

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**PETITION OF TENNESSEE AMERICAN
WATER COMPANY TO CHANGE AND
INCREASE CERTAIN RATES AND
CHARGES SO AS TO PERMIT IT TO
EARN A FAIR AND ADEQUATE RATE
OF RETURN ON ITS PROPERTY USED
AND USEFUL IN FURNISHING WATER
SERVICE TO ITS CUSTOMERS**

DOCKET NO. 08-00039

**SUPPLEMENTAL RESPONSES AND OBJECTIONS OF THE CONSUMER
ADVOCATE AND PROTECTION DIVISION TO THE FIRST DISCOVERY REQUEST
OF TENNESSEE AMERICAN WATER COMPANY**

Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”), pursuant to the Hearing Officer’s ruling at the status conference held on June 4, 2008, hereby submits these supplemental responses and objections to the first discovery request of Tennessee American Water Company (“TAWC” or “Company”).

GENERAL OBJECTIONS

1. The Consumer Advocate objects to the definitions and instructions contained in the Company’s interrogatories to the extent that the definitions and instructions attempt to impose on the Consumer Advocate a burden or obligation greater than that required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

2. The Consumer Advocate objects to the interrogatories to the extent they call for information and the production of documents which are protected from disclosure by the attorney-

client privilege, the attorney work product doctrine or any other applicable privilege or protection. The Consumer Advocate objects to the data requests to the extent that the Company is attempting to impose on the Consumer Advocate obligations with regard to identification of privileged documents beyond those required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

3. The Consumer Advocate objects to the Company's interrogatories to the extent they seek information not related to the subject matter involved in this litigation or to the extent they are not reasonably calculated to lead to the discovery of admissible evidence. By providing information in response to these requests, the Consumer Advocate does not concede that such information is relevant, material or admissible in evidence. The Consumer Advocate reserves all rights to object to the use of such information as evidence.

4. The Consumer Advocate objects to the Company's interrogatories to the extent that the Company is attempting to impose on the Consumer Advocate obligations to supplement its responses beyond those required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

5. The Consumer Advocate objects to the Company's interrogatories to the extent that the Company is attempting to require the Consumer Advocate to provide information and produce documents beyond those in its possession, custody or control as that phrase is used in the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

6. The Consumer Advocate objects to the Company's data requests to the extent they seek information and documents that are readily available through public sources or are in the Company's own possession, custody or control. It is unduly burdensome and oppressive to require

the Consumer Advocate to respond or produce documents that are equally available to the Company.

7. The Consumer Advocate's objections and responses to these requests are based on information now known to it. The Consumer Advocate reserves the right to amend, modify or supplement its objections and responses if it learns of new information.

8. The Consumer Advocate's responses to these requests are made without waiving or intending to waive the right to object to the use of any information provided in response to any subsequent proceeding or trial of this or any other action. The Consumer Advocate's responses to these requests are also not a waiver of any of the foregoing objections or any objections it has made or may make with respect to any similar, related, or future data request, and the Consumer Advocate specifically reserves the right to interpose any objection to further requests notwithstanding any response or lack of objection made in this response.

9. The Consumer Advocate will supplement its responses in accordance with the requirements of state law.

10. The Consumer Advocate expressly incorporates these general objections into its responses set forth below.

Subject to and without waiving any objections stated above the Consumer Advocate responds to the specific requests as follows:

DISCOVERY REQUEST NO. 1:

Identify each material fact and every document that you rely on to support your contention(s), position(s) or belief(s) that any of the request(s) for relief, including any increase in rates, made by TAWC in TRA Docket No. 08-00039 should not be approved by the Tennessee Regulatory Authority ("TRA").

SECOND SUPPLEMENTAL RESPONSE:

Consistent with the General Objections restated above, as well as the previous objections and responses of the Consumer Advocate, the Consumer Advocate will not respond to the extent this request seeks privileged information or information protected from disclosure by the attorney work product doctrine or other applicable law. Subject to and without waiving these objections, the Consumer Advocate responds as follows: See enclosed computer disk containing work papers and containing or referencing documents that identify material facts and documents the Consumer Advocate relies upon to support its contentions in this case. The Consumer Advocate's work on the issues presented in this docket is ongoing; consequently, it reserves the right to produce or create additional work papers; edit, alter, or revise the work papers submitted in response to this request; and identify additional documents responsive to this request. Furthermore, the Consumer Advocate reserves the right to rely on and use at trial any other fact or any other document produced or referenced by any other party or any other witness in this proceeding or any other proceeding, including, but not confined to, TRA Docket Nos. 08-00039, 06-00305, 06-00290, 06-00154, 06-00119, 04-00288, 04-00088, 03-00388, 03-00452, and 03-00118. The Consumer Advocate reserves the right to further supplement this response.

DISCOVERY REQUEST NO. 3:

Produce each document, photograph, or any other article or thing whatsoever, which refers or relates to any part of your contention(s), position(s) or belief(s) that any of the request(s) for relief, including any increase in rates, made by TAWC in TRA Docket No. 08-00039 should not be approved, whether as to the issues of credibility or any other issue.

SECOND SUPPLEMENTAL RESPONSE:

Consistent with the General Objections restated above, as well as the previous objections and responses of the Consumer Advocate, the Consumer Advocate will not respond to the extent this request seeks privileged information or information protected from disclosure by the attorney work product doctrine or other applicable law. Furthermore, the Consumer Advocate objects to producing copies of documents or things referenced by the Consumer Advocate if the documents or things: (1) were previously provided to TAWC; (2) were produced by TAWC in response to discovery requests or TRA staff data requests; (3) are in the public record or domain; or (4) are in the administrative record of the Authority; requiring the Consumer Advocate to produce copies of such documents would be unduly burdensome and costly. Subject to and without waiving these objections, the Consumer Advocate responds as follows: See enclosed computer disk containing work papers and containing or referencing documents that refer or relate to the Consumer Advocate's contentions in this case. The Consumer Advocate's work on the issues presented in this docket is ongoing; consequently, it reserves the right to produce or create additional work papers; edit, alter, or revise the work papers submitted in response to this request; and produce or reference additional documents or things responsive to this request. Furthermore, the Consumer Advocate reserves the right to refer to and use at trial any other document or thing produced or referenced by any other party or any other witness in this proceeding or any other proceeding, including, but not confined to, TRA Docket Nos. 08-00039, 06-00305, 06-00290, 06-00154, 06-00119, 04-00288, 04-00088, 03-00388, 03-00452, and 03-00118. The Consumer Advocate reserves the right to further supplement this response.

DISCOVERY REQUEST NO. 4:

Identify any person you intend to call as a fact or expert witness (including, but not limited to, the persons referred to in paragraph 4 of your “Joint Objection of the Intervenors To Discovery Question Limits for the Initial Round of Discovery,” in which you refer to “two outside consultants hired by the Consumer Advocate to respond to the Company’s revenue and depreciation witnesses”), the subject matter of the witness’ testimony, the substance of the facts and opinions to be expressed and the basis and reasons therefor, the data, documents, materials or other information shown to, relied upon, created by or considered by the witness as part of this case and/or as a basis in forming his or her opinions, any exhibits to be used as a summary of or support for each such opinion, the qualifications of the witness, including a full resume, a list of all publications authored by the witness, the compensation to be paid for the study and testimony, and a listing of any other cases in which the witness has testified at trial or by deposition.

THIRD SUPPLEMENTAL RESPONSE:

Consistent with the General Objections restated above, as well as the previous objections and responses of the Consumer Advocate, the Consumer Advocate will not respond to the extent this request seeks privileged information or information protected from disclosure by the attorney work product doctrine or other applicable law. Subject to and without waiving these objections, the Consumer Advocate responds as follows:

The Consumer Advocate anticipates that it will present the expert witness testimony of Robert T. (Terry) Buckner. Mr. Buckner is expected to testify to the following:

1. TAWC has overstated its need for an increase in regulated revenue by more than \$9.2 million, which means that the water rates charged to TAWC’s customers should actually be reduced

by \$1.6 million rather than increased by \$7.6 million as requested by TAWC;

2. The current \$9.2 million difference between the Consumer Advocate's position and TAWC's position is primarily due to the Consumer Advocate's disagreement with TAWC's projections and calculations in the following areas: (a) TAWC will collect about \$2.4 million more in operating revenue than the revenue estimates included in TAWC's rate increase petition; (b) TAWC either will not or should not incur about \$1.3 million in operation and maintenance expenses that TAWC wants to recover from its customers; (c) TAWC's calculation of depreciation expense for its utility plant in service is approximately \$400,000 too high given the proper application of the depreciation rates recommended by Consumer Advocate witness Charles W. King; (d) TAWC's forecast of "taxes other than income taxes" is overstated by approximately \$100,000 due primarily to TAWC's use of incorrect franchise and excise tax credits in its gross receipts tax estimates; (e) TAWC's calculation of its income tax expense is overstated by approximately \$1 million due to TAWC's improper use of income tax rates that are much higher than the rates specified by the applicable tax codes; (f) the return on investment that TAWC is requesting for its shareholders is too high in light of the testimony of Consumer Advocate witness Dr. Stephen N. Brown, which has the effect of unreasonably inflating TAWC's rate increase request by \$3.7 million; and (g) TAWC's computation of its gross revenue conversion factor -- a factor used to adjust gross operating revenue for any projected surplus or deficiency in net operating profits earned by the company -- is incorrect, which has the effect of overstating TAWC's rate increase request by \$400,000. As a result of these areas of dispute, the Consumer Advocate contends that TAWC has requested over \$9.2 million more in customer rates than the company actually needs to meet its expenses and provide a fair return to its shareholders while providing quality water service to its customers.

3. If the Authority decides to increase or decrease TAWC's customer rates in this proceeding, such rate adjustments should be spread proportionately to all customer classes.

Furthermore, while the Consumer Advocate does not dispute the amount of TAWC's projected rate base, it does take issue with the methodologies and forecasting conventions used to project rate base. Because Mr. Buckner's testimony is not complete at this time and because the Consumer Advocate's review of the issues presented in this matter is ongoing, the Consumer Advocate reserves the right to revise, amend, or supplement the subject matter and substance of Mr. Buckner's testimony.

The Consumer Advocate further anticipates that it will present the expert witness testimony of Charles W. King. Mr. King is expected to present recommendations on depreciation rates that the Authority should adopt in this proceeding, and he is expected to testify that TAWC's weather normalization adjustment ("WNA") should be rejected by the Authority because the WNA model used by TAWC -- a model that relies primarily on temperature to predict water usage -- does not stand the test of reasonableness, a conclusion that is supported by actual events. In particular, the WNA reduction in revenue projected by TAWC in last year's rate case (Docket #06-00290) did not occur. Because the Consumer Advocate's review of the issues presented in this matter is ongoing, the Consumer Advocate reserves the right to revise, amend, or supplement the subject matter and substance of Mr. King's testimony.

The Consumer Advocate further anticipates that it will present the expert witness testimony of Dr. Stephen N. Brown. Dr. Brown is expected to present recommendations on cost of capital that the Authority should adopt in this proceeding. Dr. Brown's cost of capital recommendations produce an overall rate of return that is lower than the return requested by TAWC. Because the Consumer

Advocate's review of the issues presented in this matter is ongoing, the Consumer Advocate reserves the right to revise, amend, or supplement the subject matter and substance of Dr. Brown's testimony.

Additional information regarding the facts and substance of the Consumer Advocate's proposed witnesses can be found in the materials included in the enclosed computer disk. The Consumer Advocate reserves the right to supplement this request.

DISCOVERY REQUEST NO. 7:

Provide in electronic media (Word, Excel, or other Microsoft Office compatible format) and in hard copy all workpapers and other documents, generated by or relied upon by all CAPD witnesses.

SECOND SUPPLEMENTAL RESPONSE:

Consistent with the General Objections restated above, as well as the previous objections and responses of the Consumer Advocate, the Consumer Advocate will not respond to the extent this request seeks privileged information or information protected from disclosure by the attorney work product doctrine or other applicable law. Furthermore, the Consumer Advocate objects to producing copies of documents referenced by the Consumer Advocate if the documents: (1) were previously provided to TAWC; (2) were produced by TAWC in response to discovery requests or TRA staff data requests; (3) are in the public record or domain; or (4) are in the administrative record of the Authority; requiring the Consumer Advocate to produce copies of such documents would be unduly burdensome and costly. Subject to and without waiving these objections, the Consumer Advocate responds as follows: See enclosed computer disk containing in electronic format work papers and containing or referencing documents generated by or relied upon by CAPD witnesses. The Consumer Advocate's review of the issues presented in this matter is ongoing; consequently, it

reserves the right to produce or create additional work papers; edit, alter, or revise the work papers submitted in response to this request; and produce or reference additional documents responsive to this request. Furthermore, the Consumer Advocate reserves the right to rely on and use at trial any other work paper or any other document produced or referenced by any other party or any other witness in this proceeding or any other proceeding, including, but not confined to, TRA Docket Nos. 08-00039, 06-00305, 06-00290, 06-00154, 06-00119, 04-00288, 04-00088, 03-00388, 03-00452, and 03-00118. The Consumer Advocate reserves the right to further supplement this response.

DISCOVERY REQUEST NO. 8:

Please produce a copy of all trade articles, journals, treatises, speeches and publications of any kind in any way utilized or relied upon by any of the CAPD's proposed expert witnesses in evaluating, reaching conclusions or formulating an opinion in the captioned matter as well as all articles, journals, speeches, or books written or co-written by any CAPD witness

SECOND SUPPLEMENTAL RESPONSE:

Consistent with the General Objections restated above, as well as the previous objections and responses of the Consumer Advocate, the Consumer Advocate will not respond to the extent this request seeks privileged information or information protected from disclosure by the attorney work product doctrine or other applicable law. Furthermore, the Consumer Advocate objects to producing copies of trade articles, journals, treatises, speeches, books, and publications referenced by the Consumer Advocate if such documents: (1) were previously provided to TAWC; (2) were produced by TAWC in response to discovery requests or TRA staff data requests; (3) are in the public record or domain; or (4) are in the administrative record of the Authority; requiring the Consumer Advocate to produce copies of such documents would be unduly burdensome and costly. Subject to and

without waiving these objections, the Consumer Advocate responds as follows: See enclosed computer disk containing documents that are responsive to this request. The Consumer Advocate's review of the issues presented in this matter is ongoing; consequently, it reserves the right to identify, produce, or reference additional documents responsive to this request. Furthermore, the Consumer Advocate reserves the right to rely on and use at trial any other document produced or referenced by any other party or any other witness in this proceeding or any other proceeding, including, but not confined to, TRA Docket Nos. 08-00039, 06-00305, 06-00290, 06-00154, 06-00119, 04-00288, 04-00088, 03-00388, 03-00452, and 03-00118. The Consumer Advocate reserves the right to further supplement this response.

DISCOVERY REQUEST NO. 9:

Please identify and produce any and all documentation, items, reports, data, communications, and evidence of any kind that the CAPD intends to offer as evidence at the hearing or to refer to in any way at the hearing.

SECOND SUPPLEMENTAL RESPONSE:

Consistent with the General Objections restated above, as well as the previous objections and responses of the Consumer Advocate, the Consumer Advocate will not respond to the extent this request seeks privileged information or information protected from disclosure by the attorney work product doctrine or other applicable law. Furthermore, the Consumer Advocate objects to producing copies of documentation, items, reports, data, communications, and evidence referenced by the Consumer Advocate if such documents: (1) were previously provided to TAWC; (2) were produced by TAWC in response to discovery requests or TRA staff data requests; (3) are in the public record or domain; or (4) are in the administrative record of the Authority; requiring the Consumer Advocate

to produce copies of such documents would be unduly burdensome and costly. Subject to and without waiving these objections, the Consumer Advocate responds as follows: See enclosed computer disk containing documents that are responsive to this request. The Consumer Advocate's review of the issues presented in this matter is ongoing; consequently, it reserves the right to identify, create, produce, or reference additional documents or evidence responsive to this request. Furthermore, the Consumer Advocate reserves the right to rely on and use at trial any other document or evidence produced or referenced by any other party or any other witness in this proceeding or any other proceeding, including, but not confined to, TRA Docket Nos. 08-00039, 06-00305, 06-00290, 06-00154, 06-00119, 04-00288, 04-00088, 03-00388, 03-00452, and 03-00118. The Consumer Advocate reserves the right to further supplement this response.

DISCOVERY REQUEST NO. 11:

The Joint Objection of the Intervenors to Discovery Question Limits for the Initial Round of Discovery, which was filed in this docket, states: "the Company has filed a depreciation study in this docket, the conclusions of which will likely be contested." Specifically identify each conclusion or aspect of the depreciation study the CAPD intends to contest, if any, and the CAPD's grounds and/or bases therefor, including any facts and/or documents the CAPD contends support those grounds.

SECOND SUPPLEMENTAL RESPONSE:

Consistent with the General Objections restated above, as well as the previous objections and responses of the Consumer Advocate, the Consumer Advocate will not respond to the extent this request seeks privileged information or information protected from disclosure by the attorney work product doctrine or other applicable law. Subject to and without waiving these objections, the Consumer Advocate responds as follows: The Consumer Advocate anticipates that it will present

a depreciation study for the Authority's consideration in this matter through the expert witness testimony of Charles W. King. See Third Supplemental Response to TAWC Discovery Request No. 4, above. Enclosed is a computer disk containing additional information that is responsive to this request. The Consumer Advocate's review of this issue is ongoing; consequently, it reserves the right to identify, create, produce, or reference additional documents or evidence responsive to this request. Furthermore, the Consumer Advocate reserves the right to rely on and use at trial any other document or evidence produced or referenced by any other party or any other witness in this proceeding or any other proceeding, including, but not confined to, TRA Docket Nos. 08-00039, 06-00305, 06-00290, 06-00154, 06-00119, 04-00288, 04-00088, 03-00388, 03-00452, and 03-00118. The Consumer Advocate reserves the right to further supplement this response.

DISCOVERY REQUEST NO. 12:

The Joint Objection of the Intervenors to Discovery Question Limits for the Initial Round of Discovery, which was filed in this docket, states: "TAWC has also filed an independent cost assessment report ("I.C.A.R.") in relation to management fees, the conclusions of which will likely be contested." Specifically identify each conclusion or aspect of the I.C.A.R. the CAPD intends to contest, if any, and the CAPD's grounds and/or bases therefor, including any facts and/or documents the CAPD contends support those grounds.

SECOND SUPPLEMENTAL RESPONSE:

Consistent with the General Objections restated above, as well as the previous objections and responses of the Consumer Advocate, the Consumer Advocate will not respond to the extent this request seeks privileged information or information protected from disclosure by the attorney work product doctrine or other applicable law. Subject to and without waiving these objections, the

Consumer Advocate responds as follows: The Consumer Advocate anticipates that the City of Chattanooga will present testimony regarding the report appended to the pre-filed testimony of TAWC witness Mr. Joe Van den Berg. See Response No. 4 of the City of Chattanooga's Fourth Supplemental Discovery Responses to Tennessee American Water Company. The Consumer Advocate reserves the right to adopt, use, and rely on any testimony presented by the City of Chattanooga regarding this report in forming the Consumer Advocate's position on any issues related to this report. Furthermore, to the extent TAWC plans to use the I.C.A.R. to justify its current level of affiliated charges allocated to TAWC from the American Water Works Service Company, the Consumer Advocate anticipates that it will take the position that such charges are too high, notwithstanding TAWC's proposed I.C.A.R. Enclosed is a computer disk containing additional information that is responsive to this request. The Consumer Advocate's review of this issue is ongoing; consequently, it reserves the right to identify, create, produce, or reference additional documents or evidence responsive to this request. Furthermore, the Consumer Advocate reserves the right to rely on and use at trial any other document or evidence produced or referenced by any other party or any other witness in this proceeding or any other proceeding, including, but not confined to, TRA Docket Nos. 08-00039, 06-00305, 06-00290, 06-00154, 06-00119, 04-00288, 04-00088, 03-00388, 03-00452, and 03-00118. The Consumer Advocate reserves the right to further supplement this response.

DISCOVERY REQUEST NO. 13:

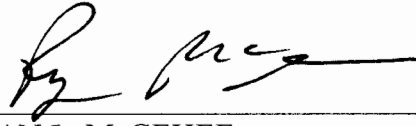
The Joint Objection of the Intervenors to Discovery Question Limits for the Initial Round of Discovery, which was filed in this docket, states: "the Company has proposed a significant adjustment to its weatherization figures which calls for \$1.3 million in new rates." Specifically

identify each conclusion or aspect of the weatherization figures the CAPD intends to contest, if any, and the CAPD's grounds and/or bases therefor, including any facts and/or documents the CAPD contends support those grounds.

SECOND SUPPLEMENTAL RESPONSE:

Consistent with the General Objections restated above, as well as the previous objections and responses of the Consumer Advocate, the Consumer Advocate will not respond to the extent this request seeks privileged information or information protected from disclosure by the attorney work product doctrine or other applicable law. Subject to and without waiving these objections, the Consumer Advocate responds as follows: The Consumer Advocate anticipates that it will take the position that TAWC's weather normalization adjustment should be rejected by the Authority because the WNA model used by TAWC -- a model that relies primarily on temperature to predict water usage -- does not stand the test of reasonableness, a conclusion that is supported by actual events. In particular, the WNA reduction in revenue projected by TAWC in last year's rate case (Docket #06-00290) did not occur. See Third Supplemental Response to TAWC Discovery Request No. 4, above. Enclosed is a computer disk containing additional information that is responsive to this request. The Consumer Advocate's review of this issue is ongoing; consequently, it reserves the right to identify, create, produce, or reference additional documents or evidence responsive to this request. Furthermore, the Consumer Advocate reserves the right to rely on and use at trial any other document or evidence produced or referenced by any other party or any other witness in this proceeding or any other proceeding, including, but not confined to, TRA Docket Nos. 08-00039, 06-00305, 06-00290, 06-00154, 06-00119, 04-00288, 04-00088, 03-00388, 03-00452, and 03-00118. The Consumer Advocate reserves the right to further supplement this response.

RESPECTFULLY SUBMITTED,



RYAN L. McGEHEE
Assistant Attorney General
Office of the Attorney General and Reporter
Consumer Advocate and Protection Division
P.O. Box 20207
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Dated: July 17, 2008.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing is being served via U.S. Mail and/or electronic mail upon:

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This the 17 day of July, 2008.



RYAN L. McGEHEE
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