

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 1, 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

ORDER GRANTING, IN PART, JOINT MOTION OF CITY OF CHATTANOOGA AND
CHATTANOOGA MANUFACTURERS ASSOCIATION FOR EXTENSION OF TIME TO
SUBMIT TESTIMONY AND FURTHER MODIFYING PROCEDURAL SCHEDULE

This matter is before the Hearing Officer upon *The City of Chattanooga's and the Chattanooga Manufacturers Association's Joint Motion for Extension of Time to Submit Testimony and to Revise Procedural Schedule* ("Joint Motion") filed on February 23, 2007 requesting an extension of time to file their pre-filed testimony and to revise the procedural schedule. On February 23, 2007, the Hearing Officer entered an *Order Granting Motion for Extension of Time and Modifying Procedural Schedule* ("Order") in response to a motion filed by the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") on February 22, 2007. Through that *Order*, the Hearing Officer modified the existing procedural schedule to accommodate the parties in the midst of the numerous discovery disputes. That *Order* was entered and served on the parties in advance of the *Joint Motion* of the City of Chattanooga (the "City") and Chattanooga Manufacturers Association ("CMA") being filed in this docket. Tennessee American Water Company ("TAWC" or the "Company") filed a response to the *Joint Motion* on February 28, 2007.

In the *Joint Motion*, the City and CMA assert grounds similar to those set forth by the Consumer Advocate in its Motion for Extension of Time, e.g., additional time is required for the preparation of pre-filed testimony, partially as a result of discovery disputes not being resolved prior to the discovery due date of February 6, 2007. The *Order* entered on February 23, 2007 granted the Consumer Advocate's request for two additional days and extended the date for filing pre-filed testimony from February 26, 2007 to February 28, 2007. The City and CMA were included in the Consumer Advocate's motion and dates for the filing of pre-filed testimony by the City and CMA were likewise extended to February 28, 2007 by the terms of the *Order*.

In their *Joint Motion*, the City and CMA request an extension until March 9, 2007 to submit pre-filed testimony. The *Joint Motion* asserts that the date for submitting pre-filed testimony must be extended because of the continual filing of supplemental discovery responses by TAWC and because there has been no ruling by the Hearing Officer regarding certain discovery requests relating to an Initial Public Offering ("IPO"). The proposed revised procedural schedule filed with the *Joint Motion* modifies dates for the filing of testimony and discovery, while maintaining the week of April 16, 2007 for the hearing on the merits. The proposed revised schedule does not follow the new format for discovery incorporated in the Hearing Officer's *Order* entered on February 23, 2007.¹ While providing additional time for the Intervenor to submit their pre-filed testimony, the proposed revised schedule shortens the time allotted to the Company to propound discovery from nine days to seven days and decreases from nine days to three days the time in which the Company must submit pre-filed rebuttal testimony after discovery responses are due from the Intervenor.

¹ A supplemental Revised Schedule submitted by the City and CMA on February 26, 2007 in place of the revised schedule attached to the *Joint Motion* also follows the previous format which is no longer in effect.

In *Tennessee American Water Company's Response to Joint Motion for Extension of Time to Submit Testimony and to Revise Procedural Schedule* ("TAWC Response"), TAWC asserts that the *Joint Motion* is "moot and unnecessary" and therefore should be denied outright.² TAWC acknowledges the effect of the Hearing Officer's Order of February 23, 2007 and states that the additional time provided therein is sufficient. TAWC describes in great detail the voluminous documentation it has produced in response to any implication by the City and CMA that the Company has not been compliant with discovery requests or has not adhered to the procedural schedule in place.³ TAWC states further that even in the absence of documentation relating to the IPO, the Intervenors have sufficient information to proceed with filing their testimony.

The Hearing Officer agrees that the Intervenors should be permitted additional time to submit their pre-filed testimony in light of the discovery disputes. Nevertheless, the Hearing Officer finds that an eleven day extension as requested by the City and CMA is not necessary.

The fact that discovery is ongoing and the Company continues to supplement its discovery responses is not novel to this case. Rarely are parties able to discover completely the opposing side's case and gather all of the information they would like to obtain before the filing of testimony. The Hearing Officer cannot agree with the assertion in the *Joint Motion* that "the parties are handcuffed from filing such testimony" on account of not having "a complete universe of material . . .".⁴ The volume of document production and information provided by the Company to date is sufficient to proceed with the submission of pre-filed testimony. Moreover,

² *Tennessee American Water Company's Response to Joint Motion for Extension of Time to Submit Testimony and to Revise Procedural Schedule*, p.1 (February 28, 2007).

³ *Id.* at 2-3.

⁴ *The City of Chattanooga's and the Chattanooga Manufacturers Association's Joint Motion for Extension of Time to Submit Testimony and to Revise Procedural Schedule*, p. 2 (February 23, 2007).

while discovery is ongoing, the testimony of the Company has been on file since November 22, 2006. The heart of the Company's case is revealed in its filed testimony and that testimony has been available to the Intervenors for more than three months.


The procedural schedule at this point cannot accommodate an additional eleven days for the filing of the Intervenors' testimony. The procedural schedule has been established and modified to meet the needs of all parties in preparing this case. To enlarge the time allotted for one party at the expense of the time allotted for another party would result in an inequitable schedule.

For these reasons, the Hearing Officer grants the request for additional time in the *Joint Motion* and extends the filing of the Intervenors' pre-filed testimony through March 5, 2007. The Hearing Officer hereby further modifies the procedural schedule as to the second round of discovery and the filing of testimony to provide a fair allocation of time for all parties to work within the existing time frame for bringing this matter to hearing. The Hearing Officer encourages all parties to work together in the event certain dates require adjustment to accommodate the needs of parties and to bring to the Hearing Officer's attention, jointly and timely, any concern regarding the overall time period for discovery and testimony or hearing date.

IT IS THEREFORE ORDERED THAT:

1. The *Joint Motion* of the City of Chattanooga and Chattanooga Manufacturers Association is granted, in part, and the Intervenors shall have until **Monday, March 5, 2007 at 4:30 p.m.** to file their pre-filed testimony.

2. The Modified Procedural Schedule is revised to accommodate the additional time for the filing of pre-filed testimony and discovery and the Second Modified Procedural Schedule, attached to this Order as **Exhibit A**, is hereby adopted and is in full force and effect.


J. Richard Collier
Hearing Officer

TRA DOCKET NO. 06-00290

**SECOND MODIFIED PROCEDURAL SCHEDULE
(March 1, 2007)**

January 22, 2007	1st Round of Discovery Due
February 6, 2007	Discovery Responses and Objections Due
February 8, 2007	Motions to Compel Due
February 9, 2007	Status Conference
February 14, 2007	Supplemental Discovery Responses Due
March 5, 2007	Intervenors' Pre-Filed Testimony Due
March 14, 2007	2nd Round of Discovery Due
March 19, 2007	Discovery Objections Due
March 21, 2007	Status Conference (Parties will report on settlement talks)
March 30, 2007	2nd Round Discovery Responses Due
April 9, 2007	Company's Pre-Filed Rebuttal Testimony Due
April 12, 2007	Pre-Hearing Conference
Week of April 16, 2007	Hearing on the Merits (Subject to Panel Approval)