

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

IN RE:)
)
PETITION OF TENNESSEE-)
AMERICAN WATER COMPANY TO)
MODIFY TARIFF, CHANGE AND) **DOCKET NO. 24-00032**
INCREASE CHARGES, FEES, AND)
RATES, AND FOR APPROVAL OF A)
GENERAL RATE INCREASE)

**MEMORANDUM IN SUPPORT OF THE CONSUMER ADVOCATE’S
MOTION FOR LIMITED DISCOVERY**

The Consumer Advocate Division of the Tennessee Office of the Attorney General (“Consumer Advocate”), pursuant to TPUC Rule 1220-01-02-.11, hereby submits this Memorandum in Support of its Motion for Limited Discovery (“Motion”) to Tennessee-American Water Company (“TAWC” or the “Company”) for leave to conduct limited discovery on the issue of rate case expenses in this Docket. This targeted discovery is necessary to uncover facts and details that are known by TAWC and are essential to establish that the rate case expenses recently submitted by TAWC are just and reasonable. For good cause, the Consumer Advocate submits this memorandum in support of its Motion for Leave to Conduct Limited Discovery as follows:

I. RULES GOVERNING DISCOVERY BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

Section 1220-1-2-.11 of the Tennessee Public Utility Commission (“TPUC” or the “Commission”) Rules, titled ‘Discovery,’ states in part, “[a]ny 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.”¹ Tenn. R. Civ. P. 26.02 allows for broad discovery. Specifically, the rule provides:

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 knowing of any discoverable matter. It is not grounds 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 parties and courts to seek truth so that disputes will be decided by facts, rather than by legal maneuvering.”² 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.”³ 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.”⁴ Under the Tennessee Rules of Civil Procedure, however, discovery may be limited in three narrow circumstances. Specifically, the Rules provide that:

The frequency or extent of use of the discovery methods outlined in subdivision 26.01 and this subdivision shall be limited by the court if it determines that: (i) the discovery sought is unreasonably

¹ Tenn. Code Ann. § 4-5-311(a).

² *White v. Vanderbilt Univ.*, 21 S.W.3d 215, 223 (Tenn. Ct. App. 1999).

³ *Vythoukas 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).

⁴ *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).

cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.⁵

The narrowness of these exceptions is supported by the fundamental principle of “*expressio unius est exclusio alterius*,” which translates as “the expression of one thing implies the exclusion of ... things not expressly mentioned.”⁶ Thus, a court may not limit discovery if the requests do not fall into one of these three categories.⁷ In the context of the exceptions noted above, the Commission’s Rules require that a party may petition the Commission for discovery.⁸ The Commission is granted the power to create such a rule under Tenn. Code Ann. § 4-5-311(c): “[t]he agency may promulgate rules to further prevent abuse and oppression in discovery.” However, this ability is constrained by the requirement that the Commission comply with the Tennessee Rules of Civil Procedure, as directed by the Commission’s own Rule 1220-01-02-.11, as well as Tenn. Code Ann. § 4-5-311(a). Consequently, it follows that “abuse or oppression in discovery” is defined as one of the three permissible reasons for limiting discovery as specifically described in Tenn. R. Civ. P. 26.02(1).

II. THE CONSUMER ADVOCATE HAS GOOD CAUSE TO REQUEST LIMITED DISCOVERY

This Memorandum demonstrates that the Consumer Advocate’s request for limited discovery meets necessary because of the unique posture of this case. The Commission directed in its Order that the Company shall file a separate proceeding for rate case expense. Since the original discovery schedule has concluded in the primary contested case in this

⁵ Tenn. R. Civ. P. 26.02(1).

⁶ *See Wells v. Tenn. Bd. of Regents*, 231 S.W.3d 912, 917 (Tenn. 2007) (applying the *expressio unius* principle to a state statute).

⁷ *See id.*

⁸ Tenn. Comp. R. & Regs. 1220-01-02-.11(1) (April 2018).

Docket, the Consumer Advocate is requesting limited discovery concerning this phase of the Docket on the issue of just and reasonable rate case expenses. In this Docket, it is necessary for the Consumer Advocate to conduct a full review of the rate case expenses to determine prudence of the expenses. The Consumer Advocate believes it is not only fully representing consumers but also providing a useful framework for the Commission as it works to decide the issue of rate case expenses, as stated in the subsequent request under the Order issued by the Commission concerning rate case expenses. 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 hearing concerning rate case expense. In the context of the current Docket, TAWC originally petitioned the Commission for approval to increase rates. Following the issuance of the Order in this Docket, the Commission directed a separate proceeding to address rate case expenses. While the Consumer Advocate was advised in an email by the Administrative Judge on December 2, 2025, that the *Order* in this Docket “was not intended to mean a separate docket would necessarily be opened. The Commission is considering the separate issue of rate case expenses under the same docket as the rate case proceeding, 24-00032.” As such, the Consumer Advocate should be able to address the facts and details of the rate case expenses in this Docket and be permitted to issue limited discovery to address the rate case expenses. TAWC is seeking over \$1.5 million in rate case expenses. Therefore, discovery by the Consumer Advocate is necessary and justified to determine whether these rate case expenses are just and reasonable. It is the duty and obligation of the Consumer Advocate to protect the interests of consumers regarding costs being passed through to consumers and it is necessary to determine the prudence of such rate case expenses which will ultimately result in a rate increase for TAWC customers.

The Consumer Advocate's request is reasonable and necessary. The consequences of the denial of the request for limited discovery would include the inability of the Consumer Advocate to determine whether the rate case expenses are just and reasonable. The Consumer Advocate would not have the ability to determine the prudence of such costs, and the Consumer Advocate will be severely constrained in representing the interests of TAWC's customers.

Discovery and pre-filed testimony present the only opportunities for consumers to receive due process with a representative and evidentiary voice regarding a rate increase due to rate case expenses. In summary, the Consumer Advocate will work diligently to put forth a case based on a factual record concerning rate case expenses to adequately represent the interests of consumers. By not allowing limited discovery at this juncture, the Consumer Advocate's ability to provide an analysis and additional information to present its case to the Commission for the protection of Tennessee consumers. Further, the Consumer Advocate respectfully notes that, in the event of a dispute over a specific discovery request, the Consumer Advocate is willing to make available the experts and/or consultants it employs to work informally with TAWC's responding witnesses to resolve any such dispute, as it has in other dockets.

III. THE CONSUMER ADVOCATE'S DISCOVERY REQUESTS ARE NOT ABUSIVE OR OPPRESSIVE

Under Tennessee law, the request for limited discovery requests should only be denied if they are found to be abusive or oppressive.⁹ As discussed above, the "abusive or oppressive" standard should be understood in terms of the Tennessee Rules of Civil Procedure – therefore, for discovery requests to be abusive or oppressive, they must violate one of the three situations specified in Tenn. R. Civ. Pro. 26.02. The Consumer Advocate is willing to discuss and work with

⁹ Tenn. Code Ann. § 4-5-311(c).

TAWC to clarify, alter, amend, or (if necessary) withdraw a discovery request that is unreasonably cumulative or duplicative.

A. The Discovery Sought Is Not Unreasonably Cumulative or Duplicative

Under the first prong of Tenn. R. Civ. Pro. 26.02(1), the Commission may limit discovery if “the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive.” In this Docket, the Consumer Advocate will take all reasonable efforts to ensure that its discovery is not cumulative or duplicative and has sought to obtain the information from other sources, if possible.

B. The Consumer Advocate Has Not Had Ample Opportunity by Discovery to Obtain the Information Sought Concerning Rate Case Expenses

The Consumer Advocate had a limited opportunity to conduct discovery concerning this issue in the main portion of this rate case. As described above, a second circumstance under which a judge or hearing officer may limit discovery would only occur if “the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.”¹⁰

C. The Discovery Sought Is Not Unduly Burdensome or Expensive, Taking Into Account the Needs of the Case

The discovery sought would not be unduly burdensome or expensive to TAWC after considering the needs and amount of review needed concerning rate case expenses. The final circumstance in which discovery may be limited – that is, “if the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties’ resources, and the importance of the issues at stake in the litigation” – would not limit discovery in this Docket. After a full review and analysis of rate case expenses, the Consumer

¹⁰ Tenn. R. Civ. Pro. 26.02(1)(ii).

Advocate's experts can assess the prudence of rate case expenses and will challenge any of those that appear to be unreasonable or imprudent amounts, as well as present their position on what the correct figures should be and the basis of such. In light of the Consumer Advocate's role in this matter, its pending discovery requests are certainly reasonable in relation to "the needs of the case." The second aspect requires that discovery requests be evaluated considering the "amount in controversy."¹¹ Only through this opportunity for limited discovery can the Consumer Advocate these expenses are just and reasonable. The final aspect requires that discovery requests must be considered concerning any "limitations on the parties' resources." TAWC is a subsidiary of American Water Works Company, Inc., ("AWWA") which is the largest water and wastewater holding company in the United States. TAWC has access to not only its own experts, analysts, and regulatory staff but also that of AWWA and affiliates. Thus, while it may take time and effort for TAWC to respond to the Consumer Advocate's requests, these discovery requests amount to a normal part of doing business for a company backed by a parent company's vast resources.

IV. CONCLUSION

For all of the foregoing reasons, the Consumer Advocate respectfully requests that the Commission grant its Motion for Limited Discovery in this proceeding.

¹¹ Tenn. Code Ann. § 4-5-311(c).

RESPECTFULLY SUBMITTED,



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TPUC Docket No. 24-00032

CA's Memorandum in Support of Motion for Limited Discovery

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail, with a courtesy copy by electronic mail:

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This the 23rd day of December, 2025.



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