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December 6, 2010

Via E-Mail and USPS

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

filed electronically in docket office on 12/06/10

**Re: Petition of Tennessee American Water Company
Docket No. 10-00189**

Dear Chairman Freeman:

Enclosed please find an original and five (5) copies of The City of Chattanooga's Second Motion to Compel Tennessee American Water Company to Respond to Discovery Requests. I would appreciate you stamping the extra copy of the document as "filed," and returning it to me in the enclosed, self-addressed and stamped envelope.

With best regards, I am

Sincerely yours,

Frederick L. Hitchcock

Frederick L. Hitchcock

by WBK
w/permission

FLH:kwr
Enclosures

Chairman Mary Freeman
c/o Ms. Sharla Dillon
December 6, 2010
Page 2

cc: Mr. J. Richard Collier (w/encl.)
Mr. Vance L. Broemel (w/encl.)
Mr. T. Jay Warner
Mr. Ryan L. McGehee
Ms. Mary L. White
Mr. David C. Higney (w/encl.)
Mr. Henry M. Walker (w/encl.)
Mr. Michael A. McMahan (w/enc.)
Mr. R. Dale Grimes (w/encl.)
Mr. Mark Brooks (w/encl.)
Mr. Scott H. Strauss (w/encl.)
Ms. Katharine M. Mapes
Mr. Donald L. Scholes (w/encl.)
Ms. Kelly Cashman-Grams (via email; w/encl.)
Ms. Monica Smith-Ashford (via email; w/encl.)
Ms. Shilina Chatterjee Brown (via email; w/encl.)

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

IN RE:)	
)	
PETITION OF TENNESSEE AMERICAN)	
WATER COMPANY TO CHANGE AND)	Docket No. 10-00189
INCREASE CERTAIN RATES AND CHARGES.)	

**THE CITY OF CHATTANOOGA'S SECOND MOTION TO COMPEL TENNESSEE
AMERICAN WATER COMPANY TO RESPOND TO DISCOVERY REQUESTS**

The City of Chattanooga ("Chattanooga"), by and through counsel, submits this Motion seeking an Order compelling the Petitioner, Tennessee American Water Company ("TAWC"), to respond fully to Chattanooga's First Discovery Requests. This Motion follows the supplementation by TAWC of certain responses to Chattanooga's Request Nos. 1-31 and TAWC's responses to Chattanooga Request Nos. 32-86 following the grant of Chattanooga's motion for leave to propound additional discovery requests.

I.
RENEWAL OF CHATTANOOGA'S FIRST MOTION TO COMPEL

Since the parties argued outstanding Motions to Compel in the hearing on November 22, 2010, TAWC has provided supplemental responses to certain of Chattanooga's First Discovery Requests.¹ By email memorandum dated November 24, 2010, Mr. Richard Collier noted the status of Items A-N of Chattanooga's first Motion to Compel. Through subsequent discussions and supplementation of TAWC's responses, certain of the Items initially in dispute have been resolved, and disputes currently exist only as to Items B, G, K, and L set forth in Chattanooga's

¹ TAWC only initially responded to 31 of Chattanooga's First Discovery Requests. Chattanooga's First Motion to Compel addressed responses to those 31 requests.

first Motion to Compel remain unresolved. Chattanooga hereby renews its first Motion to Compel as to Items B, G, K, and L as set forth in Chattanooga's first Motion to Compel:²

- Item B: TAWC has refused to provide a privilege log in spite of the mandatory requirements of Tenn. R. Civ. P. 26.02(5). Such a log will not increase the burden upon TAWC or any other party that may withhold privileged information or information protected by the Work Product Protection. Instead, it will increase the efficiency of these proceedings and will reduce the time required by the Hearing Officer and others to evaluate the claims of privilege or protection.
- Item G: TAWC has refused to provide information responsive to Chattanooga's Request No. 3, which asked for it to explain any addition, subtraction, acceleration, delay, deferral, or change in any recommended capital improvement projects. TAWC asserts that it has fully responded by providing a tabular compilation of capital expenditures in response to CRMA Request No. 30 and by referring to compiled budget totals contained in an exhibit supporting Sheila Miller's testimony. TAWC's recitation of actual and budgeted capital expenditures for each annual period is in no way responsive to the Chattanooga request.
- Item K: Chattanooga's Item K addressed TAWC's refusal to meaningfully respond to Chattanooga Request No. 8, which requested documents that showed the dates capital projects were put in service and explained how they are used and/or useful to TAWC ratepayers as of the date put in service. In TAWC's response, it claimed that TAWC management had provided management representation letters containing the information requested and that TAWC's auditors had confirmed the accuracy of those representations.

² Chattanooga's understanding that matters other than those set forth herein have been resolved is based, in part, upon assurances by TAWC that it will further supplement its responses. For example, Mr. Mike Miller has agreed to provide in native format all spreadsheets that exist in that form to supplement .pdf copies previously provided.

TAWC delivered on December 2, 2010 copies of certain representation letters marked confidential. Those representation letters do not provide information responsive to the Request. Further, TAWC has refused to provide any information from its auditors concerning the confirmation of the "used and useful" status of capital expenditures.

- Item L: Chattanooga's Item L addressed the failure of TAWC to provide financial statements for each TAWC affiliate to which TAWC has made payments. TAWC seeks a huge rate increase in this proceeding to pay, *inter alia*, amounts charged to it by its affiliates for management fees or related to capital expenditures. TAWC has repeatedly represented to this Authority that none of these affiliates earn any profit from payments made by TAWC and other regulated subsidiaries of American Waterworks Company. These financial statements will, among other things, also address the issue of which affiliates have received payments from TAWC.

Chattanooga respectfully renews its request that its First Motion to Compel be granted as to all issues not resolved by the parties.

II.
MOTION TO COMPEL ADDRESSED TO TAWC RESPONSES TO REQUEST NOS. 32-86

This portion of Chattanooga's Second Motion to Compel addresses inadequacies of TAWC's Responses to Chattanooga's Requests Nos. 32-86, to which TAWC responded after the Order of the Hearing Officer on November 22, 2010. Following the pattern set forth in Chattanooga's First Motion to Compel, similar requests are grouped into issue Items, which are numbered consequently following the Items set forth in Chattanooga's First Motion to Compel.

O. Request Nos. 32-35 and 37: Confirmation that All Factual Information Upon Which Expert Witnesses Relied Has Been Produced.

In responses to Requests Nos. 32-35 and 37, TAWC asserted that it was withholding communications with expert witnesses. While the parties have agreed that communications that did not contain information relied upon by an expert witness need not be produced, Chattanooga did not agree that parties would not be required to disclose all of the information provided expert witnesses that support any facts or opinions to which experts may testify. *See* Tenn. R. Civ. P. 26.02(4). Chattanooga respectfully requests that TAWC be ordered to immediately provide all documents and information upon which Mr. Baryenbruch or any other expert witness relied in preparing the facts and opinions upon which Mr. Baryenbruch will testify or that TAWC be required to affirm or at least to state that it has not withheld any such information.

P. Request No. 38: Billing Contracts Referred to in Testimony of John S. Young Before the California Public Utilities Commission.

The issues in this proceeding will include allocation of expenses to regulated and non-regulated subsidiaries. Mr. Young testified before the California Public Service Commission concerning this subject, and his testimony addressed billing contracts that are relevant to the allocation of expenses between regulated and non-regulated subsidiaries of AWWC. TAWC has refused to provide the requested information. Chattanooga respectfully requests that TAWC be

ordered to immediately produce documents constituting, referring to, or relating to billing contracts referenced in Mr. Young's testimony.

Q. Request Nos. 40, 41, 42: Expenses, Revenues, or Capital expenditures attributable to "Service Line Protection Program".

Chattanooga requested information concerning accounting entries that TAWC has made to reflect expenses, capital expenditures, or revenues relating to the Service Line Protection Program. TAWC has responded to the request with a vague answer asserting that expenses "are recorded on the books of AWR." The response does not affirmatively state that there are no expenses, capital expenditures, or revenues associated with this Program recorded on the books of TAWC. For example, if TAWC completed work covered under the Program, expenses associated with that work should be recorded on its books and an invoice should be generated to AWR. Chattanooga respectfully requests that TAWC be ordered to immediately provide the requested information or to affirmatively confirm that no expenses, capital expenditures, or revenues from the Program are reflected on the books and records of TAWC. Chattanooga respectfully requests that TAWC be required to respond fully to the Request.

R. Request No. 43: Update of Information Provided in Docket No. 08-00039.

Chattanooga requested that TAWC update information it provided in the Docket No. 08-00039 concerning payments to AWWC or any affiliate or subsidiary. TAWC has refused to do so. Chattanooga respectfully requests that TAWC be required to respond fully to the Request.

S. Request No. 50 Financial Statements of Related Companies.

This case will involve significant issues concerning proper allocation of AWWSC expenses and other common expenses among regulated and unregulated subsidiaries of AWWC. The information sought in this Request is needed to evaluate the allocation procedures. To the

extent that financial statements are provided in response to Request No. 11 (Item L, above), it will be unnecessary to duplicate the information in response to this Request.

T. Requests Nos. 52, 53: Advertisements and Expenses.

Request No. 52 asked for all advertisements placed by AWWC or any of its subsidiaries or affiliates (including TAWC) since January 1, 2008, in the service area of TAWC. TAWC refused to provide any responsive information. Request No. 53 asked for a listing of all expenditures for ads identified in response to Request No. 52 and for advertisement expenditures incurred in a specified business unit, and for all other advertisements relating to TAWC placed since January 1, 2008. TAWC refused to provide any of the requested information, claiming only that AWWSC billings for ads were eliminated from expenses claimed in this case. Chattanooga has the right to test the apparent TAWC claim that it has not paid for any advertisements through obtaining the requested information. Chattanooga respectfully requests that TAWC be required to respond fully to the Request.

U. Request No. 57: Expenses and Investments of Regulated Companies Used for Non-Regulated Business Activities.

This Request asked for the identification of all expenses and investments of regulated AWWC subsidiaries that were used to provide non-regulated services. TAWC refused to provide any meaningful information. Chattanooga respectfully requests that TAWC be required to respond fully to the Request.

V. Request No. 58: Clarification About Whether Any TAWC Customers Received Non-Regulated Services from Any Affiliate Other Than AWR.

In response to this Request, TAWC cited information provided to the CAPD concerning the number of customers of TAWC that received non-regulated services from AWR. Chattanooga respectfully requests that TAWC be required to provide all of the requested

information about all non-regulated services made available to customers of TAWC or to clarify that no non-regulated services other than those provided by AWR.

W. Request No. 85: Services Billed to TAWC.

This Request asked for a description of each category of service billed to TAWC on Summary Bill Reports and the purpose and amount of each expense. TAWC has refused to provide any meaningful information in response. Because these charges relate to a very large part of the rate increase sought by TAWC, Chattanooga has a right to learn of the purpose and amounts of the services billed to TAWC. Chattanooga respectfully requests that TAWC be required to respond fully to the Request.

Respectfully Submitted,

OFFICE OF THE CITY ATTORNEY

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing pleading was emailed and was served upon the following person(s) via ☐ hand delivery or ☒ United States first class mail with proper postage applied thereon to ensure prompt delivery:

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This 6th day of December, 2010.


~~Frederick L. Hitchcock~~ Willa B. Kalaidjian