

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 9, 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

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DOCKET NO.
08-00039

ORDER ON JOINT OBJECTION TO DISCOVERY
QUESTION LIMITS IN MAY 1, 2008 ORDER

This matter is before the Hearing Officer upon the *Joint Objection of the Intervenors to Discovery Question Limits for the Initial Round of Discovery* (“*Joint Objection*”) filed on May 6, 2008 in response to the Hearing Officer’s *Order Granting Petitions to Intervene and Establishing a Procedural Schedule* (“*Hearing Officer’s Order*”) issued on May 1, 2008. The Hearing Officer issues this order to provide guidance to the parties relative to the discovery process as set forth in the Procedural Schedule.

The Intervenors, Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”), Chattanooga Manufacturers Association (“CMA”) and the City of Chattanooga (“the City”), collectively, filed the *Joint Objection* responding and objecting to the Hearing Officer’s decision to expand the number discovery requests for the Consumer Advocate up to eighty questions in the initial round of discovery. The Intervenors state that because of the complexity of the issues in this docket and “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, . . .” it is likely that the Consumer Advocate will need to propound in excess of eighty questions and the

City and CMA more than forty questions each in the initial round of discovery.¹ The Intervenor argue that this case differs from Docket No. 06-00290 in that Tennessee American Water Company (“TAWC” or the “Company”), in this docket, has included in its filings a depreciation study and an independent cost assessment report and has proposed a significant adjustment to its weatherization figures.

The *Hearing Officer’s Order* of May 1, 2008, in the absence of a motion by any of the Intervenor, granted permission to the Consumer Advocate “to propound discovery in excess of the number prescribed in TRA Rule 1220-1-2-.11(5)(a), up to a total of eighty questions, including subparts, during the initial round of discovery.”² Thus, through the *Hearing Officer’s Order*, discovery has been expanded for one party, the Consumer Advocate, without that party having to file a motion to request such relief. A need for additional discovery having already been established in Docket No. 06-00290 and the parties being in agreement to the expanded discovery in that docket, the Hearing Officer considered it reasonable and efficient to proceed to extend the same ruling to this docket at the outset. The issue of whether or not the other Intervenor, the City or CMA, should be permitted to propound discovery in excess of that allowed in TRA Rule 1220-1-2-.11(5)(a) was not addressed in the *Hearing Officer’s Order*. Likewise, there was no foundation for considering expanding discovery requests from the Consumer Advocate beyond eighty questions in this docket and therefore, the *Hearing Officer’s Order* did not address that issue.

While the filing of the *Joint Objection* is understandable in light of the *Hearing Officer’s Order*, the *Joint Objection* does not suffice as a motion for permission to expand discovery as set forth in TRA Rule 1220-1-2-.11(5)(a). Even if the *Joint Objection* is considered a “memorandum” for the purpose of “establishing good cause for the service of additional interrogatories or requests for production,”³ none of the Intervenor has complied with TRA Rule 1220-1-2-.11(5)(a) because

¹ *Joint Objection of the Intervenor to Discovery Question Limits for the Initial Round of Discovery*, p. 2 (May 6, 2008).

² *Order Granting Petitions to Intervene and Establishing a Procedural Schedule*, p. 5 (May 1, 2008).

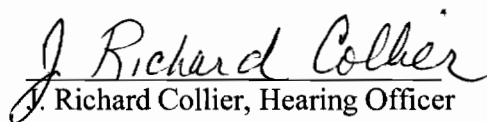
³ TRA Rule 1220-1-2-.11(5)(a).

the additional requests (beyond the limit in the rule) have not been submitted. The relief requested by the Intervenor in the *Joint Objection* “to lift the first-round discovery limitations,” to make it incumbent upon TAWC to “object[] to the number of questions” and then “to decide the need for any such limitations . . . and motions for service of additional requests” suggests a procedure which turns TRA Rule 1220-1-2-.11(5)(a) on its head. The Intervenor is asking the Hearing Officer to adopt a procedure in this docket that activates TRA Rule 1220-1-2-.11(5)(a) in reverse. The rule sets forth the proper procedure whereby a party is to request permission in advance of propounding additional discovery requests and provide the additional discovery requests at the time of the filing of the motion.

For the reasons set forth herein, the Hearing Officer is not able to grant the relief requested in the *Joint Objection*.⁴ Instead, the parties are directed to comply with the *Hearing Officer's Order* in propounding discovery in accordance with the Procedural Schedule. The Consumer Advocate has permission to propound eighty discovery requests and the City and CMA can propound forty discovery requests, each, for a total of one hundred sixty discovery requests from the Intervenor. The Hearing Officer is not opposed to the Intervenor pooling their discovery requests in the amount of one hundred sixty requests total so as to maximize the use of that total number. In that regard, the Hearing Officer, at this time, would permit the Consumer Advocate to propound in excess of eighty discovery requests, provided that the total number of discovery requests from the Intervenor in the initial round does not exceed one hundred sixty discovery requests, including subparts. Any discovery requests in excess of one hundred sixty, jointly, or beyond the limit in the *Hearing Officer's Order* or TRA Rule 1220-1-2-.11(5)(a), if propounded individually, must be accompanied by a motion as required in TRA

⁴ The Hearing Officer notes that the number of 243 discovery requests permitted in TRA Docket No. 07-00105, presented as an example by the Intervenor in the *Joint Objection* at page 3, was arrived at through the filing of motions, was pursuant to an agreement of the parties in that docket, and was applicable to multiple rounds of discovery.

Rule 1220-1-2-.11(5)(a). Because objections and motions to compel relating to certain discovery requests were fully briefed and argued in the previous TAWC rate case, Docket No. 06-00290, the Hearing Officer asks that the parties be prudent in drafting their discovery requests and use discretion in propounding or objecting to those discovery requests for which rulings from Docket No. 06-00290 may have precedential value and may be applicable to discovery in this docket.


J. Richard Collier, Hearing Officer