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January 5, 2011

Mary Freeman, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Attention: Sharla Dillon

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

Dear Chairman Freeman:

Enclosed please find for filing in the above-referenced proceeding the original and four copies of the Utility Workers Union of America, AFL-CIO and UWUA Local 121's Supplemental Responses to the Tennessee American Water Company's First Discovery Requests.

Please feel free to contact either of the undersigned if you have any questions. Thank you for your attention to this matter.

Sincerely,

Scott H. Strauss
Katharine M. Mapes

Attorneys for UWUA Intervenors

Enclosures

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

SUPPLEMENTAL RESPONSES AND OBJECTIONS OF THE UTILITY WORKERS UNION OF AMERICA, AFL-CIO AND UWUA LOCAL 121 TO TENNESSEE AMERICAN WATER COMPANY'S FIRST SET OF DISCOVERY REQUESTS

Pursuant to the governing discovery orders in this proceeding, the Utility Workers Union of America, AFL-CIO ("UWUA") and UWUA Local 121 ("Local 121") provide the following supplemental responses and objections to the First Discovery Requests of the Tennessee American Water Company ("TAWC" or "the Company") to the Utility Workers Union of America, AFL-CIO and UWUA Local 121 dated November 1, 2010 ("First Discovery Requests"). The UWUA and Local 121 incorporate by reference all objections contained in their November 15, 2010 Responses.

UWUA has no supplemental response to Data Request Nos. 10 and 14.

Respectfully submitted,

/s/ Mark Brooks
Mark Brooks
Attorney at Law
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/s/ Scott H. Strauss
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Attorneys for Utility Workers Union of America,
AFL-CIO and UWUA Local 121

January 5, 2011

TENNESSEE REGULATORY AUTHORITY DOCKET NO. 10-00189
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DISCOVERY REQUEST NO. 1:

Identify each document that you anticipate you will rely on in opposition to the request(s) for relief, including any increase in rates, made by TAWC in TRA Docket No. 10-00189.

RESPONSE:

UWUA objects to this request as an impermissible intrusion into UWUA's attorney-work product. *See* Tenn. R. Civ. P. 26.02 (3). "The central purpose of the work product doctrine is to protect an attorney's preparation for trial under the adversary system. The policy underlying the doctrine is that lawyers preparing for litigation should be permitted to assemble information, to separate the relevant facts from the irrelevant, and to use the relevant facts to plan and prepare their strategy without undue and needless interference." *Swift. v. Campbell*, 159 S.W.3d 565, 572 (Tenn. Ct. App. 2004) (citing *Boyd v. Comdata Network, Inc.* 88 S.W.3d 203, 219-20 (Tenn. Ct. App. 2002)). "Thus, the doctrine protects parties from 'learning of the adversary's mental impressions, conclusions, and legal theories of the case,' *Memphis Publ'g Co. v. City of Memphis,* [871 S.W.2d 681, 689], and prevents a litigant 'from taking a free ride on the research and thinking of his opponent's lawyer.' *United States v. Frederick,* 182 F.3d 496, 500 (7th Cir. 1999)." *Swift*, 159 S.W.3d at 572 (quoting cited cases). UWUA will present its case-in-chief in accordance with the ordered schedule and the Company can seek proper and tailored discovery into those submissions at that time. UWUA has no obligation to provide the Company with UWUA's preliminary legal determinations as to what information it might seek to use at hearing in this proceeding.

To the extent the Company's request constitutes a contention interrogatory, *i.e.*, that it asks for all documents concerning the contentions the UWUA intends to make in this proceeding, the request is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Courts have found such requests to add "a significant and unreasonable burden to the task of the answering party." *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D. 657, 663-64 (D. Kan. 1996).

As such, the Company's request is also objectionable as premature. UWUA has not yet received discovery responses from the Company, nor has it finished the process of preparing its own testimony, which is not due to be filed until January 5, 2011. Even where a party seeks discovery concerning specific contentions that another party has already made (which is not the case here), the party seeking such information early in a proceeding before substantial discovery has been conducted must generally "be able to show that there is good reason to believe that answers to its well-tailored questions will contribute meaningfully to clarifying the issues in the case, narrowing the scope of the dispute, or setting up early settlement discussions . . . ." *In re*

Convergent Technologies Sec. Litig., 108 F.R.D. 328, 338-39 (N.D. Cal. 1985). Broad requests for each document UWUA will rely on furthers none of these goals and is thus impermissible.

This request is additionally premature because the procedural schedule adopted by the TRA at its pre-hearing conference (and confirmed by Order dated November 12, 2010) provides the Company with an opportunity for discovery after UWUA has filed its direct testimony on January 5, 2011, allowing the Company to tailor its data requests in a more focused and productive manner.

Finally, UWUA objects to this data request to the extent the Company seeks material that may be used to impeach the Company's witnesses. It also objects on the ground that much of the material covered by this question constitutes attorney work product and is therefore exempt from discovery.

Without waiving any of the foregoing objections, UWUA responds that the UWUA has not yet identified any document that it intends to use in opposition to the Company's requested rate increase.

SUPPLEMENTAL RESPONSE:

Without waiving any of its earlier objections, UWUA currently anticipates relying upon the Direct Testimony of James Lewis, filed January 5, 2011 in this proceeding, and all documents referenced in, quoted from, or attached thereto as Exhibits.

In addition, almost immediately prior to the filing of this Supplement, UWUA learned of reports by former TAWC employee Jerry Haddock regarding the Company's valve maintenance work. UWUA intends to seek additional discovery on this issue and reserves the right to supplement accordingly.

DISCOVERY REQUEST NO. 2:

Identify all persons known to you who have or claim to have knowledge, information, or possess any document(s) that support your answer to Discovery Request No. 1 above.

RESPONSE:

UWUA objects to this request as an impermissible intrusion into UWUA's attorney-work product. *See* Tenn. R. Civ. P. 26.02 (3). "The central purpose of the work product doctrine is to protect an attorney's preparation for trial under the adversary system. The policy underlying the doctrine is that lawyers preparing for litigation should be permitted to assemble information, to separate the relevant facts from the irrelevant, and to use the relevant facts to plan and prepare their strategy without undue and needless interference." *Swift. v. Campbell*, 159 S.W.3d 565, 572 (Tenn. Ct. App. 2004) (citing *Boyd v. Comdata Network, Inc.* 88 S.W.3d 203, 219-20 (Tenn. Ct. App. 2002)). "Thus, the doctrine protects parties from 'learning of the adversary's mental impressions, conclusions, and legal theories of the case,' *Memphis Publ'g Co. v. City of Memphis,* [871 S.W.2d 681, 689], and prevents a litigant 'from taking a free ride on the research and thinking of his opponent's lawyer.' *United States v. Frederick,* 182 F.3d 496, 500 (7th Cir. 1999)." *Swift*, 159 S.W.3d at 572. UWUA will present its case-in-chief in accordance with the ordered schedule and the Company can seek proper and tailored discovery into those submissions at that time. UWUA has no obligation to provide the Company with the UWUA's preliminary legal determinations as to what information it might seek to use at hearing in this proceeding.

To the extent the Company's request constitutes a contention interrogatory, *i.e.,* that it asks for all documents concerning the contentions the UWUA intends to make in this proceeding, the request is objectionable as being overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Courts have found such requests to add "a significant and unreasonable burden to the task of the answering party." *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D. 657, 663-64 (D. Kan. 1996).

The Company's request is also objectionable as premature. UWUA has not yet received discovery responses from the Company, nor has it finished the process of preparing its own testimony, both of which will inform the preparation of its case in chief. Even where a party seeks discovery concerning specific contentions that another party has already made (which is not the case here), the party seeking information early in a proceeding before substantial discovery has been conducted must generally "be able to show that there is good reason to believe that answers to its well-tailored questions will contribute meaningfully to clarifying the issues in the case, narrowing the scope of the dispute, or setting up early settlement discussions . . . ." *In re Convergent Technologies Sec. Litig.*, 108 F.R.D. 328, 338-39 (N.D. Cal. 1985). A broad, early request for *all* persons with knowledge related to Discovery Request No. 1 furthers

none of these goals and is thus impermissible.

This request is additionally premature because the procedural schedule adopted by the TRA at its pre-hearing conference (and confirmed by Order dated November 12, 2010) provides the Company with an opportunity for discovery after UWUA has filed its direct testimony on January 5, 2011.

Without waiving any of the foregoing objections, UWUA responds that because the UWUA has not yet identified any document that it intends to use in opposition to the Company's requested rate increase, UWUA cannot identity any individuals with information responsive to the Company's request.

SUPPLEMENTAL RESPONSE:

Without waiving any of the foregoing objections, we have presented the direct testimony of James Lewis, which includes a statement from Jerry Haddock. With the exception of Exhibit Nos. UWUA-1, UWUA-4, and UWUA-11, each document identified in response to Discovery Request No. 1 was created by the Company and sponsored by Company personnel. Exhibit No. UWUA-4 was based directly on data provided by the Company.

In addition, as discussed in Supplemental Response No. 1, UWUA intends to seek additional discovery regarding the issue raised by Mr. Haddock's statement and reserves the right to supplement accordingly.

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DISCOVERY REQUEST NO. 3:

Identify any person you intend to call as a fact witness, the subject matter of the witness' testimony, the substance and basis of the facts to be testified to, the data, documents, materials or other information shown to, relied upon, created by or considered by the witness as part of this case, any exhibits to be used by the witness, a full resume for the witness, the compensation to be paid for the testimony, and a listing of any other cases in which the witness has testified at trial or by deposition.

RESPONSE:

UWUA objects to this request as an impermissible intrusion into UWUA's attorney-work product. *See* Tenn. R. Civ. P. 26.02 (3). "The central purpose of the work product doctrine is to protect an attorney's preparation for trial under the adversary system. The policy underlying the doctrine is that lawyers preparing for litigation should be permitted to assemble information, to separate the relevant facts from the irrelevant, and to use the relevant facts to plan and prepare their strategy without undue and needless interference." *Swift. v. Campbell*, 159 S.W.3d 565, 572 (Tenn. Ct. App. 2004) (citing *Boyd v. Comdata Network, Inc.* 88 S.W.3d 203, 219-20 (Tenn. Ct. App. 2002)). "Thus, the doctrine protects parties from 'learning of the adversary's mental impressions, conclusions, and legal theories of the case,' *Memphis Publ'g Co. v. City of Memphis,* [871 S.W.2d 681, 689], and prevents a litigant 'from taking a free ride on the research and thinking of his opponent's lawyer.' *United States v. Frederick,* 182 F.3d 496, 500 (7th Cir. 1999)." *Swift*, 159 S.W.3d at 572 (quoting cited cases). UWUA will present its case-in-chief in accordance with the ordered schedule and the Company can seek proper and tailored discovery into those submissions at that time. UWUA has no obligation to provide the Company with the UWUA's preliminary legal determinations as to what information it might seek to use at hearing in this proceeding.

UWUA objects to this request as being overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Company is not entitled to a listing of all the information "considered" by a witness, nor is the Company entitled to any material covered by the attorney-client privilege.

The Company's request is also objectionable as premature. UWUA has not yet received discovery responses from the Company, nor has it finished the process of preparing its own testimony, both of which will inform the preparation of its case-in-chief. Nor can the UWUA identify any potential witnesses responsive to the Company's rebuttal testimony, because that testimony does not yet exist. This request is additionally premature because the procedural schedule adopted by the TRA at its pre-hearing conference (and confirmed by Order dated November 12, 2010) provides the Company with an opportunity for discovery after UWUA has filed its direct testimony on January 5, 2011.

Without waiving these objections or its ability to call other fact witnesses, the UWUA responds that it may call at least one union member as a fact witness, but at this point does not know the identity of that witness.

UWUA responds further that it does not plan on compensating any fact witness that it may present in this proceeding.

SUPPLEMENTAL RESPONSE:

Without waiving these objections, UWUA intends to call James Lewis, a National Senior Representative for the UWUA, as a fact witness. The subjects to be addressed by Mr. Lewis and the bases for his presentation are as stated in his written direct testimony, Exhibit UWUA-1.

Mr. Lewis is an employee of the UWUA and will not receive any additional compensation for his testimony in this proceeding. He has not previously testified in any utility commission or court proceedings. On occasion, Mr. Lewis has testified in union arbitration proceedings. In lieu of a resume, his employment background is described in Exhibit No. UWUA-1.

UWUA does not intend to call Mr. Haddock as a fact witness. However, if necessary the UWUA can seek to make him available, depending on the timing and location of the hearing.

DISCOVERY REQUEST NO. 4:

Identify any person you intend to call as an expert witness, the subject matter of the witness' testimony, the substance and basis of the facts and opinions to be expressed, the data, documents, materials or other information shown to, relied upon, created by or considered by the witness as part of this case and/or as a basis in forming his or her opinions, any exhibits to be used as a summary of or support for each such opinion, the qualifications of the witness, including a full resume, a list of all publications authored by the witness, the compensation to be paid for the study and testimony, and a listing of any other cases in which the witness has testified at trial, by deposition or submitted written testimony.

RESPONSE:

UWUA objects to this request as an impermissible intrusion into UWUA's attorney-work product. *See* Tenn. R. Civ. P. 26.02 (3). "The central purpose of the work product doctrine is to protect an attorney's preparation for trial under the adversary system. The policy underlying the doctrine is that lawyers preparing for litigation should be permitted to assemble information, to separate the relevant facts from the irrelevant, and to use the relevant facts to plan and prepare their strategy without undue and needless interference." *Swift. v. Campbell*, 159 S.W.3d 565, 572 (Tenn. Ct. App. 2004) (citing *Boyd v. Comdata Network, Inc.* 88 S.W.3d 203, 219-20 (Tenn. Ct. App. 2002)). "Thus, the doctrine protects parties from 'learning of the adversary's mental impressions, conclusions, and legal theories of the case,' *Memphis Publ'g Co. v. City of Memphis,* [871 S.W.2d 681, 689], and prevents a litigant 'from taking a free ride on the research and thinking of his opponent's lawyer.' *United States v. Frederick,* 182 F.3d 496, 500 (7th Cir. 1999)." *Swift*, 159 S.W.3d at 572 (quoting cited cases). UWUA will present its case-in-chief in accordance with the ordered schedule and the Company can seek proper and tailored discovery into those submissions at that time. UWUA has no obligation to provide the Company with the UWUA's preliminary legal determinations as to what information it might seek to use at hearing in this proceeding.

UWUA objects to this request as being overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Company is not entitled to a listing of all the information "considered" by a witness, nor is the Company entitled to any material covered by the attorney-client privilege.

The Company's request is also objectionable as premature. UWUA has not yet received discovery responses from the Company, nor has it finished the process of preparing its own testimony, both of which will inform the preparation of its case-in-chief. Nor can the UWUA identify any potential witnesses responsive to the Company's rebuttal testimony, because that testimony does not yet exist.

This request is additionally premature because the procedural schedule adopted by the

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TRA at its pre-hearing conference (and confirmed by Order dated November 12, 2010) provides the Company with an opportunity for discovery after UWUA has filed its direct testimony on January 5, 2011.

Without waiving its objections or its ability to call expert witnesses in this proceeding, the UWUA responds that it does not at this time anticipate calling any expert witness.

SUPPLEMENTAL RESPONSE:

Without waiving these objections, UWUA intends to call James Lewis, a National Senior Representative for the UWUA, as both a fact and an expert witness. The nature of Mr. Lewis' expertise is as described in his written direct testimony, Exhibit UWUA-1. In addition, please see the UWUA's Supplemental Response to Discovery Request No. 3.

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DISCOVERY REQUEST NO. 5:

Please identify and produce any and all engagement letters, expert reports and work papers (including drafts) created by or provided to any expert or other witness.

RESPONSE:

UWUA objects to this request as an impermissible intrusion into UWUA's attorney-work product. *See* Tenn. R. Civ. P. 26.02 (3). "The central purpose of the work product doctrine is to protect an attorney's preparation for trial under the adversary system. The policy underlying the doctrine is that lawyers preparing for litigation should be permitted to assemble information, to separate the relevant facts from the irrelevant, and to use the relevant facts to plan and prepare their strategy without undue and needless interference." *Swift. v. Campbell*, 159 S.W.3d 565, 572 (Tenn. Ct. App. 2004) (citing *Boyd v. Comdata Network, Inc.* 88 S.W.3d 203, 219-20 (Tenn. Ct. App. 2002)). "Thus, the doctrine protects parties from 'learning of the adversary's mental impressions, conclusions, and legal theories of the case,' *Memphis Publ'g Co. v. City of Memphis,* [871 S.W.2d 681, 689], and prevents a litigant 'from taking a free ride on the research and thinking of his opponent's lawyer.' *United States v. Frederick,* 182 F.3d 496, 500 (7th Cir. 1999)." *Swift*, 159 S.W.3d at 572 (quoting cited cases). UWUA will present its case-in-chief in accordance with the ordered schedule and the Company can seek proper and tailored discovery into those submissions at that time. UWUA has no obligation to provide the Company with the UWUA's preliminary legal determinations as to what information it might seek to use at hearing in this proceeding.

UWUA objects to this request as being overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Company is not entitled to engagement letters, or the material of any non-testifying witness, nor is the Company entitled to any material covered by the attorney-client privilege.

The Company's request is also objectionable as premature. UWUA has not yet received discovery responses from the Company, nor has it finished the process of preparing its own testimony, both of which will inform the preparation of its case-in-chief. Nor can the UWUA identify any potential witnesses responsive to the Company's rebuttal testimony, because that testimony does not yet exist.

This request is additionally premature because the procedural schedule adopted by the TRA at its pre-hearing conference (and confirmed by Order dated November 12, 2010) provides the Company with an opportunity for discovery after UWUA has filed its direct testimony on January 5, 2011.

Without waiving its objections, UWUA responds that it has not yet identified any UWUA witnesses, and thus no such documents exist at this time.

SUPPLEMENTAL RESPONSE:

Without waiving its objections, no such documents exist.

TENNESSEE REGULATORY AUTHORITY DOCKET NO. 10-00189
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DISCOVERY REQUEST NO. 6:

Please produce in electronic media (Word, Excel, or other Microsoft Office compatible format) and in hard copy all work papers and other documents, created by or relied upon by all UWUA witnesses.

RESPONSE:

The Company's request is objectionable as premature. UWUA has not yet received discovery responses from the Company, nor has it finished the process of preparing its own testimony, both of which will inform the preparation of its case-in-chief. Nor can the UWUA identify any potential witnesses responsive to the Company's rebuttal testimony, because that testimony does not yet exist.

This request is additionally premature because the procedural schedule adopted by the TRA at its pre-hearing conference (and confirmed by Order dated November 12, 2010) provides the Company with an opportunity for discovery after UWUA has filed its direct testimony on January 5, 2011.

Without waiving its objections, UWUA responds that it has not yet identified any UWUA witnesses, and thus no such work papers or other documents exist at this time.

SUPPLEMENTAL RESPONSE:

Without waiving its objections, please see the UWUA's supplemental response to Discovery Request No. 1. With the submission of testimony, all responsive documents are now in the Company's possession. The UWUA can provide an electronic version of Exhibit No. UWUA-4. However, as it contents are based on data culled from a data response marked as "CONFIDENTIAL" by the Company, the UWUA is not planning to do so unless authorized by the Company.

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DISCOVERY REQUEST NO. 7:

Please identify and produce a copy of all trade articles, journals, treatises, speeches and publications of any kind in any way utilized or relied upon by any UWUA proposed expert witnesses in evaluating, reaching conclusions or formulating an opinion in the captioned matter as well as all articles, journals, speeches, or books written or co-written by any UWUA witness.

RESPONSE:

UWUA objects to this request as premature. UWUA has not yet received discovery responses from the Company, nor has it finished the process of preparing its own testimony, both of which will inform its answer to this question. This request is additionally premature because the procedural schedule adopted by the TRA at its pre-hearing conference (and confirmed by Order dated November 12, 2010) provides the Company with an opportunity for discovery after UWUA has filed its direct testimony on January 5, 2011, allowing the Company to tailor its data requests in a more focused and productive manner.

Without waiving its objections, UWUA responds that it has not yet identified any UWUA witnesses, and thus no such documents exist at this time.

SUPPLEMENTAL RESPONSE:

No such documents exist.

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DISCOVERY REQUEST NO. 8:

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

RESPONSE:

UWUA objects to this request as an impermissible intrusion into UWUA's attorney-work product. *See* Tenn. R. Civ. P. 26.02 (3). "The central purpose of the work product doctrine is to protect an attorney's preparation for trial under the adversary system. The policy underlying the doctrine is that lawyers preparing for litigation should be permitted to assemble information, to separate the relevant facts from the irrelevant, and to use the relevant facts to plan and prepare their strategy without undue and needless interference." *Swift. v. Campbell*, 159 S.W.3d 565, 572 (Tenn. Ct. App. 2004) (citing *Boyd v. Comdata Network, Inc.* 88 S.W.3d 203, 219-20 (Tenn. Ct. App. 2002)). "Thus, the doctrine protects parties from 'learning of the adversary's mental impressions, conclusions, and legal theories of the case,' *Memphis Publ'g Co. v. City of Memphis*, [871 S.W.2d 681, 689], and prevents a litigant 'from taking a free ride on the research and thinking of his opponent's lawyer.' *United States v. Frederick,* 182 F.3d 496, 500 (7th Cir. 1999)." *Swift*, 159 S.W.3d at 572 (quoting cited cases). UWUA will present its case-in-chief in accordance with the ordered schedule and the Company can seek proper and tailored discovery into those submissions at that time. UWUA has no obligation to provide the Company with the UWUA's preliminary legal determinations as to what information it might seek to use at hearing in this proceeding.

To the extent the Company's request is viewed as a contention interrogatory, *i.e.*, provide all documents concerning the contentions the UWUA intends to make in this proceeding, the request is objectionable as being overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Courts have found such requests to add "a significant and unreasonable burden to the task of the answering party." *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D. 657, 663-64 (D. Kan. 1996).

The Company's request is also objectionable as premature. UWUA has not yet received discovery responses from the Company, nor has it finished the process of preparing its own testimony, both of which will inform the preparation of its case-in-chief. Even where a party seeks discovery concerning specific contentions that another party has already made (which is not the case here), the party seeking such information early in a proceeding before substantial discovery has been conducted must generally "be able to show that there is good reason to believe that answers to its well-tailored questions will contribute meaningfully to clarifying the issues in the case, narrowing the scope of the dispute, or setting up early settlement discussions . . . ." *In re Convergent Technologies Sec. Litig.*, 108 F.R.D. 328, 338-39 (N.D. Cal. 1985). Broad requests for each document UWUA will rely on furthers none of these goals and is thus

impermissible.

This request is additionally premature because the procedural schedule adopted by the TRA at its pre-hearing conference (and confirmed by Order dated November 12, 2010) provides the Company with an opportunity for discovery after UWUA has filed its direct testimony on January 5, 2011, at which point the Company will be able to tailor its data requests in a more focused and productive manner.

UWUA also objects to this data request to the extent the Company seeks material that may be used to impeach the Company's witnesses. The Company's request is also overbroad and unduly burdensome in seeking the production of any document the UWUA "may refer to" in this proceeding.

Without waiving any of the foregoing objections, UWUA responds that the UWUA has not yet identified any document that it intends to use in opposition to the Company's requested rate increase.

SUPPLEMENTAL RESPONSE:

Without waiving its foregoing objections or its ability to rely on other documents at hearing, UWUA's Supplemental Response No. 1 is responsive to this question. As stated, UWUA reserves the right to supplement this response as more information becomes available to it.

DISCOVERY REQUEST NO. 9:

If you believe that TAWC has made any admission or statement against interest that contradicts the request(s) for relief, including any increase in rates, made by TAWC in TRA Docket No. 10-00189, please state with specificity any and all admissions or statements against interest allegedly made by TAWC. For each such admission or statement against interest state:

a. The identity of the person making each admission or statement;

b. The location where each admission or statement was made;

c. The date and time each admission or statement was made;

d. The identity of all persons present when each admission or statement was made; and

e. Identify all documents which refer or relate to each admission or statement and attach copies of said documents hereto.

RESPONSE:

UWUA objects to this request as an impermissible intrusion into UWUA's attorney-work product. *See* Tenn. R. Civ. P. 26.02 (3). "The central purpose of the work product doctrine is to protect an attorney's preparation for trial under the adversary system. The policy underlying the doctrine is that lawyers preparing for litigation should be permitted to assemble information, to separate the relevant facts from the irrelevant, and to use the relevant facts to plan and prepare their strategy without undue and needless interference." *Swift. v. Campbell*, 159 S.W.3d 565, 572 (Tenn. Ct. App. 2004) (citing *Boyd v. Comdata Network, Inc.* 88 S.W.3d 203, 219-20 (Tenn. Ct. App. 2002)). "Thus, the doctrine protects parties from 'learning of the adversary's mental impressions, conclusions, and legal theories of the case,' *Memphis Publ'g Co. v. City of Memphis*, [871 S.W.2d 681, 689], and prevents a litigant 'from taking a free ride on the research and thinking of his opponent's lawyer.' *United States v. Frederick,* 182 F.3d 496, 500 (7th Cir. 1999)." *Swift*, 159 S.W.3d at 572 (quoting cited cases). UWUA will present its case-in-chief in accordance with the ordered schedule and the Company can seek proper and tailored discovery into those submissions at that time. UWUA has no obligation to provide the Company with the UWUA's preliminary legal determinations as to what information it might seek to use at hearing in this proceeding.

To the extent the Company's request is viewed as a contention interrogatory, *i.e.*, provide all documents concerning the contentions the UWUA intends to make in this proceeding, the request is objectionable as being overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Courts have found such requests to add "a

significant and unreasonable burden to the task of the answering party." *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D. 657, 663-64 (D. Kan. 1996).

The Company's request is also objectionable as premature. UWUA has not yet received discovery responses from the Company, nor has it finished the process of preparing its own testimony, both of which will inform the preparation of its case-in-chief. Even where a party seeks discovery concerning specific contentions that another party has already made (which is not the case here), the party seeking such information early in a proceeding before substantial discovery has been conducted must generally "be able to show that there is good reason to believe that answers to its well-tailored questions will contribute meaningfully to clarifying the issues in the case, narrowing the scope of the dispute, or setting up early settlement discussions . . . ." *In re Convergent Technologies Sec. Litig.*, 108 F.R.D. 328, 338-39 (N.D. Cal. 1985). Broad requests for each document UWUA will rely on furthers none of these goals and is thus impermissible.

This request is additionally premature because the procedural schedule adopted by the TRA at its pre-hearing conference (and confirmed by Order dated November 12, 2010) provides the Company with an opportunity for discovery after UWUA has filed its direct testimony on January 5, 2011, at which the Company will be able to tailor its data requests in a more focused and productive manner.

UWUA also objects to this data request to the extent the Company seeks material that may be used to impeach the Company's witnesses.

Additionally, UWUA objects on the ground that no such list of statements against interest exists and it does not have a duty to "prepare, or cause to be prepared" new documents solely for the purpose of discovery. *Alexander v. FBI*, 194 F.R.D. 305, 310 (D.D.C. 2000) (citation omitted).

Without waiving these objections, arguably responsive are the statements made by the Company in its September 23, 2010, direct testimony in this proceeding filed by the Company President (John S. Watson) to the effect that the current Company workforce is composed of six fewer employees than the number of employees "granted" by the Tennessee Regulatory Authority in Docket 08-00039. Direct Test. of Watson at 21.

SUPPLEMENTAL RESPONSE:

Without waiving its foregoing objections or its ability to rely on other documents at hearing, UWUA's Supplemental Response No. 1 is responsive to this question.

TENNESSEE REGULATORY AUTHORITY DOCKET NO. 10-00189
Tennessee American Water Company Data Requests to UWUA

DISCOVERY REQUEST.NO. 11:

With respect to the statement on Page 3 of the Petition to Intervene filed by the Utility Workers Union of America, AFL-CIO and UWUA Local 121, that "the Company remains unwilling to address a central problem impeding its ability to deliver reliable and high quality water services to customers: the lack of an adequate complement of hourly staff," please state the following:

a. Each and every fact upon which you base your allegations;

b. Identify each and every person with knowledge relating to these allegations and set forth a summary of each person's knowledge, along with a source of such person's knowledge; and

c. Identify each and every document supporting, contradicting and/or relating to this discovery request and attach copies of such document to your answers to these discovery requests.

RESPONSE:

UWUA objects to this request as being overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Courts have found such requests for "all" instances of an occurrence to add "a significant and unreasonable burden to the task of the answering party." *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D. 657, 663-64 (D. Kan. 1996); *see also Lucero v. Valdez*, 240 F.R.D. 591, 594 (D. N.M. 2007) (stating "interrogatories should not require a party to provide the equivalent of a narrative account of its case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents.")

It is also premature. UWUA has not yet received discovery responses from the Company, nor has it finished the process of preparing its own testimony, both of which will inform its answer to this question. Parties seeking such information early in a proceeding before substantial discovery has been conducted must generally "be able to show that there is good reason to believe that answers to its well-tailored questions will contribute meaningfully to clarifying the issues in the case, narrowing the scope of the dispute, or setting up early settlement discussions . . . ." *In re Convergent Technologies Sec. Litig.*, 108 F.R.D. 328, 338-39 (N.D. Cal. 1985).

This request is additionally premature because the procedural schedule adopted by the TRA at its pre-hearing conference (and confirmed by Order dated November 12, 2010) provides the Company with an opportunity for discovery after UWUA has filed its direct testimony on January 5, 2011, at which point the Company will be able to tailor its data requests in a more

focused and productive manner. UWUA further objects to the extent the request seeks material protected on grounds of work product or the attorney-client privilege.

Without waiving its objections, UWUA can point to the Company's own testimony, where it stated that the Company employs six fewer employees than granted by the Tennessee Regulatory Authority in Docket 08-00039. Direct Test. of Watson at 21. In addition, in this proceeding the Company seeks to increase the number of employees to 110 (from 103), and has taken the position that each is "directly and integrally involved in the provision of water service." *Id.* UWUA notes that it has submitted discovery requests aimed at this and related portions of Mr. Watson's presentation.

SUPPLEMENTAL RESPONSE:

See the Testimony of James Lewis and the Statement of Jerry Haddock, filed contemporaneously with these Responses, and the information, exhibits, and documents contained and referenced therein. UWUA reserves the right to supplement this response.

TENNESSEE REGULATORY AUTHORITY DOCKET NO. 10-00189
Tennessee American Water Company Data Requests to UWUA

DISCOVERY REQUEST NO. 12:

With respect to the statement on Page 3 of the Petition to Intervene filed by the Utility Workers Union of America, AFL-CIO and UWUA Local 121, that "[t]he UWUA is uniquely positioned to address the staffing needs and practices of the Company, including both whether current staffing levels are adequate and whether the present staffing complement is being utilized in an effective manner calculated to promote the delivery of safe and reliable service," please state the following:

a. Each and every fact upon which you base your allegations;

b. Identify each and every person with knowledge relating to these allegations and set forth a summary of each person's knowledge, along with a source of such person's knowledge; and

c. Identify each and every document supporting, contradicting and/or relating to this discovery request and attach copies of such document to your answers to these discovery requests.

RESPONSE:

UWUA objects to this request as being overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Courts have found such requests for "all" instances of an occurrence to add "a significant and unreasonable burden to the task of the answering party." *Lawrence v. First Kan. Bank & Trust Co.*, 169 F.R.D. 657, 663-64 (D. Kan. 1996); *see also Lucero v. Valdez*, 240 F.R.D. 591, 594 (D. N.M. 2007) (stating "interrogatories should not require a party to provide the equivalent of a narrative account of its case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents.")

It is also premature. UWUA has not yet received discovery responses from the Company, nor has it finished the process of preparing its own testimony, both of which will inform its answer to this question. Parties seeking such information early in a proceeding before substantial discovery has been conducted must generally "be able to show that there is good reason to believe that answers to its well-tailored questions will contribute meaningfully to clarifying the issues in the case, narrowing the scope of the dispute, or setting up early settlement discussions . . . ." *In re Convergent Technologies Sec. Litig.*, 108 F.R.D. 328, 338-39 (N.D. Cal. 1985).

This request is additionally premature because the procedural schedule adopted by the TRA at its pre-hearing conference (and confirmed by Order dated November 12, 2010) provides the Company with an opportunity for discovery after UWUA has filed its direct testimony on

Jan. 5, 2011, at which point the Company will be able to tailor its data requests in a more focused and productive manner. UWUA further objects to the extent the request seeks material protected on grounds of work product or the attorney-client privilege.

Without waiving its objections, UWUA, as it explained at the pre-hearing conference, is uniquely positioned to address the staffing needs and practices of the Company because only UWUA represents the majority of its workforce. Prehearing Conference Tr. 5:14-6:7; and 9:9-23. Some of UWUA's members have worked at the Company for decades, and are thus intimately acquainted with its business and practices.[1]

SUPPLEMENTAL RESPONSE:

See the Testimony of James Lewis and the Statement of Jerry Haddock, filed contemporaneously with these Responses, and the information, exhibits, and documents contained and referenced therein. UWUA reserves the right to supplement this response.

[1] For this reason, courts are willing to qualify as experts witnesses with long-standing experience even where they have no formal training. *See, e.g., Thomas v. Newton Int'l Enterprises*, 42 F.3d 1266, 1269-70 (9th Cir. 1994); *United States v. Hoffman*, 832 F.2d 1299 (1st Cir. 1987).

TENNESSEE REGULATORY AUTHORITY DOCKET NO. 10-00189
Tennessee American Water Company Data Requests to UWUA

DISCOVERY REQUEST NO. 13:

Please identify, other than your attorneys, each person who provided information or participated in the preparation of the responses to each of these discovery requests, and for each such person specify the responses for which he or she provided information or participated in preparing.

RESPONSE:

UWUA objects to this request insofar as this question seeks information that is attorney-client privileged or which constitutes attorney work product. There is no blanket entitlement to discovery of the identity of all persons consulted by an attorney in the process of responding to discovery requests.

Without waiving these objections, UWUA received information from Carl Wood, the UWUA's Job Development Coordinator (and a former Commissioner on the California Public Utilities Commission), who has participated on behalf of the UWUA in state commission proceedings involving water utilities, and who provided information used in preparing the response to Discovery Request No. 10.

SUPPLEMENTAL RESPONSE:

Without waiving its prior objections, both James Lewis and Jerry Haddock prepared, with UWUA counsel, documents references in these responses.

TENNESSEE REGULATORY AUTHORITY DOCKET NO. 10-00189
Tennessee American Water Company Data Requests to UWUA

DISCOVERY REQUEST NO. 15:

Please identify all documents reviewed by you to respond to these discovery requests.

RESPONSE:

UWUA objects to this request insofar as this question seeks information that is attorney-client privileged or which constitutes attorney work product. There is no blanket entitlement to everything reviewed by an attorney in the process of responding to discovery requests.

Without waiving its objections, UWUA intervenors consulted the following documents:

- The Direct Testimony submitted by the Company in the above-captioned proceeding.
- A list of proceedings prepared by Carl Wood, as mentioned in Discovery Request No. 14, *supra*.

SUPPLEMENTAL RESPONSE:

Without waiving its objection, please see the UWUA's Supplemental Response to Discovery Request No. 1. UWUA also reviewed documents produced by the Company during discovery.

TENNESSEE REGULATORY AUTHORITY DOCKET NO. 10-00189
Tennessee American Water Company Data Requests to UWUA

DISCOVERY REQUEST NO. 16:

Produce all documents identified or specified in your answers or responses to the discovery requests.

RESPONSE:

UWUA objects to this request insofar as this question seeks information that is attorney-client privileged or which constitutes attorney work product. There is no blanket entitlement to everything reviewed by an attorney in the process of responding to discovery requests.

Without waiving these objections:

- The Company is already in possession of its own testimony.
- The list of proceedings prepared by Carl Wood is attorney-client privileged and therefore exempt from disclosure.

SUPPLEMENTAL RESPONSE:

Each document referenced herein, with the exception of the Company's own testimony, is being provided to the Company contemporaneously with these responses.

CERTIFICATE OF SERVICE

I, Scott H. Strauss, counsel for UWUA Intervenors, hereby certify that on the 5th day of January, 2011, caused a true and correct copy of the foregoing Responses and Objections of the Utility Workers Union of America, AFL-CIO and UWUA Local 121 to Tennessee American Water Company's First Set of Discovery Requests to be served upon all parties of record via U.S. mail or facsimile.

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