

BUTLER | SNOW

January 26, 2017

VIA ELECTRONIC FILING

Hon. David Jones, Chairman
c/o Sharla Dillon
Tennessee Regulatory Authority
502 Deaderick Street, 4th Floor
Nashville, TN 37243

RE: Petition of Tennessee-American Water Company Regarding The 2016 Investment and Related Expenses Under The Qualified Infrastructure Investment Program Rider, The Economic Development Investment Rider, and The Safety and Environmental Compliance Rider, TRA Docket No. 16-00126

Dear Chairman Jones:

Attached for filing please find *Tennessee-American Water Company's Response to the Consumer Advocate's Motion to Compel and to Consumer Advocate's Motion for Extension of Time to File Pre-Filed Testimony* in the above-captioned matter.

As required, an original of this filing, along with four (4) hard copies, will follow. Should you have any questions concerning this filing, or require additional information, please do not hesitate to contact me.

Very truly yours,

BUTLER SNOW LLP


Melvin J. Malone

clw

Enclosure

cc: Valoria Armstrong, President, Tennessee-American Water Company
Daniel Whitaker, Assistant Attorney General, Consumer Protection and Advocate Division
Wayne Irvin, Assistant Attorney General, Consumer Protection and Advocate Division
Vance Broemel, Assistant Attorney General, Consumer Protection and Advocate Division

*The Pinnacle at Symphony Place
150 3rd Avenue South, Suite 1600
Nashville, TN 37201*

MELVIN J. MALONE
615.651.6705
melvin.malone@butlersnow.com

T 615.651.6700
F 615.651.6701
www.butlersnow.com

35073174v1

BUTLER SNOW LLP

**PETITION OF TENNESSEE-AMERICAN
WATER COMPANY REGARDING 2016
INVESTMENT AND RELATED
EXPENSES UNDER THE QUALIFIED
INFRASTRUCTURE INVESTMENT
PROGRAM RIDER, THE ECONOMIC
DEVELOPMENT INVESTMENT RIDER,
AND THE SAFETY AND
ENVIRONMENTAL COMPLIANCE
RIDER**

**TENNESSEE-AMERICAN WATER COMPANY'S RESPONSE
TO THE CONSUMER ADVOCATE'S MOTION TO COMPEL AND TO THE CONSUMER
ADVOCATE'S MOTION FOR EXTENSION OF TIME TO FILE PRE-FILED TESTIMONY**

CPAD generally identifies two bases for its Motion. First, CPAD contends that Tennessee-American did not “comply with the tariff as established in TRA Docket No. 13-

00130. Next, CPAD asserts that Tennessee-American did not provide “full and complete” answers to certain supplemental discovery requests sought by CPAD.¹

I. Tennessee-American Has Complied with the Tariff Requirements Set Forth in TRA Docket No. 13-00130.

a. Tennessee-American has filed a verification form from an officer of the Company.

During discussions with the CPAD regarding *TAWC's Supplemental Responses*, Tennessee-American discovered that the verification statement was not filed with the *Petition* submitted on November 4, 2016. Thereafter, Tennessee-American promptly resolved this oversight and filed the Verification Statement of Valoria Armstrong, President on January 24, 2017. Therefore, Tennessee-American has fully complied with the requirement of the Capital Recovery Rider tariffs that the filing “shall be verified by an officer of the Company.”²

b. The Capital Recovery Rider tariffs require no additional verification.

The CPAD, however, seeks to go beyond the plain language of the tariffs. The CPAD seeks an additional verification from the controller’s office. As support for this novel request, CPAD asserts that Tennessee-American is “refusing to verify that the numbers submitted for recovery under the Capital Riders mechanism are accurate or true.”³ Tennessee-American, however, has verified “the numbers” through the mechanism established by the approved tariffs — a verification form from an officer of the Company. In addition, the witnesses submitted by Tennessee-American have verified their pre-filed testimony and the exhibits supporting that testimony. Tennessee-American has also verified its responses to discovery requests. In sum, Tennessee-American has attested to “the numbers” referenced by the CPAD at every opportunity.

¹ *Consumer Advocate’s Motion to Compel*, TRA Docket No. 16-00126 (Jan. 24, 2017) (“*Motion*”).

² *See Stipulation*, TRA Docket No. 13-00130, pp. 14, 25 and 36 (attached as Exhibit A to *Motion*).

³ *Motion* at 10.

The CPAD's attack on Tennessee-American's witnesses is not well-grounded. These witnesses have testified before the agency in other petitions submitted pursuant to the Capital Recovery Riders tariffs. Among other things, CPAD has not identified a requirement that Tennessee-American use witnesses preferred by the CPAD to support its *Petition*.

Finally, CPAD's request that an accountant or another representative from the controller's office attest to the accuracy of "the numbers" submitted is duplicative, cumulative, unnecessary, and burdensome. Tennessee-American has verified that its *Petition*, its pre-filed testimony and supporting exhibits and its responses to discovery requests are accurate. Any additional attestation would be cumulative and/or duplicative and is therefore not necessary. Most importantly, however, this request opens the door wide to further cumulative verification requirements in the future. Granting the CPAD's novel request may, in future regulatory filings, subject TAWC to countless demands from CPAD to specific attestations, beyond those required in the Capital Recovery Riders tariffs, to particular aspects of future filings. Requiring such specialized verifications for various aspects of the *Petition* would be highly burdensome, cumulative, and unnecessary.

II. Tennessee-American Is Supplementing Certain Responses to the Supplemental Discovery Requests.

As noted at the outset, Tennessee-American is supplementing its previous responses to CPAD Supplemental Discovery Request No. 5. Tennessee-American is providing the source and support for the 57.6% estimate as requested. Tennessee-American is also supplementing its response to CPAD Supplemental Discovery Request No. 20, but it preserves its objections to this Request, as set forth below.

III. CPAD's Additional Objections Lack Merit.

CPAD also objects to Tennessee-American's responses to Request Nos. 1, 4d, 19d, and 20. These objections are without merit.

With respect to Tennessee-American's response to CPAD Discovery Request No. 1, Tennessee-American states that it has provided the Recurring Project Summary Workbook to the CPAD. Tennessee-American identified the Recurring Project Summary Workbook in its Response to Request No. 3 in the First Discovery Request of the Consumer Protection and Advocate Division. The Recurring Project Summary Workbook, identified as attachment "TAW_R_CPADDR1_003_122016_Attachment1.xlsx," was attached to that set of responses and filed on December 20, 2016.

CPAD objects to Tennessee-American's responses to Request Nos. 4d and 19d for essentially the same reason it claims Tennessee-American has failed to comply with the verification requirements of the tariffs. In short, CPAD claims Tennessee-American must provide an attestation from its controller or an accountant to verify certain information. Tennessee-American has provided verified responses to the discovery requests. As stated *supra*, the plain language of the tariff requires only the verification of "an officer of the Company." CPAD points to no authority that would require a separate or additional verification by an accountant or employee of the controller's office in order to "verify the percentages and the underlying accounting." As evidenced by the numerous verifications already submitted in support of its *Petition*, Tennessee-American stands behind the accounting and numbers asserted. Tennessee-American has provided the verification required under the tariffs.

Tennessee-American notes that CPAD also apparently objects to Tennessee-American's responses that Request Nos. 4d and 19d are "overbroad, unduly burdensome, duplicative, and

seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.” This argument, however, has no bearing on the objections raised in Tennessee-American’s responses. The objection at issue is Tennessee-American’s assertion that “Tennessee-American has identified the appropriate representatives with relevant information concerning this Request,” which CPAD claims is insufficient. CPAD’s claims that Tennessee-American’s objections to the scope of discovery are contrary to Tennessee law are not pertinent to the *Motion*.⁴

Finally, CPAD objects to Tennessee-American’s response to CPAD’s Supplemental Discovery Request No. 20. This request, as set forth on page 15 of the *Motion*, seeks “the budgeted 2017 SCEP plant additions by Business Unit” across five (5) categories. Tennessee-American has provided a complete response to the Request as stated. Tennessee-American does not construct the budgets using the categories requested. Nevertheless, in the spirit of cooperation, Tennessee-American is providing information that may add insight. Tennessee-American’s supplemental response identifies exactly how this information was obtained and the limitations of the methodology used. Tennessee-American maintains its objection that CPAD’s Supplemental Request No. 20 does not seek information in Tennessee-American’s possession, custody, or control. *See* Tenn. R. Civ. P. 34.01.

CONCLUSION

Tennessee-American has provided full and complete responses to CPAD’s numerous discovery requests. These responses, as well as the *Petition* and TAWC’s pre-filed testimony, have been verified and attested to appropriately. In light of discussions between counsel for the parties prior the submission of the *Motion*, Tennessee-American has timely supplemented its

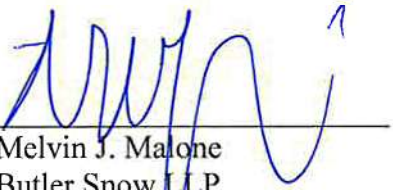
⁴ Tennessee-American does object to the scope of Request No. 20, as further discussed *infra*.

discovery responses in a good faith effort to resolve these disputes. While Tenn. R. Civ. P. 26.02 generally allows discovery for “any matter . . . which is relevant to the subject matter involved in the pending action,” the information sought must be in the party’s possession, custody or control. *See* Tenn. R. Civ. P. 34.01. The CPAD seeks verifications that are not required by the Authority and therefore are not relevant and information that is not in Tennessee-American’s possession, custody or control. Tennessee-American therefore respectfully requests the Authority to deny CPAD’s *Motion* in its entirety. Based upon the same arguments set forth above, TAWC respectfully submits that the *Extension Motion* should be denied as well.

Notwithstanding the foregoing, in the spirit of good faith cooperation TAWC would not object to a two-day extension of time for the CPAD to submit its pre-filed testimony, from January 30, 2017 to February 1, 2017, coupled with a one-day extension of time for TAWC to submit its rebuttal testimony from February 10th to February 13, 2017; provided, however, that these voluntarily offered procedural schedule modifications are conditioned upon the Target Date the Hearing on the Merits previously established by the Hearing Officer remains March 13, 2017.

This the 26th day of January, 2017.

Respectfully submitted:

By: 
Melvin J. Malone
Butler Snow LLP
The Pinnacle at Symphony Place
150 3rd Avenue South, Suite 1600
Nashville, TN 37201
(615) 651-6705
melvin.malone@butlersnow.com
*Attorneys for Tennessee-American
Water Company*

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:

Daniel Wittaker, Esq.
Assistant Attorney General
Office of the Tennessee Attorney General
Consumer Protection and Advocate Division
P.O. Box 20207
Nashville, Tennessee 37202-0207

This the 26th day of January, 2017.



Melvin J. Malone