

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 31, 2012

IN RE:

PETITION OF TENNESSEE AMERICAN WATER
COMPANY FOR A GENERAL RATE INCREASE,
IMPLEMENTATION OF A DISTRIBUTION
SYSTEM INFRASTRUCTURE CHARGE AND THE
ESTABLISHMENT OF TRACKING MECHANISMS
FOR PURCHASED POWER, PENSIONS AND
CHEMICAL EXPENSES

DOCKET NO.
12-00049

ORDER REFLECTING MATTERS ADDRESSED AT STATUS CONFERENCE

This matter is before the Hearing Officer to reflect matters addressed at the July 17, 2012 Status Conference.

BACKGROUND

On June 1, 2012, Tennessee American Water Company ("TAWC" or the "Company") filed with the Authority a *Petition of Tennessee American Water Company for a General Rate Increase, Implementation of a Distribution System Infrastructure Charge and the Establishment of Tracking Mechanisms for Purchased Power, Pensions and Chemical Expenses* ("Petition") in which the Company seeks approval by the Authority of proposed increased rates, alleging that "its existing rates for water service do not afford the Company the opportunity to recover its reasonable operating costs or to earn a just and reasonable rate of return on its investment."¹ The Company seeks to put into effect "customer rates that will produce an overall rate of return of 8.23% on a rate base of \$135,820,256."² According to TAWC, the required additional annual

¹ *Petition* at 3 (June 1, 2012).

² *Id.*

gross revenues would approximate \$10,586,344.³ Additionally, the Company is seeking to implement certain rate adjustment and tracking mechanisms.⁴

At an Authority Conference held on June 7, 2012, Chairman Kenneth C. Hill, Director Sara Kyle and Director Mary W. Freeman, the panel assigned to this docket, voted unanimously to convene a contested case proceeding and to appoint Chairman Hill as Hearing Officer for the purpose of preparing this matter for hearing, including handling preliminary matters and establishing a procedural schedule to completion.

On June 13, 2012, the Consumer Advocate Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") filed a *Petition to Intervene*. No objection or opposition to this *Petition* was filed, and the Hearing Officer granted the Consumer Advocate's request. On July 5, 2012, the City of Chattanooga (the "City") filed a *Petition to Intervene*. On July 9, 2012, TAWC responded that it did not object to the City intervening with respect to rate matters, and therefore the City's intervention request was granted. On July 6, 2012, the Town of Signal Mountain ("Signal Mountain") filed a *Petition to Intervene*. No objection or opposition to this *Petition* was filed, and the Hearing Officer granted Signal Mountain's request.

STATUS CONFERENCE

A Status Conference was held on **July 17, 2012, at 1:00 p.m.** In attendance at the Status Conference were the following parties represented by counsel:

Tennessee American Water Company – **Melvin J. Malone, Esq.** and **Junaid Odubeko**, Butler, Snow, O'Mara, Stevens & Cannada PLLC, 1200 One Nashville Place, 150 Fourth Avenue North, Nashville, Tennessee, 37219; and **Kevin N. Rogers** (by telephone), 1101 Broad Street, Chattanooga, Tennessee, 37402.

³ *Id.*

⁴ *Id.* at 4-5.

Town of Signal Mountain - **Phillip A. Noblett, Esq.** (by telephone), 100 E. 11th Street, Suite 200, Chattanooga, Tennessee, 37402.

City of Chattanooga – **Frederick L. Hitchcock, Esq.**, 1000 Tallan Building, Two Union Square, Chattanooga, Tennessee, 37402.

Consumer Advocate and Protection Division – **Ryan McGehee, Esq. and John Baroni, Esq.**, Office of the Attorney General, 425 5th Avenue North, John Sevier Building, P.O. Box 20207, Nashville, Tennessee, 37202.

Motion for Admission Pro Hac Vice

As an initial matter, the Hearing Officer considered the *Motion to Appear Pro Hac Vice* filed by TAWC on June 4, 2012. In the *Motion*, the Company seeks permission for Lindsay W. Ingram, III and Monica H. Braun to appear and participate in the representation of TAWC in association with Melvin J. Malone, a practicing member of the Tennessee Bar. Attorneys Ingram and Braun filed, with their *Motion*, their affidavits and certificates of good standing as required by Rule 19 of the Tennessee Supreme Court. With no objection or opposition, the Hearing Officer granted the *Motion*.

City of Chattanooga's Public Safety Request

As part of the City's *Petition to Intervene*, the City requested that the Authority issue an order "requiring Tennessee American Water Company to cooperate with the City of Chattanooga concerning critical public safety issues affecting the residents and businesses of the City."⁵ The City stated that it had engaged in a water system interconnection study in order to identify a potential need for additional facilities that would be necessary to serve Chattanooga in event of a

⁵ *City of Chattanooga's Petition to Intervene* p. 2 (July 7, 2012).

major natural disaster.⁶ The City also stated that TAWC had refused to cooperate with the City, threatening the public safety and welfare.⁷

TAWC responded that it has, indeed, participated in “emergency and disaster preparedness,” and listed several public safety initiatives that it had participated in, including the water interconnectivity study that the City had referred to in its *Petition to Intervene*.⁸ TAWC stated that it believed it had adequately complied with public safety regulations and requirements, but that if the TRA wanted to further examine the public safety issues raised by the City, those issues should be bifurcated from the rate proceeding.⁹

The City responded that the public safety issues were “intertwined with the issues raised by TAWC’s rate increase request” and that a single proceeding would “significantly reduce administrative expenses and avoid unnecessary delay in addressing the critical issues of public safety.”¹⁰ The City reiterated its position that TAWC had not participated in the interconnectivity study and that the TRA had plenary authority to order the Company to cooperate.¹¹

On July 19, 2012, TAWC filed a proposed resolution, asking the Authority to deny the City’s request, or to defer the request to a separate proceeding to follow the rate case.¹² The Company also suggested that the public safety issues could be deferred to the City and TAWC for private discussions, in hopes of reaching a resolution.¹³ In a responsive filing, the City

⁶ *Id.* at 4.

⁷ *Id.*

⁸ *Tennessee American Water Company's Response to the Petition of the City of Chattanooga to Intervene and Opposition to an Order Requiring Cooperation Concerning Public Safety Issues*, p. 2 (July 10, 2012).

⁹ *Id.* at 3.

¹⁰ *City of Chattanooga's Response to Tennessee American Water Company's Opposition to the City's Petition for an Order Requiring Cooperation Concerning Public Safety Issues and Affidavit of Mike Marino, Appended as Exhibit A to the Response*, p. 1 (July 12, 2012).

¹¹ *Id.* at 2-3.

¹² *Tennessee American Water Company's Proposed Resolution Concerning Public Safety Issues*, p. 1 (July 19, 2012).

¹³ *Id.*


reiterated, once more, that the TRA should exercise its authority and order the TAWC to cooperate with the City's request.¹⁴

At the Status Conference, the parties briefly summarized their positions. The Hearing Officer stated that he would issue a ruling at a later date.

Subsequent to the Status Conference, the City and TAWC filed a joint report stating that while they have not resolved their disagreement, they have agreed to hold discussions between engineers for both parties.¹⁵ Therefore, the parties asked the Hearing Officer to hold the issue in abeyance while representatives for the parties discussed a possible resolution.¹⁶

IT IS THEREFORE ORDERED THAT:

1. Attorneys Lindsay W. Ingram, III and Monica H. Braun are granted permission to appear *pro hac vice*.
2. The public safety issues raised by the City in its *Petition to Intervene* shall be held in abeyance pending resolution of private discussions between the parties.



Chairman Kenneth C. Hill
Hearing Officer

¹⁴ *City of Chattanooga's Response to Tennessee American Water Company's Renewed Opposition to Petition Concerning Public Safety Issues*, p. 2 (July 20, 2012)

¹⁵ *Report Regarding Discussions Concerning the City of Chattanooga's Request for Order Concerning Public Safety Issues*, p. 1 (July 24, 2012).

¹⁶ *Id.*