

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION OF TENNESSEE)	DOCKET NO. 06-00290
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)	
)	

**CONSUMER ADVOCATE’S RESPONSE TO TENNESSEE AMERICAN WATER
COMPANY’S OBJECTIONS TO FIRST DISCOVERY REQUEST OF THE
CONSUMER ADVOCATE AND MOTION TO COMPEL**

The Tennessee Attorney General, by and through the Consumer Advocate and Protection Division ("Consumer Advocate"), responds and moves for a motion to compel as follows to the objections of Tennessee American Water Company ("TAWC") to the First Discovery Request of the Consumer Advocate.

INTRODUCTION

In accordance with the procedural schedule established by the Hearing Officer, the Consumer Advocate filed its first initial discovery request and served same on TAWC on January 22, 2007. On February 6, 2007, TAWC filed and served the Consumer Advocate the responses which are the subject of this motion. In its responses, TAWC raised objections to the Consumer Advocate’s discovery requests. In addition, the Consumer Advocate found some responses deficient. Due to restrictions of time and the demand of resources required to adequately review the responses that TAWC provided, the Consumer Advocate has not yet had the opportunity to informally discuss and

work through these discovery disputes with the parties to this matter but will attempt to do so as soon as possible.

The Consumer Advocate's First Discovery Request was divided into three Parts. This motion chiefly concerns responses and objections posed by TAWC to Part II ("Questions & Production Requests Regarding Accounting, Revenue and Operating Expenses") and Part III ("Questions & Production Requests Regarding Cost of Capital and Miscellaneous") of the Consumer Advocate's First Discovery Request. The company's responses to questions/requests 15, 16, 17, 34, 35, 36 and 37 of Part II are deficient. This motion seeks to compel more responsive answers from TAWC. The specific discovery question, company response and the response of the Consumer Advocate as to the deficiency of the company's response are addressed under the heading "Part II".

Furthermore, TAWC posed several objections in lieu of responsive answers to questions and production requests under Part III of the Consumer Advocate's First Discovery Request. This motion seeks to compel the company to provide full responses. The specific discovery question, the company objection and the response of the Consumer Advocate to these objections are addressed under the heading "Part III".

STANDARD FOR DISCOVERY

Tennessee has a broad policy which favors the discovery of any relevant information:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Tenn. R. Civ. P. 26.02(1). Thus, evidence does not have to be admissible to be discoverable as long as the information sought appears reasonably calculated to lead to the discovery of admissible

evidence.

Today, it is through discovery rather than pleadings that the parties attempt “to find the truth and to prepare for the disposition of the case in favor of the party who is justly deserving of a judgment.” *Kuehne & Nagel, Inc. v. Preston, Skahan & Smith International, Inc.*, 2002 WL 1389615 at *3 (Tenn. Ct. App. 2002) (quoting Irving Kaufman, *Judicial Control Over Discovery*, 28 F.R.D. 111, 125 (1962)). Accordingly, a party seeking discovery is entitled to obtain any information that is relevant to the case and not privileged. *See Id.* Consistent with Tennessee’s open discovery policy, the relevancy requirement is “construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on any of the case’s issues.” *Id.* Discovery therefore is not limited to the issues raised by the pleadings. *See Id.*, *see also Shipley v. Tennessee Farmers Mutual Ins. Co.*, 1991 WL 77540 at *7-8 (Tenn. Ct. App. 1991). A party may also use discovery to: define and clarify the issues; probe a variety of fact-oriented issues that are not related to the merits of the case; formulate and interject additional issues into the case which relate to the subject matter of the pleadings; and determine additional causes of actions or claims which need to be or can be asserted against a party or against third parties. *See Shipley*, 1991 WL 77540 at *7-8 (quoting *Vythoulkas v. Vanderbilt University Hospital*, 693 S.W.2d 350, 359 (Tenn. Ct. App. 1985)).

It is nonetheless recognized that the trial court may limit discovery under appropriate circumstances. Because of the broad policy favoring discovery, however, the trial court should not order limitations on discovery unless the party opposing discovery can demonstrate with more than conclusory statements and generalizations that the discovery limitations are necessary to protect the party from annoyance, embarrassment, oppression, or undue burden and expense. *See Duncan v. Duncan*, 789 S.W.2d 557, 561 (Tenn. Ct. App. 1991). The trial court should decline to limit

discovery if the party opposing discovery cannot produce specific facts to support the requested limitations. *See Id.* Moreover, given the liberal construction of discovery rules, the trial court should approach any request for limitations with common sense rather than with narrow legalisms, basing the reasonableness of any ordered limitations on the character of the information sought, the issues involved, and the procedural posture of the case. *See Id.* Rather than denying discovery outright, it is appropriate for the trial court to fashion remedies to discovery issues by balancing the competing interests and hardships of the parties and by considering whether there are less burdensome means for acquiring the requested information. *See Id.*

PART II: QUESTIONS & PRODUCTION REQUESTS REGARDING ACCOUNTING, REVENUE & OPERATING EXPENSES

CAPD Request 15. Provide the amounts for relocation expenses, the STEP Project, and severance pay by account, by month for the twenty-five months ended January 31, 2007. See S. Miller's direct testimony, page 13, Lines 8-9.

Response 15 of TAWC: [TAWC provided a chart which has been omitted from this motion because the chart itself is not in issue.]

RESPONSE 15 OF THE CONSUMER ADVOCATE: The Consumer Advocate considers this response to be deficient as to the identity of the accounts provided. Identification of the accounts is necessary in order to properly classify the forecasted amounts of operation and maintenance expenses for the attrition period. In particular, without the detailed account information, the Consumer Advocate will be unable to present its forecast in the same format as the TRA's surveillance reports

which format has traditionally been used for prior rate cases. Moreover, unless the information is provided by account as requested, the Consumer Advocate will not be able to reconcile the financial data presented in the Company's petition with the financial data reported on the Company's 3.06 surveillance reports. Such reconciliation is necessary to assure that the Company's petition is properly grounded in the previously reported financial results of the Company.

CAPD Request 16. Provide the amounts for the amortization of the security costs, penalties, director expense credit, and EIP Contributions expense credit by account, by month for the twenty-five months ended January 31, 2007. See S. Miller's direct testimony, page 13, Lines 32-37.

Response 16 of TAWC: [TAWC provided a chart which has been omitted from this motion because the chart itself is not at issue.]

RESPONSE 16 OF THE CONSUMER ADVOCATE: The Consumer Advocate considers this response to be deficient as to the identity of the accounts provided. Identification of the accounts is necessary in order to properly classify the forecasted amounts of operation and maintenance expenses for the attrition period. In particular, without the detailed account information, the Consumer Advocate will be unable to present its forecast in the same format as the TRA's surveillance reports which format has traditionally been used for prior rate cases. Moreover, unless the information is provided by account as requested, the Consumer Advocate will not be able to reconcile the financial data presented in the Company's petition with the financial data reported on the Company's 3.06 surveillance reports. Such reconciliation is necessary to assure that the Company's petition is properly grounded in the previously reported financial results of the Company.

CAPD Request 17. Provide the amount for net negative salvage expense by account, by month for the twenty-five months ended January 31, 2007. See S. Miller's direct testimony, page 14, Lines 6-7. Include in your response an explanation of net negative salvage expense and state and or explain whether this amount should have been charged to an Accumulated Depreciation account instead?

Response 17 of TAWC: See attached schedule (omitted from this motion). Historically in regulated utilities net negative salvage is a component of depreciation expense that is recovered over the life of the asset through the depreciation rates approved for rate recovery. FAS 143, requires a reclassification of a portion of the net negative salvage included in regulatory approved depreciation expense to operating expense.

While the per books numbers included in the Company's filing reflects GAAP accounting for the net negative salvage, the Company has properly reclassified net negative salvage to depreciation expense in its going-level and pro-forma adjustments.

The number for January 2007 is not yet available. Once we are in receipt of this balance, a revised response will be submitted.

RESPONSE 17 OF THE CONSUMER ADVOCATE: The Consumer Advocate considers this response to be deficient as to the identity of the accounts provided. Identification of the accounts is necessary in order to properly classify the forecasted amounts of operation and maintenance expenses for the attrition period. In particular, without the detailed account information, the Consumer Advocate will be unable to present its forecast in the same format as the TRA's surveillance reports which format has traditionally been used for prior rate cases. Moreover, unless the information is provided by account as requested, the Consumer Advocate will not be able to reconcile the financial

data presented in the Company's petition with the financial data reported on the Company's 3.06 surveillance reports. Such reconciliation is necessary to assure that the Company's petition is properly grounded in the previously reported financial results of the Company.

CAPD Request 34. Provide a historical and a forecast summary of Total Gallons of Water Treated; Total Gallons of Water Billed; and Total Gallons of Water Unaccounted For, by month for the period January 2005 through February 2008.

Response 34 of TAWC: See attached schedule [omitted from this motion].

RESPONSE 34 OF THE CONSUMER ADVOCATE: The Consumer Advocate considers this response to be deficient as the forecast volumes provided are not by month as requested. The summary data provided is not sufficient to create the trends and forecasts needed for this case.

CAPD Request 35. Provide and detail the percentage by year of "unaccounted-for water" for TAWC for each year since 2000. Please provide the comparison vs. company goals (forecast) and compare with the unaccounted for rates for other American Water Works companies over the same period.

Response 35 of TAWC: TAWC objects to this question on the grounds that the requested information is unduly burdensome, overly broad, in part not in the possession and control of TAWC, and in part not relevant to this proceeding. The requested information related to other AWWC operating companies is not relevant to this proceeding or in the possession or control of TAWC.

Notwithstanding the objection, TAWC provides the following response. Please see in the table below the information requested for TAWC. Every water system has a level of unsold water and that level fluctuates for each system depending on the age of facilities, system operating pressures, terrain, facilities replacement programs, and many other factors specific to each system. The goals and objectives of TAWC regarding unaccounted for water is to minimize water loss through efficient production and distribution system operation, and reasonable, cost effective replacement programs for mains and other utility plant items that have reached the end of their useful life and whose replacement can have an impact on unaccounted for water. These goals are accomplished by having dedicated plants that utilize knowledgeable personnel, electronic equipment to monitor survey and detect leakage, repair leakage timely, replace and test plant and customer meters on appropriate schedules. TAWC's efforts also involve the investment in (i) mains with maintenance issues, (ii) pressure control where feasible, and (iii) replacement of infrastructure that has reached the end of its economical useful life (meters, water mains, fire hydrants and service lines, etc.). Finally, part of the objective is to monitor and account for uses of water in the public good that is not sold but accounted for, such as fire usage and street cleanings, and minimize or eliminate theft of water that can be substantiated. TAWC is committed to all of the programs described above in order to minimize water loss.

RESPONSE 35 OF THE CONSUMER ADVOCATE: The Consumer Advocate considers this response to be deficient as the data provided does not contain a comparison of unaccounted for rates for other AWW companies over the same period. This data is relevant to this proceeding as a measure of efficiency and service to consumers.

CAPD Request 36. Provide all NARUC or FERC accounts 601-through 675 by month, by account, show the actual or forecasted gross and net expense after deducting salaries and wages for the forty-four months ended February 2008.

Response 36 of TAWC: This information was provided in TRA data request 1 question 28 through the test period. It has been updated for this request through December 2006 and the end of the attrition period as shown on the attached spreadsheet (omitted from this motion). We do not have the data available to provide it for every month of the attrition period in detail by account as the filing was calculated as a point in time at the end of the attrition period.

The actual January 2007 data is not yet available. Upon receipt of this data TAWC will submit a revised response.

RESPONSE 36 OF THE CONSUMER ADVOCATE: The Consumer Advocate considers this response to be deficient as there are no Monthly Account amounts provided by account in the response. The summary data provided is not sufficient to create the trends and forecasts needed for this case.

CAPD Request 37. Please provide an Excel spreadsheet providing the necessary calculations explaining the disparity relationship between “Residential” and “Commercial” gallons per day (Appendix C) in Dr. Spitznagel’s testimony where “Residential” has **decreased from 155.14 to 146.23 gallons per day between the data provided in** 04-00288 and 06-00290 and Commercial gallons per day **increased** to 1055.43 gallons per day from 1023.67. Provide a narrative explaining the usage per day disparity between residential and commercial gallons per day detailed in the responding excel spreadsheet.

Response 37 of TAWC: Please see the attached schedules [omitted from this motion].

RESPONSE 37 OF THE CONSUMER ADVOCATE: The responding schedule includes a footnote prepared by Dr. Ed Spitznagel which states that “I have removed the effects of weather...”. The Consumer Advocate considers this response to be deficient as the response does not include a factual basis, a citation to work papers, source or known method presented for how one can account for the “effects of weather”. Without such information the Consumer Advocate can find no support for the schedule provided as a response to this question.

PART III: QUESTIONS & REQUESTS REGARDING COST OF CAPITAL & MISCELLANEOUS

CAPD Request 1. Regarding Dr. Vilbert's testimony filed in this docket:

1 (a). Provide copies of the following documents referenced in Dr. Vilbert's testimony:

(iv) Dr. Vilbert's Expert Report in the United States Tax Court, Docket No. 21309-05, 34th Street Partners, DH Petersburg Investment, LLC and Mid-Atlantic Finance, Partners Other than the Tax Matters Partner, Petitioner, v. Commissioner of Internal Revenue, Respondent, July 28, 2006.

Response 1 of TAWC: The Tax Court contains confidential tax payer information and cannot be released.

RESPONSE OF THE CONSUMER ADVOCATE: Dr. Vilbert's testimony in this case discusses taxes extensively, thus such a report is relevant to both Dr. Vilbert's testimony, expert conclusions and basis of his opinion under the Tennessee Rules of Evidence. Confidential data can be provided

pursuant to the Protective Order in place in this matter.

CAPD Request 5. In TRA Docket No. 06-00119, TAWC received the Tennessee Regulatory Authority's approval for a change of control. In that Docket, TAWC stated on p. 8 of the Petition for Approval of Change in Control filed on 4/21/2006 that "The Proposed Transaction will not impair the ability of the Petitioner to maintain a reasonable capital structure that is representative of other utilities." Having received that approval to proceed with the change where Thames Water Aqua US Holdings, Inc. ("TWAUSHI") and American Water Works Company, Inc. ("AWW") will merge via an Initial Public Offering and where the surviving company is AWW, and where the petition in that docket described "the marketing effort" for the IPO, produce:

- 5(a). a copy of any related registration statement that has been filed with the Securities and Exchange Commission;
- 5(b). the names of the legal firm or attorneys selected to handle the IPO and the approximate date the selection was made;
- 5(c). the names of the underwriters selected to handle the IPO and the approximate date the selection was made;
- 5(d). the names of the accounting firm(s) selected to handle the IPO and the approximate date the selection was made;
- 5(e). a copy of those portions of the underwriting agreement which identify the underwriters' discounts and fees and which identify the underwriters' Over-Allotment option;

Response and Objection 5 of TAWC: TAWC objects to Request No. 5 to the extent it seeks information that is work product or protected by attorney client privileged. (Not withstanding this

objection, TAWC responds to the subparts of Request No. 5 as follows):

5(a) The Company objects to this question, as the requested information is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the previous objection, no such filing presently exists.

5(b) The Company objects to this question, as the requested information is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

5(c) The Company objects to this question, as the requested information is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the Company further objects to producing the requested documents on the ground that they included documents and information of a highly sensitive and confidential nature, with, among other things, federal securities laws implications, that are not adequately protected by the protective order entered by the Hearing Officer in this case and that require greater protections commensurate with the sensitivity of the information contained before they could be produced.

5(d) The Company objects to this question, as the question is vague and ambiguous and the requested information is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

5(e) The Company objects to this question, as the requested information is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the previous objection, no such filing presently exists.

RESPONSE 5 OF THE CONSUMER ADVOCATE: To the extent that the TAWC objections are

based on relevance, the Consumer Advocate would maintain that information related to the proposed IPO is indeed relevant to this case. For example, in its 10K filed with the SEC in March 2002, American Water Works, the former parent of TAW and the soon-to-be parent of TAWC, pointed out that its equity ratio had fallen to 30% and that the supply of short-term credit was contingent on maintaining a minimum equity ratio of 27.5%. Having represented to the Authority that the IPO will result in a reasonable capital structure, Questions 5 (a) to 5(e) and 6-8 go to the point of determining whether the post IPO capital structure and capital structure proposed in this case are similar or disparate and whether consumers in Tennessee will receive benefits from the IPO and whether the consumers in the state are receiving treatment similar to those in other areas served by TAWC's parent. To the extent that TAWC has represented that "marketing" is already in process for the IPO, appraisals of the parent's future market value and discussions with potential investors regarding future revenue streams of the parent are relevant because the revenue streams flow from the subsidiary, TAWC, to the parent.

The Consumer Advocate would further state that such information is relevant to a rate case proceeding under Tennessee law. In *Tennessee Public Service Commission v. Nashville Gas Company*, 515 S.W.2d 315, 321 (Tenn. 1977), the Tennessee Supreme Court held that it was proper for the PSC to look into the transactions between a parent and its subsidiary in a rate case because these transactions were necessary in determining "the proper rate base and rate structure of the [regulated] subsidiary."

CAPD Request 6. Produce copies of all appraisals or other reports in the possession of TWAUSHI or AWW, or RWE, or the Thames Water Aqua Holdings, or the underwriters where such appraisals or reports estimate the fair value of the merged company's stock at any point in time from the day of the offering through December 31, 2010;

6(a). Produce a record of those portions of the proposed Charter or proposed Bylaws where the Charter of the Bylaws address AWW's capitalization;

6(b). Provide copies of all written communications, including emails, between the selected underwriters and TWAUSHI or AWW, or RWE, or the Thames Water Aqua Holdings where such communications request or discuss AWW's future revenues or AWW's future stock prices;

6(c). Provide copies of all written communications, including emails, between the selected underwriters and investors or potential investors in AWW;

6(d). Provide copies of all written communications where stock grants, bonuses, and option grants to AWW's employees or officers are proposed or discussed.

Response and Objection 6 of TAWC: TAWC objects to Request No. 6 to the extent it seeks information that is work product or protected by the attorney client privilege. Notwithstanding this objection, TAWC responds to the subparts of Request No. 6 as follows:

6(a) The Company objects to this question, as the requested information is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the Company further objects to producing the requested documents on the ground that they include documents and information of a highly sensitive and confidential nature, with, among other things, federal securities laws implications, that are not adequately protected by the protective order entered by the Hearing Officer in this case and that require greater protections commensurate with the sensitivity of the information contained before they could be produced. Notwithstanding the previous objections, the Company offers the following information: No such documents currently exist.

6(b) The Company objects to this question, as the question is overbroad, unduly burdensome, the requested information is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the Company further objects to producing the requested documents on the ground that they include documents and information of a highly sensitive and confidential nature, with, among other things, federal securities laws implications, that are not adequately protected by the protective order entered by the Hearing Officer in this case and that require greater protections commensurate with the sensitivity of the information contained before they could be produced.

6(c) The Company objects to this question, as the question is overbroad, unduly burdensome, the requested information is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the Company further objects to producing the requested documents on the ground that they include documents and information of a highly sensitive and confidential nature, with, among other things, federal securities laws implications, that are not adequately protected by the protective order entered by the Hearing Officer in this case and that require greater protections commensurate with the sensitivity of the information contained before they could be produced.

6(d) The Company objects to this question, as the question is overbroad, unduly burdensome, the requested information is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE 6 OF THE CONSUMER ADVOCATE: To the extent that the TAWC objections are based on relevance, the Consumer Advocate would maintain that information related to the proposed IPO is in deed relevant to this case. For example, in its 10K filed with the SEC in March 2002,

American Water Works, the former parent of TAW and the soon-to-be parent of TAW, pointed out that its equity ratio had fallen to 30% and that the supply of short-term credit was contingent on maintaining a minimum equity ratio of 27.5%. Having represented to the Authority that the IPO will result in a reasonable capital structure, Questions 5 (a) to 5(e) and 6-8 go to the point of determining whether the post IPO capital structure and capital structure proposed in this case are similar or disparate and whether consumers in Tennessee will receive benefits from the IPO and whether the consumers in the state are receiving treatment similar to those in other areas served by TAWC's parent. To the extent that TAWC has represented that "marketing" is already in process for the IPO, appraisals of the parent's future market value and discussions with potential investors regarding future revenue streams of the parent are relevant because the revenue streams flow from the subsidiary, TAWC, to the parent.

The Consumer Advocate would further state that such information is relevant to a rate case proceeding under Tennessee law. In *Tennessee Public Service Commission v. Nashville Gas Company*, 515 S.W.2d 315, 321 (Tenn. 1977), the Tennessee Supreme Court held that it was proper for the PSC to look into the transactions between a parent and its subsidiary in a rate case because these transactions were necessary in determining "the proper rate base and rate structure of the [regulated] subsidiary."

CAPD Request 7. Produce copies of all appraisals or other reports or other written communication in the possession of TWAUSHI or AWW, or RWE, or the Thames Water Aqua Holdings, or the selected underwriters, or the selected accountants or the selected legal firm where such appraisals or reports estimate the following:

7(a). The expected gross proceeds from the IPO;

7(b). The underwriter's portion of gross proceeds;

7(c). The portion of expected gross proceeds which will flow to AWW;

Response and Objection 7 of TAWC: TAWC objects to Request No. 7 as it is overbroad, unduly burdensome and to the extent it seeks information that is work product, protected by the attorney client privilege or outside of TAWC's possession, custody or control. Notwithstanding this objection, TAWC responds to the subparts of Request No. 7 as follows:

7(a) The Company objects to this question, as the requested information is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the Company further objects to producing the requested documents on the grounds that they include documents and information of a highly sensitive and confidential nature, with, among other things, federal securities laws implications, that are not adequately protected by the protective order entered by the Hearing Officer in this case and that require greater protections commensurate with the sensitivity of the information contained before they could be produced.

7(b) The Company objects to this question, as the requested information is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

7(c) The Company objects to this question, as the requested information is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the previous objection, AWW is not expected to obtain any proceeds from the IPO.

RESPONSE 7 OF THE CONSUMER ADVOCATE: To the extent that the TAWC objections are based on relevance, the Consumer Advocate would maintain that information related to the proposed IPO is in deed relevant to this case. For example, in its 10K filed with the SEC in March 2002, American Water Works, the former parent of TAW and the soon-to-be parent of TAW, pointed out that its equity ratio had fallen to 30% and that the supply of short-term credit was contingent on maintaining a minimum equity ratio of 27.5%. Having represented to the Authority that the IPO will result in a reasonable capital structure, Questions 5 (a) to 5(e) and 6-8 go to the point of determining whether the post IPO capital structure and capital structure proposed in this case are similar or disparate and whether consumers in Tennessee will receive benefits from the IPO and whether the consumers in the state are receiving treatment similar to those in other areas served by TAWC's parent. To the extent that TAWC has represented that "marketing" is already in process for the IPO, appraisals of the parent's future market value and discussions with potential investors regarding future revenue streams of the parent are relevant because the revenue streams flow from the subsidiary, TAWC, to the parent.

The Consumer Advocate would further state that such information is relevant to a rate case proceeding under Tennessee law. In *Tennessee Public Service Commission v. Nashville Gas Company*, 515 S.W.2d 315, 321 (Tenn. 1977), the Tennessee Supreme Court held that it was proper for the PSC to look into the transactions between a parent and its subsidiary in a rate case because these transactions were in determining "the proper rate base and rate structure of the [regulated] subsidiary."

CAPD Request 8. Produce copies of all appraisals or other reports or other written communication in the possession of TWAUSHI or AWW, or RWE, or the Thames Water Aqua

Holdings, or the selected underwriters, or the selected accountants or the selected legal firm where such appraisals or reports estimate:

8(a). The book value of equity which AWW will hold 31 days after the IPO is completed;

8(b). The book value of debt which AWW will bear 31 days after the IPO is completed.

Response and Objection 8 of TAWC: TAWC objects to Request No. 8 as it is overbroad, unduly burdensome and to the extent it seeks information that is work product, protected by the attorney client privilege or outside of TAWC's possession, custody or control. Notwithstanding this objection, TAWC responds to the subparts of Request No. 8 as follows:

8(a). The Company objects to this question, as the requested information is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the Company further objects to producing the requested documents on the ground that they include documents and information of a highly sensitive and confidential nature, with, among other things, federal securities laws implications, that are not adequately protected by the protective order entered by the Hearing Officer in this case and that require greater protections commensurate with the sensitivity of the information contained before they could be produced.

8(b). The Company objects to this question, as the requested information is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the Company further objects to producing the requested documents on the ground that they included documents and information of a highly sensitive and confidential nature, with, among other things, federal securities laws implications, that are not adequately protected by the protective order entered by the Hearing Officer in this case and that require greater protections

commensurate with the sensitivity of the information contained before they could be produced.

RESPONSE OF THE CONSUMER ADVOCATE: To the extent that the TAWC objections are based on relevance, the Consumer Advocate would maintain that information related to the proposed IPO is in deed relevant to this case. For example, in its 10K filed with the SEC in March 2002, American Water Works, the former parent of TAW and the soon-to-be parent of TAW, pointed out that its equity ratio had fallen to 30% and that the supply of short-term credit was contingent on maintaining a minimum equity ratio of 27.5%. Having represented to the Authority that the IPO will result in a reasonable capital structure, Questions 5 (a) to 5(e) and 6-8 go to the point of determining whether the post IPO capital structure and capital structure proposed in this case are similar or disparate and whether consumers in Tennessee will receive benefits from the IPO and whether the consumers in the state are receiving treatment similar to those in other areas served by TAWC's parent. To the extent that TAWC has represented that "marketing" is already in process for the IPO, appraisals of the parent's future market value and discussions with potential investors regarding future revenue streams of the parent are relevant because the revenue streams flow from the subsidiary, TAWC, to the parent.

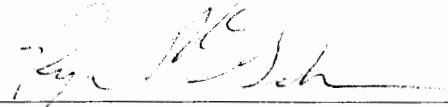
The Consumer Advocate would further state that such information is relevant to a rate case proceeding under Tennessee law. In *Tennessee Public Service Commission v. Nashville Gas Company*, 515 S.W.2d 315, 321 (Tenn. 1977), the Tennessee Supreme Court held that it was proper for the PSC to look into the transactions between a parent and its subsidiary in a rate case because these transactions were necessary in determining "the proper rate base and rate structure of the [regulated] subsidiary."

RESPECTFULLY SUBMITTED,



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Senior Counsel



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via U.S. mail, to:

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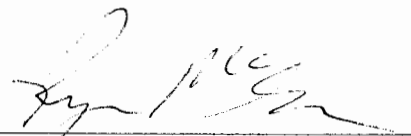
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on this the 8th day of February, 2007.



Ryan L. McGehee