

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

<b>IN RE:</b>	)	
	)	
<b>PETITION OF TENNESSEE-</b>	)	<b>DOCKET NO.</b>
<b>AMERICAN WATER COMPANY TO</b>	)	<b>10-00189</b>
<b>CHANGE AND INCREASE CERTAIN</b>	)	
<b>RATES AND CHARGES</b>	)	

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**MEMORANDUM IN SUPPORT OF THE CONSUMER ADVOCATE'S MOTION FOR  
LEAVE TO ISSUE MORE THAN EIGHTY DISCOVERY REQUESTS**

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The Consumer Advocate and Protection Division ("Consumer Advocate"), pursuant to TRA Rule 1220-1-2-.11(5)(a), hereby submits this memorandum in support of its *Motion for Leave to Issue More Than Eighty Discovery Requests* to Tennessee American Water Company. ("TAWC" or "Company"). At the Status Conference on October 18, 2010, Chairman Mary Freeman, acting as Hearing Officer, ordered that the Consumer Advocate would be allowed to issue eighty (80) discovery requests to the Company, with leave to file a motion seeking permission to make additional requests.<sup>1</sup> Even though discovery requests were not due under the TRA's procedural schedule until November 1, 2010, the Consumer Advocate agreed to file its initial eighty (80) requests on October 20, 2010, in an effort to give TAWC as much time as possible to respond to discovery.

Now, on the date initial discovery requests are due under the TRA's procedural schedule, the Consumer Advocate is requesting leave to issue more than eighty (80) discovery questions. The Consumer Advocate appreciates the Hearing Officer's ruling allowing the Consumer Advocate to issue at least eighty (80) discovery requests. However, as will be shown below,

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<sup>1</sup> *Transcript of Proceedings*, TRA Docket 10-00189, 64:16-25, October 18, 2010.

further discovery is still necessary in order for the Consumer Advocate to fully represent the interests of consumers. For good cause, the Consumer Advocate would show as follows:

### **RULES GOVERNING DISCOVERY BEFORE THE TRA**

Section 1220-1-2-.11 of the Rules of the Tennessee Regulatory Authority ("R. TRA"), entitled *Discovery*, states, in part, that "any party to a contested case may petition for discovery...discovery shall be **sought and effectuated** in accordance with the Tennessee Rules of Civil Procedure" (Emphasis added). Furthermore, Tennessee Code Annotated § 4-5-311(a) states that "the administrative judge or hearing officer, at the request of any party, shall issue subpoenas, **effect discovery**, and issue protective orders, **in accordance with the Tennessee Rules of Civil Procedure**" (Emphasis added). Rule 26.02 of the Tennessee Rules of Civil Procedure, governing discovery, provides that:

**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 electronically stored information.

Tenn. R. Civ. Pro. 26.02, *Discovery Scope and Limits* (Emphasis added). Perhaps the most important policy of discovery is that discovery should enable the parties and the court to seek the truth so that disputes will be decided by facts rather than legal maneuvering, *White v. Vanderbilt University*, 21 S.W. 3d 215, 223 (Tenn. Ct. App. 1999). Discovery should allow both the court and the parties to have an intelligent grasp of the issues to be litigated and knowledge of the facts underlying them. *Vythoulkas v. Vanderbilt University Hospital*, 693 S.W. 2d 350, 356 (Tenn. Ct. App. 1985). Further, discovery is not confined to the issues raised in the pleadings, for discovery itself may be used to clarify and define the issues in controversy. *Id.* at 359. Accordingly, a party

seeking discovery is entitled to obtain information about any matter, not privileged, which is relevant to the subject matter involved, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. *State ex. Rel. Flowers v. Tennessee Trucking Assoc. Self Insurance Group Trust*, 209 S.W. 3d 602, 615 (Tenn. Ct. App. 2006).

The Tennessee Rules of Civil Procedure go on to specify the situations in which discovery may be limited by the presiding judge or hearing officer:

the frequency or extent of use of the discovery methods set forth in subdivision 26.01 and this subdivision **shall be limited by the court if it determines that:** (i) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or, (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

Id. (Emphasis added). Applying the fundamental principal of "*expressio unius est exclusio alterius*," which translates as "the expression of one thing implies the exclusion of ... things not expressly mentioned," a court may not limit discovery if the requests do not fall into one of these three categories, *Wells v. Tennessee Board of Regents*, 231 S.W.3d 912, 917 (Tenn. 2007).

The Rules of the Tennessee Regulatory Authority have the additional requirement that a party obtain leave from the Authority before serving more than forty (40) discovery requests, R. TRA § 1220-1-2-.11. Leave is obtained by filing a Motion and accompanying "memorandum establishing **good cause**" for additional discovery. Id. (Emphasis added). The Authority is granted the power to create such a rule under T.C.A. § 4-5-311(c), "the agency may promulgate rules to further prevent abuse and oppression in discovery." However, it should be noted that

this ability is still governed by the requirement that the Authority comply with the Tennessee Rules of Civil Procedure as directed by the Authority's own Rules of Practice and Procedure, § 1220-1-2-.11, as well as T.C.A. § 4-5-311(a); therefore, "abuse or oppression in discovery" is defined under one of the three permissible reasons for limiting discovery detailed in Tenn. R. Civ. Pro. 26.02, above.

When the Authority's Rules of Practice and Procedure are read in conjunction with the T.C.A. and the Tennessee Rules of Civil Procedure, it becomes clear that, unless otherwise ordered, a party is limited to forty (40) discovery requests unless that party files a motion and memorandum establishing good cause for additional discovery. However, that Motion may not be denied unless the requesting party's discovery request violates one of the three provisions contained in Tenn. R. Civ. Pro. 26.02.

### **GOOD CAUSE**

The Consumer Advocate's *Motion for Leave to Issue More Than Eighty Discovery Requests* is certainly backed by "Good Cause" as required by the Authority, R. TRA § 1220-1-2-.11. The Consumer Advocate's additional discovery requests meet this standard for all of the following reasons:

#### **A. Completeness**

The process of utility rate-making is complex and involves numerous and often contested issues, *Tennessee Pub. Serv. Comm'n v. Nashville Gas Co.*, 551 S.W.2d 315, 318 (Tenn. 1977). The issues raised in the Petition and testimony filed by TAWC in this docket cover a multitude of complex issues including determination of the proper test year, the Company's proposed weather normalization adjustment which the TRA has previously rejected, management fees, double leveraging, return on equity, rate case expense, production costs, infrastructure

replacement, and operating and maintenance expenses, just to name a select few. This list does not even attempt to identify all of the major issues in this case, and most of these issues have multiple sub-issues which may prove contentious.

When the Consumer Advocate intervenes in a rate case its aim is to present a complete case to the TRA. By "complete case" the Consumer Advocate means a case that not merely opposes selected parts of a company's case, but one that presents a virtually parallel case that sets forth an alternative number for every number presented by the company.

By presenting a complete case the Consumer Advocate believes it is not only representing consumers to the fullest extent possible but also providing a useful framework for the TRA as it works to decide the case. It is one thing to attack a company number, for example, on wages and salaries, but something very different to state precisely what a party believes that number should be.

As the TRA is well aware, in this docket TAWC has requested a rate increase of \$9,984,463, or approximately twenty-eight (28%) percent.<sup>2</sup> Docket 10-00189 is just one more in a long line of virtually periodic requests by TAWC for a rate increase. Just two years ago in TRA Docket 08-00039, a matter which is still pending on appeal, the Company requested an increase of \$7,644,859, or 20.58%; of that amount, the TRA allowed an increase of only \$1,655,541, or 4.37%. In 2006, TAWC requested an increase of \$6,379,887, or 19.08%, in Docket 06-00290; however, the Company only received an increase of \$4,079,865. Once again, in 2004, the Company requested an increase of \$1,970,887, or 5.96%, of which it received only \$297,005. Over the past three rate cases, TAWC has requested a total increase of \$15,995,633, of which it has been granted increases of only \$6,032,411, less than forty percent of the total

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<sup>2</sup> *Petition of Tennessee American Water Company*, p.5, September 23, 2010.

increases requested. It is clear the disparity between the amount requested by TAWC and the amount granted by the TRA has grown more stark with each successive rate case.

Furthermore, in the orders issued in these prior TAWC dockets, the Authority has frequently adopted figures offered by the Consumer Advocate; figures that the Consumer Advocate would not be able to calculate without obtaining complete discovery. In order to present a complete case, the Consumer Advocate needs complete discovery. A forty question limit or even an eighty question limit makes it virtually impossible to present a complete case. If the Consumer Advocate is not allowed to propound the discovery needed for a complete case, it will have to re-evaluate the way it presents its case through its witnesses. In particular, the schedules attached to the testimony of one of our witnesses which summarize every relevant expense and revenue item in the case may be impossible to provide. Attached as **Exhibit A** to this Motion are schedules prepared by Terry Buckner for use in the last Tennessee American rate case; without complete discovery these schedules would have been impossible to prepare.

The Consumer Advocate works diligently to put forth a complete case based on a factual record in order to adequately represent the interests of consumers. In summary, we believe a forty question or even an eighty question limit in this docket will diminish the Consumer Advocate's ability to present the best case it can, as well its ability to provide material we believe is vital to the TRA to the protection of Tennessee consumers.

#### **B. New Experts and New Issues**

As addressed during the most recent status conference, the intervenors in this matter are still reviewing the testimony in this matter and determining the need for expert testimony, *Transcript of Proceedings*, TRA Docket 10-00189, 63:14 – 64:6, October 18, 2010. Since that status conference and the subsequent filing of its First Discovery Requests on Wednesday,

October 20, 2010, the Consumer Advocate has retained an additional expert from whom it intends to offer testimony in support of its case. However, that expert has had no opportunity to ask any questions of the Company or submit any discovery to this point.

Furthermore, in the Authority's most recent data requests, propounded on Wednesday, October 27, 2010, after the filing of the Consumer Advocate's *First Discovery Requests*, the TRA asked multiple questions on the issue of "Decoupling," an issue which had not arisen in this Docket until that filing. Specifically, beginning with Data Request #109, the TRA asks TAWC to discuss its position

regarding implementation of a mechanism that would maintain the average revenue per customer by on annual basis. Specifically a revenue per customer would be calculated for a customer class (e.g., residential by meter size) based upon the attrition year revenues and meters adopted in this proceeding. Each year, the actual revenue per customer (meter) would be compared to the benchmark revenue per customer (meter). **If the revenue per customer declines, then rates would be adjusted to bring the revenue per customer back up to benchmark.**

*TRA Data Request No. 2*, p.5, October 27, 2010 [sic] (Emphasis added). This issue alone in prior dockets before the TRA has been the source of literally hundreds of discovery/data requests by the Authority and the Consumer Advocate. If TAWC is being asked its position on this issue and the TRA intends to consider implementing some form of "Decoupling" in Docket 10-00189, the Consumer Advocate must be permitted an opportunity to meaningfully respond to that position. Without allowing the Consumer Advocate to propound additional discovery, the Authority would leave our office unable to present testimony on this issue with any factual support.

For additional good cause, testimony by TAWC affiliates before regulatory bodies in other states indicates that the Company may not have been completely forthcoming in its initial

petition and pre-filed direct testimony concerning additional evidence the Company may intend to submit to the TRA. In rebuttal testimony filed with the Virginia State Corporation Commission in Virginia American Water Company's current rate case, on October 4, 2010, Mike Miller stated he intends to file with the TRA in TAWC's current rate case a "study" of cost allocation factors in regards to management fees as a follow-up by the Company to the Shumaker audit.<sup>3</sup> To date, no such "study" has been filed with the TRA and the Consumer Advocate has had no chance to review it. Neither Mr. Miller's pre-filed direct testimony nor responses to TRA data requests in this docket make any mention of an additional "study" he intends to submit to the TRA in this rate case. Without additional discovery, the Consumer Advocate has no means prior to the filing of direct testimony to obtain information to test the veracity and methodology of the Company's study or any other documents that the Company may be holding until a later date. Unfortunately, the Consumer Advocate was not aware of Mr. Miller's prior comments at the time of filing its *First Discovery Requests*.

In short, without additional discovery, the Consumer Advocate will not be able to address all of the issues raised in Docket 10-00189 (particularly those issues raised after the filing of its initial eighty discovery requests), its experts will not be able to obtain the information they need to present their case effectively, and the Consumer Advocate will not be able to discover reports in TAWC's possession which are directly relevant to the issues in this proceeding.

#### **ABUSE OR OPRESSION IN DISCOVERY**

In light of the above, there can be little doubt that the Consumer Advocate has "Good Cause" for filing additional discovery requests with the Authority. Therefore, under the Authority's rules and Tennessee law, these additional discovery requests should only be denied if

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<sup>3</sup> Rebuttal testimony of Mike Miller on behalf of Virginia American Water Company, p. 47, Docket PUE 2010-0001 filed with the Virginia State Corporation Commission, October 4, 2010.



they are found to abusive or oppressive to TAWC, Tenn. Code Ann. § 4-5-311(c). As discussed more fully above, the “abusive or oppressive” standard must be defined in accordance with the Tennessee Rules of Civil Procedure; therefore, in order for these discovery requests to be “abusive or oppressive” they must violate one of the three situations specified in Tenn. R. Civ. Pro. 26.02.

#### **A. Unreasonably Cumulative or Duplicative**

Under the first prong of Tenn. R. Civ. Pro. 26.02, the Authority may limit discovery if “the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive.” The Consumer Advocate has taken every precaution to ensure that its discovery is not cumulative or duplicative, and to obtain the information from other sources when possible.

The Consumer Advocate has reviewed the data requests of the Authority and attempted to avoid asking any questions which the TRA has already propounded. Furthermore, to the extent possible, the Consumer Advocate has informed the City of Chattanooga and the Chattanooga Manufacturer’s Association of its intended discovery requests in an effort to avoid overlapping with the information requested by those parties. In short, our office has taken all reasonable steps to ensure that its questions are not duplicative or cumulative.

Furthermore, the Consumer Advocate has exhausted other possible means of obtaining the necessary information. First, our office has used publicly available data whenever possible, rather than requesting that information directly from TAWC. Second, when information was in the possession of the TRA, the Consumer Advocate has issued Records Requests to the Authority rather than discovery requests to the Company. Only after attempting to obtain all

necessary information from other sources has the Consumer Advocate issued additional data requests to TAWC.

In the event that requested data has been produced in response to another question or is more readily available from some other source, the Consumer Advocate is certainly willing to alter or amend its discovery requests to ensure that they are “not cumulative or duplicative, and to obtain the information from other sources when possible.” Id.

### **B. Ample Opportunity**

The second circumstance under which a judge or hearing officer may limit discovery occurs when “the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought,” Tenn. R. Civ. Pro. 26.02. TRA Docket 10-00189 was only filed on September 17, 2010. Therefore, there has been no opportunity for discovery in this action whatsoever prior to the written discovery in question. Clearly, the Consumer Advocate has not had “ample opportunity” for discovery in this action prior to written discovery.

### **C. Unduly Burdensome or Expensive Taking Into Account the Needs of the Case**

The final situation in which the Authority may deny the Consumer Advocate’s additional discovery requests exists “if the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties’ resources, and the importance of the issues at stake in the litigation,” Tenn. R. Civ. Pro. 26.02. Under this test, the determination of whether or not the Consumer Advocate’s discovery requests are unduly burdensome or expensive depends on the “needs of the case,” “amount in controversy,” “limitations on the parties’ resources,” and the “importance of the issues at stake.” Id.

First, we must analyze the discovery requests in question as they relate to the “needs of the case.” In the present case, TAWC’s initial filing consisted of 914 pages of information,

testimony and pleadings. The Company filed an additional 3,024 pages of information and data in response to the “Minimum Filing Guidelines” of the TRA. It is important to note that this information is only the minimum amount of information necessary to bring a rate case; many of the key assertions of TAWC’s witnesses remain unsupported by sufficient data to test their veracity, reasonableness, and/or accuracy.

The Consumer Advocate is responsible for reviewing this 3,938 pages of testimony, data, and other information filed by TAWC; our office is then charged with putting on a complete alternative rate case not only challenging any unreasonable figures presented by the Company, but also with presenting what the correct figures should be. Clearly these circumstances require more than 80 discovery requests in order to properly evaluate and present an alternative to TAWC’s entire rate case. Even the Authority’s staff, which is not expected to publicly present an alternative rate case before or during the hearing on the merits, has already required an additional fifty-one (51) questions, beyond its minimum filing guidelines, in order to evaluate the Company’s filing, for a current total of 138 data requests issued by the TRA. The Consumer Advocate has submitted only 46 additional discovery requests for a total of only 126 requests to date. In light of the Consumer Advocate’s role in this matter, its pending discovery requests are certainly reasonable in relation to “the needs of the case.”

Second, the Consumer Advocate’s discovery requests must be evaluated in light of the “amount in controversy.” *Id.* In this matter, TAWC has requested a rate increase of approximately twenty-eight (28%) percent, or \$9,984,463.<sup>4</sup> Certainly, there is little doubt a claim of \$10 million dollars in and of itself is a large amount in dispute. However, this amount is multiplied in a rate-making setting. This is not simply a matter of \$10 million, but rather TAWC is seeking an extra \$10 million *a year* from the households and businesses of Chattanooga

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<sup>4</sup> *Petition of Tennessee American Water Company*, p.5, September 23, 2010.

through increased rates. The nearly \$10 million increase requested in this case is extremely large in light of the outcomes of the three rate cases previously filed by the Company in the last six years which ended in rate increases of a combined total of \$6,379,887. In essence, TAWC is asking in this rate case for 37% more than what the Company has been awarded by the TRA in the last three rate cases combined. Moreover, given the Company's track record of requesting in excess of 60% more in rate increases than the TRA has deemed just and reasonable, the nearly \$10 million increase sought by TAWC clearly constitutes a sizeable amount in controversy.

Next, the Consumer Advocate's discovery requests must be considered with regard to any "limitations on party resources." As a subsidiary of AWW, TAWC is part of a large and sophisticated corporate system. Service company employees serve as Treasurers of affiliates like TAWC and indeed service company employees provide the bulk of the expert testimony in rates case before the TRA and other jurisdictions. It is important to note the extensive discovery propounded on TAWC affiliates in rate cases in other jurisdictions, particularly those in which service company employees such as Mike Miller and Shelia Miller and outside experts such as Dr. Spitznagel and Dr. James H. Vander Weide whom offer testimony both for TAWC and various TAWC affiliates.

In Case 2010-000036, Kentucky American Water Company ("KAWC") had few objections to responding to, excluding subparts, 602 discovery requests from the Kentucky Consumer Advocate and in excess of 100 from the Kentucky Commission. Mike Miller, Shelia Miller, Dr. Vander Weide, Paul Herbert, Dr. Spitznagel and Patrick Baryenbruch are testifying on behalf of KAWC and here on behalf of TAWC. In an on-going rate case in West Virginia in docket 10-0920-W-42T, West Virginia American Water Company ("WVAWC") has thus far substantially answered most of the more than 350 discovery requests (not including subparts)

from the West Virginia Consumer Advocate.<sup>5</sup> Mike Miller, Dr. Vander Weide, Paul Herbert and Patrick Baryenbruch are testifying on behalf of WVAWC and here on behalf TAWC. Surely, TAWC and nearly the exact same service company personnel and outside expert witnesses in Kentucky and West Virginia have the resources to provide responses to the 126 requests proposed here by the Consumer Advocate.

Finally, the Consumer Advocate's discovery requests must be reasonable in relation to the "importance of the issues at stake in the litigation." While this is a much more subjective standard than the preceding issues, the high level of importance of a rate case cannot be denied, particularly one in which the Company is asking to increase rates by approximately twenty-eight (28%) percent. Furthermore, the importance of this case to the people of Chattanooga is demonstrated by the intervention of local manufacturers, represented by the Chattanooga Manufacturers Association ("CMA"); the employee union representing company workers, Walden Ridge Utility District and Signal Mountain and finally the City of Chattanooga itself, which recognizes the importance of reasonably priced water for the economic vitality of the city.

It should be noted that pre-filed testimony is the only procedural vehicle available to the Consumer Advocate to provide evidence and analysis prior to the hearing in this matter. Without additional discovery, the Consumer Advocate will be hampered in representing the interests of Chattanooga's households and businesses. Moreover, without sufficient discovery, the Consumer Advocate may not have fully prepared positions until after the filing of pre-filed testimony.<sup>6</sup> Discovery and pre-filed testimony presents the only opportunity for consumers to receive due process with a representative and evidentiary voice regarding the rates charged them

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<sup>5</sup> It should be noted the West Virginia Staff is conducting an on-site audit of the utility rather than issuing data requests.

<sup>6</sup> In Docket 06-00290, supplemental testimony after the filing of the Consumer Advocate's pre-field direct testimony that raised new issues and areas of concern two weeks prior to the hearing on the merits was met with objections from TAWC that persisted throughout the hearing on the merits and required post-hearing depositions.

by TAWC prior to the hearing. Moreover, additional discovery is necessary in order for the Consumer Advocate to take informed positions in representing consumers in any potential settlement negotiations.

### **DISCOVERY AND RATE CASE EXPENSE**

The Company has been very clear in attempting to limit the discovery of the Consumer Advocate and other intervening parties by linking discovery rights of the parties to the TAWC's rate case expense. In arguing the discovery requests of the intervening parties should be limited to forty questions each, TAWC has asserted that with regard to "rate case expense, discovery is where things get really out of control."<sup>7</sup> In the appeal of the 2008 rate case, TAWC has sought to shift the responsibility for rate case costs to the intervening parties as "litigious" actors for, among other things, submitting a combined "411 discovery requests."<sup>8</sup> However, the Authority has found such allegations from TAWC in the past "unfounded and misplaced."<sup>9</sup> Given the practice of TAWC affiliates in other states, the facts simply do not bear out TAWC's arguments.

In KAWC's pending rate case in Kentucky, in which the Kentucky Consumer Advocate propounded 602 discovery requests and the Commission Staff issued in excess of 100 data requests, not counting subparts, the Company's requested rate case expense in Kentucky is \$553,122. This is an amount substantially less than the nearly \$700,000 TAWC is requesting in this case.<sup>10</sup> The KAWC case, which is on-going as of the date of this filing, was set in motion on January 27, 2010, involves intervening parties other than the Kentucky Consumer Advocate,

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<sup>7</sup> *Transcript of Proceedings*, TRA Docket 10-00189, p.50:10-15, October 18, 2010.

<sup>8</sup> Appeal No. M2009-00553-COA-R12-CV, Brief of Petitioner Tennessee American Water Company, p. 21, 53 (March 23, 2010).

<sup>9</sup> Appeal No. M2009-00553-COA-R12-CV, Brief of Respondent Tennessee Regulatory Authority, p. 59 (June 15, 2010).

<sup>10</sup> The is the actual rate case expense sought by KAWC in Case 2010-00036, per the Company's post-hearing brief. The nearly \$700,000 figure sought by TAWC includes \$42,000 for the expense of the cost of service study submitted by the TAWC.

featured a hearing for public comment outside of the Commission's Frankfort location, a hearing on the merits and the filing of post-hearing briefs. In the on-going West Virginia matter, in which the Consumer Advocate in that state has thus far requested more than 350 discovery requests, excluding sub-parts and the discovery requests of other parties, and the Commission Staff is undertaking an audit of the company out of state, WVAWC is seeking an estimated \$327,000 in rate case expense, a total far less than the rate case expense sought from Chattanooga consumers.

Neither in Kentucky nor West Virginia has TAWC's affiliates sought to limit discovery by a set number of questions, rather they have responded to substantially more discovery questions than the Consumer Advocate has ever sought to propound on TAWC. There are means in which to control rate case expense, particularly with regard to discovery. It is TAWC's expert witnesses that are or should be responding to discovery outside of a substantive legal or good faith objection. As in other TRA dockets, the Consumer Advocate is more than willing to allow TAWC's responding witnesses to contact Terry Buckner, the Consumer Advocate's lead analysis and CPA, in order to informally work out discovery issues as the bulk of the Consumer Advocate's discovery requests are focused on technical, financial and accounting data. Such action should, at a minimum, mitigate some discovery issues and result in reducing TAWC's legal fees incurred in this rate case.

### **CONCLUSION**

For all of the foregoing reasons, the Consumer Advocate asks that the Authority grant its *Motion for Leave to Issue More Than Eighty Discovery Requests*.

RESPECTFULLY SUBMITTED,

A handwritten signature in dark ink, appearing to read 'T. Jay Warner', is positioned above a horizontal line.

T. JAY WARNER, BPR #26649  
Assistant Attorney General  
Office of the Attorney General and Reporter  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, TN 37202-0207



### CERTIFICATE OF SERVICE

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

R. Dale Grimes  
Bass, Berry & Sims PLC  
150 Third Avenue South, Suite 2800  
Nashville, TN 37201

Henry Walker  
Bradley Arant Boult Cummings, LLP  
1600 Division St., Suite 700  
Nashville, TN 37203

David C. Higney  
Grant, Konvalinka & Harrison, P.C.  
Ninth Floor, Republic Centre  
633 Chestnut St.  
Chattanooga, TN 37450-0900

Mark Brooks  
521 Central Avenue  
Nashville, TN 37211

Scott H. Strauss  
Katharine M. Mapes, Esq.  
Spiegel & McDiarmid, LLP  
1333 New Hampshire Ave., N.W.  
Washington, DC 20036

Donald L. Scholes  
Branstetter, Stranch & Jennings, PLLC  
227 Second Avenue, North  
Fourth Floor  
Nashville, TN 37219

on this the 1<sup>st</sup> day of November, 2010.

  
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T. JAY WARNER

Tennessee-American Water Company  
Revenue Deficiency  
For the 12 Months Ending August 31, 2009

Exhibit 1, Page 1 of 9

Line No.		CAPD		TAWC		Difference
1	Rate Base	121,818,865	A/	118,199,645	A/	3,619,220
2	Operating Income at Present Rates	9,006,538	B/	5,452,341	B/	3,554,197
3	Earned Rate of Return (Line 2/Line 1)	7.39%		4.61%		2.78%
4	Cost of Capital	6.65%	C/	8.514%	E/	-1.86%
5	Required Operating Income (Line 1*Line 4)	8,105,387		10,063,518		(1,958,131)
6	Operating Income Deficiency (Line 5-Line 2)	(901,151)		4,611,177		(5,512,328)
7	Gross Revenue Conversion Factor	1.649695	D/	1.71974555	E/	(0.070050)
8	Revenue Deficiency (Line 6*Line 7)	<u>(1,486,624)</u>		<u>7,930,051</u>		<u>(9,416,675)</u>

A/ Schedule 2  
B/ Schedule 3  
C/ Schedule 9  
D/ Schedule 8  
E/ TAWC Exhibit 1, Schedule 1

Tennessee-American Water Company  
Comparative Rate Base  
For the 12 Months Ending August 31, 2009

Exhibit 1, Page 2 of 9

Line No.		CAPD	B/	TAWC	A/	Difference
1	Utility Plant in Service	209,341,111		203,998,392		5,342,719
2	Construction Work in Progress	5,284,789		7,996,461		(2,711,672)
3	Utility Plant Capital Lease	1,590,500		1,590,500		-
4	Limited-Term Utility Plant - Net	-		-		-
5	Working Capital	599,651		1,396,084		(796,433)
6	Def. Maint.	-		-		-
7	Total Additions	<u>216,816,051</u>		<u>214,981,437</u>		<u>1,834,614</u>
8	Accumulated Depreciation	62,426,348		63,563,205		(1,136,857)
9	Accumulated Amort. of Utility Capital Lease	1,139,858		1,139,858		-
10	Accumulated Deferred Income Taxes	15,242,359		16,931,771		(1,689,412)
11	Customer Advances for Construction	7,628,149		6,793,935		834,214
12	Contributions In Aid of Construction	8,459,113		8,399,016		60,097
13	Unamortized Investment Tax Credit	33,994		37,993		(3,999)
14	RWIP/Utility Plant Acquisition Adj.	<u>67,365</u>		<u>(83,986)</u>		<u>151,351</u>
15	Total Deductions	<u>94,997,186</u>		<u>96,781,792</u>		<u>(1,784,606)</u>
16	Rate Base	<u>121,818,865</u>		<u>118,199,645</u>		<u>3,619,220</u>

A/ TAWC Exhibit 1, Sch. 2  
B/ CAPD work papers.

Tennessee-American Water Company  
Income Statement at Current Rates  
For the 12 Months Ending August 31, 2009

Exhibit 1, Page 3 of 9

Line No.		CAPD		TAWC		Difference
1	Operating Revenues	39,492,768	A/	37,142,460	A/	2,350,308
2	Operations and Maintenance Expense	19,752,233	B/	21,478,005	B/	(1,725,772)
3	Depreciation and Amortization Expense	4,366,120	I/	4,730,347	C/	(364,227)
4	Taxes Other Than Income	4,047,986	D/	4,176,423	G/	(128,437)
5	State Excise Tax	473,924	E/	406,685	H/	67,239
6	Federal Income Tax	2,309,657	E/	1,362,349	H/	947,308
7	Total Operating Expense	30,949,920		32,153,809		(1,203,889)
8	AFUDC	463,690	F/	463,690	F/	-
9	Net Operating Income for Return	9,006,538		5,452,341		3,554,197

A/ TAWC Exhibit 2, Sch. 2  
B/ Schedule 5  
C/ TAWC Exhibit 2, Sch. 1  
D/ Schedule 6  
E/ Schedule 7  
F/ TAWC Exhibit 2, Sch. 3  
G/ TAWC Exhibit 2, Sch. 1  
H/ TAWC Exhibit 2, Sch. 6  
I/ CAPD work paper E-DEP

Tennessee-American Water Company  
Income Statement at Proposed Rates  
For the 12 Months Ending August 31, 2009

Exhibit 1, Page 4 of 9

Line No.		Current Rates	A/ Adjustments	C/ Proposed Rates
1	Operating Revenues	39,173,060	B/ (1,486,624)	37,686,436
2	Forfeited Discount Revenues	319,708	B/ (12,785)	306,923
3	Total Revenues	<u>39,492,768</u>	<u>(1,499,409)</u>	<u>37,993,359</u>
4	Operations and Maintenance Expense	19,752,233	(16,643)	19,735,590
5	Depreciation and Amortization Expense	4,366,120		4,366,120
6	Taxes Other Than Income	4,047,986		4,047,986
7	State Excise Tax	473,924	(96,380)	377,544
8	Federal Income Tax	<u>2,309,657</u>	(485,235)	<u>1,824,422</u>
9	Total Operating Expense	<u>30,949,920</u>		<u>30,351,662</u>
10	AFUDC	<u>463,690</u>		<u>463,690</u>
11	Net Operating Income for Return	<u>9,006,538</u>		<u>8,105,387</u>

A/ Schedule 3

B/ TAWC Exhibit 2, Sch. 2

C/ Schedule 1, Line 8 x appropriate factor from Schedule 8

Tennessee-American Water Company  
Operation & Maintenance Expenses  
For the 12 Months Ending August 31, 2009

**Exhibit 1, Page 5 of 9**

Line No.		CAPD	A/	TAWC	B/	Difference
1	Salaries and Wages	4,877,597		5,058,987		(181,390)
2	Purchased Water	52,621		52,110		511
3	Fuel and Power	2,337,108		1,922,043		415,065
4	Chemicals	1,060,227		1,559,222		(498,995)
5	Waste Disposal	169,535		179,088		(9,553)
6	Management Fees	3,453,223		4,335,190		(881,967)
7	Group Insurance	1,672,934		1,714,550		(41,616)
8	Pensions	1,156,442		1,161,108		(4,666)
9	Regulatory Expense	341,868		543,384		(201,516)
10	Insurance Other Than Group	534,380		583,492		(49,112)
11	Customer Accounting	763,785		738,845		24,940
12	Uncollectible Expense	434,707		417,756		16,951
13	Rents	17,618		11,336		6,282
14	General Office Expense	256,041		245,926		10,115
15	Miscellaneous Expense	1,802,072		2,018,623		(216,551)
16	Other Maintenance Expense	822,075		936,345		(114,270)
17	Total O&M Expense	<u>19,752,233</u>		<u>21,478,005</u>		<u>(1,725,772)</u>

A/ CAPD work papers

B/ TAWC Exhibit 2, Sch. 3

Tennessee-American Water Company  
Taxes Other Than Income Taxes  
For the 12 Months Ending August 31, 2009

Exhibit 1, Page 6 of 9

Line No.		CAPD		TAWC	D/	Difference
1	Other General Taxes	-		568		(568)
2	Gross Receipts Tax	357,833	A/	546,017		(188,184)
3	TRA Inspection Fee	75,588		74,295		1,293
4	Property Taxes	2,842,849	B/	2,824,972		17,877
5	Franchise Tax	397,550		344,020		53,530
6	FICA Taxes	366,896	C/	378,917		(12,021)
7	Unemployment Taxes	7,270	C/	7,634		(364)
8	Total Taxes Other Than Income Taxes	<u>4,047,986</u>		<u>4,176,423</u>		<u>(128,437)</u>

A/ CAPD work paper T-OTAX2

B/ CAPD work paper T-OTAX1

C/ CAPD work paper T-OTAX3

D/ TAWC Exhibit 2, Sch. 5, TAWC response to TRA #13, Page 1 of 147.

Tennessee-American Water Company  
Excise and Income Taxes  
For the 12 Months Ending August 31, 2009

Exhibit 1, Page 7 of 9

Line No.		Attrition Amount A/	
1	Operating Revenues	39,492,768	B/
2	Salaries and Wages	4,877,597	
3	Purchased Water	52,621	
4	Fuel and Power	2,337,108	
5	Chemicals	1,060,227	
6	Waste Disposal	169,535	
7	Service Company Charges	3,453,223	
8	Group Insurance	1,672,934	
9	Pensions	1,156,442	
10	Regulatory Expense	341,868	
11	Insurance Other Than Group	534,380	
12	Customer Accounting	763,785	
13	Uncollectible Expense	434,707	
14	Rents	17,618	
15	General Office Expense	256,041	
16	Miscellaneous Expense	1,802,072	
17	Other Maintenance Expense	822,075	
18	Depreciation and Amortization Expense	4,366,120	
19	Taxes Other Than Income	4,047,986	
20	NOI Before Excise and Income Taxes	11,326,429	
21	AFUDC	463,690	
22	Interest Expense	(4,479,075)	C/
23	Pre-tax Book Income	7,311,044	
24	Schedule M Adjustments	(19,904)	D/
25	Excise Taxable Income	7,291,140	
26	Excise Tax Rate	6.50%	
27	Excise Tax Payable	473,924	
28	Excise Tax Deferred	-	
29	Excise Tax Expense	473,924	
30	Pre-tax Book Income	7,311,044	
31	Preferred Dividend Credit	-	
32	Excise Tax	(473,924)	
33	Schedule M Adjustments	(19,904)	D/
34	FIT Taxable Income	6,817,215	
35	FIT Rate	35.00%	
36	Federal Income Tax Payable	2,386,025	
37	ITC Amortization	(76,368)	E/
38	Federal Income Tax Deferred	-	
39	Federal Income Tax Expense	2,309,657	

A/ Schedule 5

B/ Schedule 4

C/ Schedule 1, line 1 \* Weighted Cost of Debt per Schedule 9

D/ TAWC Exhibit No. 2, Schedule 7, Line 36.

E/ TAWC Exhibit No. 2, Schedule 7, Line 11.



Tennessee-American Water Company  
Revenue Conversion Factor  
For the 12 Months Ending August 31, 2009

Exhibit 1, Page 8 of 9

Line No.		Amount	Balance
1	Operating Revenues		1.000000
2	Add: Forfeited Discounts	0.0086 A/	0.008600
3	Balance		1.008600
4	Uncollectible Ratio	0.0111 B/	0.011195
5	Balance		0.997405
6	State Excise Tax	0.0650 C/	0.064831
7	Balance		0.932573
8	Federal Income Tax	0.3500 C/	0.326401
9	Balance		0.606173
10	Revenue Conversion Factor (Line 1 / Line 11)		1.649695

A/ 12 MTD 3/31/08 (\$319,708/\$37,196,860)  
B/ 12 MTD 3/31/08 (\$429,323/\$38,589,907)  
C/ Statutory Rate

Tennessee-American Water Company  
Cost of Capital  
For the 12 Months Ending August 31, 2009

Exhibit 1, Page 9 of 9

Line No.	Parent:	Ratio	Cost	Weighted Cost	Tax Deductible
1	Long Term Debt	55.14%	5.86%	3.23%	2.99%
2	Short Term Debt	1.90%	2.87%	0.05%	
3	Common Equity	42.96%	7.50%	3.22%	
4	Total	100.0%		6.51%	
	Tennessee American:	Ratio	Cost	Weighted Cost	
5	Long Term Debt	7.61%	8.43%	0.64%	0.64%
6	Common Equity	92.39%	6.51%	6.01%	
7	Total	100.0%		6.65%	3.6%
Final Capital Structure					
	Parent:	Ratio	Cost	Weighted Cost	Tax Deductible
8	Long Term Debt	50.94%	5.86%	2.99%	2.99%
9	Short Term Debt	1.76%	2.87%	0.05%	0.05%
10	Common Equity	39.69%	7.50%	2.98%	
11	Total Parent	92.39%	6.51%	6.01%	
	Tennessee American:				
12	Long Term Debt	7.61%	8.43%	0.64%	0.64%
13	Total Subsidiary	7.61%	8.43%	0.64%	
14	Total	100.0%		6.65%	3.68%

Source: Exhibit CAPD-SB