

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 18, 2009

IN RE:)	
)	
PETITION OF LYNWOOD UTILITY)	DOCKET NO.
CORPORATION TO CHANGE AND INCREASE)	09-00034
RATES AND CHARGES)	

PRE-HEARING ORDER

This matter came before the Hearing Officer during a Pre-Hearing Conference with the parties, Lynwood Utility Corporation (“Lynwood” or the “Company”) and the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate” or “CAPD”) on August 17, 2009.

RELEVANT PROCEDURAL BACKGROUND

On March 5, 2009, Lynwood filed with the Authority its *Petition* asserting that its “existing rates and charges do not provide sufficient revenue to cover all of its costs incurred in providing adequate sewer service to its customers, including its cost of capital.”¹ With its *Petition*, the Company filed a revised tariff designed to produce additional gross revenues of \$185,440, thereby increasing existing sewer rates by 33.82%.² Finally, the Company asserts that “the proposed rate changes are necessary and proper and designed to meet the present and future needs of its customers and future customers,” and further, that the “tariff as filed and the overall rate of return it has requested are fair and reasonable.”³

¹ *Petition*, p. 1 (March 5, 2009).

² *Id.* at 4.

³ *Id.*

At a regularly held Authority Conference held on March 30, 2009, the voting panel assigned to the docket voted unanimously to suspend the proposed revised tariff from its effective date of April 4, 2009, ninety days to July 3, 2009, convene a contested case proceeding, and appoint General Counsel or his designee as Hearing Officer for the purpose of hearing preliminary matters, including entering a protective order and ruling on petitions to intervene, setting a procedural schedule to completion and preparing the matter for a hearing before the panel.

On March 18, 2009, the Consumer Advocate filed its *Petition to Intervene*, which was unopposed by Lynwood and subsequently granted by the Hearing Officer during the first Status Conference with the parties held on April 28, 2009. An *Order Granting Petition to Intervene and Establishing Procedural Schedule* was issued by the Hearing Officer on May 28, 2009. Pursuant to the procedural schedule established by the Hearing Officer, the parties proceeded through discovery and the filing of pre-filed testimony.

On July 31, 2009, the Hearing Officer issued a *Notice of Hearing and Pre-Hearing Conference* setting a pre-hearing conference on August 17, 2009, and the hearing on the merits on August 21, 2009. Also, on July 31, 2009, in anticipation of the hearing, the Consumer Advocate filed a *Motion to Take Administrative Notice*. On August 14, 2009, the Consumer Advocate filed a *Motion to File Supplemental Testimony* and the Supplemental Testimony of Dave Peters contemporaneously therewith.

PRE-HEARING CONFERENCE

On August 17, 2009, the Pre-Hearing Conference began in the Hearing Room of the Tennessee Regulatory Authority; the parties in attendance were as follows:

Lynwood – Donald L. Scholes, Esq., Branstetter, Stranch, & Jennings, PLLC, 227 Second Avenue North, Fourth Floor, Nashville, TN 37201, **Tyler Ring**, President of Lynwood, and **James B. Ford**, Financial Consultant to Lynwood, 321 Billingsly Court, Suite 4, Franklin, TN 37065; and,

Consumer Advocate – Ryan McGehee, Assistant Attorney General, Office of the Attorney General, P.O. Box 20207, Nashville, Tennessee, 37202.

Pursuant to Tenn. Code Ann. § 4-5-306, the Pre-Hearing Conference was held to establish or resolve certain matters prior to the commencement of a Hearing on the merits, including any outstanding procedural matters or pending motions, and the orderly conduct of the Hearing.

I. Pending Motions

A. Motion to Take Administrative Notice

In its *Motion to Take Administrative Notice*, pursuant to Tenn. Code Ann 4-5-313(6) and 65-2-109(4), the Consumer Advocate requests that the Authority take administrative notice of the Final Order of the TRA in Docket No. 06-00187 filed on November 27, 2007. Lynwood did not file a responsive pleading to this motion and, during the Pre-Hearing Conference, stated that it had no objection to the Consumer Advocate's request. Upon review of the motion, and without objection from the parties, the Hearing Officer granted the *Motion to Take Administrative Notice*.

B. Motion to File Supplemental Testimony

In its *Motion to File Supplemental Testimony*, the Consumer Advocate requests that the Authority accept its proffered supplemental direct testimony of David Peters:

The supplemental testimony corrects errors in Mr. Peter's Direct Testimony filed on June 19, 2009 and incorporates information gathered from supplemental discovery responses submitted by Lynwood. The supplemental testimony substantially changes the position of the Consumer Advocate to the extent it raises the appropriate rate increase from a level of a 7.96% proposed in the June 19, 2009 testimony to an increase of 12.69% as proposed in the supplemental testimony.⁴

Lynwood did not file a responsive pleading to this motion and, during the Pre-Hearing Conference, stated that it had no objection to the Consumer Advocate's request. Upon review of

⁴ *Motion to File Supplemental Testimony* (August 14, 2009).

the motion, and without objection from the parties, the Hearing Officer granted the *Motion to File Supplemental Testimony*.

II. Order of Proof

The length and timing of the order of proof was discussed. The following order of the hearing was then established and agreed upon:

Opening Statement	Lynwood (10 minutes)
Opening Statement	Consumer Advocate (10 minutes)
Public Comments	(limited to 3 minutes each)
Lynwood witness	Tyler Ring
Cross-examination	Consumer Advocate
Questions	TRA Staff ⁵
Re-direct examination	Lynwood
Lynwood witness	James B. Ford
Cross-examination	Consumer Advocate
Questions	TRA Staff
Re-direct examination	Lynwood
Consumer Advocate witness	David Peters
Cross-examination	Lynwood
Questions	TRA Staff
Re-direct examination	Consumer Advocate
Final public comments	(if any)
Adjourn	

⁵ While the Directors may ask questions at any time, Staff of the TRA may directly question a witness between cross and re-direct examination.

Summaries of direct witness' testimony shall be limited to ten minutes. All witnesses are subject to recall for rebuttal purposes. Additionally, the parties agreed to submit post-hearing briefs in lieu of closing statements. Finally, Lynwood agreed to extend the deadline for resolution of its rate petition to September 30, 2009. The timeframe for filing post-hearing briefs shall be determined by the voting panel.

IT IS THEREFORE ORDERED THAT:

1. The Consumer Advocate's *Motion to Take Administrative Notice* is granted.
2. The Consumer Advocate's *Motion to File Supplemental Testimony* is granted.
3. The order of hearing is adopted as set forth herein above.
4. The Hearing on the merits in this docket will commence promptly at **9:00 a.m. on**

Friday, August 21, 2009.

A handwritten signature in black ink, appearing to read "G. Hotvedt", is written over a horizontal line.

Gary Hotvedt, Hearing Officer