

**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)	

**JOINT OBJECTION OF THE INTERVENORS TO DISCOVERY QUESTION LIMITS
FOR THE INITIAL ROUND OF DISCOVERY**

Pursuant to the Hearing Officer's *Order Granting Petitions to Intervene and Establishing a Procedural Schedule* filed May 1, 2008, the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter ("Consumer Advocate"), the City of Chattanooga ("Chattanooga"), and the Chattanooga Manufacturers Association ("CMA") (collectively, the "Intervenors"), jointly file this timely objection. The Intervenors object to the limitation of eighty (80) first-round discovery questions, including subparts, for the Consumer Advocate, as well as the imposition of the general limitation on the number of discovery questions set forth in TRA Rule 1220-1-2-.11. As grounds for this objection, the Intervenors would show the following:

1. The process of utility rate-making is complex and involves numerous and often contested issues. *Tennessee Pub. Serv. Comm'n v. Nashville Gas Co.*, 551 S.W.2d 315, 318 (Tenn.1977). This is a complex rate case in which Tennessee American Water Company ("TAWC")

or “Company”) is seeking to increase customers’ water bills by \$7,644,859 each year. This annual rate increase proposal follows very closely on the heels of the annual rate increase granted to TAWC last year in Docket 06-00290. In addition, the Company has proffered the direct testimony of nine (9) witnesses in support of the proposed rate increase. The initial round of discovery -- which is the only round of discovery prior to the filing of the Intervenor’s direct testimony -- is essential for the Intervenor to adequately and fully rebut the veracity of the Company’s witnesses, to explore the purported deficiency of the sizeable rate increase the TRA awarded to TAWC just last year, and to formulate and present the Intervenor’s own expert opinions regarding just and reasonable water rates in Chattanooga. Due to the volume of factual assertions bearing on the amount of the Company’s requested rate increase, as well as the level of just and reasonable water rates, the Intervenor’s will likely require initial discovery requests in excess of eighty (80) questions, including subparts, and in excess of the general forty (40) question limit imposed by TRA Rule 1220-1-2-.11.

2. The Hearing Officer’s decision on the discovery question limitation is based in part on an agreement to an eighty (80) question limitation for the initial round of discovery in Docket 06-00290 and Docket 03-00118.¹ The parties in this docket have no such agreement nor have such discussions taken place in regards to limitations on discovery in this case. Furthermore, this docket is readily distinguishable from recent TAWC rate cases due to the financial impact and factual assertions of several issues that are presently before the TRA in this case but were not in the prior cases. For example, the Company has filed a depreciation study in this docket, the conclusions of which will likely be contested.² In any rate case, depreciation expense is a fact intensive and complex

¹ *Order Granting Petitions to Intervene and Establishing a Procedural Schedule*, May 1, 2008, p.4

² There was no depreciation study filed in either Docket 03-00118 or Docket 06-00290.

issue that substantially impacts utility rates. TAWC has also filed an independent cost assessment report (“I.C.A.R.”) in relation to management fees, the conclusions of which will likely be contested.³ And finally, the Company has proposed a significant adjustment to its weatherization figures which calls for \$1.3 million in new rates.⁴

3. As matter of practice before the Authority in all major rate cases, the TRA has allowed for an expanded initial round of discovery by intervenors. This is so because major rate cases such as this one require investigation and analyses of the revenues, expenses, capital requirements, investment in rate base, and rate design of a large public utility, as well as its affiliates, a task that could hardly be accomplished on eighty (80) questions alone. In recognition of the inherent complexity of rate-making and the analyses it requires, as well as the utility itself being the sole source of much of the financial information that is pertinent to such analyses, the TRA has under its rules of procedure allowed for expanded initial discovery in excess of eighty (80) questions. For instance, in TRA Docket No. 07-00105, a recent major rate case decided by the TRA, the Consumer Advocate propounded 243 discovery requests, including subparts, prior to filing its direct testimony, notwithstanding the company’s existing responses to questions answered under the minimum filing guidelines.

4. The need for expanded initial discovery is present in this case, as well. The Consumer Advocate’s in-house witnesses alone, who are still in the process of preparing discovery, have drafted more than eighty (80) questions to date. This figure does not include the discovery requirements of two outside consultants hired by the Consumer Advocate to respond to the Company’s revenue and

³ There was no independent cost assessment report filed in either Docket 03-00118 and Docket 06-00290.

⁴ This is in great contrast to the \$230,000 impact of weatherization issues in Docket 06-00290.

depreciation witnesses. Additionally, Chattanooga and CMA have also retained consultants who will likely offer testimony on issues materially affecting the amount and application of the Company's proposed rate increase, such as issues concerning the I.C.A.R. and rate design.

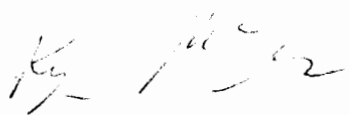
5. Due to the complexity and material financial impact of the depreciation study, the I.C.A.R., and the proposed weatherization adjustments, the Intervenor has devoted considerable resources to the hiring of outside consultants to respond to these matters. Furthermore, the retention of these outside experts does not obviate the need for discovery by the Intervenor's in-house witnesses on other matters material to the Company's requested rate increase, as well as the determination of just and reasonable water rates for TAWC customers. The review of the Company's petition, testimony, and responses to the data requests of the TRA staff is ongoing. Accordingly, the process of drafting discovery by in-house witnesses and outside consultants has not been completed. Thus, an exact number, estimate or copies of discovery questions can not be provided at this time. It is apparent, however, that the Intervenor will likely be unable to adequately evaluate water rates and respond to the Company's \$7.6 million rate increase request without an expanded initial round of discovery.

6. In recognition of the complexities that rate cases entail and to conserve time and resources, the initial decision of the Hearing Officer in this matter has contemplated discovery requests in excess of forty (40) based on the prior procedural history of TAWC rate cases. However, the chief concern of the Intervenor is that this determination by the Hearing Officer, while extending the number of initial requests that are permitted, appears to foreclose the possibility of additional discovery questions in excess of eighty (80) during the initial round of discovery. The Intervenor submit that setting a limit on initial discovery at this early stage is premature and serves only to

prejudice the Intervenor. The Intervenor further submit that the most practical procedural course at this time is the one set forth in TRA Rule 1220-1-2-.11, rather than setting an arbitrary limit on the number of discovery questions at the outset without consideration of good cause for exceeding the rule's question limit, such as expansion of discovery to adequately address the total number of pertinent issues to be tried in this matter, as well as consideration of the total number of witnesses to be proffered in their various fields of expertise by all the parties.

Wherefore, the Intervenor jointly request the Hearing Officer to lift the first-round discovery limitations set forth in his *Order Granting Petitions to Intervene & Establishing a Procedural Schedule* and instead, if TAWC objects to the number of questions, decide the need for any such discovery limitations in light of the Intervenor's initial discovery requests and motions for service of additional requests to be filed in this docket.

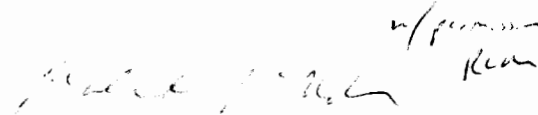
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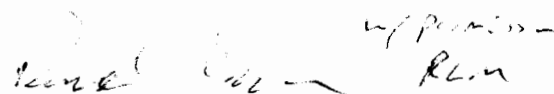
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Dated: May 6, 2008

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 6th day of MAY, 2008.

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