

BASS

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October 18, 2010

Via Hand-Delivery

Filed electronically in the Docket Office 10/18/10

Chairman Mary W. Freeman
c/o Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

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, Docket No. 10-00189*

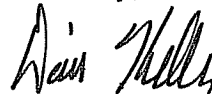
Dear Chairman Freeman:

Enclosed please find the original and five (5) copies of the "Comments of Tennessee American Water Company With Respect to the Proposed Procedural Schedule."

Please return a copy of this filing, which I would appreciate your stamping as "filed," and returning to me by way of our courier.

Should you have any questions concerning any of the enclosed, please do not hesitate to contact me.

Sincerely,



David Killion

Enclosures

cc: Hon. Sara Kyle
Hon. Eddie Roberson
Mr. David Foster, Chief of Utilities Division
Mr. Jerry Kettles, Chief of Economic Analysis & Policy Division
Richard Collier, Esq.
Vance Broemel, Esq.
T. Jay Warner, Esq.
Ryan McGehee, Esq.
Mary L. White, Esq.

Chairman Mary W. Freeman
October 18, 2010
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**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

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**

Docket No. 10-00189

**COMMENTS OF TENNESSEE AMERICAN WATER COMPANY
WITH RESPECT TO THE PROPOSED PROCEDURAL SCHEDULE**

Tennessee American Water Company (the "Company"), after consulting with the Consumer Advocate and Protection Division of the Office of the Attorney General, the City of Chattanooga, and the Chattanooga Manufacturers Association (collectively, "Intervenors"), has unfortunately been unable to reach an agreement regarding a proposed procedural schedule.¹ Therefore, the Company submits the proposed procedural schedule attached hereto as Exhibit A and the following in support thereof:

1. The Company has proposed a schedule that fairly balances the needs and interests of all parties. It provides sufficient time for all parties to accomplish the necessary tasks of propounding and responding to discovery, dealing with discovery disputes, and preparing direct and rebuttal testimony. The proposals offered to date by the Intervenors have not successfully achieved this balance, and instead have provided Intervenors with excess time at the beginning

¹ While all parties have been copied on all correspondence regarding a proposed procedural schedule, only the Company and Consumer Advocate have proposed any schedules. All references to the Intervenors' proposal are based on the latest proposals made by the Consumer Advocate to the Company.

of the schedule and have provided the Company too little time at the end of the schedule.² The lengthy preparation periods Intervenorors have proposed for themselves during the first four months of the case make it such that the final two months of the case, when the Company has to prepare rebuttal testimony and discovery requests, prepare for the hearing, participate in the Hearing on the Merits, and leave sufficient time for the panel to take the matter under advisement prior to deliberations, are unfairly compressed to the Company's prejudice.

2. Discovery responses. The Company proposes that the parties respond to discovery requests in 14-15 days during both the first and second rounds of discovery. After responses and any objections are filed by the responding parties, the Company's proposal provides for a period to meet and confer about any discovery deficiencies, followed by a time for motions to compel and rulings thereon for any discovery disputes the parties cannot resolve themselves. Intervenorors, however, have proposed a full month for preparing responses to the first round of discovery requests, which the Company neither needs nor requests. And while Intervenorors' proposal provides for dealing with discovery disputes in that 30 day period, the disputes are largely theoretical during the time before actual responses must be made; such a process is not only unnecessarily lengthy but could also create the need for a second round of motions to compel (and further delays in the schedule) if a party claims another party's subsequent production is deficient. (See paragraph 5 below.) In addition, the Intervenorors themselves have provided a 14 day turnaround for the second round of discovery instead of the 30 days proposed for the first round. There seems to be no reason to have two dramatically different timeframes for responding to discovery.

² A comparison of the procedural schedules proposed by the Company and Intervenorors is attached hereto as Exhibit B.

3. Propounding second round discovery. The time for the Company to propound its second round of discovery is also an area of marked difference. Both proposals afford Intervenor six weeks after the filing of the Company's testimony to prepare and serve their first round of discovery requests. For the Company's second round of requests, however, the Company proposes a period of two weeks (including the Christmas holidays) after Intervenor's testimony is filed for the Company to prepare and serve those requests. Intervenor's proposal, though, would only allow the Company *six days* after the Intervenor's testimony is filed.

4. Deadlines for testimony. With respect to Intervenor's direct and the Company's rebuttal testimony, the Company's proposed schedule provides for Intervenor testimony to be due 30 days after receiving the Company's discovery responses and for the Company's rebuttal testimony to be due two weeks after receiving Intervenor's discovery responses. Thirty days after receiving discovery responses should be ample time for Intervenor to file their testimony, especially since Intervenor will have had the Company's testimony for three months by the time that Intervenor's testimony is due. The Company's deadline for filing rebuttal testimony of just two weeks after receiving discovery responses, while short, is something the Company is willing to live with. In contrast, Intervenor's proposal again lengthens the schedule unnecessarily by providing themselves 43 days to file their testimony after receiving discovery responses; on the other hand Intervenor's proposal also shortens the Company's time to just *one week* from receipt of discovery responses to file the Company's rebuttal testimony. A one week period to review Intervenor's responses, retain any additional rebuttal witnesses that may be needed, and to prepare and file this testimony is clearly an insufficient amount of time.

5. Discovery disputes. Intervenor's schedule creates a framework that will facilitate needless and expensive discovery disputes. The majority of these disputes likely can and should

be avoided. It is clear that a major driver of increased costs in recent rate cases has been the amount of litigation over discovery disputes. Part of that increase has been the result of the schedule itself, which has not allowed sufficient time for the parties to discuss these differences reasonably and intelligently with a goal of reaching reasonable compromises before having to bring the issue before the Hearing Officer. The Company's proposal therefore includes an explicit period for a "meet and confer" process two days after a party submits discovery responses. Such a process is common in litigation, and is actually mandated by many courts.³ Intervenor's have agreed to include a "meet and confer" deadline, but Intervenor's' proposed "meet and confer" is scheduled *before* any documents have been produced. Not only does this seriously limit the effectiveness of any "meet and confer" requirement, but scheduling a "meet and confer" and motions to compel before any documents have been produced will force the parties to spend a great deal of time arguing over what ultimately may amount to only theoretical deficiencies in production. The Company's proposed schedule requires a production, followed by a "meet and confer," and then a deadline for any motions to compel that may still be needed. Such a proposal is more efficient and should eliminate a number of unnecessary and costly discovery disputes.

6. Responses to pre-hearing motions. Another important aspect of the Company's proposal is that the Company has provided the parties an opportunity to respond to any motions to be decided prior to the Hearing on the Merits. The Company's proposal requires pre-hearing motions to be filed by Wednesday, February 9, so that the parties have at least one day to

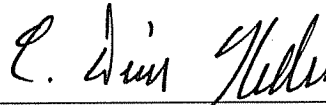
³ See Local Rules of Court, Middle District of Tennessee, R. 37.01(b)(3) ("Counsel for a party moving to compel discovery, quash a subpoena, or for a protective order, shall file with the Court, at the time of the filing of the motion, a statement certifying that he has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the issues raised and that counsel have not been able to do so. No such motion shall be considered by the Court absent compliance with this Rule.").

respond to any motions that are filed in advance of the pre-hearing conference on Friday, February 11. Intervenor's proposal would require that pre-hearing motions be filed by Thursday, February 10, for the pre-hearing conference on Friday, February 11.

7. Post-hearing briefing. Finally, the Company has not provided for post-hearing briefing because the Company believes it is expensive and unnecessary after a lengthy hearing. Instead, the Company proposes that the parties have closing arguments at the conclusion of the case. Should the Directors require additional briefing on a particular issue, that issue can be addressed by the Directors at the Hearing on the Merits of this matter.

For the foregoing reasons, the Company respectfully requests the Hearing Officer to adopt its proposed schedule attached as Exhibit A.

Respectfully submitted,



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Tennessee American Water Company*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via the method(s) indicated, on this the 18th day of October, 2010, upon the following:

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<input type="checkbox"/> Facsimile	Mary L. White, Esq.
<input type="checkbox"/> Overnight	Counsel for the Consumer Advocate and Protection Division
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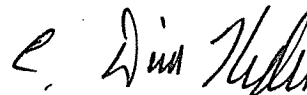


EXHIBIT A

**TRA DOCKET NO. 10-00189
TAWC'S PROPOSED PROCEDURAL SCHEDULE**

September 17, 2010	Petition Filed
October 18, 2010	Status Conference
November 1, 2010	1st Round of Discovery
November 15, 2010	Discovery Responses and Objections
November 17, 2010	Deadline to Meet and Confer
November 19, 2010	Motions to Compel
November 23, 2010	Status Conference
December 3, 2010	Supplemental Discovery Responses
December 15, 2011	Intervenors' Pre-Filed Testimony
December 30, 2011	2nd Round of Discovery
January 12, 2011	Discovery Responses and Objections
January 14, 2010	Deadline to Meet and Confer
January 18, 2011	Motions to Compel
January 20, 2011	Status Conference (Parties will report on settlement talks)
January 24, 2011	Supplemental Discovery Responses
February 7, 2011	Company's Pre-Filed Rebuttal Testimony
February 9, 2011	Pre-Hearing Motions Due
February 11, 2011	Pre-Hearing Conference
February 14, 2011	Hearing
March 17, 2011	Deadline for Deliberation

EXHIBIT B

**TRA DOCKET NO. 10-00189
COMPARISON OF PROPOSED PROCEDURAL SCHEDULES**

	<u>Tennessee American's Proposed Scheduling Order</u>	<u>Consumer Advocate's Proposed Scheduling Order</u>
Petition Filed	September 17, 2010	
Status Conference	October 18, 2010	
1st Round of Discovery Requests Due	November 1, 2010	
Objections to 1st Round of Discovery Due	November 15, 2010	November 8, 2010
1st Round of Discovery Responses Due		November 29, 2010
Deadline to Meet and Confer	November 17, 2010	November 10, 2010
Motions to Compel Due	November 19, 2010	November 15, 2010
Status Conference	November 23, 2010	November 17, 2010
Supplemental Discovery Responses	December 3, 2010	<i>(not proposed)</i>
Intervenors' Pre-Filed Testimony Due	December 15, 2011	January 11, 2011
2nd Round of Discovery Requests Due	December 30, 2011	January 17, 2011
Objections to 2nd Round of Discovery Due	January 12, 2011	January 21, 2011
2nd Round of Discovery Responses Due		January 31, 2011
Deadline to Meet and Confer	January 14, 2010	January 25, 2011
Motions to Compel	January 18, 2011	January 26, 2011
Status Conference	January 20, 2011	January 28, 2011
Supplemental Discovery Responses	January 24, 2011	<i>(not proposed)</i>
TAWC's Pre-Filed Rebuttal Testimony Due	February 7, 2011	February 7, 2011
Pre-Hearing Motions Due	February 9, 2011	February 10, 2011
Pre-Hearing Conference	February 11, 2011	
Hearing	Feb. 14 – 18, 2011	
Post Hearing Briefs Due	<i>(not proposed)</i>	March 4, 2011
Deadline for Deliberation / Six Months Out	March 17, 2011	