

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION  
AT NASHVILLE, TENNESSEE**

<b>IN RE:</b>	)	
	)	
<b>PETITION OF TENNESSEE AMERICAN</b>	)	
<b>WATER COMPANY REGARDING</b>	)	
<b>CHANGES TO THE QUALIFIED</b>	)	
<b>INFRASTRUCTURE INVESTMENT</b>	)	<b>Docket No. 17-00020</b>
<b>PROGRAM RIDER, THE ECONOMIC</b>	)	
<b>DEVELOPMENT INVESTMENT RIDER,</b>	)	
<b>AND THE SAFETY AND</b>	)	
<b>ENVIRONMENTAL COMPLIANCE RIDER</b>	)	
<b>AND IN SUPPORT OF THE CALCULATION</b>	)	
<b>OF THE 2017 CAPITAL RECOVERY</b>	)	
<b>RIDERS RECONCILIATION</b>	)	

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**MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE  
TO ISSUE MORE THAN FORTY DISCOVERY REQUESTS**

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The Consumer Protection and Advocate Division (Consumer Advocate), pursuant to TPUC Rule 1220-1-2-.11(5)(a), hereby submits this memorandum in support of its *Motion for Leave to Issue More Than Forty Discovery Requests* to Tennessee-American Water Company (TAWC). For good cause, the Consumer Advocate would show as follows:

**RULES GOVERNING DISCOVERY BEFORE THE TPUC**

Section 1220-1-2-.11 of the Tennessee Public Utility Commission (TPUC) Rules, entitled *Discovery*, states in part, “Any party to a contested case may petition for discovery.... [D]iscovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure.” The Uniform Administrative Procedures Act provides the implementing mechanism: “[t]he 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.” Tenn. Code Ann. § 4-5-311(a).

Tenn. R. Civ. P. 26.02 allows for broad discovery. Specifically, the rule 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, i.e. information that is stored in an electronic medium and is retrievable in perceivable form, and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.*

(Emphasis added). Perhaps the most important underlying policy of discovery is “that discovery should enable the parties and the courts to seek the truth so that disputes will be decided by facts rather than by legal maneuvering.” *White v. Vanderbilt Univ.*, 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 Univ. Hosp.*, 693 S.W.2d 350, 356 (Tenn. Ct. App. 1985) (internal citations omitted), *superseded on other grounds by statute*, Tenn. R. Civ. P. 26.02(4)(B), *as recognized in West v. Schofield*, 460 S.W.3d 113, 125 (Tenn. 2015). 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. Tenn. Trucking Ass’n Self Ins. Grp. Tr.*, 209 S.W.3d 602, 615 (Tenn. Ct. App. 2006) (internal citations omitted).

TPUC Rule 1220-1-2-.11(5)(a) requires that a party obtain leave from the Commission before serving more than forty discovery requests. Leave is obtained by filing a motion and an accompanying “memorandum establishing good cause” for additional discovery.<sup>1</sup>

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<sup>1</sup> TPUC Rule 1220-1-2-.11(5)(a).

## **THE CONSUMER ADVOCATE HAS GOOD CAUSE TO ISSUE MORE THAN FORTY DISCOVERY REQUESTS**

The Consumer Advocate's *Motion for Leave to Issue More Than Forty Discovery Requests* is made with good cause, as required by TPUC Rule 1220-1-2-.11. This memorandum demonstrates that the Consumer Advocate's discovery requests meet this standard.

As background, when the Consumer Advocate intervenes in a 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 petition, 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 TPUC as it works to decide the case. It should be noted that the discovery process is the principal procedural vehicle available to the Consumer Advocate to gather evidence and conduct analysis prior to the hearing in this matter.

The consequences of the denial of the additional discovery requested would include the inability of the Consumer Advocate to test the merits of TAWC's proposed adjustment in rates and to evaluate the impact on consumers and related policy issues presented in the Company's *Petition*. This would mean that the Consumer Advocate would not have the ability to develop fully prepared positions on the myriad of issues presented in the *Petition*. Without the requested discovery – and without receiving discovery responses in the format requested – the Consumer Advocate will be severely constrained in representing the interests of households and businesses. Discovery and resulting pre-filed testimony present the only opportunities for consumers to receive due process with a representative and evidentiary voice regarding the rates charged to them by

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

Furthermore, while TAWC has ample opportunity to prepare its filing and has access to all information that is relevant to the case, the Consumer Advocate must build its case from the inception of the *Petition*, which for this Docket was filed on March 1, 2017. The Consumer Advocate must then analyze the filing, prepare discovery questions, review TAWC's responses, and prepare additional discovery questions. All of this occurs within a relatively short timeframe. In this Docket – as is the case in nearly every Docket – many requests in the second-round of discovery ask for additional information or clarification of requests pertaining to the first-round of discovery. Thus, issuing more than forty discovery requests is imperative for the Consumer Advocate in order to understand TAWC's *Petition*, to analyze the information supplied thus far by TAWC, and to develop a meaningful position on behalf of ratepayers.

### CONCLUSION

For all of the foregoing reasons, the Consumer Advocate respectfully requests that the Commission grant its *Motion for Leave to Issue More Than Forty Discovery Requests*.

RESPECTFULLY SUBMITTED,



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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:

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This the 19<sup>th</sup> day of May, 2017.



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