

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

January 17, 2025

IN RE:

**PETITION OF TENNESSEE-AMERICAN
WATER COMPANY TO MODIFY TARIFF,
CHANGE AND INCREASE CHARGES, FEES,
AND RATES, AND FOR APPROVAL OF A
GENERAL RATE INCREASE**

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**DOCKET NO.
24-00032**

**ORDER GRANTING CITY’S MOTION
TO FILE TWO ADDITIONAL DISCOVERY REQUESTS**

This matter is before the Administrative Judge upon the *Motion for Leave to File two Additional Data Requests and to Set Expedited Schedule for Response* (“*City Motion*”) filed by the City of Chattanooga (“*City*”) on November 6, 2024, requesting permission to serve two additional discovery requests on Tennessee-American Water Company, Inc. (“*TAWC*” or the “*Company*”). The City seeks “(1) copies of bill impacts for TAWC’s 20 largest customers reflecting the effect of TAWC’s proposed rate changes and (2) analysis of the relative impacts on TAWC customers of TAWC’s proposed consolidation of rates among its rate areas as compared to TAWC’s proposed shift of revenue recovery from fixed charges to variable charges.”¹ The City states that TAWC initially had agreed to provide the information and this agreement was not contingent on settlement or any other event.² The City maintains this information is relevant and “is of significant interest to the parties and to the Commission as the Commission considers TAWC’s proposed rate design changes.”³ According to the City, it only recently found out that

¹ *City Motion*, p. 1 (November 6, 2024).

² *Id.*

³ *Id.*

the information would not be provided and filed its motion seeking additional discovery and seeks responses by Monday, November 11, 2024.⁴

The parties presented arguments on the *City's Motion* during the Pre-hearing Conference held on November 6, 2024. As requested, TAWC filed *Tennessee-American Water Company's Response to Motion for Leave to File Two Additional [Discovery] Requests and to Set Expedited Schedule for Response* (“*TAWC's Response*”) on November 8, 2024. In *TAWC's Response*, TAWC argues that the documents requested by the City were discussed as a part of settlement negotiations and should, therefore, remain confidential and not be allowed to be used beyond settlement negotiations.⁵ According to TAWC, these documents were first requested during settlement negotiations held on October 24, 2024.⁶ TAWC maintains “the Company did not understand, and the City of Chattanooga did not disclose, when making these requests that the City of Chattanooga intended to use the information that arose during settlement negotiations outside and apart from the settlement discussions.”⁷

TAWC argues that the documents the City seeks first came to light during settlement negotiations and Tenn. R. Evid. 408 would protect such documents as confidential.⁸ According to TAWC, failure to protect these documents requested by the City could have a chilling effect

⁴ *Id.* at 2.

⁵ *TAWC's Response*, p. 1 (November 8, 2024).

⁶ *Id.*

⁷ *Id.* at 2.

⁸ TAWC's quote of Tenn. R. Evid. 408 in footnote 1 on p. 2 of *TAWC's Response* omitted the bolded sentence below. Tenn. R. Evid. 408 provides as follows:

Evidence of (1) furnishing or offering to furnish or (2) accepting or offering to accept a valuable consideration in compromising or attempting to compromise a claim, whether in the present litigation or related litigation, which claim was disputed or was reasonably expected to be disputed as to either validity or amount, is not admissible to prove liability for or invalidity of a civil claim or its amount or a criminal charge or its punishment. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. **This rule does not require the exclusion of any evidence actually obtained during discovery merely because it is presented in the course of compromise negotiations.** This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution; however, a party may not be impeached by a prior inconsistent statement made in compromise negotiations. (emphasis added).

on future settlement negotiations between parties. The Administrative Judge disagrees. The protections afforded under Tennessee Rules of Evidence 408 relate to the admissibility of such evidence at the hearing. If the information the City seeks was to be presented at the hearing, TAWC would have an opportunity to object to its admissibility at that time. The Commission encourages parties to settle dockets informally or to avail themselves of the formal alternative dispute resolution process set forth in Commission Rule 1220-01-03.

While TAWC maintains the documents the City seeks first came to light during settlement negotiations and should be protected, the City, however, argues it had previously requested these documents and were told they would be provided. The *City Motion* requests the opportunity for two additional discovery requests. The Administrative Judge finds that the Commission favors broad discovery, and the City's discovery requests seek relevant information. Therefore, the Administrative Judge concludes the *City Motion* is well taken and should be granted. Based on these findings, the *City Motion* is granted and TAWC shall submit the responses to the City's data requests by 12:00 p.m. (CST) on November 13, 2024.⁹

IT IS SO ORDERED.



Monica Smith-Ashford, Administrative Judge

⁹ This Order memorializes a ruling made by the Administrative Judge and communicated to the parties via email on November 12, 2024.