R. DALE GRIMES

TEL: (615) 742-6244
FAX: (615) 742-2744
dgrimes@bassberry.com

BASS
BERRY • SIMS PLC
A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

150 THIRD AVENUE SOUTH, SUITE 2800
NASHVILLE, TN 37201
(615) 742-6200

www.bassberry.com

OTHER OFFICES:

KNOXVILLE
MEMPHIS

November 18, 2010

Via Hand-Delivery

Chairman Mary W. Freeman
c/o Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

filed electronically in docket office on 11/18/10

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. 10-00189

Dear Chairman Freeman:

Enclosed please find the original and five (5) copies of Tennessee American Water Company's Response in Opposition to the Consumer Advocate and Protection Division's Motion for Leave to File a Reply to TAWC's Opposition to Additional Discovery Beyond Eighty Questions. This document also is being filed today by way of email to the Tennessee Regulatory Authority Docket Manager, Sharla Dillon.

Please file the original and four copies of this material and stamp the additional copy as "filed". Then please return the stamped copies to me by way of our courier.

Should you have any questions concerning this matter, please do not hesitate to contact me at the email address or telephone number listed above.

With kindest regards, I remain

Very truly yours,

R. Dale Grimes

RDG:smb
Enclosures

cc: Hon. Sara Kyle (*w/o enclosure*)
Hon. Eddie Roberson (*w/o enclosure*)
Mr. David Foster, Chief of Utilities Division (*w/o enclosure*)
Richard Collier, Esq. (*w/o enclosure*)
Mr. Jerry Kettles, Chief of Economic Analysis & Policy Division *(w/o enclosure*)
T. Jay Warner, Esq. (*w/enclosure*)
Ryan McGehee, Esq. (*w/enclosure*)
Mary L. White, Esq. (*w/enclosure*)
David C. Higney, Esq. (*w/enclosure*)
Henry M. Walker, Esq. (*w/enclosure*)
Michael A. McMahan, Esq. (*w/enclosure*)
Valerie L. Malueg, Esq. (*w/enclosure*)
Frederick L. Hitchcock, Esq. (*w/enclosure*)
Harold L. North, Jr., Esq. (*w/enclosure*)
Mark Brooks, Esq. (*w/enclosure*)
Scott H. Strauss, Esq. (*w/enclosure*)
Katharine M. Mapes, Esq. (*w/enclosure*)
Donald L. Scholes, Esq. (*w/enclosure*)

BEFORE 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. 10-00189**

TENNESSEE AMERICAN WATER COMPANY'S RESPONSE IN OPPOSITION TO THE CONSUMER ADVOCATE AND PROTECTION DIVISION'S MOTION FOR LEAVE TO FILE A REPLY TO TAWC'S OPPOSITION TO ADDITIONAL DISCOVERY BEYOND EIGHTY QUESTIONS

Tennessee American Water Company (the "Company") hereby responds to the Consumer Advocate and Protection Division's ("CAPD") motion "for Leave to File a Reply to TAWC's Opposition to Additional Discovery Beyond Eighty Questions" as follows:

The CAPD's motion should be denied. This is nothing more than attempt to cure the CAPD's inadequate original motion for leave, which failed to establish good cause for exceeding the discovery limit as already expanded by the Hearing Officer to 80 discovery questions. Likewise, the proferred "reply" brief also fails to show good cause for asking additional questions. Accordingly, TAWC respectfully requests that the Hearing Officer deny this motion as well as the original motion seeking to exceed the discovery limits.

A. The CAPD Has Failed to Show Good Cause

Even in its proposed reply the CAPD again misses the mark regarding the standard for showing good cause. The CAPD cites Tenn. R. Civ. P. 26.02(1) as the authority governing how discovery limits should be set in a contested case before the TRA. As stated in the Company's

response to the CAPD's motion, however, the three-part test the CAPD quotes from Rule 26.02 does not supplant the TRA's rules limiting discovery requests to 40 per party. See TRA Rule 1220-1-2-.11(5)(a). The TRA's rules allow a party to exceed 40 requests only when "good cause" is shown.

The CAPD has failed to show good cause for allowing it to exceed the number of discovery requests beyond the 80 requests already granted. The CAPD dismisses as a "quibbling practice unheard of for administrative agencies" the Company's point that the CAPD must establish good cause for each of its additional discovery requests, but in doing so the CAPD again basically insists on writing the TRA's rule out of existence. If a party is not required to state good cause for each additional question, how else would the TRA be able to determine whether the party should be able to ask 81 questions, or 810? Certainly this is one reason the TRA's rule requires a party seeking to exceed the discovery limit to submit the additional questions along with the motion seeking leave. See TRA Rule 1220-1-2-.11(5)(a). The fact is that the CAPD has argued and continues to argue at length regarding the facts and circumstances of this case, but it has failed to address the appropriateness or need for even a single one of its specific proposed requests.

B. The Volume of Requests Sought Counsels Against a Finding of Good Cause

Notwithstanding that the CAPD has already been authorized to ask double the number of questions allowed by the rule, it now seeking to ask many, many more. The TRA's rule sets a reasonable limit on discovery for good reason. Granting the CAPD's motion would essentially amount to a repeal of that rule and a rejection of an effort to control rate case costs in some measure.

The CAPD incredibly argues that its 126 numbered discovery requests contain only 11 subparts. As the Hearing Officer will quickly see, this is simply not the case – the subparts are numerous and are well beyond the alleged 11 subparts. Even an extremely conservative count reveals a total of 215 questions, considering subparts. Under the CAPD's theory, all a party would need to do to avoid the "subparts" rule would be to include its multiple questions as part of the discovery request text itself, rather than outlining the additional inquires in bulleted form. Even more importantly, though, the CAPD does not dispute in its proposed reply that the burden and expense associated with the multiple outstanding requests for expanded discovery is substantial.

The CAPD again makes reference to proceedings in Kentucky and West Virginia, but fails to address the fact that comparing the TRA rate case to the Kentucky and West Virginia rate cases is an "apples to oranges" comparison due to the lack of a discovery limit in those jurisdictions versus limited discovery pursuant to TRA Rule 1220-1-2-.11(5)(a). The CAPD's reference to the rate case expense in those cases can only be labeled an irrelevant non-sequitur: without knowing all the circumstances of rate proceedings in other states, any meaningful comparison of rate case costs cannot be made.

C. The CAPD's Examples of Questions it Wants to Ask Do Not Show Good Cause

The CAPD points to two "new" issues as a basis for granting its motion. Neither issue establishes good cause for more questions of TAWC.

The first is the issue that the CAPD calls "decoupling." This is a matter that came up in data requests from the TRA and not anything that TAWC has raised. The CAPD's questions should be addressed to the Authority, not TAWC.

The second is the issue of a cost allocation study, which TAWC anticipates completing and filing in this case pursuant to one of the recommendations of the management auditor. In spite of TAWC's giving the CAPD a pinpoint citation to where Mr. Miller disclosed this study in his direct testimony on September 17, 2010, before any discovery was propounded, the CAPD repeats its reference to Mr. Miller's subsequent testimony about the study in a Virginia proceeding, as if that were some kind of surprise revelation. The fact of this study was fully disclosed at the outset of this case and TAWC requests that the CAPD cease implying otherwise. In any event, this does not show good cause for more discovery. TAWC has already agreed to file this study when it is completed and therefore this study does not warrant the need for additional requests beyond the 80 question limit.

D. The CAPD Misrepresents the Company's Argument Regarding the CAPD's Role in this Rate Case

The Company noted in its response to the CAPD's motion that – contrary to the CAPD's assertions – the CAPD does not have a duty "to present a complete rate case" to the TRA. (CAPD Motion, at 5.) The Company also noted that it is the Company's burden, and not that of the CAPD, to show that its requested rate increase is just and reasonable. Instead of responding to these points, the CAPD instead attempts to exaggerate and mischaracterize the Company's response.

For example, the CAPD alleges that the Company "asserts that in 'representing' the interest of consumers, the Consumer Advocate cannot propose specific recommendations," and alleges that the Company's argument "suggests the Consumer advocate should simply delegate its statutory duty to other intervening parties." This is clearly not what the Company actually said in its response. Furthermore, the CAPD's arguments do nothing to rebut the fact that the CAPD does not have a duty to present "a virtually parallel case that sets forth an alternative

number for every number presented by the Company." (CAPD Motion, at 5.) The CAPD's unnecessary efforts to complicate rate cases with "parallel" universes is one of the many factors driving up rate case expense, as TAWC has noted repeatedly over the years.

E. Conclusion

Apparently expecting its motion to be granted as a matter of course, the CAPD – like the City and UWUA Intervenors – made no effort in its original motion to show good cause for its request to exceed the TRA's discovery limits. The CAPD should not now be allowed to attempt to meet its burden for the first time in a reply, especially since again it has failed to establish good cause for burdening TAWC with the added cost of more discovery. The CAPD's motion for leave to file a reply and its motion to submit discovery that triples the TRA's discovery limits therefore should both be denied.

Respectfully submitted,

R. Dale Grimes (#006332)
E. Steele Clayton (#017298)
C. David Killion (#026412)
BASS, BERRY & SIMS PLC
150 Third Ave. South, Suite 2800
Nashville, TN 37201
(615) 742-6200

Counsel for Petitioner
Tennessee American Water Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by way of the method(s) indicated, on this the 18th day of November, 2010, upon the following:

[x] Hand-Delivery	T. Jay Warner, Esq.
[ ] U.S. Mail	Ryan McGehee, Esq.
[ ] Facsimile	Mary L. White, Esq.
[ ] Overnight	Counsel for the Consumer Advocate and Protection Division
[x] Email	Office of the Attorney General
	425 5th Avenue North, 2nd Floor
	Nashville, TN 37243-0491
[ ] Hand-Delivery	David C. Higney, Esq.
[ ] U.S. Mail	Counsel for Chattanooga Manufacturers Association
[ ] Facsimile	Grant, Konvalinka & Harrison, P.C.
[x] Overnight	633 Chestnut Street, 9th Floor
[x] Email	Chattanooga, TN 37450
[x] Hand-Delivery	Henry M. Walker, Esq.
[ ] U.S. Mail	Counsel for Chattanooga Manufacturers Association
[ ] Facsimile	Boult, Cummings, Conners & Berry, PLC
[ ] Overnight	1600 Division Street, Suite 700
[x] Email	Nashville, TN 37203
[ ] Hand-Delivery	Michael A. McMahan, Esq.
[ ] U.S. Mail	Valerie L. Malueg, Esq.
[ ] Facsimile	Special Counsel
[x] Overnight	City of Chattanooga (Hamilton County)
[x] Email	Office of the City Attorney
	100 East 11th Street, Suite 200
	Chattanooga, TN 37402
[ ] Hand-Delivery	Frederick L. Hitchcock, Esq.
[ ] U.S. Mail	Harold L. North, Jr., Esq.
[ ] Facsimile	Counsel for City of Chattanooga
[x] Overnight	Chambliss, Bahner & Stophel, P.C.
[x] Email	1000 Tallan Building
	Two Union Square
	Chattanooga, TN 37402
[x] Hand-Delivery	Mark Brooks, Esq.
[ ] U.S. Mail	Counsel for Utility Workers Union of America,
[ ] Facsimile	AFL-CIO and UWUA Local 121
[ ] Overnight	521 Central Avenue
[x] Email	Nashville, TN 37211

[ ] Hand-Delivery
[ ] U.S. Mail
[ ] Facsimile
[x] Overnight
[x] Email

Scott H. Strauss, Esq.
Katharine M. Mapes, Esq.
Counsel for UWUA, AFL-CIO and UWUA Local 121
Spiegel & McDiarmid LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036

[x] Hand-Delivery
[ ] U.S. Mail
[ ] Facsimile
[ ] Overnight
[x] Email

Donald L. Scholes, Esq.
Counsel for Walden's Ridge Utility District and Signal Mountain
Branstetter, Stranch & Jennings PLLC
227 Second Avenue North
Fourth Floor
Nashville, TN 37201