

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**March 9, 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 SETTING HEARING ON THE MERITS  
IN CHATTANOOGA, TENNESSEE**

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This matter is before the Hearing Officer upon the requests of the City of Chattanooga (the "City") and Chattanooga Manufacturers Association ("CMA") that the Tennessee Regulatory Authority (the "Authority" or "TRA") hold the hearing in this docket in Chattanooga, Tennessee. Based upon the filings and arguments of the parties, the Hearing Officer has determined that the hearing in this matter should be held in Chattanooga, Tennessee.

The original request to hold the hearing on the merits of this rate case in Chattanooga was made by the CMA on December 29, 2006. The Petitioner, Tennessee American Water Company ("TAWC" or the "Company") issued a statement in opposition to CMA's request on January 5, 2007. The request was addressed during a Status Conference held on January 8, 2007, and the Hearing Officer heard oral arguments from the parties.

On January 10, 2007, the City filed its formal request to hold the hearing in Chattanooga. TAWC filed its supplemental statement in opposition to the requests of the City and CMA on

January 11, 2007. During the January 8, 2007 Status Conference, the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”) stated that it did not oppose the request to hold the hearing in Chattanooga.

### **Positions of the Parties**

In *Chattanooga Manufacturers Association’s Request that Contested Case Hearing be Conducted in Chattanooga, Tennessee*, CMA asserts that the Company’s rate increase request will have an adverse effect on “citizens, residents and ratepayers throughout the Chattanooga area.”<sup>1</sup> Specifically, CMA states the following in support of its request:

CMA submits that the Company, the CMA and the City of Chattanooga conduct their business operations in Chattanooga, and a substantial number of the witnesses and documents likely to be presented during this contested case are located in Chattanooga. (Paragraph 2)

There is significant interest with respect to the Company’s request to increase its rates and charges. A change of venue will enhance substantially any interested ratepayers’ opportunity to be heard. (Paragraph 3)<sup>2</sup>

In the Company’s initial filing on January 5, 2007, *Statement of Tennessee American Water Company in Opposition to Chattanooga Manufacturers Association’s Request that Contested Case Hearing to be Conducted in Chattanooga, Tennessee*, TAWC argues against the request of CMA primarily on the basis of the inconvenience and cost of holding the hearing in a location other than Nashville.

The CMA has made no showing that subjecting everyone involved to such massive inconvenience, increased cost, and arbitrary impracticality would result in rates that are one bit more just and reasonable than would be obtained in the TRA’s official Hearing Room in Nashville.<sup>3</sup>

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<sup>1</sup> *Chattanooga Manufacturers Association’s Request that Contested Case Hearing be Conducted in Chattanooga, Tennessee*, p. 1 (December 29, 2006).

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

<sup>3</sup> *Statement of Tennessee American Water Company in Opposition to Chattanooga Manufacturers Association’s Request that Contested Case Hearing to be Conducted in Chattanooga, Tennessee*, p. 1 (January 5, 2007).

Further, the Company disagrees that the location in Chattanooga would be more convenient to witnesses in the hearing. The Company states,

The CMA also suggests that the hearing should be relocated to Chattanooga because a substantial number of the witnesses likely to be presented in this case are located in Chattanooga. It is more likely, however, that the majority of witnesses will not be from Chattanooga as in recent rate cases involving Chattanooga utilities. Nonetheless, while it may suit a handful of witnesses to have the hearing come to them in Chattanooga, that does not warrant uprooting the entire regulatory agency, Directors, staff, and all, as well as all the many other necessary participants in the proceeding, and relocating them to makeshift quarters in a different city.<sup>4</sup>

In summary, TAWC maintains that Nashville is the best location for the hearing because,

(1) it is the location of the offices, staff, and resources of the TRA, (2) it is the location of the attorneys for the Petitioner, (3) it is the location of the majority of the attorneys for the Intervenors, (4) it is the most convenient location for the witnesses of the Petitioner, and (5) it best serves the interests of justice.<sup>5</sup>

*City of Chattanooga's Request that Contested Case Hearing be Conducted in Chattanooga, Tennessee* was filed on January 10, 2007, on behalf of the Mayor of Chattanooga and in concert with CMA's request. In its request, the City asserts,

. . . holding a hearing in this matter in Chattanooga presents an educational opportunity for the TRA and the citizens of southeast Tennessee. . . . Although the activities of the TRA that have a peculiar local impact may be reported in the local paper, and, occasionally in other media outlets, it is reasonable to assume in that holding a hearing in Chattanooga will provide a vehicle for educating the public about the purpose and role of the TRA.<sup>6</sup>

In addressing two of the arguments posed by TAWC in opposition to holding the hearing in Chattanooga, the City responds as follows:

. . . the convenience of the witnesses to this hearing and the public benefit to be derived from the educational opportunities that are involved will outweigh those expenses and inconvenience.<sup>7</sup>

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<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *City of Chattanooga's Request that Contested Case Hearing be Conducted in Chattanooga, Tennessee*, p. 1 (January 10, 2007).

<sup>7</sup> *Id.* at 3.

As to the issue of setting a precedent, the City is not suggesting that all such hearings be held in the communities involved. Although our request only addresses this particular case, it is respectfully submitted that holding contested case hearings once (sic) or twice a year outside Nashville in different areas of the state will better serve the public interest by keeping all Tennessee citizens who live away from Nashville more informed about the role and purpose of the TRA in our state government.<sup>8</sup>

In its *Supplemental Statement of Tennessee American Water Company in Opposition to Chattanooga Manufacturers Association's and City of Chattanooga's Request that Contested Case Hearing be Conducted in Chattanooga Tennessee* filed on January 11, 2007, the Company argues in favor of a public input meeting in Chattanooga as opposed to the entire hearing on the merits in Chattanooga which, according to the Company,

will cause a costly, unnecessary, and unjustified burden on Chattanooga ratepayers and state taxpayers. The sole basis for CMA's request is to provide the public an opportunity to give the TRA input at a Chattanooga location and Tennessee American Water's proposal to the Hearing Officer that the TRA conduct a public input meeting at a convenient time and place in Chattanooga fully serves this purpose.<sup>9</sup>

The Company suggests such a public input meeting could be convened by a Director, Hearing Officer, or Consumer Services Division staff member, with the Company and Intervenor present.<sup>10</sup>

The Company also argues that there is no precedent by the TRA for holding rate hearings away from Nashville and that to do such in this case would set a precedent to do so in any rate case where the Petitioner is located in another city. The Company concludes,

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<sup>8</sup> *Id.* at 3-4.

<sup>9</sup> *Supplemental Statement of Tennessee American Water Company in Opposition to Chattanooga Manufacturers Association's and City of Chattanooga's Request that Contested Case Hearing be Conducted in Chattanooga Tennessee*, p. 1 (January 11, 2007).

<sup>10</sup> *Id.* at 3.

In the final analysis, however, the unique request to relocate the entire evidentiary hearing to Chattanooga will result in significant increased costs, which will have to be borne by the ratepayers of Tennessee American and the taxpayers of the entire state.<sup>11</sup>

### **Findings and Conclusions**

The TRA is not restricted by statute or rule in setting the location of meetings and hearings. Tenn. Code Ann. § 65-1-103(a) permits the Authority to hold sessions

. . . at such times and places as may be necessary for the proper discharge of their duties, or as the convenience of the parties, in the judgment of the Tennessee regulatory authority, may require.

TRA Rule 1220-1-1-.06 sets forth the following requirements for hearings before the Authority:

- (1) All contested case hearings, public hearings under rulemaking and any other hearings pursuant to these rules shall be held at the offices of the Authority in Nashville, Tennessee as such dates and times as may be set in the official notice of hearing or as may be set by order of the Authority.
- (2) . . . The Authority may schedule regular periodic dates for Authority Conferences, which may be rescheduled by the Authority, and any special meetings at such places, dates and times as the Authority may direct.
- (3) On its own motion or on the motion of any party, the Authority may fix the place, date and time of any hearing as it deems appropriate.

TRA Rule 1220-1-1-.06 expressly permits the Authority to conduct public hearings at locations other than Nashville, Tennessee, upon the Authority's own motion or upon the motion of a party, as the Authority may deem appropriate.

Three of the four parties participating in this docket, including the Petitioner, TAWC, conduct business in Chattanooga. The two Chattanooga-based Intervenors are represented by legal counsel whose offices are located in Chattanooga. The Consumer Advocate, whose offices are in Nashville, does not oppose holding the hearing in Chattanooga. TAWC opposes holding

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<sup>11</sup> *Id.*

the hearing in Chattanooga and argues that such a location would impose a hardship on the Company and its witnesses and an inconvenience to TAWC's legal counsel located in Nashville. Likewise, the Intervenor claim that there is no inconvenience to witnesses if the hearing is held in Chattanooga.

A Chattanooga location would afford ratepayers of the Company a ready opportunity to observe the hearing and become better educated concerning the ratemaking process. Ratepayers could actually participate in the process by offering public comments during the hearing. It is reasonable to assume that the costs associated with travel to and lodging, if necessary, in Nashville would prevent many ratepayers from attending and participating in a public hearing in Nashville. The Hearing Officer finds that conducting the hearing in this docket in the City of Chattanooga has the benefit of creating a better opportunity for ratepayers and other interested parties in the City of Chattanooga to attend and be heard during a hearing. For this reason, conducting the hearing in Chattanooga is in the public interest.

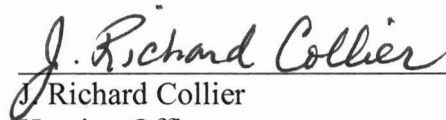
Obviously there will be costs involved in the transportation of the Directors and staff of the TRA to Chattanooga to conduct the hearing. Nevertheless, such costs must be weighed against the benefits of holding the hearing in a location where interested members of the public, particularly ratepayers, have an opportunity to participate in the process. The cited factors of possible inconvenience and of dangerous precedent, which is somewhat overstated,<sup>12</sup> do not outweigh the public interest factor of creating an environment that encourages full participation by members of the public. Moreover, the City's active participation in this docket and its express request to hold the hearing in Chattanooga are significant factors to consider in determining the location of the hearing.

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<sup>12</sup> The Tennessee Public Service Commission, the predecessor to the TRA, convened rate case hearings of TAWC in Chattanooga.

**IT IS THEREFORE ORDERED THAT:**

The requests of the City of Chattanooga and Chattanooga Manufacturers Association are granted, and the hearing on the merits of the Petition in this docket shall be held in Chattanooga, Tennessee, at a location, date and time to be determined.

  
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J. Richard Collier  
Hearing Officer