

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE: JOINT PETITION OF TENNESSEE)	
AMERICAN WATER COMPANY, THE CITY OF)	
WHITWELL, TENNESSEE AND TOWN OF)	DOCKET NO. 12-00157
POWELL CROSSROADS, TENNESSEE, FOR)	
APPROVAL OF A PURCHASE AGREEMENT AND)	
WATER FRANCHISE AGREEMENT AND FOR)	
THE ISSUANCE OF A CERTIFICATE OF)	
CONVENIENCE AND NECESSITY)	

**MOTION TO RECONSIDER THE AUTHORITY'S REQUIREMENT OF CONSUMER
ADVOCATE'S FILING PRE-HEARING BRIEF BEFORE PETITIONER**

The Consumer Advocate and Protection Division ("Consumer Advocate") respectfully moves the Tennessee Regulatory Authority ("TRA" or "Authority") to reconsider the current procedural schedule requiring the Consumer Advocate to file its pre-hearing brief before the petitioner must file its pre-hearing brief because such requirement gives an unfair advantage to the petitioner. In particular, the current schedule prevents Consumer Advocate from having access to all the facts since rebuttal testimony is due after the Consumer Advocate's brief is due and Petitioner will be able to review and respond to the Consumer Advocate's work product as expressed in its legal analysis, while the Consumer Advocate will have no such opportunity.

RELEVANT PROCEDURAL BACKGROUND

The Consumer Advocate's *Petition to Intervene* was approved by the Hearing Officer in the March 11, 2013 Status Conference. During that conference, and at the insistence of Tennessee American Water Company ("TAWC" or "Petitioner"), the parties attempted to determine an agreed-upon procedural schedule for Docket No. 12-00157. Consistent with the Consumer Advocate's concern that there were too many uncertainties to be able to determine a

procedural schedule at that time, the parties could not determine such schedule. The Hearing Officer set a conference call for the following week on Tuesday, March 19, 2013. This conference was rescheduled to Thursday, March 21, 2013 to give TAWC the opportunity to complete its data responses so more information would be known in order to set the procedural schedule.

During the conference call on March 21, 2013, the Consumer Advocate requested the opportunity to file a pre-hearing brief and requested that the due date of such brief would be the same date that the petitioner would file its brief. The Hearing Officer approved the request for pre-hearing briefs but denied the request for the pre-hearing briefs to be due at the same time as petitioner. Later during the same conference call, the Hearing Officer set the procedural schedule, including the dates for the Consumer Advocate to file its pre-filed testimony and pre-hearing brief for April 12, 2013 and for TAWC to file its rebuttal testimony on April 19, 2013 and its pre-hearing brief on April 22, 2013. Since this Status Conference, the Consumer Advocate filed a Motion to Compel on April 3, 2013, to which TAWC intends to file its response on April 5, 2013, the same day this motion is being filed.

ARGUMENT

It is not fair to require the Consumer Advocate to file its pre-hearing brief before TAWC is required to file its rebuttal testimony and its pre-hearing brief for at least reasons. First, by requiring the Consumer Advocate to file its brief before TAWC files its rebuttal testimony means that the Consumer Advocate will have to file its brief before all evidence is in the record since rebuttal testimony is evidence. Second, the procedural schedule currently forces the Consumer Advocate to reveal its work product to the Petitioner and gives the Petitioner the opportunity to

utilize the Consumer Advocate's work product to raise new arguments without giving the Consumer Advocate the opportunity to file a reply brief.

When the Consumer Advocate requested the opportunity for a reply brief, the Hearing Officer indicated that the Consumer Advocate can raise any replies during its oral arguments before the directors. Indeed, the same rationale applies to TAWC; if TAWC has any replies to the Consumer Advocate's brief, TAWC has the same opportunity to raise those replies during the oral arguments before the directors. By giving TAWC a later date for its pre-hearing brief, the Authority is giving TAWC the opportunity to reply to the Consumer Advocate's brief in writing. This gives TAWC the opportunity to review and respond to the Consumer Advocate's legal analysis for its advantage, but does not give the Consumer Advocate the same opportunity. Moreover, it allows the Staff to consider TAWC's written reply before the hearing. With the present procedural schedule, the Consumer Advocate does not have the same opportunity to provide written replies that can be considered by the Staff before the hearing. Of course, both parties could argue they want the opportunity to submit replies, which would lead to an endless process. To circumvent the risk of a never-ending process, ideally, both parties would get the opportunity to submit briefs simultaneously and then submit written replies simultaneously. But to provide one party the opportunity to submit a written reply brief but not the other is simply not fair.

The timing and order of filing written briefs is different than the order of arguments by parties in court. When making oral arguments, both parties cannot make arguments at the same time because the tribunal can only hear one person at a time. The same is not true for written briefs.

The brief is different than filing testimony. Testimony inserts new facts in the record. The briefs are the work product of attorneys' legal analysis of applying law to facts in the record. Indeed, same-day filing of post-hearing briefs for all parties is acceptable because all facts are already on the record and the attorneys have access to all the same law. By requiring the Consumer Advocate to file its brief before the rebuttal testimony is available necessarily inhibits the Consumer Advocate from having access to all the facts to which the relevant law will be applied.

As for access to the law, both parties have the same access to or opportunity to research the law so there is no reason to require the Consumer Advocate to file its brief before TAWC's brief. In this case, the Consumer Advocate has already narrowed the issues by filing the Proposed Issues list. In addition to this proposed issues list, the Consumer Advocate has communicated its concerns with TAWC's request for accounting and ratemaking treatment and the deferred accounting numerous times. Thus, TAWC cannot claim it is unaware of the Consumer Advocate's concerns. Rather, TAWC just disagrees with the Consumer Advocate.

The only reason to require the Consumer Advocate to submit its brief before TAWC is to give TAWC the opportunity to reply and possibly use the Consumer Advocate's work product to raise new arguments that it did not raise in its pleading or before the Consumer Advocate files its brief. Indeed, this is what will likely occur with the Motion to Compel filed on April 3, 2013. For nearly three weeks, TAWC said that it was not providing the detail for the due diligence fees because it was protected by attorney-client privilege. The Consumer Advocate stated that it did not agree and indicated why. Only after the Consumer Advocate filed its Motion to Compel did TAWC communicate to the Consumer Advocate that it did not think that providing the detail was necessary at this time. Had TAWC stated this as the reason earlier, the Consumer Advocate

would have filed a motion to compel arguing the timing reason for withholding the detail. As it stands now, if TAWC argues that this is not the appropriate time to submit such detail, the only opportunity the Consumer Advocate has to reply is in oral arguments or, in this instance, in writing in its brief. This is an example of how TAWC may use the Consumer Advocate's work product of legal analysis to raise new arguments. The Consumer Advocate will not have the same opportunities to reply to any new arguments raised in TAWC's brief. Without providing the Consumer Advocate the opportunity to reply to TAWC's brief, the only way to make the process fair for both parties is to set the schedule so that both parties submit their briefs on the same date.

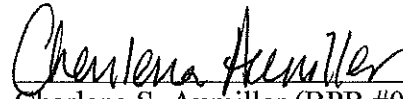
Because TAWC has requested an expedited review and the timing of the May conference does not permit the time for both parties to have reply briefs, the only way to make the process fair is to require both parties to submit their briefs simultaneously.

CONCLUSION

For the reasons previously stated, the Consumer Advocate respectfully requests the Authority to revise the procedural schedule so that the pre-hearing briefs are due after all testimony is filed and at the same time.

RESPECTFULLY SUBMITTED,

Robert E. Cooper, Jr. (BPR #010934)
Attorney General and Reporter
State of Tennessee

A handwritten signature in cursive script, reading "Charlena Aumiller", written over a horizontal line.

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CERTIFICATE OF SERVICE

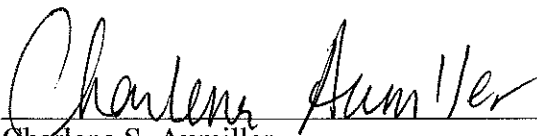
I hereby certify that a true and correct copy of the foregoing Motion to Compel was served via U.S. Mail or electronic mail upon:

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This the 5th day of April, 2013.


Charlena S. Aumiller