

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 28, 2013

IN RE:

**JOINT PETITION OF TENNESSEE-AMERICAN WATER
COMPANY, THE CITY OF WHITWELL, TENNESSEE,
AND THE TOWN OF POWELLS CROSSROADS,
TENNESSEE, FOR APPROVAL OF A PURCHASE
AGREEMENT AND A WATER FRANCHISE AGREEMENT
AND FOR THE ISSUANCE OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY**

**DOCKET NO.
12-00157**

**ORDER GRANTING CONSUMER ADVOCATE INTERVENTION IN PROCEEDINGS
AND ESTABLISHING PROCEDURAL SCHEDULE**

This matter came before the Hearing Officer of the Tennessee Regulatory Authority ("Authority" or "TRA") during a status conference held on March 11, 2013, to determine the issues that are to be resolved by the panel, address any pending petitions to intervene, entry of a protective order, if needed, and to establish a procedural schedule. In addition, the Hearing Officer held a telephone conference with the parties on March 21, 2013, to further discuss the procedural schedule.

RELEVANT BACKGROUND

On December 27, 2012, an *Expedited Joint Petition of Tennessee American Water Company, the City of Whitwell, Tennessee, and the Town of Powells Crossroads, Tennessee for Approval of a Purchase Agreement and a Water Franchise Agreement and for Issuance of a Certificate of Convenience and Necessity ("Joint Petition")* was filed with the Authority by Tennessee American Water Company ("TAWC"). In the *Joint Petition*, TAWC, the City of Whitwell, Tennessee ("Whitwell"), and the Town of Powells Crossroads, Tennessee

(“Crossroads”), (collectively, “Petitioners”), seek the TRA’s consideration and approval, on an expedited basis, of TAWC’s proposed purchase of Whitwell’s water system, the grant of an exclusive water utility franchise agreement between TAWC and Crossroads, and a Certificate of Convenience and Necessity (“CCN”) to allow TAWC undertake service to Whitwell’s designated service areas, approximately 2,750 metered customers.¹

On January 28, 2013, a *Complaint and Petition to Intervene* (“*Petition to Intervene*”) was filed by the Office of the Attorney General, Consumer Advocate and Protection Division (“Consumer Advocate”), requesting to intervene as a party in the proceedings. During the regularly scheduled Authority Conference held on February 13, 2013, the voting panel of Directors unanimously convened a contested case proceeding and appointed General Counsel or her designee as Hearing Officer, for the purpose of preparing this matter for a hearing before the panel.²

MARCH 11, 2013 STATUS CONFERENCE

In accordance with the public notice issued on February 27, 2013, the Status Conference was convened at 2:00 p.m. CDT on March 11, 2013, in the Hearing Room on the Ground Floor of the Tennessee Regulatory Authority at 460 James Robertson Parkway, Nashville, Tennessee. The parties in attendance were as follows:

For TAWC:

Melvin J. Malone, Esq., and **Junaid A. Odubeko, Esq.**, Butler, Snow, O’Mara, Stevens & Cannada, PLLC, 1200 One Nashville Place, 150 Fourth Avenue North, Nashville, Tennessee 37219, and **Deron E. Allen**, President, and **Kevin N. Rogers**, Finance Manager, Tennessee American Water Company, 1101 Broad Street, Chattanooga, Tennessee 37402; and

¹ *Joint Petition* (December 27, 2012); *see also* pre-filed Direct Testimony of Deron E. Allen, p. 2 (appended to *Joint Petition*).

² *Order Convening a Contested Case and Appointing a Hearing Officer* (February 21, 2013).

For Consumer Advocate:

Charlena S. Aumiller, Esq., Office of the Attorney General, Consumer Advocate and Protection Division, P.O. Box 20207, Nashville, Tennessee 37202.

Petition to Intervene

In its *Petition to Intervene*, the Consumer Advocate seeks intervention in this docket under Tenn. Code Ann. § 65-4-118, which authorizes the Consumer Advocate to intervene in proceedings to represent the interests of Tennessee consumers. In its *Petition to Intervene*, the Consumer Advocate asserts that consumers could be adversely affected by the proposed agreements, costs, and deferred accounting treatment set forth in the *Joint Petition*. In addition, the Consumer Advocate states that while it does not oppose either TAWC's acquisition of Whitwell's water system or its franchise agreement with Crossroads, it asserts that additional investigation and discovery is needed in order for it to properly evaluate the Petitioner's requests. Further, the Consumer Advocate states that it can protect the public interest only by participating in this proceeding. The Petitioners filed no objection in the docket file, and, during the status conference, TAWC stated that it did not oppose the Consumer Advocate's intervention request.

During the status conference, the Hearing Officer found, based on the foregoing, that the legal rights and interests of Tennessee consumers may be determined in this proceeding, the Consumer Advocate's petition is timely, and that its intervention will not impair the orderly and prompt conduct of these proceedings. Therefore, the Hearing Officer granted the Consumer Advocate's *Petition to Intervene*. At this time, there are no other petitions to intervene pending in the docket.

Protective Order

On March 8, 2013, with the agreement of the Consumer Advocate, TAWC filed a proposed protective order in the docket file. During the status conference, after having reviewed the proposed protective order, the Hearing Officer informed the parties that the proposed

protective order was appropriate and acceptable. Thereafter, a Protective Order, substantially identical to that proposed by the parties, was entered in the docket file on March 12, 2013.

Procedural Schedule

The Hearing Officer directed TAWC and the Consumer Advocate to work together to submit a joint procedural schedule. Thereupon, the parties requested, and the Hearing Officer granted, a brief recess in order to allow the parties to discuss and prepare a joint procedural schedule for the immediate consideration of the Hearing Officer. After approximately forty-five (45) minutes, the parties indicated that they had worked out some general issues but required assistance in order to finalize the schedule. Following a lengthy discussion, the Hearing Officer set a time for TAWC to file its responses to informal discovery requests that had been previously propounded by the Consumer Advocate and, to allow time for the Consumer Advocate to review the responses, scheduled a telephone conference with the parties to further discuss a procedural schedule.³


Thereafter, on March 21, 2013, the Hearing Officer held a telephone conference with the parties. During the telephone conference, the parties agreed to a procedural schedule designed to efficiently move this docket forward to a May 2013 hearing before the panel, which the Hearing Officer adopts and attaches as **Exhibit A** to this Order. As with any schedule, the effectiveness of the Procedural Schedule is directly dependent upon the extent of cooperation or delay on the part of the parties in meeting the individual benchmark dates. The Hearing Officer encourages the parties to continue to work amicably to resolve disputes, should any arise, and also to bring any such matters promptly to the attention of the Hearing Officer.

³ To permit sufficient time following receipt of the discovery responses, the telephone conference was scheduled on March 19, 2013. Nevertheless, on March 19, 2013, the parties informed the Hearing Officer by email that, despite their efforts, additional time was needed to obtain and review a few remaining data responses. Therefore, upon the request of the parties, the Hearing Officer rescheduled the telephone conference to March 21, 2013.

While every effort will be made to accommodate the request of the Petitioners for a hearing in this matter during the May Authority Conference, the finalization and setting of the hearing before the Authority will be made upon determination that all preliminary procedural matters are complete, subject to discretion of the voting panel. Therefore, while the preference of the parties is noted, the date for the hearing is not included in the Procedural Schedule at this time. The date for the hearing will be announced separately, upon confirmation of the voting panel.

IT IS THEREFORE ORDERED THAT:

1. The Consumer Advocate is granted leave to intervene in this proceeding and shall receive copies of any notices, orders, or other documents herein.
2. The Procedural Schedule attached to this Order as **Exhibit A** is adopted and is in full force and effect.



Kelly Cashman-Grams, Hearing Officer

Procedural Schedule – Docket No. 12-00157

(March 28, 2013)

Due Date	Filing/Action
March 11, 2013	Initial Status Conference @ 2:00 p.m. CST
March 21, 2013	Telephone Conference re status of discovery
March 12 - April 2, 2013	All parties are permitted to conduct discovery in accordance with TRA Rule 1220-1-2-.11. A copy of each discovery request and response exchanged between the parties shall be filed with the Authority.*
April 3, 2013	Final Deadline for filing Motions to Compel Discovery (if any)**
April 5, 2013	Response(s) to Motions to Compel (if any)**
April 8, 2013	Status Conference on Discovery Motions, following Authority Conference (if needed)
April 9, 2013	Supplemental Responses to Discovery (as applicable)*
April 12, 2013	Pre-Filed Direct Testimony &/or Initial Brief of Consumer Advocate*
April 19, 2013	Pre-Filed Rebuttal Testimony of Utility Petitioner*
April 22, 2013	Reply Legal Brief of Utility Petitioner*
April 24, 2013	Pre-Hearing Motions**
April 26, 2013	Responses to Pre-Hearing Motions**
April 30, 2013	Pre-Hearing Conference @ 1:00 p.m. CST
TBD	Oral Argument & Hearing on the Merits (Target date: May AC)

* General Filings & Testimony are to be filed no later than 4:00 p.m. CST on the designated due date.

** Motions & Responses to Motions must be filed by 2:00 p.m. CST on the designated due date.

Exhibit A