

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

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

**SUPPLEMENTAL RESPONSES AND OBJECTIONS OF THE CONSUMER
ADVOCATE AND PROTECTION DIVISION TO THE FIRST DISCOVERY REQUEST
OF TENNESSEE AMERICAN WATER COMPANY**

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"), pursuant to the Hearing Officer's ruling at the status conference held on June 4, 2008, hereby submits its supplemental responses and objections to the first discovery request of Tennessee American Water Company ("TAWC" or "Company").

GENERAL OBJECTIONS

1. The Consumer Advocate objects to the definitions and instructions contained in the Company's interrogatories 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 interrogatories 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. 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 interrogatories to the extent they seek information not related to the subject matter involved 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 interrogatories to the extent that the Company is attempting to impose on the Consumer Advocate obligations to supplement its responses beyond those required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

5. The Consumer Advocate objects to the Company's interrogatories 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.

6. 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.

7. 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.

8. 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 response to 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.

9. The Consumer Advocate will supplement its responses in accordance with the requirements of state law.

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

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

DISCOVERY REQUEST NO. 1:

Identify each material fact and every document 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. 08-00039 should not be approved by the Tennessee Regulatory Authority ("TRA").

FIRST SUPPLEMENTAL RESPONSE:

The Consumer Advocate withdraws its original response to Discovery Request No. 1 in its entirety and substitutes the following response in its place: The Consumer Advocate asserts the General Objections described above. Subject to and without waiving these objections, the Consumer Advocate responds as follows: The Consumer Advocate's investigation of this matter is ongoing; it is currently without sufficient information to take a position on the petition filed in this docket by the Company. Furthermore, the identity of each material fact and every document that the Consumer Advocate may rely on to support its 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. 08-00039 should not be approved by the Authority, if any, is unknown to the Consumer Advocate at this time. The Consumer Advocate is not presently in possession or control of information or documents that are responsive to this request. The Consumer Advocate is aware of its obligation to supplement this response. Tenn.R.Civ.P. 26.05; TRA Rule 1220-1-2-.11(1). The Consumer Advocate will comply fully with this obligation.

DISCOVERY REQUEST NO. 2:

Identify all persons known to you, your attorney, or other agent(s) 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 Discovery Request No. 1 above.

FIRST SUPPLEMENTAL RESPONSE:

The Consumer Advocate withdraws its original response to Discovery Request No. 2 in its entirety and substitutes the following response in its place: The Consumer Advocate asserts the General Objections described above. Subject to and without waiving these objections, the Consumer

Advocate responds as follows: The Consumer Advocate's investigation of this matter is ongoing. At this time the Consumer Advocate identifies the Company personnel and witnesses who filed direct testimony in this matter, as well as the Company's customers, as persons known to the Consumer Advocate who may have knowledge, information, or documents which support the Consumer Advocate's answer to Discovery Request No. 1 above. The Consumer Advocate is aware of its obligation to supplement this response. Tenn.R.Civ.P. 26.05; TRA Rule 1220-1-2-.11(1). The Consumer Advocate will comply fully with this obligation.

DISCOVERY REQUEST NO. 3:

Produce each document, photograph, or any other article or thing whatsoever, which refers or relates to 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. 08-00039 should not be approved, whether as to the issues of credibility or any other issue.

FIRST SUPPLEMENTAL RESPONSE:

The Consumer Advocate withdraws its original response to Discovery Request No. 3 in its entirety and substitutes the following response in its place: The Consumer Advocate asserts the General Objections described above. The Consumer Advocate objects further to the extent the Company is asking the Consumer Advocate to produce information protected from disclosure by the attorney work product doctrine and/or the attorney-client privilege. *State ex. rel. Flowers v. Tennessee Trucking Ass'n Self Ins. Group*, 209 S.W.3d 602, 616-618 (Tenn. Ct. App. 2006); Tenn. R. Civ. P. 26.02(3). Subject to and without waiving these objections, the Consumer Advocate responds as follows: The Consumer Advocate's investigation of this matter is ongoing; it is currently without sufficient information to take a position on the petition filed in this docket by the

Company. Furthermore, each document, photograph, or any other article or thing whatsoever, that the Consumer Advocate may rely on to support its 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. 08-00039 should not be approved, if any, is unknown to the Consumer Advocate at this time. The Consumer Advocate is not presently in possession or control of information or documents that are responsive to this request. The Consumer Advocate is aware of its obligation to supplement this response. Tenn.R.Civ.P. 26.05; TRA Rule 1220-1-2-.11(1). The Consumer Advocate will comply fully with this obligation.

DISCOVERY REQUEST NO. 4:

Identify any person you intend to call as a fact or expert witness (including, but not limited to, the persons referred to in paragraph 4 of your “Joint Objection of the Intervenors To Discovery Question Limits for the Initial Round of Discovery,” in which you refer to “two outside consultants hired by the Consumer Advocate to respond to the Company’s revenue and depreciation witnesses”), the subject matter of the witness’ testimony, the substance of the facts and opinions to be expressed and the basis and reasons therefor, 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 or by deposition.

FIRST SUPPLEMENTAL RESPONSE:

The Consumer Advocate withdraws its original response to Discovery Request No. 4 in its entirety and substitutes the following response in its place: The Consumer Advocate asserts the General Objections described above. The Consumer Advocate objects further to the extent the Company is asking the Consumer Advocate to produce information protected from disclosure by the attorney work product doctrine and/or the attorney-client privilege. *State ex. rel. Flowers v. Tennessee Trucking Ass'n Self Ins. Group*, 209 S.W.3d 602, 616-618 (Tenn. Ct. App. 2006); Tenn. R. Civ. P. 26.02(3). The Consumer Advocate objects further to the disclosure of fact witnesses to be called at trial because Tennessee law does not require disclosure of such witnesses. *Strickland v. Strickland*, 618 S.W.2d 496 (Tenn. Ct. App. 1981), *Pistole v. Hayes*, No. M2002-00470-COA-R3-CV, 2004 WL 1123528 (Tenn. Ct. App. Jan. 12, 2004). The Consumer Advocate objects further to the disclosure of consulting experts because the Tennessee Rules of Civil Procedure generally does not require disclosure of such consultants. Tenn.R.Civ.P. 26.02(4)(B). Subject to and without waiving these objections, the Consumer Advocate responds as follows: The Consumer Advocate's investigation of this matter is ongoing. The Consumer Advocate has not identified the witness(es), if any, that it may call at trial or that may submit prefiled testimony on behalf of the Consumer Advocate. The Consumer Advocate is aware of its obligation to supplement this response. Tenn.R.Civ.P. 26.05; TRA Rule 1220-1-2-.11(1). The Consumer Advocate will comply fully with this obligation.

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 or relied on or referred to in responding thereto.

FIRST SUPPLEMENTAL RESPONSE:

The Consumer Advocate withdraws its original response to Discovery Request No. 5 in its entirety and substitutes the following response in its place: The Consumer Advocate asserts the General Objections described above. Subject to and without waiving these objections, the Consumer Advocate responds as follows: Except for the documents filed by the Company itself, which the Consumer Advocate objects to providing the Company under General Objection No. 6, and except for the Agreement Between Snavely King Majoros O'Conner & Bedell, Inc. and the Office of the Attorney General of Tennessee, which the Consumer Advocate previously provided to the Company on May 28, 2008, the Consumer Advocate is not presently in possession or control of documents that are responsive to this request. The Consumer Advocate is aware of its obligation to supplement this response. Tenn.R.Civ.P. 26.05; TRA Rule 1220-1-2-.11(1). The Consumer Advocate will comply fully with this obligation.

DISCOVERY REQUEST NO. 6:

Provide any and all engagement letters and all expert reports and work papers (including drafts) which have been obtained from, created by or provided to any expert or witness.

FIRST SUPPLEMENTAL RESPONSE:

The Consumer Advocate withdraws its original response to Discovery Request No. 6 in its entirety and substitutes the following response in its place: The Consumer Advocate asserts the General Objections described above. The Consumer Advocate objects further to the extent the Company is asking the Consumer Advocate to produce information protected from disclosure by the attorney work product doctrine and/or the attorney-client privilege. *State ex. rel. Flowers v. Tennessee Trucking Ass'n Self Ins. Group*, 209 S.W.3d 602, 616-618 (Tenn. Ct. App. 2006); Tenn.

R. Civ. P. 26.02(3). The Consumer Advocate objects further to the disclosure of facts or opinions known by consulting experts because the Tennessee Rules of Civil Procedure generally does not require disclosure of such information. Tenn.R.Civ.P. 26.02(4)(B). Subject to and without waiving these objections, the Consumer Advocate responds as follows: The Consumer Advocate has provided or made available the information and documents the Company has filed in this docket to staff experts and consulting experts retained by the Consumer Advocate for the purpose of evaluating this case. The Consumer Advocate previously provided the Agreement Between Snively King Majoros O'Conner & Bedell, Inc. and the Office of the Attorney General of Tennessee to the Company on May 28, 2008. The Consumer Advocate is not presently in possession or control of other engagement letters, reports, or work papers that are responsive to this request. The Consumer Advocate is aware of its obligation to supplement this response. Tenn.R.Civ.P. 26.05; TRA Rule 1220-1-2-.11(1). The Consumer Advocate will comply fully with this obligation.

DISCOVERY REQUEST NO. 7:

Provide in electronic media (Word, Excel, or other Microsoft Office compatible format) and in hard copy all workpapers and other documents, generated by or relied upon by all CAPD witnesses.

FIRST SUPPLEMENTAL RESPONSE:

The Consumer Advocate withdraws its original response to Discovery Request No. 7 in its entirety and substitutes the following response in its place: The Consumer Advocate asserts the General Objections described above. The Consumer Advocate objects further to the extent the Company is asking the Consumer Advocate to produce information protected from disclosure by the attorney work product doctrine and/or the attorney-client privilege. *State ex. rel. Flowers v.*

Tennessee Trucking Ass'n Self Ins. Group, 209 S.W.3d 602, 616-618 (Tenn. Ct. App. 2006); Tenn. R. Civ. P. 26.02(3). Subject to and without waiving these objections, the Consumer Advocate responds as follows: The Consumer Advocate's investigation of this matter is ongoing. The Consumer Advocate has not identified the witness(es), if any, that may submit testimony on behalf of the Consumer Advocate. The Consumer Advocate is not presently in possession or control of workpapers or documents that are responsive to this request. The Consumer Advocate is aware of its obligation to supplement this response. Tenn.R.Civ.P. 26.05; TRA Rule 1220-1-2-.11(1). The Consumer Advocate will comply fully with this obligation.

DISCOVERY REQUEST NO. 8:

Please 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 CAPD'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 CAPD witness

FIRST SUPPLEMENTAL RESPONSE:

The Consumer Advocate withdraws its original response to Discovery Request No. 8 in its entirety and substitutes the following response in its place: The Consumer Advocate asserts the General Objections described above. Subject to and without waiving these objections, the Consumer Advocate responds as follows: The Consumer Advocate's investigation of this matter is ongoing. The Consumer Advocate has not identified the witness(es), if any, that may submit testimony on behalf of the Consumer Advocate. The Consumer Advocate is not presently in possession or control of trade articles, journals, treatises, speeches, publications, or books that are responsive to this request. The Consumer Advocate is aware of its obligation to supplement this response.

Tenn.R.Civ.P. 26.05; TRA Rule 1220-1-2-.11(1). The Consumer Advocate will comply fully with this obligation.

DISCOVERY REQUEST NO. 9:

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

FIRST SUPPLEMENTAL RESPONSE:

The Consumer Advocate withdraws its original response to Discovery Request No. 9 in its entirety and substitutes the following response in its place: The Consumer Advocate asserts the General Objections described above. The Consumer Advocate objects further to the extent the Company is asking the Consumer Advocate to produce information protected from disclosure by the attorney work product doctrine and/or the attorney-client privilege. *State ex. rel. Flowers v. Tennessee Trucking Ass'n Self Ins. Group*, 209 S.W.3d 602, 616-618 (Tenn. Ct. App. 2006); Tenn. R. Civ. P. 26.02(3). Subject to and without waiving these objections, the Consumer Advocate responds as follows: The Consumer Advocate's investigation of this matter is ongoing. The documents, items, reports, data, communications, or evidence that the Consumer Advocate intends to introduce into evidence or use as exhibits at trial, if any, are unknown to the Consumer Advocate at this time. The Consumer Advocate, however, reserves the right to introduce into evidence or use at trial any document, item, report, data, communication, evidence, or information produced by any party or any witness in this proceeding or any other proceeding, including, but not confined to, TRA Docket Nos. 08-00039, 06-00305, 06-00290, 06-00154, 06-00119, 04-00288, 04-00088, 03-00388, 03-00452, and 03-00118. The Consumer Advocate is aware of its obligation to supplement this

response. Tenn.R.Civ.P. 26.05; TRA Rule 1220-1-2-.11(1). The Consumer Advocate will comply fully with this obligation.

DISCOVERY REQUEST NO. 10:

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

FIRST SUPPLEMENTAL RESPONSE:

The Consumer Advocate withdraws its original response to Discovery Request No. 10 in its entirety and substitutes the following response in its place: The Consumer Advocate asserts the General Objections described above. Subject to and without waiving these objections, the Consumer Advocate responds as follows: Except for the legal objections and statements regarding supplementation of discovery, Robert T. (Terry) Buckner, a regulatory analyst on the Consumer Advocate's staff, is the source of the information provided in response to Nos. 1, 2, 3, 5, 6, 9, 11, 12 and 13. Ryan L. McGehee and Joe Shirley, assistant attorneys general representing the Consumer Advocate in this matter, are the source of the statements regarding supplementation of discovery and the legal objections asserted in Nos. 1 through 13, as well as the information provided in response to Nos. 4, 7, 8 and 10. Ryan L. McGehee and Joe Shirley also contributed to the information provided in response to No. 2.

DISCOVERY REQUEST NO. 11:

The Joint Objection of the Intervenors to Discovery Question Limits for the Initial Round of Discovery, which was filed in this docket, states: "the Company has filed a depreciation study in this

docket, the conclusions of which will likely be contested.” Specifically identify each conclusion or aspect of the depreciation study the CAPD intends to contest, if any, and the CAPD’s grounds and/or bases therefor, including any facts and/or documents the CAPD contends support those grounds.

FIRST SUPPLEMENTAL RESPONSE:

The Consumer Advocate withdraws its original response to Discovery Request No. 11 in its entirety and substitutes the following response in its place: The Consumer Advocate asserts the General Objections described above. The Consumer Advocate objects further to the extent the Company is asking the Consumer Advocate to produce information protected from disclosure by the attorney work product doctrine and/or the attorney-client privilege. *State ex. rel. Flowers v. Tennessee Trucking Ass’n Self Ins. Group*, 209 S.W.3d 602, 616-618 (Tenn. Ct. App. 2006); Tenn. R. Civ. P. 26.02(3). Subject to and without waiving these objections, the Consumer Advocate responds as follows: The Consumer Advocate’s investigation of this matter is ongoing. Each conclusion or aspect of the depreciation study the CAPD intends to contest, if any, and the CAPD’s grounds and/or bases therefor, including any facts and/or documents the CAPD contends support those grounds, if any, are unknown to the Consumer Advocate at this time. The Consumer Advocate is not presently in possession or control of information or documents that are responsive to this request. The Consumer Advocate is aware of its obligation to supplement this response. Tenn.R.Civ.P. 26.05; TRA Rule 1220-1-2-.11(1). The Consumer Advocate will comply fully with this obligation.

DISCOVERY REQUEST NO. 12:

The Joint Objection of the Intervenors to Discovery Question Limits for the Initial Round of Discovery, which was filed in this docket, states: “TAWC has also filed an independent cost

assessment report (“I.C.A.R.”) in relation to management fees, the conclusions of which will likely be contested.” Specifically identify each conclusion or aspect of the I.C.A.R. the CAPD intends to contest, if any, and the CAPD’s grounds and/or bases therefor, including any facts and/or documents the CAPD contends support those grounds.

FIRST SUPPLEMENTAL RESPONSE:

The Consumer Advocate withdraws its original response to Discovery Request No. 12 in its entirety and substitutes the following response in its place: The Consumer Advocate asserts the General Objections described above. The Consumer Advocate objects further to the extent the Company is asking the Consumer Advocate to produce information protected from disclosure by the attorney work product doctrine and/or the attorney-client privilege. *State ex. rel. Flowers v. Tennessee Trucking Ass’n Self Ins. Group*, 209 S.W.3d 602, 616-618 (Tenn. Ct. App. 2006); Tenn. R. Civ. P. 26.02(3). Subject to and without waiving these objections, the Consumer Advocate responds as follows: The Consumer Advocate’s investigation of this matter is ongoing. Each conclusion or aspect of the I.C.A.R. the CAPD intends to contest, if any, and the CAPD’s grounds and/or bases therefor, including any facts and/or documents the CAPD contends support those grounds, if any, are unknown to the Consumer Advocate at this time. The Consumer Advocate is not presently in possession or control of information or documents that are responsive to this request. The Consumer Advocate is aware of its obligation to supplement this response. Tenn.R.Civ.P. 26.05; TRA Rule 1220-1-2-.11(1). The Consumer Advocate will comply fully with this obligation.

DISCOVERY REQUEST NO. 13:

The Joint Objection of the Intervenor to Discovery Question Limits for the Initial Round of Discovery, which was filed in this docket, states: “the Company has proposed a significant

adjustment to its weatherization figures which calls for \$1.3 million in new rates.” Specifically identify each conclusion or aspect of the weatherization figures the CAPD intends to contest, if any, and the CAPD’s grounds and/or bases therefor, including any facts and/or documents the CAPD contends support those grounds.

FIRST SUPPLEMENTAL RESPONSE:

The Consumer Advocate withdraws its original response to Discovery Request No. 13 in its entirety and substitutes the following response in its place: The Consumer Advocate asserts the General Objections described above. The Consumer Advocate objects further to the extent the Company is asking the Consumer Advocate to produce information protected from disclosure by the attorney work product doctrine and/or the attorney-client privilege. *State ex. rel. Flowers v. Tennessee Trucking Ass’n Self Ins. Group*, 209 S.W.3d 602, 616-618 (Tenn. Ct. App. 2006); Tenn. R. Civ. P. 26.02(3). Subject to and without waiving these objections, the Consumer Advocate responds as follows: The Consumer Advocate’s investigation of this matter is ongoing. Each conclusion or aspect of the weatherization figures the CAPD intends to contest, if any, and the CAPD’s grounds and/or bases therefor, including any facts and/or documents the CAPD contends support those grounds, if any, are unknown to the Consumer Advocate at this time. The Consumer Advocate is not presently in possession or control of information or documents that are responsive to this request. The Consumer Advocate is aware of its obligation to supplement this response. Tenn.R.Civ.P. 26.05; TRA Rule 1220-1-2-.11(1). The Consumer Advocate will comply fully with this obligation.

RESPECTFULLY SUBMITTED,



RYAN L. McGEHEE

Assistant Attorney General

Office of the Attorney General and Reporter

Consumer Advocate and Protection Division

P.O. Box 20207

Nashville, TN 37202-0207

Dated: June 9, 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 9 day of June, 2008.



RYAN L. McGEHEE

Assistant Attorney General

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