

**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

**CONSUMER ADVOCATE AND PROTECTION DIVISION'S RESPONSE TO
TENNESSEE AMERICAN WATER COMPANY'S RENEWED MOTION TO COMPEL
THE CONSUMER ADVOCATE AND PROTECTION DIVISION TO PROVIDE
COMPLETE DISCOVERY RESPONSES**

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 submits its response to the renewed motion to compel filed by Tennessee American Water Company ("TAWC" or "Company").

The Company asks the Hearing Officer: (1) to deny the Consumer Advocate's General Objection No. 3; (2) to compel the Consumer Advocate to provide a more complete response to Request No. 2; and (3) to compel the Consumer Advocate to provide updates to Request Nos. 1, 3, 4, 7, 8, 9, 11, 12, and 13. Motion at 2-4. As set forth more fully below, the Consumer Advocate maintains that its General Objection No. 3 is proper and should be sustained and that its supplemental responses to Request Nos. 1, 2, 3, 4, 7, 8, 9, 11, 12, and 13 are accurate and complete and need no revision or supplementation at this time.

I. THE CONSUMER ADVOCATE’S GENERAL OBJECTION NO. 3 IS PROPER AND SHOULD BE SUSTAINED.

The Consumer Advocate’s General Objection No. 3 states:

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.

This general objection is taken straight from Rule 26.02(1) of the Tennessee Rules of Civil Procedure, which outlines the scope and limits of discovery. Tenn.R.Civ.P. 26.02(1) states in pertinent part that “[p]arties may obtain discovery regarding any matter, not privileged which is relevant to the subject matter involved in the pending action 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.”

Accordingly, in General Objection No. 3, the Consumer Advocate merely objects to Company requests to the extent they seek information that goes beyond the scope and limits of discovery established by the Tennessee Rules of Civil Procedure. The objection, therefore, is grounded squarely in Tennessee law, and this type of general objection is made routinely by parties responding to discovery requests in Authority matters.

Furthermore, the Consumer Advocate’s General Objection No. 3 is essentially the same as the Company’s own general objections to providing the Consumer Advocate with information that is not discoverable under the Tennessee Rules of Civil Procedure. *See* TAWC’s General Objection Nos. 1, 2, and 5 in Tennessee American Water Company’s Responses to the First Discovery Request

of the Consumer Advocate and Division to Tennessee American Water Company, as well as Tennessee American Water Company's Responses to the Remainder of the Requests Contained in the First Discovery Request of the Consumer Advocate and Division to Tennessee American Water Company, filed in this docket on May 28, 2008, and June 9, 2008, respectively. If the Hearing Officer determines that such general objections are improper, the Consumer Advocate requests the Hearing Officer to deny such objections of the Company as well.

II. THE CONSUMER ADVOCATE'S SUPPLEMENTAL RESPONSES TO REQUEST NOS. 1, 2, 3, 4, 7, 8, 9, 11, 12, AND 13 ARE ACCURATE AND COMPLETE AND NEED NO REVISION OR SUPPLEMENTATION AT THIS TIME.

Pursuant to the Hearing Officer's instructions made at the status conference on June 4, 2008, the Consumer Advocate has provided supplemental answers to TAWC's Request Nos. 1, 2, 3, 4, 7, 8, 9, 11, 12, and 13 that are accurate and complete. The Hearing Officer stated:

I don't find it to be a valid objection or reason not to answer a question that a party is anticipating filing prefiled testimony. The question is asked a particular point in time, and if the party has an answer to that question, if they know who a witness is going to be and they know what the substance of the testimony is going to be, I think the question needs to be answered. The response that you can find out when we file our prefiled is not satisfactory. If we're going to conduct discovery under the Rules of Civil Procedure, we've got to follow the guidelines of what are acceptable objections and what are not. If a question reaches into a work product privilege of an expert, I understand that, but if a company or an individual has an answer to a question, has that information and can provide it at the time that the question is asked, then I think the question needs to be answered.

Transcript at 54 (June 4, 2008). The Consumer Advocate understands the Hearing Officer's instructions and it endeavored to supply supplemental responses to TAWC's questions that comply with these instructions and with the Tennessee Rules of Civil Procedure.

The Company is laboring under the mistaken belief that "[i]t seems unlikely that now, a mere five days before the CAPD's pre-filed testimony is due, that the CAPD does not know of any

additional documents, data, reports, studies, or individuals on which it relies as an Intervenor in this matter.” Motion at 4. First, the Consumer Advocate does not take the position that its prefiled testimony is due in five days from now because at the June 4 status conference the parties agreed to address the first round of discovery and then address the remainder of the schedule at the June 18 status conference (which is now scheduled for June 19). Transcript at 98-99 (June 4, 2008). Second, the Consumer Advocate has provided the Company with all the responsive information that it has at this time for Request Nos. 1, 2, 3, 4, 7, 8, 9, 11, 12, and 13. In particular, the Consumer Advocate has not drawn any conclusions or taken any positions on any of the issues in this matter at this time. With respect to the Company’s special concerns regarding Request No. 2, the Consumer Advocate would refer the Hearing Officer to the Consumer Advocate’s supplemental response filed on June 9, 2008, and to Tenn.R.Civ.P. 26.05(1)(A).

Finally, the Company’s suggestion on page 4 of its Motion that the Consumer Advocate is attempting to avoid its discovery obligations is flat wrong. The Consumer Advocate has stated clearly in its responses that it recognizes its obligations to provide supplemental responses; and, as responsive information and documents become known and available to the Consumer Advocate, the Consumer Advocate will act accordingly to seasonably supplement its responses. The bottom line, however, is that the Consumer Advocate must identify such responsive information and documents for itself before they can be produced to anyone else, including the Company.

For the reasons stated, the Consumer Advocate requests the Hearing Officer to deny the Company’s Motion.

RESPECTFULLY SUBMITTED,



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Dated: June 18, 2008

CERTIFICATE OF SERVICE

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

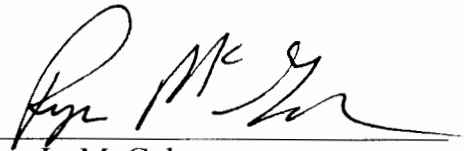
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on this the 18 day of June, 2008.



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