BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 3, 2008

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**

ORDER GRANTING, IN PART, JOINT MOTION OF INTERVENORS TO EXPAND TIME TO SUBMIT TESTIMONY AND MODIFYING PROCEDURAL SCHEDULE

This matter is before the Hearing Officer upon the *Joint Motion of the Intervenors to Expand the Time to Submit Their Prefiled Testimony to July 21, 2008* ("*Joint Motion*") filed on June 25, 2008. Based on the filings of the parties and the arguments presented at the Staus Conferences held in this docket, the Hearing Officer expands the amount of time for the filing of direct pre-filed testimony by the Intervenors to July 14, 2008, and modifies the procedural schedule as to other filing dates to account for the additional time being provided to the Intervenors.

Background

On May 1, 2008, the Hearing Officer entered the *Order Granting Petitions to Intervene and Establishing a Procedural Schedule* ("*Hearing Officer's Order*") in which the Hearing Officer, in lieu of a Status Conference and in the interest of conserving resources and time, prepared a Procedural Schedule in this docket. That Procedural Schedule followed roughly the time periods provided for filings in Docket No. 06-00290. The Procedural Schedule was effective as of the date

of that Order, initiated the first round of discovery on May 12, 2008 and set the date for the filing of the Intervenors' pre-filed testimony for June 23, 2008.

On May 6, 2008, the the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), the City of Chattanooga (the "City") and Chattanooga Manufacturers Association ("CMA") (collectively, "the Intervenors") filed a *Joint Motion to Modify Procedural Schedule*, in which the Intervenors stated as to the Procedural Schedule,

> The current two-week period between Company's supplemental discovery responses and the due date for the Intervenors' prefiled direct testimony is especially not viable and simply cannot be met by the Intervenors should the discovery be supplemented in any meaningful way.[1]

In that Motion the Intervenors requested an extension of at least one week in the procedural schedule to submit their pre-filed direct testimony. A Status Conference was scheduled for June 4, 2008 to hear argument on the Intervenors' motion.

In advance of the Status Conference, on June 2, 2008, the Consumer Advocate filed a motion with a supporting memorandum asking the Hearing Officer to set aside the Procedural Schedule and extend the date of the Hearing on the merits. In its Motion, the Consumer Advocate asked for an extension of four weeks from the date it received "full and complete responses to all discovery requests" to allow it "to perform analysis, form opinions and file direct testimony . . ." In the supporting memorandum, the Consumer Advocate argued that there had been a prejudicial delay in the discovery process, that additional time would be required for the filing of its pre-filed testimony if its motion for additional discovery requests was granted, and that the complexity of the issues in this docket called for additional time to analyze the data and prepare pre-filed testimony. The Intervenors' motion was addressed at the June 4, 2008 Status Conference in the context of other procedural matters. The parties reached an agreed schedule to address discovery matters. The

[1] *Joint Motion to Modify Procedural Schedule*, p. 3 (May 6, 2008).

Consumer Advocate stated that it would need until July 18, 2008 to file pre-filed testimony.

Another Status Conference was held on June 19 and 20, 2008 to consider a multitude of discovery matters, including questions relating to confidential documentation. Because of several pending motions, the date for the filing of the Intervenors' pre-filed testimony was suspended. During the Status Conference held on June 20, 2008, the Hearing Officer provided to the parties a copy of a proposed modified procedural schedule which expanded the amount of time for the filing of pre-filed testimony by sixteen days and adjusted other dates after the filing of the testimony to account for the additional time inserted in the schedule. In response to the proposed schedule, the Intervenors filed their *Joint Motion.*

In their *Joint Motion*, the Intervenors assert once again that this matter is a complex rate case which presents a significant number of issues to explore and requires extensive preparation by experts. The Intervenors argue that a large amount of time and resources have been expended by the Intervenors in pursuing discovery responses from the Company and arguing motions related to discovery and the production of confidential information. The Intervenors request an extension until July 21, 2008 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.

Tennessee American Water Company ("TAWC" or the "Company") filed *Tennessee American Water Company's Response In Opposition to the Joint Motion of the Intervenors to Expand the Time to Submit Their Pre-filed Direct Testimony to July 21, 2008* ("*TAWC's Response*") on June 27, 2008. In *TAWC's Response,* the Company asserts that the Intervenors been afforded more than enough time to prepare pre-filed testimony. TAWC states that if any additional time is necessary for the filing of pre-filed testimony by the Intervenors, such situation is the result of the Intervenors own actions, such as pursuing a large amount of unnecessary

discovery, refusing to agree upon a protective order and employing a witness whose previous employment with American Waterworks has raised significant confidentiality issues. TAWC supports the Hearing Officer's proposed amended procedural schedule and further suggests that the proceedings could be streamlined by removing a second round of discovery from the schedule, except as to TAWC.

Findings and Conclusions

The Hearing Officer has heard argument from the parties as to the complexity of the issues in this rate case, particularly in comparison to the rate case presented in Docket No. 06-00290. The Hearing Officer's initial procedural schedule provided for an aggressive schedule in pursuing discovery and the parties are commended for their efforts in staying reasonably within the time frames of the original procedural schedule. The parties are also to be commended for their earnest attempts to resolve the multiple discovery disputes which have arisen. The Hearing Officer is appreciative of the significant amount of time the parties have invested in meetings during and apart from the Status Conferences. These meetings have proven to be fruitful.

While there remain many issues to be resolved before the prehearing process is completed, it is safe to say that, because of the foregoing effort of the parties, the prehearing process has continued in a steady pace and in close proximity to the filing dates in the original procedural schedule. Since May 1, 2008, the Intervenors have been permitted the opportunity to propound the number of discovery requests they sought in their early filings. The record in this docket reveals that TAWC has produced significant documentation amounting to tens of thousands of pages in response to the Intervenors' discovery requests.

In the first joint motion, the Intervenors sought to expand the time for filing pre-filed testimony by at least a week. In their most recent requests, the Intervenors seek an extension of four weeks to submit their pre-filed 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 and the ongoing collection of documentation. Nevertheless, the Hearing Officer does not agree that the time and resources expended in arguing motions and addressing confidentiality issues translates directly to a delay in the ability of their experts to analyze data and prepare testimony. The experts can and should be focused on the information that has been made available to them and their time and resources should not be affected adversely by the arguments of legal counsel and the preparation of legal documents. Further, the premise that pre-filed testimony should not be due until a set period of time following the receipt of "full and complete responses" to discovery is a laudable idea but not practical in the setting of a complex rate case where there is a statutorily predetermined amount of time to complete the case.

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. While discovery is ongoing, the Intervenors have had the Company's testimony available to them for over three months. The Intervenors' experts have had access to significant documentation for a number of weeks. An extension of time to file pre-filed testimony to July 14, 2008 will provide an additional three weeks beyond the original date of June 23, 2008 and two weeks beyond the original extension request of June 30, 2008.

As a result of this extension of time, the procedural schedule must be 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 extend an unfair advantage to certain parties in their preparation for the hearing in this docket.

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 direct testimony through July 14, 2008. The Hearing Officer hereby further modifies the procedural schedule as to the second round of discovery and the filing of the Company's rebuttal 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.

IT IS THEREFORE ORDERED THAT:

1. The *Joint Motion* of the Consumer Advocate, the City of Chattanooga and Chattanooga Manufacturers Association is granted, in part, and the Intervenors shall have until **Monday, July 14, 2008** at **4:30 p.m.** to file their pre-filed testimony.

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

J. Richard Collier

J. Richard Collier
Hearing Officer

TRA DOCKET NO. 08-00039

AMENDED PROCEDURAL SCHEDULE

(July 3, 2008)

May 12, 2008	**1st Round of Discovery**
May 28, 2008	**Discovery Responses and Objections**
June 2, 2008	**Motions to Compel**
June 4, 2008	**Status Conference**
June 9, 2008	**Supplemental Discovery Responses**
June 17, 2008	**Supplemental Motions to Compel**
June 18, 2008	**Responses to Supplemental Motions to Compel**
June 19 - 20, 2008	**Status Conference**
July 14, 2008	**Intervenors' Pre-Filed Testimony**
July 21, 2008	**2nd Round of Discovery**
July 30, 2008	**Discovery Responses and Objections**
August 4, 2008	**Status Conference (Parties will report on settlement talks)**
August 6, 2008	**Supplemental Discovery Responses**
August 13, 2008	**Company's Pre-Filed Rebuttal Testimony**
August 15, 2008	**Pre-Hearing Conference**

EXHIBIT A