

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 28, 2011

IN RE:

**PETITION OF TENNESSEE AMERICAN WATER
COMPANY FOR A GENERAL RATE INCREASE**

**DOCKET NO.
10-00189**

**ORDER ESTABLISHING PROCEDURE FOR TESTIMONY OF
PATRICIA H. SCHUMAKER**

This matter is before the Hearing Officer to clarify the role of Patricia H. Schumaker and the procedure for Ms. Schumaker to present witness testimony during the Hearing before the Tennessee Regulatory Authority (“Authority” or “TRA”) in this proceeding. On January 12, 2011, Tennessee American Water Company (“TAWC”) filed a motion asking that Ms. Schumaker be called as a witness to testify during the hearing in this matter.¹ In its motion, TAWC explained that Ms. Schumaker should provide testimony because the Intervenors had demonstrated that they “. . . now wish to attack in this rate case the procedures, methodology and conclusions contained in the audit that Schumaker completed for the Authority.”² TAWC further stated,

. . . should the Authority allow the intervenors in this case the leeway to perform a limited examination of the conclusions contained in the management audit completed by Schumaker for the Authority, TAWC requests that the Authority call Schumaker to present testimony regarding the procedures, methodology and facts that support the conclusions contained in the Authority’s ordered audit. If the Authority chooses not to call Schumaker itself, TAWC requests that the Authority enter an order stating TAWC’s act of calling Schumaker would in no way affect Schumaker’s status as an independent auditor.³

¹ *Motion to Call Schumaker & Company to Present Testimony Regarding Its Affiliate Audit Report of Tennessee American Water Company for the Tennessee Regulatory Authority* (January 12, 2011).

² *Id.*, at p. 3.

³ *Id.*, at p. 4.

TAWC's motion was followed by the motion filed by the City of Chattanooga ("City") on January 18, 2011, requesting the setting of a deposition of Patricia H. Schumaker.⁴ The City's motion stated that because TAWC did not submit pre-filed testimony from a representative of Schumaker & Company and TAWC filed its motion after the deadline for the filing of Intervenor testimony and discovery requests, the City should be permitted to take a deposition "[i]n order to properly evaluate and document whatever evidence Ms. Schumaker might offer, . . ."⁵

The motions filed TAWC and the City were argued before the Hearing Officer during the Status Conference held on January 24, 2011. Subsequently, on January 28, 2011, the parties to this action filed a letter advising the Hearing Officer that they had reached an agreement as to setting a deposition of Ms. Schumaker and as to Ms. Schumaker being called as a witness to testify during the evidentiary hearing in this docket. Based on that agreement and communications between the parties and TRA General Counsel, the Hearing Officer entered an *Order Setting Deposition of Patricia H. Schumaker* on February 11, 2011. That Order adopted the agreement of the parties, with certain exceptions, and set the deposition of Ms. Schumaker to be taken at the TRA on February 18, 2011. Also, the Hearing Officer's Order adopted the parties' agreement that Ms. Schumaker would ". . . be called as a witness live at the evidentiary hearing where she can be questioned by the parties, the staff, and the Directors."⁶

Following the deposition of Ms. Schumaker, the parties reached an agreement that Ms. Schumaker would appear as a witness to provide testimony at the Hearing in Chattanooga on Tuesday, March 1, 2011. During the Pre-Hearing Conference held on February 25, 2011, the parties requested clarification as to manner in which Ms. Schumaker would offer her testimony

⁴ *City of Chattanooga's Motion that Witness be Ordered to Appear for Deposition*, (January 18, 2011).


⁵ *Id.*, at p. 2.

⁶ Letter to Chairman Mary Freeman from Henry Walker, Esq. (January 28, 2010).

during the Hearing. Based on the agreement of the parties, it was determined that counsel for TAWC would initially question Ms. Schumaker as an independent witness, to be followed by questioning by the Intervenor's attorneys in the order established at the Pre-Hearing Conference, Authority Staff and TRA Directors.

The Hearing Officer notes that there have been multiple references in oral argument and in written filings to Ms. Schumaker as having been selected by the Authority as the management auditor or the management audit performed by Ms. Schumaker as being the Authority's audit, both of which give the mistaken impression that Ms. Schumaker was working for the Authority in performing the audit or is appearing at the Hearing as a witness for the Authority. Notwithstanding the assistance provided by Authority Staff in the preparation of TAWC's Request for Proposal ("RFP") and subsequent contract, and the actions of the TRA Directors in approving the RFP and the selection of Schumaker & Company, the Authority has not adopted the audit as the Authority's audit nor Ms. Schumaker as the Authority's auditor or witness in this proceeding. It is clear that TAWC controlled the issuance of the RFPs, made the selection of Schumaker & Company from its evaluation of the responses to the RFPs and worked directly with Schumaker & Company in the conduct of the management audit. While there is no indication at this point in the proceeding that Ms. Schumaker is not an independent witness, there is certainly no basis for Ms. Schumaker to be considered as the Authority's witness or for the management audit to be referred to as the Authority's audit. Any such references in this proceeding are incorrect and misleading and should cease.

IT IS HEREBY ORDERED.


Chairman Mary W. Freeman
Hearing Officer