

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 12, 2010

IN RE:	)	
	)	
PETITION OF TENNESSEE AMERICAN WATER	)	DOCKET NO.
COMPANY FOR A GENERAL RATE INCREASE	)	10-00189

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ORDER GRANTING PETITIONS TO INTERVENE,  
REFLECTING ACTION TAKEN AT STATUS CONFERENCE AND  
ESTABLISHING A PROCEDURAL SCHEDULE

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This matter is before the Hearing Officer to consider petitions to intervene, to establish a procedural schedule and to resolve certain preliminary matters.

**TRAVEL OF CASE**

On September 23, 2010, Tennessee American Water Company (“TAWC” or the “Company”) filed its *Petition* in which the Company seeks approval by the Authority of proposed increased rates, alleging that “[t]he Company’s existing rates and charges will not provide, and cannot be made to provide, sufficient revenues to cover all the costs incurred in providing adequate quality water service including its cost of capital.”<sup>1</sup> The Company seeks to put into effect “customer rates that will produce an overall rate of return of 8.38% on a rate base of \$125,472,973.”<sup>2</sup> According to TAWC, the required additional annual gross revenues would approximate \$9,984,463.<sup>3</sup>

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<sup>1</sup> *Petition* at 2 (September 23, 2010).

<sup>2</sup> *Id.* at 5.

<sup>3</sup> *Id.*

At a regularly scheduled Authority Conference held on September 27, 2010, Chairman Mary W. Freeman, Director Eddie Roberson and Director Sara Kyle, of the Tennessee Regulatory Authority (“Authority” or “TRA”), the panel assigned to this docket, voted unanimously to convene a contested case proceeding and to appoint Chairman Mary W. Freeman as Hearing Officer for the purpose of preparing this matter for hearing, including handling preliminary matters and establishing a procedural schedule to completion.

On September 21, 2010, the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”) filed a Petition to Intervene. Chattanooga Manufacturers Association (“CMA”) and the City of Chattanooga (“Chattanooga”) filed petitions to intervene on October 4, 2010 and October 6, 2010, respectively. No objection or opposition to these petitions was filed. On October 12, 2010, the Hearing Officer entered an Order granting the petitions to intervene filed by the Consumer Advocate, CMA and Chattanooga.

A Notice of Status Conference was issued on October 7, 2010 setting a Status Conference for Monday, October 18, 2010 to establish a procedural schedule and discuss other preliminary matters. The Notice provided that any interested party desiring to participate in the Status Conference should file a petition to intervene no later than October 14, 2010 and that petitions to intervene filed by that date would be considered at the Status Conference on October 18, 2010. The Notice also stated that the establishment of a procedural schedule, discovery between the parties and the issuance of a protective order would be matters for discussion during the Status Conference.

#### **STATUS CONFERENCE**

The Status Conference was convened on October 18, 2010. In attendance at the Status Conference were the following parties represented by counsel:

Tennessee American Water Company – **R. Dale Grimes, Esq.** and **David Killion, Esq.**, Bass, Berry & Sims, PLC, 315 Deaderick Street, Suite 2700, Nashville, TN 37238-3001.

Consumer Advocate and Protection Division - **Vance Broemel, Esq.**, **Ryan McGehee, Esq.**, **T. Jay Warner, Esq.** and **Mary White, Esq.**, Office of the Attorney General, 425 5<sup>th</sup> Ave. N, John Sevier Building, P.O. Box 20207, Nashville, TN 37202.

City of Chattanooga, Tennessee – **Frederick Hitchcock, Esq.**, Chambliss, Bahner & Stophel, P.C., 1000 Tallan Building, Two Union Square, Chattanooga, TN 37402; and **Michael A. McMahan, Esq.**, Office of the City Attorney, 801 Broad Street, Suite 400, Chattanooga, TN 37402.

Chattanooga Manufacturers Association (CMA) – **Henry M. Walker, Esq.**, Bradley, Arant, Boulton, Cummings, LLP, 1600 Division Street, Suite 700, P.O. Box 340025, Nashville, TN 37203; and **David C. Higney, Esq.**, Grant, Konvalinka & Harrison, P.C., 9<sup>th</sup> Floor, Republic Centre, 633 Chestnut Street, Chattanooga, TN 37450-0900.

Utility Workers Union of America AFL-CIO and UWUA Local 121 – **Mark Brooks, Esq.**, 521 Central Ave., Nashville, TN 37211; and **Scott H. Strauss, Esq.**, Spiegel & McDiarmid, LLP, 1333 New Hampshire Ave., N.W., Washington, DC 20036.

#### **Motion for Admission Pro Hac Vice**

As an initial matter, the Hearing Officer considered the *Motion for Admission Pro Hac Vice of Scott H. Strauss and Katherine M. Mapes* (“Motion”) filed on October 14, 2010. In the *Motion*, Attorneys Strauss and Mapes state that they seek to participate in the representation of Utility Workers Union of America AFL-CIO and UWUA Local 121 in association with Mark Brooks, Esq., a practicing member of the Tennessee Bar. Attorneys Strauss and Mapes filed, with their *Motion*, their affidavits and certificates of good standing as required by Rule 19 of the Tennessee Supreme Court. Following an introduction by Mr. Brooks and without opposition, the Hearing Officer granted the *Motion*.

#### **Petitions to Intervene**

The Utility Works Union of America, AFL-CIO (“UWUA”) and UWUA Local 121 (collectively referred to as “UWUA”) filed a petition to intervene on October 14, 2010. The petition states that their intervention request should be granted because the “UWUA’s legal

rights, duties, privileges, immunities or other legal interest may be affected by this proceeding.”<sup>4</sup> UWUA asserts that it is a national labor organization representing approximately 55,000 electric, gas and water industry workers. UWUA Local 121 represents 70 employees of TAWC performing a variety of jobs and constituting a significant percentage of TAWC’s workforce. In the petition, UWUA asserts it can assist the Authority in considering the Company’s request to increase rates and charges because it “is uniquely positioned to address the staffing needs and practices of the Company, including both whether current staffing levels are adequate and whether the present staffing complement is being utilized in an effective manner calculated to promote the delivery of safe and reliable service.”<sup>5</sup>

During the Status Conference, counsel for TAWC objected to the UWUA’s petition, stating that their interests as customers can be adequately represented by the Consumer Advocate or Chattanooga and that the perspective of members of the Union is not of the type necessary to evaluate the Company’s compliance with service metrics established for TAWC. TAWC asserted that the union’s intervention in this proceeding would be a distraction and would “drive up the cost” and “slow down the proceeding” in this docket.

Counsel for UWUA responded that, based on the pre-filed testimony of the Company, issues related to staffing and filling open positions, as well as issues about service quality and training, are before the TRA in this proceeding. According to the UWUA, these issues are of great concern to members of the UWUA and are the reason for UWUA’s request to intervene.

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

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<sup>4</sup> *Petition to Intervene of the Utility Workers Union of America, AFL-CIO and UWUA Local 121*, p. 1 (December 28, 2006).

<sup>5</sup> *Petition to Intervene of the Utility Workers Union of America, AFL-CIO and UWUA Local 121*, p. 3 (October 14, 2010).

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if;

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

Upon hearing argument of counsel, the Hearing Officer determined that the legal rights and interests of UWUA and UWUA Local 121 may be determined in this proceeding, the petition of UWUA and UWUA Local 121 is timely and the interventions will not impair the orderly and prompt conduct of these proceedings. For these reasons and applying the standards set forth in Tenn. Code Ann. § 4-5-310(a), the Hearing Officer granted the intervention of UWUA and UWUA Local 121.

#### **Discovery Matters**

During the Status Conference, the Intervenors requested that they be permitted to propound more than forty questions in their initial discovery requests. TRA Rule 1220-1-2-.11(5)(a) provides:

No party shall serve on any other party more than forty (40) discovery requests including subparts without first having obtained leave of the Authority or a Hearing Officer. Any motion seeking permission to serve more than forty (40) discovery requests shall set forth the additional requests. The motion shall be accompanied by a memorandum establishing good cause for the service of additional interrogatories or requests for production. If a party is served with more than forty (40) discovery requests without an order authorizing the same, such party need only respond to the first forty (40) requests.

The Consumer Advocate specifically argued that it had already exceeded eighty questions in its preparation of discovery requests and that due to the size of the Company's requested rate increase, there is a need to obtain additional information relating to many line items through the initial discovery requests. Counsel for TAWC opposed additional discovery requests from the Consumer Advocate, stating that, with the information already provided by the Company, the Intervenor should be able to narrow and coordinate their requests so that no one party has to exceed the forty question limit. Counsel for Chattanooga stated that at this stage the most efficient manner of approaching discovery is to have each intervening party propound its forty requests and then seek relief upon determining that forty requests are not sufficient.

The Hearing Officer ruled that the Consumer Advocate could propound eighty questions in the first round of discovery. The other parties were allowed the forty requests by rule. Any party may file a request for additional discovery. As to the filing of motions to compel discovery, any such motion must include a statement that the parties have met to discuss the objections and were not able to resolve those objections before filing the motion to compel.

### **Procedural Schedule**

In the Order issued on October 12, 2010, the Hearing Officer instructed the parties to discuss and propose alternative procedural schedules, jointly if possible, and submit those schedules to the Hearing Officer at the time of the Status Conference on October 18, 2010. During the Status Conference, TAWC and the Consumer Advocate each produced a proposed procedural schedule for consideration. Following much discussion among the parties, the Hearing Officer established a partial procedural schedule that encompassed dates for the filing of initial discovery requests, responses, objections and motions and for the Intervenor to file the pre-filed testimony of their witnesses.

Upon review and consideration of the multiple proposed procedural schedules and the requests of the parties, the Hearing Officer hereby establishes a complete Procedural Schedule, attached as **Exhibit A**. The goals of the procedural schedule are to move this docket toward deliberations on the issues raised by the *Petition* within a six month period from the filing date of the *Petition*<sup>6</sup> and to provide the parties a reasonable and adequate amount of time to conduct discovery, to prepare and submit pre-filed testimony and to prepare for Hearing. The Hearing Officer is appreciative of the efforts of the parties in proposing procedural schedules that both expedite the process and provide for thorough discovery and preparation. As with any schedule, the effectiveness of this Procedural Schedule is directly dependent upon the extent of cooperation or delay on the part of the parties in meeting the individual benchmark dates.

### **Protective Order**

During the Status Conference on October 18, 2010, the parties announced that an agreed proposed protective order was being submitted to the Hearing Officer. The parties agreed to use the TRA's Amended Protective Order from TRA Docket No. 08-00039, TAWC's last rate case. The Consumer Advocate, Chattanooga and the CMA expressly stated that they were not waiving prior objections to this or other protective orders used in TRA dockets. Nevertheless, to avoid additional litigation, expense and time, the parties agreed to the Protective order submitted at the Status Conference. Having not had a prior opportunity to review the proposed protective order, counsel for UWUA and UWUA Local 121 requested that he be permitted a chance to review it and promptly notify the Hearing Officer of any objections he might have. The Hearing Officer granted that request and stated that a determination as to the Protective Order would be made at a later date.

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<sup>6</sup> While Tenn. Code Ann. § 65-5-103(a) allows nine months for the investigation by the TRA, Tenn. Code Ann. § 65-5-103(b)(1) permits the Company to place the proposed rates into effect under bond after six months.

### **Micellaneous Matters**

During the Status Conference, counsel for CMA stated that CMA would be filing a request that the Authority hold the hearing on the merits in this docket in Chattanooga, Tennessee. Counsel for TAWC responded that the hearings in Chattanooga, Tennessee for the Company's two previous rate cases had not been well attended by the public. TAWC suggested that public comment could be received just as well by the Authority convening a limited hearing in Chattanooga, Tennessee expressly for the purpose of receiving comments from the public and then holding the hearing on the merits in the TRA's offices in Nashville. No action was taken on CMA's statements.

Also during the Status Conference TAWC made a request that the Intervenors provide work papers at the time they file their pre-filed expert testimony. The parties agreed that, in an effort to expedite the exchange of information, expert witness work papers would be provided by the Intervenors within a few days of the filing of pre-filed expert witness testimony.

### **Petition to Intervene of Walden's Ridge and Signal Mountain**

On October 18, 2010, the TRA received *Petition of Walden's Ridge Utility District and Signal Mountain, Tennessee for Leave to Intervene*. The filing was made too late to be considered during the Status Conference. Nevertheless, as of the date of this Order no one has objected or filed opposition to this petition. Walden's Ridge Utility District and Signal Mountain, Tennessee identify themselves in the petition as purchasers of water from TAWC for distribution to their own customers pursuant to special contracts with TAWC, both approved by the TRA. The petitioners assert that the Company's requested increase is "not fair and




reasonable and is not in best interests of the petitioners and their customers.”<sup>7</sup> The petition states that the “petitioners’ legal rights, duties, immunities, or other legal interests may be determined in this proceeding and presently are not, or may not be, adequately represented by another party in this docket.”<sup>8</sup>

There being no opposition to the petition and the Hearing Officer finding that the petition complies with Tenn. Code Ann. § 4-5-310, as set forth earlier in this Order, the Hearing Officer grants the *Petition of Walden’s Ridge Utility District and Signal Mountain, Tennessee for Leave to Intervene*.

**IT IS THEREFORE ORDERED THAT:**

1. The UWUA and UWUA Local 121 are granted leave to intervene and receive copies of any notices, orders or other documents herein.
2. Walden’s Ridge Utility District and Signal Mountain, Tennessee are granted leave to intervene and receive copies of any notices, orders or other documents herein.
3. The Consumer Advocate is permitted to propound discovery requests in excess of the number prescribed in TRA Rule 1220-1-2-.11(5)(a), up to a total of eighty questions during the initial round of discovery.
4. The Procedural Schedule, attached to this Order as **Exhibit A**, is hereby adopted and is in full force and effect.

  
Chairman Mary W. Freeman  
Hearing Officer

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<sup>7</sup> *Petition of Walden’s Ridge Utility District and Signal Mountain, Tennessee for Leave to Intervene*, p.2 (October 18, 2010)

<sup>8</sup> *Id.*

**TRA DOCKET NO. 10-00189**

**PROCEDURAL SCHEDULE  
(November 12, 2010)**

<b>September 23, 2010</b>	<b>Petition Filed</b>
<b>November 1, 2010</b>	<b>1<sup>st</sup> Round of Discovery Due</b>
<b>November 15, 2010</b>	<b>Discovery Responses and Objections Due</b>
<b>November 18, 2010</b>	<b>Motions to Compel Due</b> (Parties must meet and confer prior to filing of motion.)
<b>November 22, 2010</b>	<b>Status Conference</b>
<b>November 29, 2010</b>	<b>Supplemental Discovery Responses Due</b>
<b>January 5, 2011</b>	<b>Intervenors' Pre-Filed Testimony Due</b>
<b>January 14, 2011</b>	<b>2<sup>nd</sup> Round of Discovery Due</b>
<b>January 24 2011</b>	<b>Discovery Responses and Objections Due</b>
<b>January 26, 2011</b>	<b>Motions to Compel Due</b> (Parties must meet and confer prior to filing of motion.)
<b>January 28, 2011</b>	<b>Status Conference</b> (Parties will report on settlement talks)
<b>February 1, 2011</b>	<b>Supplemental Discovery Responses Due</b>
<b>February 8, 2011</b>	<b>Company's Pre-Filed Rebuttal Testimony Due</b>
<b>February 14, 2011</b>	<b>Pre-Hearing Motions</b>
<b>TBA</b>	<b>Hearing on the Merits</b>