

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

IN RE:)	
)	
PETITION OF TENNESSEE)	
AMERICAN WATER COMPANY TO)	
CHANGE AND INCREASE CERTAIN)	
RATES AND CHARGES SO AS TO)	DOCKET NO. 08-00039
PERMIT IT TO EARN A FAIR AND)	
ADEQUATE RATE OF RETURN ON)	
ITS PROPERTY USED AND USEFUL IN)	
FURNISHING WATER SERVICE TO)	
ITS CUSTOMERS)	

**PETITION FOR INTERLOCUTORY REVIEW BY THE AUTHORITY OF THE
HEARING OFFICER’S ORDER GRANTING, IN PART, JOINT MOTION OF
INTERVENORS TO EXPAND TIME TO SUBMIT TESTIMONY AND MODIFYING
PROCEDURAL SCHEDULE**

The Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”) and the City of Chattanooga (“Chattanooga”) (collectively, the “Intervenors”), pursuant to TRA Rule 1220-1-2.06(6), jointly request permission to seek interlocutory review by the Authority of the Hearing Officer’s Order Granting, in Part, Joint Motion of Intervenors to Submit Testimony and Modifying Procedural Schedule. In particular, the Intervenors request review of the Hearing Officer’s decision to require the Intervenors to submit their pre-filed testimony on July 14, 2008. This date simply does not allow the Intervenors sufficient time to prepare their testimony. Accordingly, the Intervenors are requesting that they be allowed until July 21, 2008, to file their testimony.

The Intervenors appreciate the Hearing Officer’s statement regarding the need for an aggressive schedule in this case. Order at 4. And the Intervenors have made every effort to meet

the demands of this case in a timely fashion. However, a schedule can be too aggressive, effectively limiting the ability of the intervening parties to fully and adequately represent the interests of their clients and constituents. Such is the case here. As demonstrated more fully below, the Hearing Officer's schedule -- particularly, the July 14 deadline for submission of the Intervenor's pre-filed testimony -- does not provide the Intervenor with an adequate amount of time to analyze all of the issues raised in this case and to prepare pre-filed testimony setting forth the Intervenor's positions on these issues.

I. The Intervenor's Experts Are Utilizing The Information Made Available To Them; However, Not All Of The Requested Information Has Been Received, And Sufficient Time Is Needed To Analyze The Information That Has Been Received.

The Hearing Officer states that "the experts can and should be focused on the information that has been made available to them." Order at 5. And that is exactly what the experts for the Intervenor are doing. Even today, these experts continue their work to analyze information as it is received. The problem is, however, that on the original date that discovery responses were due, the Consumer Advocate had less than one-third of its discovery requests answered and some Chattanooga's discovery requests were not answered satisfactorily or were answered with objections rather than the requested information.

The primary purpose of the Intervenor's discovery requests was to discover the salient facts pertinent to determining whether it is just and reasonable for TAWC to increase its customers' water bills by more than 20%; the Intervenor did not propound requests "to discover completely the other side's case and gather all of the information they would like to obtain before filing of testimony." Order at 5. In other words, the Intervenor's experts need the requested information delivered to them in a timely manner in order for them to form their opinions on the issues affecting the merits (or lack

thereof) of TAWC's rate increase request within a reasonable time frame. And as in any rate case, most of the salient facts pertinent to determining whether or not rates should be adjusted are in the hands of the requesting utility. This is so because it is the utility's own financial and operational data that weigh so heavily on the rates that should be charged to customers. So while the Hearing Officer correctly notes that the Intervenor's experts have had access to significant documentation for several weeks (Order at 5), it is not merely the volume of information, but its responsiveness to the material issues that have been raised in this matter, that concerns the Intervenor the most. The record in this case indicates clearly that this proceeding entails a large, complex rate case involving a substantial number of fact-intensive issues requiring the detailed analyses of voluminous information.¹

The Intervenor has worked with Tennessee American Water Company ("TAWC") to resolve as many discovery issues as possible; however, some discovery disputes still remain. In particular, the Intervenor is presently awaiting a ruling from the Hearing Officer on whether they can receive requested information pertinent to the analyses of cost of capital and affiliated charges.² The discovery process used in this case has resulted in some, but not all, of the requested information being supplied to the Intervenor in supplemental responses over an extended period of time. Accordingly, while the experts for the Intervenor are utilizing the information as it filters in, they still need sufficient time to receive all discovery responses and materials; to review the information that they have received which, as the Hearing Officer notes, is voluminous; to perform the requisite

¹ Transcript of Status Conference, June 4, 2008; Memorandum in Support of Motion to Set Aside Procedural Schedule and Extend the Date of the Final Hearing Or In The Alternative Grant Leave to Seek Emergency Relief from the Hearing Panel, June 2, 2008; Consumer Advocate's Memorandum in Support of Motion to Ask Additional Discovery Questions, May 12, 2008; and Joint Objection of the Intervenor to Discovery Question Limits in the Initial Round of Discovery, May 6, 2008.

² In particular, still outstanding are responses to Consumer Advocate request nos. part III, nos. 7, 8, 9 and 10; CMA request nos. 11 and 17; and Chattanooga request nos. 15 and 23.

analyses of the many issues affecting just and reasonable rates for TAWC's customers; and to form their expert opinions on these issues. The Intervenor's experts have informed their respective counsel that a pre-filed testimony deadline of July 14 does not provide them with adequate time to accomplish their work in this regard. Therefore, unless the July 14 deadline is extended, the Intervenor's opportunity to be heard in this matter will be unduly prejudiced and their due process rights will be infringed.

II. The Authority's Timeline For Deciding This Matter Should Include A Sufficient Amount Of Time For The Intervenor's To Prepare Their Cases.

The timeline for the Authority's final decision in this case is governed by T.C.A. § 65-5-103. Subsection (a) of this statute provides that the Authority must decide the Company's rate increase request "in any event not later than nine (9) months after the filing of the increase." Subsection (b)(1) provides further that if the Authority's decision has not been made after six months from the filing of the increase, the Company may place the proposed increase in effect prior to the Authority's final decision. If the Company chooses to exercise its statutory right to do so, subsection (b)(2) allows the Authority to require the Company to file a bond in the amount of the proposed increase and, after completing the hearing, to require the Company to refund to customers portions of the increase collected by the Company but subsequently disallowed by the Authority.

The Intervenor's understand that it may be preferable to complete rate cases such as this one within the initial six-month time frame so that the procedures outlined in T.C.A. § 65-5-103(b) are never used. Accordingly, the Intervenor's are attaching a proposed procedural schedule that accomplishes this goal while providing the Intervenor's with sufficient time to prepare their cases. If, however, the Authority decides that it is not feasible to extend the deadline for the filing of the

Intervenors' testimony without also extending the timeline for the Authority's final decision beyond the initial six-month period, then the Intervenors request an extension of the timeline by as much time as required to accommodate their request.

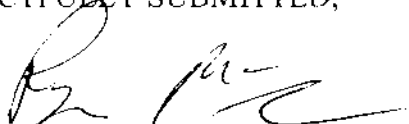
The Intervenors submit that, if necessary, this is an appropriate case for extending the timeline for the Authority's final decision. Although TAWC's petition for a rate increase was filed on March 14, 2008, the Intervenors were not granted intervention until May 1, 2008, and the original date for discovery responses to the Intervenors' requests was not until May 28, 2008. Furthermore, the initial discovery responses received by the Intervenors were unresponsive or so materially inadequate that they sought relief through motions and renewed motions to compel; and while many of the discovery issues were resolved in the weeks following the June 4, 2008, status conference, some important discovery disputes have yet to be resolved. Accordingly, it has been nearly four months since TAWC filed its rate increase petition and the discovery phase of this docket is still ongoing. The six-month timeline is difficult to meet even when the petitioning utility fully cooperates with the discovery needs of the intervening parties, but this timeline is impossible to meet when, as in this case, protracted discovery disputes have consumed so much valuable time.

The customer rates set in this proceeding will affect the pocketbooks of Chattanoogaans for a long period of time. It is therefore better to set these rates correctly rather than quickly. The Intervenors believe that they will be able to present valuable evidence demonstrating that TAWC's requested rate hike is too high in light of attendant circumstances. The Authority should consider this evidence before making a final decision in this matter, and the only way the Intervenors can adequately present it is to have sufficient time to complete their work and prepare their pre-filed testimony. The Intervenors understand that TAWC and the Authority itself also need sufficient time

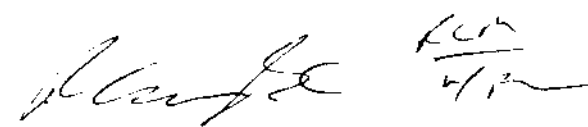
to do their work in this proceeding; however, the Intervenor should not be penalized by having their time for preparation cut unreasonably short simply to meet an initial six-month deadline, especially since T.C.A. § 65-5-103 explicitly recognizes that some cases may take as long as nine months to complete and specifically sets forth a procedure in subsection (b) for doing so.

WHEREFORE, the Intervenor jointly request that permission from the Hearing Officer be granted to seek interlocutory review by the Authority of the Hearing Officer's Order Granting, in Part, Joint Motion of Intervenor to Submit Testimony and Modifying Procedural Schedule; that the Authority vacate the Hearing Officer's Order; that the Authority enter an order approving the attached procedural schedule proposed by the Intervenor or, in the alternative, order a procedural schedule consistent with T.C.A. § 65-5-103(b) that allows the Intervenor until July 21, 2008, to submit pre-filed testimony. The Intervenor further request the Hearing Panel to consider this appeal at the Authority Conference scheduled for July 14, 2008.

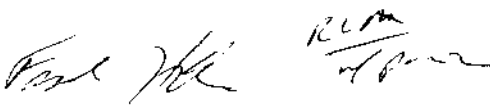
RESPECTFULLY SUBMITTED,



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Dated: July 9, 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 9 day of July, 2008.



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PROPOSED PROCEDURAL SCHEDULE
BY THE CONSUMER ADVOCATE AND THE CITY OF CHATTANOOGA
(July 9, 2008)

Intervenor testimony ---	Monday, July 21
Discovery questions issued ---	Friday, July 25
Responses to Discovery ---	Monday, August 4
Company Rebuttal ---	Friday, August 15
Hearing ---	Tuesday, Wednesday, Thursday, August 26-28
Post Hearing Brief ---	Thursday, September 4
Agency deliberations ---	Monday, September 8 (or at a specially set agenda conference later that week)
New rates effective ---	September 14, 2008