

**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
EARN A FAIR AND ADEQUATE RATE
OF RETURN ON ITS PROPERTY USED
AND USEFUL IN FURNISHING WATER
SERVICE TO ITS CUSTOMERS**

DOCKET NO. 08-00039

**SECOND MOTION TO COMPEL TENNESSEE AMERICAN WATER COMPANY TO
ANSWER THE FIRST DISCOVERY REQUESTS OF THE CONSUMER ADVOCATE
AND PROTECTION DIVISION**

Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division ("Consumer Advocate"), pursuant to the scheduling order entered by the Hearing Officer on June 13, 2008, hereby requests the Hearing Officer to compel Tennessee American Water Company ("TAWC" or "Company") to fully and completely respond to the first discovery requests of the Consumer Advocate for the reasons set forth below.

INTRODUCTION

The Company and the Consumer Advocate have worked to resolve as many discovery issues as they could prior to the filing of this motion. This motion raises all discovery issues involving the Company's responses and supplemental responses to the Consumer Advocate's first discovery request known to the Consumer Advocate at this time. The Consumer Advocate will continue working with the Company to resolve these discovery issues by agreement.

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, 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.*

SPECIFIC DISCOVERY REQUESTS THAT ARE THE SUBJECT OF THIS MOTION

PART II: DEPRECIATION & WEATHER NORMALIZATION

REQUEST PART II, NO. 7:

Please provide, in Microsoft Excel or Word or comparable format with formulas intact, all

workpapers, analyses, studies and other documentation underlying the tables and exhibits in the Gannett Fleming depreciation study. Include in this response the results of all actuarial and Simulated Plant Record studies, all data and studies of other water utilities, and all documentation supporting the life span assumptions made by Gannett Fleming.

RESPONSE:

The Company objects to this question as unduly burdensome to the extent that it seeks the production of documents in an electronic format that is different from which they presently exist. Notwithstanding its objection, the Company states that all workpapers, analyses, studies and other documentation underlying the tables and exhibits of the Gannett Fleming depreciation study are attached on the enclosed CD. These documents are not available in Microsoft Excel or Word format as they were created by Gannett Fleming in-house programs. The files are labeled as:

TN-CAPD01-PART II-Q007 Attachment 1.pdf

TN-CAPD01-PART II-Q007 Attachment 2.pdf

TN-CAPD01-PART II-Q007 Attachment 3.pdf

TN-CAPD01-PART II-Q007 Attachment 4.pdf

MOTION TO COMPEL:

The Consumer Advocate contends that the Company's response is unresponsive and incomplete in that the Consumer Advocate believes that the files referenced in the Company's response do not contain all of the documents, workpapers, analyses, studies, calculations, or other material underlying the opinions expressed in the depreciation study sponsored by TAWC witness John Spanos. Mr. Spanos has been identified as a testifying expert in this matter and has, in fact, submitted pre-filed direct testimony expressing his opinion as to the appropriate rates for

depreciating the Company's utility plant in service, which rates are identified in summary tables and exhibits contained in the depreciation study submitted by Mr. Spanos. The detailed calculations underlying these summary tables and exhibits have not been provided to the Consumer Advocate. The Consumer Advocate is entitled to discover all facts, reports, and materials that support Mr. Spanos' opinions in this matter. *Hammock v. Sumner County*, 1997 WL 749461, *2 (Tenn. Ct. App. Dec. 5, 1997); *Southside Leasing Co. v. Matlock*, 1989 WL 128506, *2 (Tenn. Ct. App. Oct. 27, 1989); Tenn. R. Civ. P. 26.02(4)(A); TRA Rule 1220-1-2-.11(1). With respect to TAWC's objection to the designated format, the Consumer Advocate is willing to accept the requested information in any readable format so long as the information provided is responsive to the question asked.

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

REQUEST PART III, NO. 3, SUBPART (a):

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."

Also, on May 6, 2008 American Water Works filed with the SEC a Registration Statement stating that the Company may issue \$750 million of debt. Included in the filing was Exhibit 23.1, a consent statement by Price Waterhouse Coopers:

Consent Of Independent Registered Public Accounting Firm. We hereby consent to the use in this Registration Statement on Amendment No. 1 to Form S-4 (No. 333-148284) of our report dated February 28, 2008 relating to the consolidated financial statements of American Water Works

Company, Inc. and Subsidiary Companies (formerly Thames Water Aqua US Holdings, Inc. and Subsidiary Companies), which appears in such Registration Statement. We also consent to the reference to us under the heading “Experts” in such Registration Statement.

- a. Provide the consolidated financial statements prepared by Price Water House Coopers and all American Water Work’s workpapers relied on by Price Water House Coopers to prepare the consolidated financial statements.

SUPPLEMENTAL RESPONSE:

The Company objects to this request on the grounds that it is overbroad, unduly burdensome, and seeks information that is not relevant to this proceeding, including information subject to attorney/client privilege and the work product doctrine, and containing highly confidential information.

Subject to and without waiving its objections, the Company states that public information about AWK can be found at the following web sites: www.sec.gov and www.amwater.com (investor relations). Furthermore, please see the response to TN-COC-01-Q002. The 2007-2005 AWW Audited Financial Statements can be found with the response to TN-TRA-01-Q5.

MOTION TO COMPEL:

As a regulated public utility in Tennessee, TAWC’s rates have been set using double leveraging methodology. Thus, the capital structure of the parent is fundamentally relevant to this proceeding. The request is designed to gather information to help us better understand the company’s equity growth. The request seeks information in the company’s possession. The reference to public information is not responsive to the request.

In response to the TAWC’s objections, it is the Authority’s responsibility to investigate the

post-IPO capital structure of TAWC and its parent to determine whether consumers should be provided rate relief as a result of changes occurring after the IPO. *Transcript of Authority Conference*, May 15, 2007. pp. 21-22.

In addition, Tennessee law has consistently approved of the examination and consideration of a wide spectrum of evidence when the Authority is conducting a rate-making proceeding. *Consumer Advocate v. TRA*, 1997 WL 92079, *3 (Tenn.Ct.App.1997) - (copy attached). This wide scope has extended from subsidiary to parent. 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 Authority 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.”

TAWC’s objection as to the request being “unduly burdensome” is inadequate as it lacks specificity.

The rules favor discovery. Thus, the party opposing discovery must demonstrate with more than conclusionary statements and generalizations that the discovery limitations sought are necessary to protect it from, among other things, oppressive or undue burden or expense.

State ex rel Paula A. Flowers v. Tennessee Trucking Association Self Insurance Group Trust, Inc., 209 S.W. 3d 602, 615 (Tenn.Ct.App.2006) (cert.denied). TAWC’s objection as to burdensomeness is nothing more than a general and conclusionary statement lacking in any specificity as to how the request is burdensome. In determining whether a discovery request is “unduly” burdensome, Tenn. R.Civ.P. 26.02(1) provides that a court shall take into account the “needs of a case, the amount in controversy, limitations on the parties resources, and the importance

of the issues at stake in the litigation”. In other words, the question is not whether a request in of itself is burdensome, but whether the case and surrounding circumstances is such that the alleged burdensomeness of the request is undue. In making this determination, a trial court must look at the request within the context of the entire case.

The facts on file in this docket illustrate the size of the potential controversy and the importance of this matter. The company has requested a rate increase in excess of \$7,000,000.00 for the rate-payers of Chattanooga on the heels of a \$4,000,000.00 rate increase granted in May of 2007. As to resources, TAWC and AWW have thousands of employees. The company has committed to fielding nine expert witnesses, five of which have been hired from outside the company specifically for this case, in support of its petition. Furthermore, the company has requested an unprecedented amount for rate-case expenses to be recovered by the rate-payers of Chattanooga, illustrating that it pre-determined that this proceeding would require significant resources before it began.

As to the assertion of the attorney-client privilege and work product doctrine as a basis for an objection, the burden is on the party asserting the privilege to show it is applicable. *State ex rel Paula A. Flowers v. Tennessee Trucking Association Self Insurance Group Trust, Inc.*, 209 S.W. 3d 602, 617 (Tenn.Ct.App.2006) (cert.denied). The company has not provided any grounds for invoking the attorney-client privilege or the work product doctrine. Even if the company can meet the burden, the Consumer Advocate has the right to challenge the assertion of privilege and/or work product doctrine under a process established under Tennessee law. *Id.*

Furthermore, the company has not demonstrated a need for “enhanced” protection of “highly confidential” materials. A protective order is already in place. Documents labeled “confidential”

will be protected from disclosure to the public. The sole justification and basis for the supplemental protective order in Docket 06-00290 was the then impending Initial Public Offering (“I.P.O.”). The stock has now gone public.

REQUEST PART III, NO. 3, SUBPART (c):

- c. Provide copies of all audited financial statements of American Water Works and Subsidiary Companies which were performed between April 28, 2007 and April 28, 2008.

SUPPLEMENTAL RESPONSE:

The Company objects to this question on the grounds that the requested is overbroad, unduly burdensome, and in large part not relevant to this proceeding.

MOTION TO COMPEL:

As a regulated public utility in Tennessee, TAWC’s rates have been set using double leveraging methodology. Thus, the capital structure of the parent is fundamentally relevant to this proceeding. The request is designed to gather information to help the Consumer Advocate better understand the company’s equity growth. In response to the company’s objections, the Consumer Advocate incorporates the response to objections in the “Motion to Compel” grounds in Part III, Request No. 3, Sub-part (a).

REQUEST PART III, NO. 3, SUBPART (d):

- d. Provide copies of all minutes taken between May 12, 2007, and May 12, 2008, for the Audit Committee of American Water Works.

SUPPLEMENTAL RESPONSE:

The Company objects to this request on the grounds that it is overbroad, unduly burdensome, and seeks information that is not relevant to this proceeding, including information

subject to the attorney/client privilege and work product doctrine, and containing highly confidential information.

MOTION TO COMPEL:

The discovery request seeks relevant information as to the Audit Committee of AWW. The Audit Committee sets rules and “controls” for auditors to follow in developing financial statements of the company. An auditing committee is a requirement for publicly listed companies. Many, if not most publicly listed companies have auditing committees and their filings with the Securities and Exchange Commission feature a “vouching statement” by an outside auditor who endorses the company’s internal financial controls. AWW’s auditors do not make such a vouching statement. In the absence of such a voucher, the Audit Committee’s minutes may reveal those financial assets that management has identified as posing the greatest risk of material misstatements which are not preventable or detected on a timely basis. The discovery request seeks information to ascertain the reliability of the audit controls for the financial statements of AWW. The financial statements, which are produced using the “controls” the Audit Committee creates, in turn reflect the amount of equity, thus affecting the capital structure for TAWC to be determined in this proceeding.

In response to the company’s objections, the Consumer Advocate incorporates the response to objections in the “Motion to Compel” grounds in Part III, Request No. 3, Sub-part (a).

REQUEST PART III, NO. 3, SUBPART (c):

- e. Provide copies of all studies, working papers, and other documents issued by the Audit Committee or which the Audit Committee caused to be issued between May 12, 2007, and May 12, 2008.

SUPPLEMENTAL RESPONSE:

The Company objects to this request on the grounds that it is overbroad, unduly

burdensome, and seeks information that is not relevant to this proceeding, including information subject to the attorney/client privilege and work product doctrine, and containing highly confidential information.

MOTION TO COMPEL:

The discovery request seeks relevant information as to the Audit Committee of AWW. The Audit Committee sets rules and “controls” for auditors to follow in developing financial statements of the company. An auditing committee is a requirement for publicly listed companies. Many, if not most publicly listed companies have auditing committees and their filings with the Securities and Exchange Commission feature a “vouching statement” by an outside auditor who endorses the company’s internal financial controls. AWW’s auditors do not make such a vouching statement. In the absence of such a voucher, the Audit Committee’s studies, working papers and other documents issued by the committee may reveal those financial assets that management has identified as posing the greatest risk of material misstatements which are not preventable or detected on a timely basis. The discovery request seeks information to ascertain the reliability of the audit controls for the financial statements of AWW. The financial statements, which are produced using the “controls” the Audit Committee creates, in turn reflect the amount of equity, thus affecting the capital structure for TAWC to be determined in this proceeding.

In response to the company’s objections, the Consumer Advocate incorporates the response to objections in the “Motion to Compel” grounds in Part III, Request No. 3, Sub-part (a).

REQUEST PART III, NO. 4:

In the Registration statement filed with the Securities and Exchange Commission (“SEC”) on May 6, 2008, American Water Works made this statement: “In order to obtain the state PUC

approvals to consummate the proposed RWE Divestiture we were required to accept certain conditions and restrictions that could increase our costs.”

- a. Identify those costs, provide the amounts of each cost, and identify the “State PUC(s)” which imposed the costs.

SUPPLEMENTAL RESPONSE:

The Company objects to this request on the grounds that it is overbroad, unduly burdensome, seeks information not readily available to TAWC, and seeks information that is not relevant to this proceeding.

Subject to and without waiving its objections, the Company states that public information about AWK can be found at the following web sites: www.sec.gov and www.amwater.com. AWW filed petitions in 13 states seeking approval for the change of control. Those states are: Arizona, New Mexico, California, Illinois, Pennsylvania, West Virginia, Kentucky, Tennessee, Virginia, Maryland, New Jersey, and New York. The orders issued regarding those petitions can be found on the Commission (including the TRA) websites.

There has been no tabulation or quantifications of any additional costs related to those conditions. Mr. Miller was a witness in both the West Virginia and Kentucky Change of Control proceedings. Below are examples of conditions in those two states that could result in increased costs.

1. WV - Pages 9-11 of the Commission Order addresses the conditions relating to the approval of the Petition.
2. WV - Conditions, B, H, M, S, W, and X impose reporting requirements that would not be required except for those conditions.

3. KY - Pages 19-29 of the Commission Order addresses the conditions relating to the approval of the Petition, those conditions are also listed in detail in Appendix A attached to the Order.

4. KY - Conditions 4, 10, 12, 14, 17, 20, 21, 22, 24, 26, and 38, impose reporting requirements that would not be required except for those conditions.

MOTION TO COMPEL

The discovery requests seeks what “costs” were incurred by AWW and its subsidiaries or what conditions were mandated by RWE acquisition. The request seeks information in the company’s possession. The reference to public information is not responsive to the request. The company’s response is further inadequate in that it merely references a list of states from which orders approving the change in control resulting from the acquisition. The company did not provide copies of the orders nor such basic information such as docket numbers and dates from which the Consumer Advocate could locate such orders on public service commission websites.

REQUEST PART III, NO. 5:

In the Registration statement filed with the SEC on May 6, 2008, American Water Works made this statement:

The RWE acquisition resulted in certain changes in our business. For example, our operations and management were managed through Thames Water. Also, we agreed not to file rate cases with some state PUCs for specified periods of time as a condition of the acquisition. As of December 31, 2007, all rate stay-out provisions associated with the RWE acquisition had expired.

- a. Identify those states where there were stay-out provisions, identify the terms and conditions of those provisions and provide copies of orders , decisions or other material to substantiate your reply.

SUPPLEMENTAL RESPONSE:

The Company objects to this request on the grounds that it is overbroad, unduly burdensome, seeks information not readily available to TAWC, and seeks information that is not relevant to this proceeding.

Subject to and without waiving its objections, the Company states that public information about AWK can be found at the following web sites: www.sec.gov and www.amwater.com. In 2006, AWW filed petitions in 13 states seeking approval for the change of control. Those states are: Arizona, New Mexico, California, Illinois, Pennsylvania, West Virginia, Kentucky, Tennessee, Virginia, Maryland, New Jersey, and New York. The orders issued regarding those petitions can be found on the Commission (including TRA) websites. In the 2006 Change of Control Proceedings, there were no rate case filing moratoriums (stay-outs) included in the Orders approving the Petitions.

In neither the 2002 nor 2006 Change of Control Proceedings regarding TAWC, were any rate filing moratorium conditions proposed by any party or approved by the TRA.

In the 2002 Change of Control proceedings, there were rate filing moratoriums (stay-outs) as part of the conditions attached to the Commission's approval of those petitions in Arizona, Kentucky, West Virginia, California, Maryland, New Jersey, and New York. The Commission (TRA) orders approving the 2002 Change of Control proceedings can be found at the Commission (TRA) websites referenced earlier in this response.

MOTION TO COMPEL

The discovery requests seeks what "costs" were incurred by AWW and its subsidiaries or what conditions were mandated by RWE acquisition. The request seeks information in the company's possession. The reference to public information is not responsive to the request. The

company's response is further inadequate in that it merely references a list of states from which orders approving the change in control resulting from the acquisition. The company did not provide copies of the orders nor such basic information such as docket numbers and dates from which the Consumer Advocate could locate such orders on public service commission websites.

REQUEST PART III, NO. 6:

If American Water Works' current amount of equity is subject to any claims or liability via capital assigned to AWW from RWE or its subsidiaries and where such capital may be withdrawn from AWW by RWE, its subsidiaries or assignees, identify by class of equity and amount any such claims, including common equity and all other equity classes, such as assigns or other items of value.

SUPPLEMENTAL RESPONSE:

The Company objects to this request on the grounds that it does not make sense, is vague and ambiguous, overbroad, unduly burdensome, seeks information not readily available to TAWC, and seeks information that is not relevant to this proceeding.

Subject to and without waiving the foregoing objections, the Company provides the following response. Based upon the Company's interpretation of this request, the answer is none.

MOTION TO COMPEL

As a regulated public utility in Tennessee, TAWC's rates have been set using double leveraging methodology. Thus, the capital structure of the parent is fundamentally relevant to this proceeding. The information sought in this request is needed to determine if the capital structure and level of equity may substantially change in the near future due to RWE's strategy to divest from AWW. At present, RWE has not completely divested from AWW although it has stated in the past a desire to totally divest. Additionally, the company's response is equivocal in reliance on its

“interpretation” of the request.

In response to the company’s objections, the Consumer Advocate incorporates the responses to objections in the “Motion to Compel” grounds in Part III, Request No. 3, Sub-part (a).

REQUEST PART III, NO. 7:

In its S-1 Registration statement filed May 6 with the SEC, American Water Works stated: “RWE intends to fully divest its ownership of American Water through the consummation of one or more public offerings of common stock of American Water as soon as reasonably practicable, subject to market conditions.” Provide any study, document, email and all written material where RWE or RWE Aqua Holdings GmbH consider what circumstances financial, and otherwise, constitute conditions that “are reasonably practicable, subject to market conditions” for the public offerings of common stock.

SUPPLEMENTAL RESPONSE:

The Company objects to this request on the grounds that it is overbroad, unduly burdensome, and seeks information that is not relevant to this proceeding, seeks information that may be subject to attorney/client privilege and work product, and seeks information that is highly confidential. Furthermore, this request seeks information that is not in the possession, custody or control of the TAWC.

Subject to and without waiving its objections, the Company states that public information about AWK can be found at the following web sites: www.sec.gov and www.amwater.com (investor relations).

MOTION TO COMPEL

As a regulated public utility in Tennessee, TAWC’s rates have been set using double

leveraging methodology. Thus, the capital structure of the parent is fundamentally relevant to this proceeding. The information sought in this request is needed to determine if the capital structure and level of equity may substantially change in the near future due to RWE's strategy to divest from AWW. At present, RWE has not completely divested from AWW although it has stated in the past a desire to totally divest, dependent upon "market conditions". The request seeks information in the company's possession. The reference to public information is not responsive to the request.

In response to the company's objections, the Consumer Advocate incorporates the responses to objections in the "Motion to Compel" grounds in Part III, Request No. 3, Sub-part (a).

REQUEST PART III, NO. 8:

Provide any study, document, email and all written material where RWE, RWE Aqua Holdings GmbH, or American Water Works has performed or caused to be performed a study of American Water Works' expected market value between now and 2010.

SUPPLEMENTAL RESPONSE:

The Company objects to this request on the grounds that it is unduly burdensome, seeks information that is irrelevant to this proceeding now that TAWC's parent company's (AWK) initial public offering has closed, and seeks information that is not in the possession, custody or control of the TAWC. Furthermore, the Company objects to this request to the extent it seeks Highly Confidential Information. The Company objects to the production of highly confidential data without the entry of a protective order that includes heightened protections sufficient to protect highly confidential information from public disclosure. Subject to and without waiving these objections, please see the public information about AWK which can be found at the following web sites: www.sec.gov and amwater.com (investor relations). Please see the response to

TN-COC-01-Q2 for the public road show information.

MOTION TO COMPEL:

As a regulated public utility in Tennessee, TAWC's rates have been set using double leveraging methodology. Thus, the capital structure of the parent is fundamentally relevant to this proceeding. The information sought in this request is needed to determine if the capital structure and level of equity may substantially change in the near future due to RWE's strategy to divest from AWW. At present, RWE has not completely divested from AWW although it has stated in the past a desire to totally divest, dependent upon "market conditions". The request seeks information in the company's possession. The reference to public information is not responsive to the request.

In response to the company's objections, the Consumer Advocate incorporates the responses to objections in the "Motion to Compel" grounds in Part III, Request No. 3, Sub-part (a).

REQUEST PART III, NO. 9:

Provide any study, document, email and all written material where RWE, RWE Aqua Holdings GmbH, or American Water Works has performed or caused to be performed a study where a second class of stock is, has, would be or will be issued for American Water Works.

SUPPLEMENTAL RESPONSE:

The Company objects to this request on the grounds that it is overbroad, unduly burdensome, seeks information that is not relevant to this proceeding, seeks information that is not in the possession, custody or control of TAWC, seeks information that may be subject to the attorney/client privilege and work product doctrine, and seeks information that is highly confidential in nature.

Subject to and without waiving its objections, the Company states that public information about AWK can be found at the following web sites: www.sec.gov and www.amwater.com (investor

relations).

Please refer to the response to TN-CAPD-01-part III-Q3(f), to which is attached the By-laws of AWW, which addresses types of securities authorized for AWW.

MOTION TO COMPEL:

This discovery request seeks information needed to determine what constraints or liabilities may impact the paid-in capital portion of equity. The request seeks information in the company's possession. The public information referenced by the company is not responsive. In response to the company's objections, the Consumer Advocate incorporates the responses to objections in the "Motion to Compel" grounds in Part III, Request No. 3, Sub-part (a).

REQUEST PART III, NO. 10:

Provide any study, document, email and all written material where RWE, RWE Aqua Holdings GmbH, or American Water Works has performed or caused to be performed a study of the dividends which American Water Works should, will or consider paying to its stockholders.

SUPPLEMENTAL RESPONSE:

The Company objects to this request on the grounds that it is overbroad, unduly burdensome, seeks information that is not within the possession, custody or control of TAWC, seeks information that is not relevant to this proceeding, including information subject to the attorney/client privilege and work product doctrine, and containing highly confidential information.

Subject to and without waiving its objections, the Company states that public information about AWW can be found at the following web site: www.sec.gov. The Prospectus includes extensive discussion about AWW's dividend policy on page 27, and in the Management Discussion section beginning on page 63.

MOTION TO COMPEL:

The request is designed to discover information to determine what class of stockholders would receive dividends, if any, and how dividend strategies and policies may change AWW and/or TAWC in such a way as it is not a traditional water service company. For example, traditional water companies typically pay dividends to share holders whereas some companies listed on the stock exchange do not pay dividends, but rather investors earn money by buying and selling stock. The request seeks information in the company's possession. The reference to public information is not responsive to the request.

In response to the company's objections, the Consumer Advocate incorporates the responses to objections in the "Motion to Compel" grounds in Part III, Request No. 3, Sub-part (a).

PART IV: QUESTIONS & REQUESTS REGARDING REVENUES, EXPENSES, TAXES, RATE BASE & MISCELLANEOUS

REQUEST PART IV, NO. 3:

Provide the number of meters by meter type, by customer class, by location and the volume usage by usage rate schedule, by customer class, by location for the years ended December 31, 2003-2007 and the twelve months ended March 31, 2008.

SUPPLEMENTAL RESPONSE:

The Company objects to this question in part on the grounds that the requested information is not relevant or timely to this proceeding, is unduly burdensome, overbroad, and is not readily available in the format requested. Notwithstanding this objection, the Company provided this information for the last three fiscal years, 2005 - 2007 in response to TRA DR 1 Question 20. The information for 2003 - 2006 was provided to the CAPD in the last TAWC rate case filing, Docket

No. 06-00290, TRA DR 1 Question 20. If the CAPD did not retain that information, it is publicly available on the official TRA file. Please see the response to TN-CAPD-01-Part IV-Q001 for reference to the raw data for January-March 2008.

MOTION TO COMPEL:

The Consumer Advocate has received the requested information for all periods except for January 1, 2003 through July 31, 2003. This question asks the Company to provide certain billing determinants (e.g., meters and usage by type, class, and location) so that the Consumer Advocate can analyze regulated revenues. The proper amount of regulated revenues is a significant issue to be investigated and determined in this case; if the Consumer Advocate is without sufficient information to form a supportable position on the Company's regulated revenues, it will not be able to determine whether the rates proposed by the Company in this docket are just and reasonable nor will it be able to recommend rates to the Authority that the Consumer Advocate believes are just and reasonable. Because the amount of the Company's regulated revenues is such a material and overriding issue in this case, the Consumer Advocate needs the requested information going back to January 1, 2003, to assure that its attrition year forecast of regulated revenues is grounded to historical trends that are deeply rooted enough to reasonably support the Consumer Advocate's revenue forecast.

REQUEST PART IV, NO. 41:

Provide all NARUC accounts 601-through 675 by month, by account and show the actual or forecasted gross amount and net expense after deducting salaries and wages for the 34 months ended August 2009.

SUPPLEMENTAL RESPONSE:

Please see the attached schedule. The Company did not calculate each attrition year

adjustment by month. Therefore, the monthly attrition year amounts are not available in the format requested. For the attrition year, please refer to the response provided to TN-TRA-01-Q028.

MOTION TO COMPEL:

The Consumer Advocate has responsive data for all requested time periods except for expenses by NARUC accounts 601 through 675 for the months of December 2006, January 2008, February 2008, and March 2008. The Consumer Advocate needs this information in order to accurately project other operations and maintenance expenses for the attrition year. The determination of other operations and maintenance expenses for the attrition year has a material bearing on establishing just and reasonable rates in this matter.

REQUEST PART IV, NO. 43:

Provide all employee expense reports with invoices and receipts for the 27 months ended March 31, 2008 for the Corporate Office, Shared Services Center ("SSC"), Southeast Region, and other affiliated utility service companies by month.

SUPPLEMENTAL RESPONSE:

The Company objects to this request on the grounds that it is over broad, unduly burdensome and seeks information that is not readily available to TAWC. Subject to and without waiving these objections, TAWC provides the following response. TAWC and AWWSC no longer use paper expense reports. Rather, reimbursable expenses are tracked using purchase cards ("p-card") that are issued by the TAWC. Each p-card user has usage limits and provides receipts for purchases that are reviewed and electronically approved by the employee's supervisor. The volume of the information to comply with this request is voluminous and would require a very significant amount of time and expense to compile as requested. TAWC is willing to provide the CAPD with a sample of such

documents.

MOTION TO COMPEL:

In an effort to address the Company's concerns regarding the breadth and burdensomeness of this question, the Consumer Advocate has narrowed its request to include the p-card reports and associated receipts, invoices, or other supporting documentation for all management employees down to the supervisor-level for TAWC, as well as the southeast regional office, the shared services company and corporate headquarters of American Water Works, for the twelve months ended March 31, 2008. It is important for the Consumer Advocate to receive this information in order to review it for certain types of expenses incurred by the Company that the Authority has disallowed for ratemaking purposes in prior cases. The Consumer Advocate will also review this information to analyze the propriety of certain expenses incurred for ratemaking purposes. The analysis of this data could lead to adjustments that would impact the determination of just and reasonable rates in this proceeding.

REQUEST PART IV, NO. 62:

Provide the information for Plant in Service and Accumulated Depreciation by JDE account in the following format as of July 2002, March 2004, June 30, 2006:

(1)	(2)	(3)	(4)	(5)	(6)
JDE	Account	Plant in Service	Acc. Deprec.	Current Deprec.	Net
<u>Acct #</u>	<u>Description</u>	<u>Balance</u>	<u>Balance</u>	<u>Rate</u>	<u>Book Value</u>

The response should incorporate the format and subsidiary accounts of the Company's Accounting Exhibit No. 2, Schedule 4.

SUPPLEMENTAL RESPONSE:

The Company objects to this request on the grounds that it is over broad, unduly burdensome and seeks information that is not readily available to the Company in the requested format. Furthermore, the Company objects to this request to the extent that it seeks information that is not relevant to this proceeding. The Company also objects to this request on the grounds that it calls upon the Company to create or otherwise organize data regarding time periods outside of the Company's historical test year. Subject to and without waiving its objections, TAWC provides the following response. The requested information relates to the attrition years in the last three Company rate cases and is not relevant to this proceeding. Please see the response the Company previously provided to request TN-CAPD-01-Part II-Q20, which provides the accumulated depreciation by plant account from the TRA Annual Report for the last 10 years. Also, please refer to the response previous supplied by the Company to request TN-TRA-01-Q13-rate base back-up, pages 47-52 of 52. This information provides the utility plant balances and accumulated depreciation balances at the end of the historical test-year and monthly through August 2009, the end of the attrition year in this case. In past TAWC rate cases, the Company had filed its rate base components as of the mid-point of the attrition year. In case number 06-00290, the CAPD proposed a thirteen month average of rate base for the attrition year. Director Miller's motion in case number 06-00290 indicates that the CAPD's thirteen month average rate base approach was accepted, and that motion was approved by the TRA. The Company filed this case consistent with the thirteen month average attrition year rate base approved by the TRA in case number 06-00290. Also, see the attached schedules, which are the depreciation calculations filed in the Company's past three rate cases and apply to the three periods requested by the CAPD.

MOTION TO COMPEL:

The Consumer Advocate has narrowed this request to include the Plant In Service and Accumulated Depreciation balances by JDE account recorded on the Company's books as of July 31, 2002, March 31, 2004, and June 30, 2006. The Consumer Advocate needs this information to examine the application of depreciation rates to determine whether depreciation charges have been properly computed and journalized to the Company's books of account. The historical data is relevant to this analysis because depreciation expense for plant assets is computed and journalized to the books periodically over the economic life of the associated asset accounts. Thus, in order to review the appropriateness of the application of depreciation rates, some historical data must be examined because depreciation calculations made in prior years may affect such calculations in the current and future years. Accordingly, the Consumer Advocate's analysis of this information will help determine the proper level of depreciation expense for the test year and attrition year in this docket. Furthermore, the determination of the proper amount of depreciation expense is an issue that must be addressed in every rate case because this expense is a major driver in establishing just and reasonable rates.

REQUEST PART IV, NO. 63:

Provide the Plant in Service and Accumulated Depreciation by JDE account in the following format as of November 2007, December 2007, January 2008, February 2008, and March 2008:

(1)	(2)	(3)	(4)	(5)	(6)
JDE	Account	Plant in Service	Acc. Deprec.	Current Deprec.	Net
<u>Acct #</u>	<u>Description</u>	<u>Balance</u>	<u>Balance</u>	<u>Rate</u>	<u>Book Value</u>

The response should incorporate the format and subsidiary accounts of the Company's

Accounting Exhibit No. 2, Schedule 4.

SUPPLEMENTAL RESPONSE:

The Company objects to this request on the grounds that it is unduly burdensome, in particular, because the information requested is not readily available to the Company in the requested format and would be extremely costly to gather and produce. Furthermore, the Company objects to this request on the grounds that it calls upon the Company to create or otherwise organize data regarding time periods outside of the Company's historical test year, seeks to have the Company create work product and seeks information that is not relevant to this rate case. The Company also objects to this request on the grounds that it detracts from the Company's ability to address and support its historical test-year data and the adjustments developed to arrive at a reasonable attrition year and is not required by the TRA's recognized rate case procedures. The Company filed its petition, testimony, exhibits and workpapers fully supporting its case based on a test year ending November 30, 2007. Test year data and schedules were prepared specifically for the historical test year utilized in the Company's filing. This request seeks the compilation of data in a format not readily available to the Company for each of the four months past the end of the historical test-year. It is burdensome and fundamentally unfair to require the Company to respond to a data request that, in essence, requires the Company to completely redo the data collection and analysis required to file its petition based on a test year, or multiple test years, proposed by an Intervener, particularly when that test year includes dates after the petition was filed. The re-creation of every aspect of its case for multiple historical test years is not required by TRA rules and is not necessary for the CAPD to assess the Company's petition. Subject to and without waiving its objections, the Company provides the following response. The Company only compiles the accumulated depreciation by JDE account

in reports specific to rate case filings, the periods for which the CAPD requests this information is not readily available to TAWC and can not be produced without considerable time and cost to TAWC. In addition, the information for December 2007 will be provided in the response to TN-CAPD-01-part IV-Q71. The attrition year calculations for the requested information can be found in the response to TN-TRA-01-Q013-Rate Base Back-Up, pages 47-52 of 52. The information for total utility plant and accumulated depreciation for December 2007 and January through March 2008 can be found in the monthly reports filed with the TRA (report PSC-3.06).

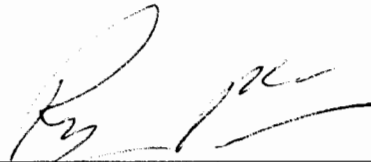
MOTION TO COMPEL:

The Consumer Advocate has narrowed this request to include the Plant In Service and Accumulated Depreciation balances by JDE account recorded on the Company's books as of November 30, 2007, December 31, 2007, January 31, 2008, February 29, 2008, and March 31, 2008. The Company has provided the Consumer Advocate with references to sources for its Accumulated Depreciation balances by JDE account as of November 30, 2007, and December 31, 2007. The Consumer Advocate wants the Company to provide its Plant In Service balances by JDE account as of November 30, 2007, and December 31, 2007, as well as its Plant In Service and Accumulated Depreciation balances by JDE account as of January 31, 2008, February 29, 2008, and March 31, 2008. The Consumer Advocate needs this data because Plant In Service is a major addition to the Company's Rate Base and Accumulated Depreciation is a major deduction to the Company's Rate Base. In other words, Plant In Service, when offset by the associated Accumulated Depreciation, essentially represents the recorded book value of the Company's water system that is used to serve customers in Chattanooga and surrounding communities. The Consumer Advocate believes that this information is available through at least March 31, 2008, because on or about May 1, 2008, the

Company filed its 3.06 monthly surveillance report for March 2008 with the Authority, which clearly indicates that the Company's books have been closed through at least March 2008. The 3.06 monthly surveillance report for March 2008 includes the Company's computation of Rate Base, which cannot be properly completed without knowing the Plant In Service and Accumulated Depreciation balances on the Company's books. Accordingly, the requested data is invaluable to the Consumer Advocate in order to analyze and forecast the Company's Rate Base for the attrition year in this docket, which forecast must be completed in order for the Consumer Advocate to recommend just and reasonable rates for the Authority's consideration in this matter.

WHEREFORE, the Consumer Advocate requests the Hearing Officer to enter an order compelling TAWC to produce full and complete answers to the Consumer Advocate's discovery requests, as outlined above, on or before June 20, 2008, or within such other time as the Hearing Officer may deem reasonable.

RESPECTFULLY SUBMITTED,



RYAN L. McGEHEE
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Consumer Advocate and Protection Division
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(615) 532-5512

Dated: June 17, 2008

CERTIFICATE OF SERVICE

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

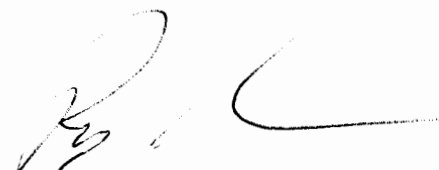
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on this the 17 day of June, 2008.



Ryan L. McGehee

#120836