

January 6, 2011

Via E-Mail and USPS

filed electronically in docket office on 01/06/11

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

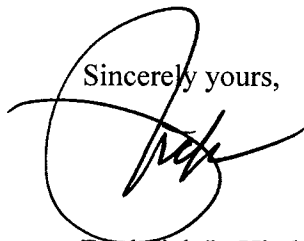
**Re: Petition of Tennessee American Water Company  
Docket No. 10-00189**

Dear Chairman Freeman:

Enclosed please find an original and five (5) copies of The City of Chattanooga's Second Supplemental Responses to the First Discovery Requests of Tennessee American Water Company. I would appreciate you stamping the extra copy of each 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

FLH/meb  
Enclosures

Chairman Mary Freeman  
c/o Ms. Sharla Dillon  
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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**

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

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**THE CITY OF CHATTANOOGA'S SECOND SUPPLEMENTAL RESPONSES TO THE  
FIRST DISCOVERY REQUESTS OF TENNESSEE AMERICAN WATER COMPANY**

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The City of Chattanooga ("the City"), by and through counsel, hereby serves its Second Supplemental Responses to certain of the First Discovery Requests propounded by Tennessee-American Water Company.

**RESTATEMENT OF GENERAL OBJECTIONS**

(1) The City objects to all requests that seek information protected by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege or restriction on disclosure.

(2) The City objects to the definitions and instructions accompanying requests to the extent definitions and instructions contradict, are inconsistent with, or impose any obligations beyond those required by the Tennessee Rules of Civil Procedure or the rules, regulations, and orders of the Tennessee Regulatory Authority.

(3) The City objects to the definitions of the words "document" or "documents" or "documentation" that accompany the requests, because such definitions are overbroad and unduly burdensome.

(4) The City is providing its objections herein without waiver of, or prejudice to, its right at any later time to raise objections to: (a) the competence, relevance, materiality,

privilege, or admissibility of the response, or the subject matter thereof; and (b) the use of any response or subject matter thereof in any subsequent proceedings.

(5) The City objects to each request to the extent that it is unreasonably cumulative or duplicative or seeks information obtainable from some other source that is more convenient, less burdensome or less expensive.

(6) The City objects to each request to the extent it is premature such that it seeks information concerning matters about which discovery is ongoing and/or seeks information to be provided by experts who have been consulted by counsel but as to whom a decision has not yet been made concerning testimony at the hearing in this matter.

(7) The City's specific objections to each request shall be in addition to the General Objections set forth in this section. These General Objections form a part of each discovery response, and they are set forth here to avoid the duplication and repetition of restating them for each discovery response. The absence of a reference to a General Objection in response to a particular request does not constitute a waiver of any General Objection with respect to that discovery request. All responses are made subject to and without waiver of the City's general and specific objections.

**DISCOVERY REQUEST NO. 1:**

Identify each document that you anticipate you will rely on in opposition to the request(s) for relief, including any increase in rates, made by TAWC in TRA Docket No. 10-00189.

**RESPONSE NO. 1:**

Counsel for the City have not yet identified the facts and documents upon which the City will rely. Such facts and documents will include information responsive to the Intervenor's

discovery requests and to TRA staff data requests. TAWC has not yet provided information and documents responsive to the Intervenor's requests. Without waiving its objections, following receipt of TAWC's complete discovery responses, the City will finish its review and will supplement this response.

**SUPPLEMENTAL RESPONSE NO. 1:**

*See* documents referenced in Pre-Filed Testimony of Kimberly Dismukes and Exhibits to Ms. Dismukes' Pre-Filed Testimony.

**DISCOVERY REQUEST NO. 2:**

Identify all persons known to you who have or claim to have knowledge, information, or possess any document(s) that support your answer to Discovery Request No. 1 above.

**RESPONSE NO. 2:**

Such persons include the employees and consultants of TAWC and its Affiliates who have knowledge of information responsive to the Intervenor's discovery requests and the TRA Staff data requests, the TRA staff, persons associated with other Intervenor's, and witnesses to be offered by the parties. Without waiving its objections, to the extent that the City identifies other individuals with the requested information, it will supplement this response.

**SUPPLEMENTAL RESPONSE NO. 2:**

Kimberly Dismukes.

**DISCOVERY REQUEST NO. 3:**

Identify any person you intend to call as a fact witness, the subject matter of the witness' testimony, the substance and basis of the facts to be testified to, the data, documents, materials or other information shown to, relied upon, created by or considered by the witness as part of this case, any exhibits to be used by the witness, a full resume for the witness, the compensation to be

paid for the testimony, and a listing of any other cases in which the witness has testified at trial or by deposition.

**RESPONSE NO. 3:**

The City has not yet identified fact witnesses that it will call. Without waiving its objections, to the extent that the City identifies fact witnesses that it will call, it will supplement this response.

**DISCOVERY REQUEST NO. 4:**

Identify any person you intend to call as an expert witness, the subject matter of the witness' testimony, the substance and basis of the facts and opinions to be expressed, the data, documents, materials or other information shown to, relied upon, created by or considered by the witness as part of this case and/or as a basis in forming his or her opinions, any exhibits to be used as a summary of or support for each such opinion, the qualifications of the witness, including a full resume, a list of all publications authored by the witness, the compensation to be paid for the study and testimony, and a listing of any other cases in which the witness has testified at trial, by deposition or submitted written testimony.

**RESPONSE NO. 4:**

The City has consulted with certain experts in preparation for the hearing of this matter. These experts may not be called as witnesses and, therefore, the identity of, facts known by, or opinions held by such experts are not discoverable under Rule 26(4)(B), Tennessee Rules of Civil Procedure, until a decision is made by the City that they will be called as trial witnesses. A decision cannot be made by the City with respect to utilization of such experts as trial witnesses until TAWC fully responds to the Intervenor's discovery requests and such responses can be analyzed by the City and its consulting experts. Without waiving its objections, following

receipt of TAWC's complete discovery responses, City will finish its review and will supplement this response if necessary.

**SUPPLEMENTAL RESPONSE NO. 4:** City will call as an expert witness Kimberly H. Dismukes, 5800 One Perkins Place Drive, Suite 5-F, Baton Rouge, Louisiana 70808. Attached as TAWC-1-04 Supplement is a description of Ms. Dismukes' qualifications. The subject matter of Ms. Dismukes' testimony, the substance and basis of the facts and opinions to be expressed, the data, documents, materials or other information relied upon by Ms. Dismukes and exhibits to presented by Ms. Dismukes have not yet been determined. It is anticipated that Ms. Dismukes will address topics that will include, without limitation, affiliate transactions, service company charges, TAWC's "benchmarking" methodology, and TAWC's "market cost" approach.

**SECOND SUPPLEMENTAL RESPONSE NO. 4:** *See* Pre-Filed Testimony of Kimberly Dismukes and Exhibits to Ms. Dismukes' Pre-Filed Testimony.

**DISCOVERY REQUEST NO. 5:**

Please identify and produce any and all engagement letters, expert reports and work papers (including drafts) created by or provided to any expert or other witness.

**RESPONSE NO. 5:**

Any engagement letters with consulting experts are not discoverable under Rule 26(4)(B), Tennessee Rules of Civil Procedure, until a decision is made by the City that the consulting experts will be called as trial witnesses. As noted in response to the previous request, a decision cannot be made by the City with respect to utilization of such experts as trial witnesses until TAWC fully responds to the Intervenor's discovery requests and such responses can be analyzed by the City and its consulting experts. Without waiving its objections,

following receipt of TAWC's complete discovery responses, City will finish its review and will supplement this response if necessary.

**SUPPLEMENTAL RESPONSE NO. 5:**

The engagement letter with Kimberly Dismukes dated October 20, 2010, contains and constitutes attorney work product, including discussion of initial consultation efforts and descriptions of analytical approaches that disclose the confidential mental impressions, conclusions, and legal theories of the City's counsel, and the letter is being withheld on that basis. Without waiving any work product protection or other applicable privilege, the engagement arrangement with Ms. Dismukes specifies that her time is to be billed at the rate of \$165.00 per hour and that her fees shall not exceed \$42,515.00.

**DISCOVERY REQUEST NO. 6:**

Please produce in electronic media (Word, Excel, or other Microsoft Office compatible format) and in hard copy all work papers and other documents, created by or relied upon by all City witnesses.

**RESPONSE NO. 6:**

The requested information has not yet been developed by the City and therefore cannot be provided at this time. Without waiving its objections, City will supplement its responses to this request after the information sought becomes available.

**DISCOVERY REQUEST NO. 7:**

Please identify and produce a copy of all trade articles, journals, treatises, speeches and publications of any kind in any way utilized or relied upon by any of the City's proposed expert



witnesses in evaluating, reaching conclusions or formulating an opinion in the captioned matter as well as all articles, journals, speeches, or books written or co-written by any City witness.

**RESPONSE NO. 7:**

The City has consulted with certain experts in preparation for the hearing of this matter. These experts may not be called as witnesses and, therefore, the identity of, facts known by, or opinions held by such experts are not discoverable under Rule 26(4)(B), Tennessee Rules of Civil Procedure until a decision is made by the City that they will be called as trial witnesses. A decision cannot be made by the City with respect to utilization of such experts as trial witnesses until TAWC fully responds to the Intervenor's discovery requests and such responses can be analyzed by the City and its consulting experts. Without waiving its objections, following receipt of TAWC's complete discovery responses, City will finish its review and will supplement this response, if necessary.

**DISCOVERY REQUEST NO. 8:**

Please identify and produce any and all documentation, items, reports, data, communications, and evidence of any kind that the City intends to offer as evidence at the hearing or to refer to in any way at the hearing.

**RESPONSE NO. 8:**

The requested information has not yet been developed by the City and therefore the Request cannot be provided at this time. Without waiving its objections, City will supplement its responses to this request after the information sought becomes available.

**SUPPLEMENTAL RESPONSE NO. 8:**

*See Pre-Filed Testimony of Kimberly Dismukes and Exhibits to Ms. Dismukes' Pre-Filed Testimony.*

**DISCOVERY REQUEST NO. 9:**

If you believe that TAWC has made any admission or statement against interest that contradicts the request(s) for relief, including any increase in rates, made by TAWC in TRA Docket No. 10-00189, please state with specificity any and all admissions or statements against interest allegedly made by TAWC. For each such admission or statement against interest state:

- a. The identity of the person making each admission or statement;
- b. The location where each admission or statement was made;
- c. The date and time each admission or statement was made;
- d. The identity of all persons present when each admission or statement was made; and
- e. Identify all documents which refer or relate to each admission or statement and attach copies of said documents hereto.

**RESPONSE NO. 9:**

Without waiving its objections, following receipt of TAWC's complete discovery responses, City will finish its review and will supplement this response.

**DISCOVERY REQUEST NO. 10:**

Please state the City's 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 each of those respective cases.

**RESPONSE NO. 10:**

The City objects to this request on the grounds (i) that the request seeks information that is not relevant to these proceedings and is not likely to result in the discovery of relevant information; and (ii) that the information sought, to the extent that it exists, is obtainable from

some other sources, i.e., public filings in the possession of TAWC, that are more convenient, less burdensome and less expensive.

**SUPPLEMENTAL RESPONSE NO. 10:** The City expressed no position as to the total amount of the revenue requirement to which TAWC was entitled in Docket Nos. 08-00039 and 06-00290.

**DISCOVERY REQUEST NO. 11:**

Please identify, other than your attorneys, each person who provided information or participated in the preparation of the responses to each of these discovery requests, and for each such person specify the responses for which he or she provided information or participated in preparing.

**RESPONSE NO. 11:**

Other than consulting experts, whose identities are not discoverable under Rule 26(4)(B), Tennessee Rules of Civil Procedure until a decision is made by the City that they will be called as trial witnesses, none.

**SUPPLEMENTAL RESPONSE NO. 11:**

Kimberly Dismukes has prepared the Pre-Filed Testimony referenced in certain supplemental responses.

**DISCOVERY REQUEST NO. 12:**

Identify all persons with whom you consulted prior to answering these discovery requests.

**RESPONSE NO. 12:**

Other than consulting expert(s), whose identity is not discoverable under Rule 26(4)(B), Tennessee Rules of Civil Procedure until a decision is made by the City that they will be called as trial witnesses, none.

**SUPPLEMENTAL RESPONSE NO. 11:**

Kimberly Dismukes has prepared the Pre-Filed Testimony referenced in certain supplemental responses.

**DISCOVERY REQUEST NO. 13:**

Please identify all documents reviewed by you to respond to these discovery requests.

**RESPONSE NO. 13:**

The City has reviewed various portions of the pre-filed testimony by TAWC, responses to the data requests of the TRA, and the testimony and documents produced in previous TAWC rate cases.

**DISCOVERY REQUEST NO. 14:**

Produce all documents identified or specified in your answers or responses to the discovery requests.

**RESPONSE NO. 14:**

The City objects to this request on the ground that TAWC has in its possession the documents and information identified or specified herein.

Respectfully Submitted,

OFFICE OF THE CITY ATTORNEY

By: 

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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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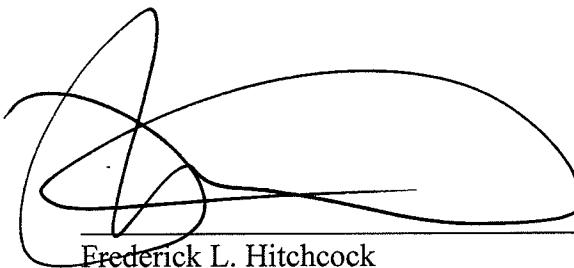
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This 6th day of January, 2011.



Frederick L. Hitchcock