

IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:)	
)	
TENNESSEE AMERICAN WATER)	
COMPANY'S RESPONSE TO)	DOCKET NO. 18-00039
COMMISSION'S INVESTIGATION OF)	PHASE II
IMPACTS OF FEDERAL TAX)	
REFORM ON THE PUBLIC UTILITY)	
REVENUE REQUIREMENTS)	

CONSUMER ADVOCATE'S FIRST DISCOVERY REQUEST
TO TENNESSEE-AMERICAN WATER COMPANY CONCERNING
PHASE II OF THIS DOCKET

To: Tennessee American Water Company
C/O Melvin J. Malone
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
The Pinnacle at Symphony Place
150 3rd Avenue South, Suite 1600
Nashville, TN 37201
melvin.malone@butlersnow.com

This First Discovery Request for Phase II is hereby served upon Tennessee-American Water Company ("TAWC" or "Company"), pursuant to Rules 26, 33, 34, and 36 of the Tennessee Rules of Civil Procedure and Tenn. Comp. R. & Reg. 1220-1-2-.11. The Consumer Advocate Unit, Financial Division of the Tennessee Attorney General's Office ("Consumer Advocate") requests that full and complete responses be provided pursuant to the Tennessee Rules of Civil Procedure. The responses are to be produced at the Office of the Tennessee Attorney General and Reporter, Financial Division, 315 Deaderick Street, 20th Floor, Nashville, Tennessee 37243, c/o Daniel P. Whitaker, III, on or before 4:00 p.m. (CDT), Monday, October 7, 2019.

This First Discovery Request for Phase II will address the remaining issues related to TAWC in the wake of the 2017 Tax Cuts and Jobs Act. While these are the first discovery requests

issued pertaining to Phase II issues, the numbering for this request will begin at No. 3-1 for ease of reference.

PRELIMINARY MATTERS AND DEFINITIONS

1. **Continuing Request.** These discovery requests are to be considered continuing in nature and are to be supplemented from time to time as information is received by the Company and any of its affiliates which would make a prior response inaccurate, incomplete, or incorrect.

2. **Clear References.** To the extent that the data or information requested is incorporated or contained in a document, identify the document including page/line number if applicable.

3. **Format of Responses.** Provide all responses in the format in which they were created or maintained, for example, Microsoft Word or Microsoft Excel format with all cells and formulas intact and in working order. If a document (including, without limitation, a financial or other spreadsheet or work paper) is not created or maintained in Microsoft Excel format, convert the document to Microsoft Excel format or provide the document in a format that enables or permits functionality like or similar to Microsoft Excel (including, without limitation, the functionality of working cells and formulas), or provide the software program(s) that will enable the Consumer Advocate to audit and analyze the data and information in the same manner as would be enabled or permitted if the document were provided in Microsoft Excel format.

4. **Objections.** If any objections to this discovery are raised on the basis of privilege or immunity, include in your response a complete explanation concerning the privilege or immunity asserted. If you claim a document is privileged, identify the document and state the basis for the privilege or immunity asserted. If you contend that you are entitled to refuse to fully answer any of this discovery, state the exact legal basis for each such refusal.

5. **Singular/Plural.** The singular includes the plural, and vice-versa, where appropriate.

6. **Definitions.** As used in this Request:

(a) “Affiliate” shall mean any entity who, directly or indirectly, is in control of, is controlled by, or is under common control with the Company. For greater clarification, “control” is the ownership of 20% or more of the shares of stock entitled to vote for the election of directors in the case of a corporation, or 20% or more of the equity interest in the case of any other type of entity, or status as a director or officer of a corporation or limited liability company, or status as a partner of a partnership, or status as an owner of a sole proprietorship, or any other arrangement whereby a person has the power to choose, direct, or manage the board of directors or equivalent governing body, officers, managers, employees, proxies, or agents of another person. In addition, the term “Affiliate” shall mean any entity that directly or indirectly provides management or operational services to the Company or any affiliate (as defined in the preceding sentence) of the Company, or to which the Company provides management or operational services. Further, the payment of money to the Company or receipt by the Company of money from an entity with which the Company has any relationship, other than such payment or receipt, shall include the payor or recipient of such money as an “Affiliate”.

(b) “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the discovery request inclusive rather than exclusive.

(c) “Communication” shall mean any transmission of information by oral, graphic, written, pictorial or otherwise perceptible means, including but not limited to personal conversations, telephone conversations, letters, memoranda, telegrams, electronic mail, newsletters, recorded or handwritten messages, meetings and personal conversations, or otherwise.

(d) “Document” shall have the broadest possible meaning under applicable law. “Document” shall mean any medium upon which intelligence or information can be recorded or retrieved, such as any written, printed, typed, drawn, filmed, taped, or recorded medium in any manner, however produced or reproduced, including but not limited to any writing, drawing, graph, chart, form, letter, note, report, electronic mail, memorandum (including memoranda, electronic mail, report, or note of a meeting or communication), work paper, spreadsheet, photograph, videotape, audio tape, computer disk or record, or any other data compilation in any form without limitation, which is in your possession, custody or control. If any such document was, but no longer is, in your possession, custody or control, state what disposition was made of the document and when it was made?

(e) "Person" shall mean any natural person, corporation, firm, company, proprietorship, partnership, business, unincorporated association, or other business or legal entity of any sort whatsoever.

(f) "Identify" with respect to:

- i. Any natural person, means to state the full name, telephone number, email address and the current or last known business address of the person (if no business address or email address is available provide any address known to you) and that person's relationship, whether business, commercial, professional, or personal with you;
- ii. Any legal person, business entity or association, means to state the full name, the name of your contact person with the entity, all trade name(s), doing business as name(s), telephone number(s), email address(es), and current or last known business address of such person or entity (if no business address is available provide any address known to you);
- iii. Any document, means to state the type of document (e.g., letter), the title, identify the author, the subject matter, the date the document bears and the date it was written; and
- iv. Any oral communication, means to state the date when and the place where it was made, identify the person who made it, identify the person or persons who were present or who heard it, and the substance of it.

(g) "Including" shall be construed to mean including but not limited to.

(h) You," "Your," "Company," "Tennessee-American," or "TAWC" shall mean Tennessee-American Water Company and all employees, agents, attorneys, representatives or any other person acting or purporting to act on its behalf.

FIRST (PHASE II) DISCOVERY REQUESTS

- 3-1. On page 3 of his testimony, Mr. Wilde indicates the consequences of not following the tax normalization rules are significant. Excluding the impact of the Repair Deduction, regarding which the Company has provided a Consent Agreement purportedly mandating normalization treatment, does TAWC acknowledge that the impact of such a violation is lessened in this specific situation given that, for the majority of property, the Company has

not elected to use MACRS depreciation methods and rates? If the Company will not acknowledge this statement, provide a comprehensive narrative of why it will not.

RESPONSE:

- 3-2. If the Repair Deduction is not normalized in the Company's Tennessee jurisdiction, does TAWC contend that its parent, American Water Works Company, Inc. ("AWW"), would be at risk of losing the ability to utilize the Repair Deduction? If so, describe the process that would occur which would lead to this result. Include in this response the implications of purported non-compliance by TAWC and the implications it would have on AWW.

RESPONSE:

- 3-3. Refer to the Consent Agreement attached to Mr. Wilde's supplemental testimony. Provide a comprehensive explanation describing how and why the Consent Agreement was reached within the 2010 tax matter.

RESPONSE:

- 3-4. Provide the reason for the phrase "Gross-Up" referenced at the bottom of Mr. Wilde's Exhibit JRW-2S.

RESPONSE:

- 3-5. Provide a workpaper detailing all book/tax timing differences that comprise each line item found on JRW-2S, further splitting these individual differences between Tennessee-direct items and those allocated to TAWC from related parties. To the extent such items are allocated to Tennessee operations, provide supporting analysis and explanation detailing how such assignments were determined.

RESPONSE:

- 3-6. Indicate whether the ARAM period incorporated into Exhibit JRW-2S is Tennessee-specific, or is this period identical throughout the AWW footprint?

RESPONSE:

- 3-7. Beginning on page 5, line 23 of Mr. Wilde's testimony, he states that "Absent clear direction or guidance from the IRS to the contrary, Tennessee-American believes it is required to comply with the Consent Agreement" With respect to the phrase "clear direction or guidance", does the Company believe that such direction and guidance could come in the form of an IRS statement issued regarding the Notice in 2019-33? Describe the implication of a possible declaration from the IRS in 2019-33 with respect to the classification of the Repair Deduction in the context of the Consent Agreement language. In other words, if the IRS concludes the Repair Deduction is not protected in Notice 2019-33, does the Company believe that such a conclusion would supersede the terms of the Consent Agreement?

RESPONSE:

- 3-8. For each plant account, identify the portion of current depreciation rates related to accrual for future Removal Costs.

RESPONSE:

- 3-9. Refer to page 11, lines 5-6 of Mr. Wilde's testimony as well as Exhibit JRW-2S. Confirm that the effective date of the \$16.8 million excess is December 31, 2017.

RESPONSE:

- 3-10. Confirm that TAWC did not amortize any of its excess ADIT balances in 2018 or 2019 (to date).

RESPONSE:

3-11. On page 16, line 8 of Mr. Wilde's testimony, he references the implications on excess ADIT associated with a hypothetical increase in tax rates. In the event federal income tax rates are increased in the future, does the Company believe it would be appropriate to collect any plant-related ADIT deficiencies over the remaining book life of the underlying assets, or would a more rapid collection of deficient ADIT from ratepayers be appropriate?

RESPONSE:

3-12. Regarding the last sentence of Mr. Wilde's testimony, please explain in greater detail exactly how an "indirect" normalization violation could occur within the context of this passage of testimony.

RESPONSE:

3-13. Across AWW's various state operations, how many state utility commissions have issued a final order, or otherwise made a final determination, concerning the impacts of the 2017 Tax Cuts and Jobs Act? How many other states have made partial resolutions concerning these impacts? Provide a copy of all state commission orders for those states in which AWW operates which address the disposition of excess ADIT.

RESPONSE:

3-14. Have any state utility commissions assessed carrying charges to AWW's deferred federal income taxes?

RESPONSE:

3-15. Refer to Mr. Wilde's argument that the ARAM method should be utilized to normalize all excess ADIT related to plant-in-service "without a clear legal requirement to do so". Have

all other AWW subsidiaries made this argument? To the extent other state utility commissions have issued rulings concerning this issue for other AWW subsidiaries, provide those final orders or rulings.

RESPONSE:

RESPECTFULLY SUBMITTED,

A handwritten signature in blue ink, appearing to read "D.P. Whitaker, III", is positioned above a horizontal line.

DANIEL P. WHITAKER, III (BPR No. 035410)

Assistant Attorney General

KAREN H. STACHOWSKI (BPR No. 019607)

Assistant Attorney General

Office of the Tennessee Attorney General

Consumer Advocate Unit, Financial Division

P.O. Box 20207

Nashville, Tennessee 37202-0207

(615) 532-9299

Daniel.Whitaker@ag.tn.gov


Karen.Stachowski@ag.tn.gov

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:

Melvin J. Malone
Butler Snow LLP
The Pinnacle at Symphony Place
150 3rd Avenue South, Suite 1600
Nashville, TN 37201
melvin.malone@butlersnow.com

This the 25rd day of September, 2019.



DANIEL P. WHITAKER III
Assistant Attorney General