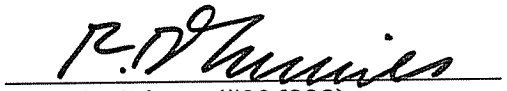
The Tennessee Rules of Civil Procedure expressly protect from discovery, in the absence of exceptional circumstances of substantial need and undue hardship on the part of the requesting party, all "documents and tangible things . . . prepared in anticipation of litigation or for trial by

or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer or agent)." Tenn. R. Civ. P. 26.02(3). That protection is subject only to the provisions of Tenn. R. Civ. P. 26.02(4), which provides simply for discovery of the "facts known and opinions held" by testifying experts and does not otherwise destroy the work product protection that is applicable to communications and drafts exchanged between the Company's counsel and its retained expert. Numerous courts have held that such protection applies even to materials shared with a testifying expert. *See, e.g., Bogosian v. Gulf Oil Corp.*, 738 F.2d 587, 593-95 (3rd Cir. 1984); *Taylor v. Anderson-Tully Co.*, 151 F.R.D. 295 (W.D. Tenn. 1993) (agreeing that such disclosure would "significantly hamper communication between the party, the party's attorney, and the experts" and that "the party and the party's attorney must have free communication" with their experts). Accordingly, the Company has appropriately withheld such communications and drafts from its document production, on the basis that they are protected by the work product doctrine.

Conclusion

TAWC has made every effort to fully comply with the City's Discovery Requests. Accordingly, for all of the reasons set forth in TAWC's Responses, in this Motion and those reasons to be discussed at the November 22, 2010 hearing, the City'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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