

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

<b>IN RE:</b>	)	
	)	
<b>PETITION OF TENNESSEE</b>	)	
<b>AMERICAN WATER COMPANY TO</b>	)	
<b>CHANGE AND INCREASE CERTAIN</b>	)	
<b>RATES AND CHARGES SO AS TO</b>	)	<b>DOCKET NO. 08-00039</b>
<b>PERMIT IT TO EARN A FAIR AND</b>	)	
<b>ADEQUATE RATE OF RETURN ON</b>	)	
<b>ITS PROPERTY USED AND USEFUL IN</b>	)	
<b>FURNISHING WATER SERVICE TO</b>	)	
<b>ITS CUSTOMERS</b>	)	

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**CONSUMER ADVOCATE AND PROTECTION DIVISION'S LIMITED REPLY  
TO TENNESSEE AMERICAN WATER COMPANY'S RESPONSE IN  
OPPOSITION TO THE CONSUMER ADVOCATE'S MOTION TO ASK  
ADDITIONAL DISCOVERY REQUESTS**

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Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), hereby submits this limited reply to the response of Tennessee American Water Company ("TAWC" or "Company") to the Consumer Advocate's motion requesting permission to ask additional discovery questions in excess of the eighty questions authorized by the Hearing Officer in his Order Granting Petitions to Intervene and Establishing a Procedural Schedule entered on May 1, 2008.

TAWC argues that the Consumer Advocate's motion for additional discovery should be denied because the Consumer Advocate's discovery requests are duplicative and unduly burdensome. As demonstrated below, neither of these arguments has any merit because they are not supported by fact or law. Indeed, these arguments are erroneous and potentially misleading, which is why the

Consumer Advocate submits this limited reply.

**I. The Consumer Advocate's Discovery Requests Are Not Duplicative.**

TAWC identifies two discovery questions of the Consumer Advocate that the Company claims are duplicative of the TRA staff's data requests and accuses the Consumer Advocate of failing to carefully examine the Company's responses to the TRA staff's data requests prior to propounding its discovery. Response at 2-3. First, neither question the Company identifies as being duplicative is actually duplicative of the TRA staff's requests; second, as explained clearly on page 6 of the Consumer Advocate's Memorandum in Support of Motion to Ask Additional Discovery Questions, the Consumer Advocate thoroughly reviewed all of the Company's filings in this docket, including its responses to the TRA staff's data requests, and made serious efforts to refrain from asking discovery questions regarding information that was already submitted or that could be obtained from other sources besides the Company.

The Company asserts that part IV, question 41, propounded by the Consumer Advocate is duplicative of TRA staff data request number 28. This assertion is incorrect because, unlike the TRA staff's request, the Consumer Advocate's question asks for the Company's expense information "by account" rather than the aggregate expense information requested by the TRA staff. The Consumer Advocate needs this information "by account" in order to conduct detailed analyses that could lead to the discovery of nonrecurring expenses, improperly incurred or disallowable expenses, anomalies or mistakes in bookkeeping, as well as ascertaining the various growth rates for particular categories of expenses -- all of which may impact the amount of just and reasonable water rates to be determined in this matter and none of which can be properly analyzed without the requested information being provided "by account."

The Company also asserts that part IV, question 3, propounded by the Consumer Advocate is duplicative of TRA staff data request number 20. This assertion is incorrect because, unlike the TRA staff's request, the Consumer Advocate's question asks for the Company's meter information "by location" and it asks for information covering a longer period of time, including more up-to-date information through March 31, 2008. The Consumer Advocate asked for this additional meter information in order to determine the appropriate amount of regulated revenues, which analysis has a significant impact on the amount of just and reasonable water rates to be determined in this matter. Because different customer rates apply at different locations, it would be impossible for the Consumer Advocate to compute a proper revenue price-out without the requested meter information being provided "by location." Additionally, the information is needed through March 31, 2008, in order to coincide with the Consumer Advocate's test year cut-off, which is based on the most recent year of information practicably available.<sup>1</sup>

## **II. The Company's Burdensome Argument Is Potentially Misleading.**

The Company cites *Kuehn & Nagel, Inc. v. Preston, Skahan & Smith, Int'l, Inc.*, 2002 WL 1389615, No. M-1998-00983-COA-R3-CV, \*4 (Tenn. Ct. App. June 27, 2002), for the proposition that in contested litigation there can be a strong temptation to inflict harm on one's adversary by seeking additional information so that the adversary will have to incur additional costs. Response at 2. The Company also states the Consumer Advocate did not exercise self-discipline in propounding its discovery and asserts the Consumer Advocate asked hundreds of needless questions. Response at 3. Any suggestion that the Consumer Advocate propounded needless discovery for the

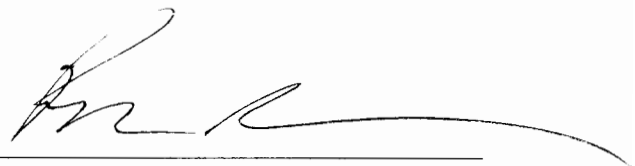
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<sup>1</sup> The Consumer Advocate would note for the record that the Company's response to TRA staff data request number 20 is incomplete in that the information was not provided by meter size as requested by the staff.

purpose of inflicting harm on the Company or running up its costs is patently false. First, the Consumer Advocate has asked the Company to provide only the information the Consumer Advocate needs and does not have. Second, the Consumer Advocate is well aware of who is paying the Company's costs of litigating this case -- and it is neither the Company nor its shareholders. Consumers are paying for the Company's litigation costs; indeed, the Company's request for expenses for trying this matter is among the highest the Consumer Advocate has ever seen in any rate case or proceeding decided by the Authority.

The fact remains that the Consumer Advocate has asked for the information it needs to adequately represent the interests of consumers in this case, and because consumers are paying the Company's litigation costs the Consumer Advocate sees no reason why it should not have the information it has requested in order to represent them. When it comes to weighing the relative burdens of the parties, the Hearing Officer should keep in mind that it is the consumers who will shoulder the burden of any rate increase and also pay the Company's legal bills associated with its pursuit of this increase.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read 'Ryan L. McGehee', written over a horizontal line.

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Dated: May 21, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing is being served via U.S. Mail and/or electronic mail upon:

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This the 21 day of MAY, 2008.

  
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