

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

IN RE:)
)
JOINT PETITION OF)
TENNESSEE-AMERICAN WATER)
COMPANY, AND THUNDER AIR, INC.) **Docket No. 18-00099**
D/B/A JASPER HIGHLANDS)
DEVELOPMENT, INC. FOR APPROVAL OF)
AN ASSET PURCHASE AGREEMENT AND)
FOR THE ISSUANCE OF A CERTIFICATE)
OF CONVENIENCE AND NECESSITY)

**CONSUMER ADVOCATE'S FIRST DISCOVERY REQUEST
TO THUNDER AIR, INC. D/B/A JASPER HIGHLANDS DEVELOPMENT, INC.**

To: William H. Horton, Esq.
Counsel for Thunder Air, Inc., d/b/a Jasper Highlands Development, Inc.
735 Broad Street, Suite 306
Chattanooga, Tennessee 37402
whorton@whorton-law.com

This First Discovery Request is hereby served upon Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc. (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 Protection and Advocate Division of the 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, Consumer Protection and Advocate Division, 315 Deaderick Street, 20th Floor, Nashville, Tennessee 37243, c/o Daniel P. Whitaker III, on or before 2:00 p.m. (CDT), Monday, November 26, 2018.

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. The singular shall include the plural, and vice-versa, where appropriate.

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

(a) “You,” “Your,” “Company,” or “Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc.,” shall mean Thunder Air, Inc. and all employees, agents, attorneys, representatives or any other person acting or purporting to act on its behalf.

(b) “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”.

(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) "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the discovery request inclusive rather than exclusive.
- (h) "Including" shall be construed to mean including but not limited to.

FIRST (INFORMAL) DISCOVERY REQUESTS

1. Provide a copy of the map highlighting the assets to be acquired in this transaction, distinct from assets that will be retained by Thunder Air, Inc. The map should be clear to a reader unfamiliar with the Thunder Air territory.

RESPONSE:

2. Identify any assets, including acreage included in this transaction which exceed those assets necessary to operate the water system. This response should describe the asset in question and indicated their a) Original Cost and b) Net Book Cost as of September 30, 2018.

RESPONSE:

3. Provide a copy of the Thunder Air Signatory page. The existing page contained on the website of the Tennessee Public Utility Commission (TPUC) is not legible.

RESPONSE:

4. Provide a comprehensive explanation for the distinction between Article 2.2, Excluded Assets and Schedule 2.2, Excluded Assets.

RESPONSE:

5. Is the purchase price of \$1.5 Million subject to change based upon finalizing the Excluded Assets within Schedule 2.2?

RESPONSE:

6. Provide the most recent Income Statement for Thunder Air, and indicate whether and in what manner the financial statement was reviewed or audited by an independent third party.

RESPONSE:

7. Provide the most recent Balance Sheet for Thunder Air, and indicate whether and in what manner the financial statement was reviewed or audited by an independent third party.

RESPONSE:

8. Provide a comprehensive description of the nature of the commercial enterprises operated by Thunder Air and its affiliates and other related entities whose financial results are included within the financial results of the a) Thunder Air Balance Sheet and b) Thunder Air Income Statement.

RESPONSE:

9. Provide the monthly number of customers billed by Thunder Air for the period January 1, 2016, through September 30, 2018.

RESPONSE:

10. Provide the monthly quantify of sales volumes billed by Thunder Air for the period January 1, 2016, through September 30, 2018.

RESPONSE:

11. Identify all persons, partnerships, or corporations constructing the water system and indicate whether these persons or entities are affiliated personally or legally with Thunder Air or any of its affiliates.

RESPONSE:

12. Provide a copy of all documentation supporting the original cost of the water system.

RESPONSE:

13. Identify the monthly Operating and Maintenance (O&M) costs directly associated with the operations of Thunder Air for the period January 1, 2016, through September 30, 2018. Within this response, identify the portion of O&M associated with labor costs.

RESPONSE:

14. Refer to the testimony of Dane Bradshaw on page 1, lines 21 – 23, and list the system functions performed by Jasper Highlands Property Owners Association.

RESPONSE:

15. Provide a monthly listing of charges incurred by Thunder Air and billed to Jasper Highlights Property Owners Association for the period January 1, 2015, through September 30, 2018, split between the three categories contained in Schedule B of the Management Agreement dated January 1, 2015.

RESPONSE:

16. Provide documents sufficient to show that the Jasper Highlands Property Owners' Association, Inc. is the owner and operator of the water system being acquired by Tennessee-American Water Company.

RESPONSE:

17. Under Tenn. Code Ann. § 68-221-706, the Tennessee Department of Environment and Conservation (TDEC) exercises general supervision over the construction of public water systems throughout the state. Provide documentation from TDEC of the approval of the construction of the water system being acquired by Tennessee-American Water Company.

RESPONSE:

18. Under Tenn. Code Ann. §68-221-707, TDEC exercises general supervision over the operation and maintenance of public water systems throughout the state. Provide the following:

- a. The water system's operation and maintenance plan required under Tenn. Code Ann. §68-221-707(c).
- b. The approval by TDEC of the water system's operation and maintenance plan.

RESPONSE:

19. Under Tenn. Comp. R. & Regs. Rule 0400-45-01-.05(8)(a), a person is required to notify the Division of Water Supply prior to placing a system in operation. Provide a copy of this required notification to TDEC by the water system being acquired by Tennessee-American Water Company and a copy of TDEC's response to the notification.

RESPONSE:

20. Provide the Public Water System Identification (PWSID) number assigned by TDEC to this water system.

RESPONSE:

21. Since the initial notification to TDEC as required under Tenn. Comp. R. & Regs. Rule 0400-45-01-.05(8)(a) has there been any notification to TDEC of changes in ownership or operation of the water system as required under Tenn. Comp. R. & Regs. Rule 0400-45-01-.05(8)(b)? Provide copies of all such notifications and responses by TDEC.

RESPONSE:

22. Provide copies of the following documents involving TDEC:

- a. All notices of non-compliance and related correspondence (i.e. responses).
- b. All notices of violation and related correspondence (i.e. responses).
- c. All Sanitary Surveys and related correspondence. A Sanitary Survey is a comprehensive on-site inspection and evaluation, together with a file review, by TDEC to determine the operational performance and adequacy of the water system.
- d. All correspondence regarding complaint investigations by TDEC.

RESPONSE:

23. Tenn. Code Ann. §68-221-904(a) requires all water systems to have a certified operator in direct charge of a water system. Provide the following:

- a. The name, license number, date of hire of the water system's current certified operator.
- b. The names, license numbers, dates of employment of all other certified operators employed by the water system since the initial notification to TDEC of the operation of the water system under Tenn. Comp. R. & Regs. Rule 0400-45-01-.05(8)(a).

RESPONSE:

24. Provide a detailed discussion, along with all documents containing the source and support, of how Jasper Highlands Property Owners' Association established utility rates.

RESPONSE:

25. Provide a detailed discussion and all corresponding documents relating to the current owner/operator's managerial, technical, and financial capability in operating a water utility.

RESPONSE:

26. Provide a copy of the most recent tax return, regardless of the filing entity, which includes the tax depreciation associated with the Thunder Air water system.


RESPONSE:

27. Confirm Thunder Air's position that Jasper Highlands Property Owners' Association is not a "public utility" as distinguished in Tenn. Code Ann. § 65-4-101(6)(B)(i). If this is the case, provide a detailed narrative and all relevant supporting documents that demonstrates

Jasper Highlands Property Owners' Association was unable to obtain such services from the local utility district.

RESPONSE:

RESPECTFULLY SUBMITTED,


DANIEL P. WHITAKER III (BPR No. 035410)
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Office of the Tennessee Attorney General
Public Protection Section
Consumer Protection and Advocate Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
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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:

William H. Horton, Esq.
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Linda Bridwell
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This the 9th day of November, 2018.

Daniel P. Whitaker by Remission
DANIEL P. WHITAKER III (1075)