

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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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. 04-00288

CONSUMER ADVOCATE'S RESPONSE TO TENNESSEE AMERICAN WATER
COMPANY'S REQUEST FOR DISCOVERY

Comes now Paul G. Summers, Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate" or "CAPD"), and hereby submits the following responses to Discovery Requests propounded by Tennessee American Water Company ("TAWC" or "Company").

GENERAL OBJECTIONS

1. The Consumer Advocate objects to the definitions and instructions contained in the data requests to the extent that the definitions and instructions attempt to impose on the Consumer Advocate a burden or obligation greater than that required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

2. The Consumer Advocate objects to the data requests to the extent they call for information and the production of documents which are protected from disclosure by the attorney-client privilege, the attorney work product doctrine or any other applicable privilege or

protection. In particular, the Consumer Advocate objects to requests seeking its legal research related to pertinent statutes, rules, orders and case law. The Consumer Advocate objects to the data requests to the extent that the Company is attempting to impose on the Consumer Advocate obligations with regard to identification of privileged documents beyond those required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

3. The Consumer Advocate objects to the Company's data requests to the extent they seek information relating to matters not at issue in this litigation or to the extent they are not reasonably calculated to lead to the discovery of admissible evidence. By providing information in response to these requests, the Consumer Advocate does not concede that such information is relevant, material or admissible in evidence. The Consumer Advocate reserves all rights to object to the use of such information as evidence.

4. The Consumer Advocate objects to the Company's data requests to the extent that the Company is attempting to require the Consumer Advocate to provide information and produce documents beyond those in its possession, custody or control as that phrase is used in the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

5. The Consumer Advocate objects to the Company's data requests to the extent they seek information and documents that are readily available through public sources or are in the Company's own possession, custody or control. It is unduly burdensome and oppressive to require the Consumer Advocate to respond or produce documents that are equally available to the Company.

6. The Consumer Advocate's objections and responses to these requests are based on information now known to it. The Consumer Advocate reserves the right to amend, modify or supplement its objections and responses if it learns of new information.

7. The Consumer Advocate's responses to these requests are made without waiving or intending to waive the right to object to the use of any information provided in this response in any subsequent proceeding or trial of this or any other action. The Consumer Advocate's responses to these requests are also not a waiver of any of the foregoing objections or any objections it has made or may make with respect to any similar, related, or future data request, and the Consumer Advocate specifically reserves the right to interpose any objection to further requests notwithstanding any response or lack of objection made in this response.

8. The Consumer Advocate objects to any request seeking all documents reviewed by its witnesses over an undefined time period. Such a request is ambiguous, overly broad, burdensome and is not likely to lead to the discovery of admissible evidence.

9. The Consumer Advocate expressly incorporates these general objections into its responses set forth below.

DISCOVERY REQUEST NO. 1:

State each fact that you rely on to support your contention(s), position(s) or belief(s) that any of the request(s) for relief, including any increase in rates, made by TAWC in TRA Docket No. 04-00288 should not be approved by the Tennessee Regulatory Authority ("TRA").

RESPONSE: Subject to and without waiving any objections stated above the Consumer Advocate responds to the specific request as follows:

The Consumer Advocate's investigation and discovery is ongoing at present in this matter. A great deal rests on the responses provided to its discovery requests by TAWC. The Consumer Advocate will supplement this response at a later time. The Consumer Advocate anticipates the written testimony submitted by its witnesses in this docket will be complete in the sense that all necessary supporting material will either be supplied or appropriate citations will be made at the time of filing.

DISCOVERY REQUEST NO. 2:

Identify all persons known to you, your attorney, or other agent who have knowledge, information or possess any document(s) or claim to have knowledge, information or possess any document(s) which support your answer to Interrogatory number one (1) above.

RESPONSE: Subject to and without waiving any objections stated above the Consumer Advocate responds to the specific request as follows:

The staff of the Consumer Advocate, the staff of the TRA and the employees and hired consultants identified in this docket by the parties involved.

DISCOVERY REQUEST NO. 3:

Identify each document, photograph, or any other article or thing whatsoever, which you rely on to corroborate any part of your contention(s), position(s) or belief(s) that any of the request(s) for relief, including any increase in rates, made by TAWC in TRA Docket No. 04-00288 should not be approved, whether as to the issues of credibility or any other issue, or which is adverse to these same contention(s), position(s) or belief(s).

RESPONSE: Subject to and without waiving any objections stated above the Consumer Advocate responds to the specific request as follows:

See response to Discovery Request No. 1.

DISCOVERY REQUEST NO. 4:

With respect to each person you expect to call as a witness, including any expert witness, regarding this matter, state or provide:

- a. the witness's full name and work address;

RESPONSE: Subject to and without waiving any objections stated above the Consumer Advocate responds to the specific request as follows:

The Consumer Advocate objects to this request. This request seeks information not discoverable pursuant to Tenn. R. Civ. P. 26.02(3)&(4). Without waiving this objection, the Consumer Advocate notifies the requesting party that the Consumer Advocate is still conducting its investigation in this matter and is awaiting responses to its discovery requests. Accordingly, witnesses have not yet been determined nor have they prepared their testimony for this case. If testimony is prepared and filed, it will be provided. This testimony will contain the identity of any expert witness, the subject matter regarding the issues addressed, the substance of the facts and opinions regarding the issues addressed and a summary of the grounds for each opinion. The witnesses will likely come from the Consumer Advocate professional staff: Dr. Steve Brown, Terry Buckner, Mike Chrysler, and/or Dan McCormac. To the extent this request calls for anything more than the testimony and exhibits of Consumer Advocate expert witnesses, the Consumer Advocate objects on the ground that it is overly broad and burdensome because any

relevant information discoverable within the scope of Tenn. R. Civ. P. 26, as interpreted by the legal counsel at the TRA, will be provided in the pre-filed testimony which will be filed well in advance of the hearing on the merits.

- b. each subject matter about which such witness is expected to testify;

RESPONSE: See response to Discovery Request No. 4(a).

- c. the substance of the facts and opinions to which any expert is expected to testify;

RESPONSE: See response to Discovery Request No. 4(a).

- d. a summary of the grounds or basis of each opinion to which such witness is expected to testify;

RESPONSE: See response to Discovery Request No. 4(a).

- e. whether or not the expert has prepared a report, letter or memorandum of his findings, conclusions, or opinions;

RESPONSE: See response to Discovery Request No. 4(a).

- f. the witness's complete background information, including current employer, educational, professional and employment history, and qualifications within the field in which the witness is expected to testify, and identify all publications written or presentations made in whole or in part by the witness;

RESPONSE: See response to Discovery Request No. 4(a).

- g. an identification of any matter in which the expert has testified (through deposition or otherwise) by specifying the name, docket number and forum of each case, the dates of the prior testimony and the subject of the prior testimony, and identify the transcripts of any such testimony;

RESPONSE: See response to Discovery Request No. 4(a).

h. the identity of any person with whom the witness consulted or otherwise communicated in connection with his expected testimony;

RESPONSE: See response to Discovery Request No. 4(a).

i. the terms of the retention or engagement of each expert including but not limited to the terms of any retention or engagement letters or agreements relating to his/her engagement, testimony, and opinions as well as the compensation to be paid for the testimony and opinions;

RESPONSE: See response to Discovery Request No. 4(a).

j. the identity of all documents or things shown to, delivered to, received from, relied upon, or prepared by any expert witness, which are related to the witness' expected testimony in this case, whether or not such documents are supportive of such testimony, including without limitation all documents or things provided to that expert for review in connection with testimony and opinions; and

RESPONSE: See response to Discovery Request No. 4(a).

k. the identity of any exhibits to be used as a summary of or support for the testimony or opinions provided by the expert.

RESPONSE: See response to Discovery Request No. 4(a).

DISCOVERY REQUEST NO. 5:

Provide any and all documents identified or specified in your answers or responses to the discovery requests served upon you in this matter.

RESPONSE: Subject to and without waiving any objections stated above the Consumer

Advocate responds to the specific request as follows:

See response to request No. 4(a). The documents and things relied upon by its witnesses and are which are not generally available to the public, will be provided as attachments to the testimony filed in this docket or will be provided separately once the Consumer Advocate has completed its investigation of this matter.

DISCOVERY REQUEST NO. 6:

Provide any and all documents and things relied upon by any CAPD witness in submission of testimony in this matter.

RESPONSE: Subject to and without waiving any objections stated above the Consumer Advocate responds to the specific request as follows:

See response to Discovery Request No. 5.

DISCOVERY REQUEST NO. 7:

Provide any and all expert reports which have been obtained from any expert.

RESPONSE: Subject to and without waiving any objections stated above the Consumer Advocate responds to the specific request as follows:

See response to Discovery Request No. 5.

DISCOVERY REQUEST NO. 8:

Provide each document, photograph, or any other article or thing whatsoever, upon which you rely in support of your contention(s), position(s) or belief(s) that any of the request(s) for

Please produce a copy of all articles, journals, books or speeches written by or co-written by any of CAPD's expert witnesses, whether published or not.

RESPONSE: Subject to and without waiving any objections stated above the Consumer

Advocate responds to the specific request as follows:

This material is available at the TRA website in TRA Docket No. 01-00704.

DISCOVERY REQUEST NO. 12:

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

RESPONSE: Depending on how this request is interpreted, it appears to request items which are the work product of the Consumer Advocate. The Consumer Advocate objects to the request to the extent TAWC is actually seeking to discovery the mental impressions of legal counsel and/or the documents legal counsel might use at the hearing of this matter. Subject to and without waiving any objections stated above the Consumer Advocate responds to the specific request as follows:

See response to Discovery Request No. 5.

DISCOVERY REQUEST NO. 13:

Please produce copies of any and all documents referred to or relied upon in responding to these discovery requests.

RESPONSE: Subject to and without waiving any objections stated above the Consumer

Advocate responds to the specific request as follows:

See response to Discovery Request No. 5.

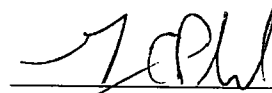
DISCOVERY REQUEST NO. 14:

Please identify 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 to which he or she provided information or participated in preparing, and describe the information provided or the participation in preparation.

RESPONSE: Subject to and without waiving any objections stated above the Consumer Advocate responds to the specific request as follows:

Most of the professional staff of the Consumer Advocate participated in some manner with regard to responding to these requests.

Respectfully submitted,



TIMOTHY C. PHILLIPS, B.P.R. # 012751
Senior Counsel



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Dated: December 1, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been served via the methods indicated on this 1 day of December, 2004, to the following:

Via first-class U.S. mail, postage prepaid:

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