

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION OF TENNESSEE-)	DOCKET NO.
AMERICAN WATER COMPANY TO)	10-00189
CHANGE AND INCREASE CERTAIN)	
RATES AND CHARGES)	

**CONSUMER ADVOCATE'S RESPONSE TO COMMENTS OF TENNESSEE
AMERICAN WATER COMPANY WITH RESPECT TO THE
PROPOSED PROCEDURAL SCHEDULE**

Comes now, the Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division ("Consumer Advocate"), respectfully responds to the Comments of Tennessee American Water Company ("TAWC") with Respect to the Proposed Procedural Schedule, as set forth below.

POST HEARING BRIEFING

In its October 18, 2010 Comments, TAWC labeled post hearing briefs as "expensive and unnecessary after a lengthy hearing," recommending instead that the parties have "closing arguments at the conclusion of the case."¹ The Consumer Advocate respectfully disagrees.

First, as the Authority is well aware, TAWC has requested a rate increase of \$9,984,463, or approximately twenty-eight (28%) percent.² The issues raised in the Petition and testimony filed by TAWC in this docket cover a multitude of complex issues including determination of the proper test year, the weather normalization adjustment, management fees, double leveraging,

¹ *Comments of Tennessee American Water Company with Respect to the Proposed Procedural Schedule*, p.5, October 18, 2010.

² *Petition of Tennessee American Water Company*, p.5, September 23, 2010.

return on equity, rate case expense, production costs, infrastructure replacement, and operating and maintenance expenses, just to name a select few. This list does not even attempt to identify all of the major issues in this case, and most of these issues have multiple sub-issues which may prove contentious. In light of the complexity of this case it is unlikely that mere oral arguments could provide the Authority with a meaningful summary of each party's position in this docket. Post hearing briefs, on the other hand, provide the Directors and TRA staff with well documented and sourced summaries of each party's position, evidenced with footnotes and references in the record, not mere references to each party's position without any factual support. These briefs can be referenced and reviewed by the Authority with ease in the days and weeks following the final hearing, long after oral arguments have been forgotten, and during which time the TRA must make difficult decisions and determine the proper level of rates for TAWC's customers.


Next, hearing closing arguments for all parties involved would create significant logistical problems for the Authority. Currently, there are seven total parties represented in Docket 10-00189: TAWC, the Consumer Advocate, the City of Chattanooga, the Chattanooga Manufacturer's Association, the Utility Workers' Union of America, Walden's Ridge Utility District, and the Municipality of Signal Mountain, Tennessee. If all seven parties are granted an opportunity to provide closing arguments covering the issues in this docket it would likely take a full day of hearings just to allow all closing arguments to be heard. Even if the parties were limited to a mere thirty minutes each, which the Consumer Advocate believes is insufficient to summarize the major issues of a rate increase of this size and scope, and no party went over its allotted time, which based on prior cases is equally unrealistic, it would still take three and one-half hours just to deliver closing statements. Assuming that the parties could meaningfully

summarize their positions on each issue in a clear and concise manner within that time frame, even the best listener would find it difficult, if not impossible to digest the complicated data, expert positions, and arguments of seven parties stretching over several hours without the benefit of a brief summarizing those positions. It becomes clear that in order to make closing arguments feasible, the TRA would have to shorten them to the point that their use becomes questionable.

Finally, contrary to assertions by counsel for TAWC, closing arguments are likely to be as costly for the private parties in this case as post hearing briefs. When the number of attorneys representing each party that will be present during closing arguments is taken into account, given that most will be billing by the hour for their time, as well as the preparation that would go into such arguments by counsel for each party, closing arguments might prove just as expensive as post hearing briefs and far less effective in meaningfully summarizing the positions of the party for use by the TRA.

For the foregoing reasons, the Consumer Advocate requests that the TRA allow parties to file post hearing briefs rather than give closing arguments.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

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on this the 19th day of October, 2010.



T. JAY WARNER