

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 17, 2007

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

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DOCKET NO.  
06-00290

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ORDER GRANTING PETITIONS TO INTERVENE, PERMITTING  
ADDITIONAL DISCOVERY REQUESTS  
AND ESTABLISHING A PROCEDURAL SCHEDULE

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This matter is before the Hearing Officer, upon filings by the parties, to consider petitions to intervene, to establish a procedural schedule and to resolve certain preliminary matters.

TRAVEL OF CASE

On November 22, 2006, Tennessee American Water Company ("TAWC" or the "Company") filed its *Petition* in which the Company seeks approval by the Authority of proposed increased rates, alleging that "[t]he Company's existing rates and charges will not provide, and cannot be made to provide, sufficient revenues to cover all the costs incurred in providing adequate quality water service including its cost of capital."<sup>1</sup> The Company seeks to put into effect "customer rates that will produce an overall rate of return of 8.466% on a rate base of \$100,583,193."<sup>2</sup> According to TAWC, the additional gross revenues would be approximately \$6,379,887.<sup>3</sup>

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<sup>1</sup> *Petition* at 2 (November 22, 2006).

<sup>2</sup> *Id.* at 5.

<sup>3</sup> *Id.*

At a regularly scheduled Authority Conference held on December 4, 2006, Chairman Sara Kyle, Director Pat Miller and Director Ron Jones, of the Tennessee Regulatory Authority (“Authority” or “TRA”), the panel assigned to this docket, voted unanimously to convene a contested case proceeding and to appoint General Counsel or his designee as Hearing Officer for the purpose of preparing this matter for hearing, including handling preliminary matters and establishing a procedural schedule to completion.

On December 12, 2006, the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”) filed a Petition to Intervene. No objection or opposition to the Petition to Intervene was filed. On December 21, 2006, the Hearing Officer entered an Order granting the Consumer Advocate’s Petition to Intervene and setting a Status Conference for Monday, January 8, 2007 to establish a procedural schedule and discuss other preliminary matters.

A Notice of Status Conference was issued on December 21, 2006. The Notice provided that any interested party desiring to participate in the Status Conference should file a petition to intervene not later than January 3, 2007 and that petitions to intervene filed by that date would be considered at the Status Conference on January 8, 2007. The Notice also stated that the establishment of a procedural schedule, discovery between the parties and the issuance of a protective order would be matters for discussion during the Status Conference.

#### **STATUS CONFERENCE**

The Status Conference was convened on January 8, 2007 following the conclusion of the Authority Conference being held on that date. In attendance at the Status Conference were the following parties represented by counsel:

Tennessee American Water Company – **R. Dale Grimes, Esq.**, Bass, Berry & Sims, PLC, 315 Deaderick Street, Suite 2700, Nashville, TN 37238-3001.

Consumer Advocate and Protection Division - **Vance Broemel, Esq., Stephen R. Butler, Esq.** and **Timothy Phillips, Esq.**, Office of the Attorney General, 425 5<sup>th</sup> Ave. N, John Sevier Building, P.O. Box 20207, Nashville, TN 37202.

City of Chattanooga, Tennessee – **Michael A. McMahan, Esq.**, Office of the City Attorney, 801 Broad Street, Suite 400, Chattanooga, TN 37402.

Chattanooga Manufacturers Association (CMA) – **Henry M. Walker, Esq.**, Boulton, Cummings, Connors & Berry, PLC, 1600 Division Street, Suite 700, P.O. Box 340025, Nashville, TN 37203; and **David C. Higney, Esq.**, Grant, Konvalinka & Harrison, P.C., 9<sup>th</sup> Floor, Republic Centre, 633 Chestnut Street, Chattanooga, TN 37450-0900.

### **Petitions to Intervene**

The City of Chattanooga (“Chattanooga”) and Chattanooga Manufacturers Association (“CMA”) filed petitions to intervene on December 28 and December 29, 2006, respectively. Chattanooga states that its intervention request should be granted because “the City of Chattanooga is a customer of TAWC and the legal rights, duties, privileges, immunities or other legal interests of the City of Chattanooga and its citizens may be determined in these proceedings.”<sup>4</sup> CMA asserts that it is a trade association in existence for 100 years and representing over 250 manufacturers and businesses. CMA alleges that approval of the Company’s request to increase certain rates and charges “will adversely affect ratepayers including but not limited to CMA members and other similarly situated entities.”<sup>5</sup> No party or person filed an objection to or opposed the intervention requests of Chattanooga and CMA.

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if;

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

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<sup>4</sup> *Petition to Intervene*, p. 2 (December 28, 2006).

<sup>5</sup> *Petition to Intervene by the Chattanooga Manufacturers Association*, p. 2 (December 29, 2006).

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

Under TRA Rule 1220-1-2-.06, any party opposing a motion in a contested case must file and serve a response to the motion within seven days of service of the motion.

During the Status Conference, the Hearing Officer found that the legal rights and interests of Chattanooga and CMA may be determined in this proceeding, the petitions of Chattanooga and CMA are timely and the interventions will not impair the orderly and prompt conduct of these proceedings. For these reasons and applying the standards set forth in Tenn. Code Ann. § 4-5-310(a), the Hearing Officer granted the petitions of Chattanooga and CMA.

#### **Discovery Matters**

During the Status Conference, the Consumer Advocate requested that it be permitted to propound more than forty questions in its initial discovery requests. TRA Rule 1220-1-2-.11(5)(a) provides:

No party shall serve on any other party more than forty (40) discovery requests including subparts without first having obtained leave of the Authority or a Hearing Officer. Any motion seeking permission to serve more than forty (40) discovery requests shall set forth the additional requests. The motion shall be accompanied by a memorandum establishing good cause for the service of additional interrogatories or requests for production. If a party is served with more than forty (40) discovery requests without an order authorizing the same, such party need only respond to the first forty (40) requests.

The Consumer Advocate stated that because the TRA's Minimum Filing Requirements do not apply to TAWC's *Petition*, there is a need to obtain additional information through the initial discovery requests. Counsel for TAWC did not object to additional discovery requests from the Consumer Advocate, provided the number of requests did not exceed the number of additional

requests permitted in the previous rate case filed by TAWC. It was noted that in a previous TAWC rate case, TRA Docket No. 03-00118, the Consumer Advocate was permitted to propound eighty questions in the first round of discovery.<sup>6</sup> Counsel for TAWC then agreed to an initial discovery limit of eighty questions from the Consumer Advocate.

### **Procedural Schedule**

In voting to convene a contested case proceeding, the panel assigned to this docket instructed the Hearing Officer to proceed to establish a procedural schedule which would contemplate a Hearing on the merits of the *Petition* during the second week in April, 2007. During the Status Conference, the Hearing Officer presented a proposed procedural schedule to the parties for their review and comments. TAWC and the Consumer Advocate each produced a proposed procedural schedule for consideration. Following much discussion, it was agreed that the parties would have additional time to discuss and propose alternative procedural schedules, jointly if possible, and submit those schedules to the Hearing Officer no later than January 9, 2007.

On January 9, 2007, the Consumer Advocate filed a proposed procedural schedule which established a filing schedule for two rounds of discovery, the first in advance of the submission of pre-filed testimony by the Intervenors and second in advance of the submission of pre-filed rebuttal testimony by the Company. The Company filed a letter on January 9, 2007 adopting the Consumer Advocate's proposed schedule in general but requesting an earlier date for receiving the first round of discovery and additional time after the filing of the Intervenors' pre-filed testimony for the Company to prepare and propound discovery. CMA submitted a proposed

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<sup>6</sup> See *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. 03-00118, *Order on March 12, 2003 Status Conference*, pp. 4-5 (March 17, 2003).

procedural schedule that provided for a single round of discovery, in advance of the pre-filed testimony by the Intervenor, with no discovery between the submission of the Intervenor's pre-filed testimony and the submission of the Company's pre-filed rebuttal testimony.

The goals of the procedural schedule are to move this docket toward deliberations on the issues raised by the *Petition* no later than May 22, 2007<sup>7</sup> and to provide the parties a reasonable and adequate amount of time to conduct discovery, prepare and submit pre-filed testimony and prepare for Hearing. The Hearing Officer is appreciative of the efforts of the parties in proposing procedural schedules that both expedite the process and provide for thorough discovery and preparation.

Upon review and consideration of the multiple proposed procedural schedules and the requests of the parties, the Hearing Officer hereby establishes a Procedural Schedule, attached as **Exhibit A**, for resolution of issues in this docket within the six month statutory period from the date of the filing of the *Petition*. The Procedural Schedule includes a Hearing date during the week of April 16, 2007 as requested by all of the parties in this docket. Because that Hearing date is beyond the date specifically mentioned by the panel in this docket, the Hearing date in the Procedural Schedule is subject to the approval of the panel. If the panel does not approve the third week in April for the Hearing date, certain dates in the Procedural Schedule may be modified. As with any schedule, the effectiveness of this Procedural Schedule is directly dependent upon the extent of cooperation or delay on the part of the parties in meeting the individual benchmark dates.

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<sup>7</sup> While Tenn. Code Ann. § 65-5-103(a) allows nine months for the investigation by the TRA, Tenn. Code Ann. § 65-5-103(b)(1) permits the Company to place the proposed rates into effect under bond after six months.

## **PROTECTIVE ORDER**

During the Status Conference on January 8, 2007, the Hearing Officer provided the parties with a proposed protective order for their review and comments. The parties agreed to review the order, compare it with protective orders entered in similar dockets and provide any proposed modifications to the Hearing Officer by January 12, 2007. The parties have responded with revisions to the proposed protective order, and the Hearing Officer will be entering a Protective Order separate from this Order.

### **IT IS THEREFORE ORDERED THAT:**

1. The City of Chattanooga and Chattanooga Manufacturers Association are granted leave to intervene and receive copies of any notices, orders or other documents herein.
2. The Consumer Advocate is permitted to propound discovery requests in excess of the number prescribed in TRA Rule 1220-1-2-.11(5)(a), up to a total of eighty questions during the initial round of discovery.
3. The Procedural Schedule, attached to this Order as **Exhibit A**, is hereby adopted and is in full force and effect.

  
Richard Collier, Hearing Officer

**TRA DOCKET NO. 06-00290**

**PROCEDURAL SCHEDULE**

**(January 17, 2007)**

<b>January 22, 2007</b>	<b>1<sup>st</sup> Round of Discovery Due</b>
<b>February 6, 2007</b>	<b>Discovery Responses and Objections Due</b>
<b>February 8, 2007</b>	<b>Motions to Compel Due</b>
<b>February 9, 2007</b>	<b>Status Conference</b>
<b>February 14, 2007</b>	<b>Supplemental Discovery Responses Due</b>
<b>February 26, 2007</b>	<b>Intervenors' Pre-Filed Testimony Due</b>
<b>March 7, 2007</b>	<b>2<sup>nd</sup> Round of Discovery Due</b>
<b>March 16, 2007</b>	<b>Discovery Responses and Objections Due</b>
<b>March 19, 2007</b>	<b>Motions to Compel Due</b>
<b>March 20, 2007</b>	<b>Status Conference (Parties will report on settlement talks)</b>
<b>March 23, 2007</b>	<b>Supplemental Discovery Responses Due</b>
<b>April 3, 2007</b>	<b>Company's Pre-Filed Rebuttal Testimony Due</b>
<b>April 10, 2007</b>	<b>Pre-Hearing Conference</b>
<b>Week of April 16, 2006</b>	<b>Hearing on the Merits (Subject to Panel Approval)</b>