

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**February 24, 2015**

**IN RE:**

**PETITION OF TENNESSEE-AMERICAN WATER  
COMPANY REGARDING THE 2015 INVESTMENT  
AND RELATED EXPENSES UNDER THE QUALIFIED  
INFRASTRUCTURE INVESTMENT PROGRAM  
RIDER, THE ECONOMIC DEVELOPMENT  
INVESTMENT RIDER, AND THE SAFETY AND  
ENVIRONMENTAL COMPLIANCE RIDER**

**DOCKET NO.  
14-00121**

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**AMENDED ORDER  
GRANTING CITY OF CHATTANOOGA'S PETITION TO INTERVENE<sup>1</sup>**

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This matter is before the Hearing Officer of the Tennessee Regulatory Authority ("Authority" or "TRA") upon a *Petition to Intervene* filed by the City of Chattanooga, Tennessee ("City") on February 11, 2015.

**BACKGROUND**

On October 29, 2014, pursuant to the TRA's decision in Docket No. 13-00130, Tennessee-American Water Company ("TAWC") filed its initial request and supporting documentation for Authority approval to increase during the 2015 calendar year the tariff percentage rates for its Qualified Infrastructure Investment Program Rider ("QIIP Rider"), Economic Development Investment Program Rider ("EDI Rider"), and Safety and Environmental Compliance Program Rider ("Safety Rider") (collectively "Capital Riders").<sup>2</sup>

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<sup>1</sup> This Amended Order replaces the previous Order Granting City of Chattanooga's Petition to Intervene issued by the Hearing Officer on February 19, 2015.

<sup>2</sup> *Petition* (October 29, 2015).

Since its initial filing, TAWC has filed revised proposed tariff pages,<sup>3</sup> supplemental pre-filed testimony and exhibits,<sup>4</sup> and responses to the informal data requests of the Consumer Advocate and to the Authority's request for certain information that it determined necessary to review and consider TAWC's revised proposed tariffs in this docket.<sup>5</sup>

On November 26, 2014, the Consumer Advocate filed its *Petition to Intervene*. On January 12, 2015, the panel of Directors assigned in this docket suspended the proposed tariffs for thirty (30) days,<sup>6</sup> convened a contested case proceeding, granted the Consumer Advocate's *Petition to Intervene*, and appointed the Authority's General Counsel or her designee to act as Hearing Officer in this matter. On January 16, 2015, the Consumer Advocate filed the Direct Testimony of William H. Novak. On February 11, 2015, the Hearing Officer suspended the revised proposed tariffs an additional sixty (60) days through and including April 14, 2015.<sup>7</sup>

#### **PETITION TO INTERVENE**

In its *Petition to Intervene*, the City asks that the Authority grant its request to intervene in this proceeding because the "legal rights, duties, privileges, immunities, or other legal interests of the City of Chattanooga and its citizens may be adversely affected by the proposed revised tariffs submitted by [TAWC]."<sup>8</sup> In support of its request, the City states that it is a proper party to this proceeding because it is a customer of TAWC, and asserts that TAWC's proposed tariffs violate Tenn. Code Ann. § 65-5-103(d) in that they are not in the public interest and seek

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<sup>3</sup> Revised proposed Summary of Riders tariff pages filed on November 25, 2014 and December 4, 2015.

<sup>4</sup> Supplemental Testimony of Linda Bridwell (December 29, 2014).

<sup>5</sup> Response to the Consumer Advocate (December 10, 2014); and see, Response to TRA Request for Reconciliation (January 20, 2014).

<sup>6</sup> The proposed tariffs had an initial effective date of January 13, 2015.

<sup>7</sup> *Order Re-Suspending Tariffs through April 14, 2015* (February 11, 2015).

<sup>8</sup> *Petition to Intervene* (February 11, 2015).

recovery of expenses and investments not authorized by the alternative regulatory methods described in the statute.<sup>9</sup>

Specifically, the City asserts that, despite its express agreement, TAWC has failed to provide the City certain reports, notices, and opportunities for consultation as agreed for the purpose of ensuring that its alternative rate mechanisms and the costs recovered through those mechanisms are in the public interest.<sup>10</sup> In addition to TAWC's failure to provide reports, notice, and consultation, the City further alleges that each tariff is not in the public interest because it violates applicable law.

As to TAWC's QIIP Rider, the City contends that "TAWC seeks rate increases under the QIIP rider to pay for improvements for which it has already received rate increases, in violation of applicable law, including Tenn. Code Ann. § 65-5-103(d)(5)."<sup>11</sup> Further, the City contends that "TAWC's petition and pre-filed testimony in Docket No. 14-00121 establish that TAWC is seeking to recover expenses and investments under the [EDI] Rider that have no relationship to the economic development needs of the Chattanooga community."<sup>12</sup> Concerning the Safety Rider, "TAWC is seeking to recover non-safety related environmental compliance expenses and investments, in violation of Tenn. Code Ann. § 65-5-103(d)(2)."<sup>13</sup> Finally, although not at issue in the instant docket, the City also asserts that TAWC failed to follow notice and information procedures agreed to between the City and TAWC to ensure that TAWC's "Pass-through Rider" ("PCOP") is consistent with state law and in the public interest.<sup>14</sup>

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<sup>9</sup> *Id.* at ¶¶ 4-5.

<sup>10</sup> *Id.* at ¶¶ 6-9.

<sup>11</sup> *Id.* at ¶ 10; esp. 10(d).

<sup>12</sup> *Id.* at ¶ 11; esp. 11(c).

<sup>13</sup> *Id.* at ¶ 12; esp. 12(c).

<sup>14</sup> *Id.* at ¶ 13. Although not at issue or under review in the instant docket, on January 2, 2015, TAWC filed a *Petition* and proposed tariff to increase during the 2015 calendar year the tariff percentage rate for its Pass-Throughs mechanism for Fuel, Purchased Power, Chemicals, Purchased Water, Wheeling Water Costs, Waste Disposal and

In conclusion, the City asserts that, “only by intervening and participating in this proceeding can [it] properly protect its interests and the interests of its citizens” and therefore, requests that its *Petition to Intervene* be granted.<sup>15</sup>

## **FINDINGS & CONCLUSIONS**

Under Tenn. Code Ann. § 65-2-107, “All persons having a right under the provisions of the laws applicable to the authority to appear and be heard in contested cases as defined in this chapter shall be deemed parties to such proceedings for the purposes of this chapter. In addition, the authority may upon motion allow any interested person to intervene and become a party to any contested case.” Along with its own statutes and rules, contested case proceedings before the Authority are governed by the provisions of Tenn. Code Ann. § 4-5-101, *et seq.*, known as the Tennessee Uniform Administrative Procedures Act (“UAPA”). Tenn. Code Ann. § 4-5-310 establishes the following criteria for considering requests for mandatory and permissive intervention:

- (a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:
  - (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
  - (2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
  - (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

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TRA Inspection Fee (“PCOP”) in Docket No. 15-00001. On January 12, 2015, the panel assigned in Docket No. 15-00001 suspended the effective date of the proposed PCOP tariff for sixty days through March 30, 2015.

<sup>15</sup> *Id.* at ¶ 14.

- (b) The agency may grant one (1) or more petitions for intervention at any time, upon determining that the intervention sought is in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.<sup>16</sup>

Further, the UAPA provides that a Hearing Officer may, at any time, limit or impose conditions upon or otherwise modify an intervenor's participation in the proceedings.<sup>17</sup> Similarly, TRA Rule 1220-01-02-.08 directs that requests for intervention before the Authority are to be made and considered as follows:

- (1) Petitions for intervention shall be granted in accordance with T.C.A. § 4-5-310 and T.C.A. § 65-2-107.
- (2) A petition for intervention shall set forth with particularity those facts that demonstrate that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Intervention may be denied or delayed for failure to provide such specific facts.
- (3) A petition for intervention shall be filed at least seven (7) days prior to the date of the contested case hearing.<sup>18</sup>

Finally, TRA Rule 1220-1-2-.06 requires any party opposing a motion in a contested case to file and serve a response to the motion within seven (7) days of service of the motion.

### ***Timeliness***

Under Tenn. Code Ann. § 4-5-310(a)(1) and TRA Rule 1220-01-02-.08(3), a petition for intervention must be filed at least seven (7) days prior to the date of the contested case hearing. The instant proceeding is yet in its early stages; discovery has not formally commenced, nor has a hearing date been established. Thus, the City's appears to have been diligent in filing its request to intervene in this matter. Therefore, the Hearing Officer considers the *Petition to Intervene* timely-filed.

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<sup>16</sup> Tenn. Code Ann. § 4-5-310.

<sup>17</sup> Tenn. Code Ann. § 4-5-310(c) and (d).

<sup>18</sup> Tenn. Comp. R. & Regs. 1220-01-02-.08.

### ***Content & Requisite Showing***

Tenn. Code Ann. 4-5-310(a)(2) and TRA Rule 1220-01-02-.08(2) require that a petition to intervene state particular facts that demonstrate a legal right or interest held by the petitioner may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Tenn. Code Ann. § 65-4-118(b)(1) provides a general basis for the qualification of the Consumer Advocate as an intervening party to represent the interests of Tennessee public utility consumers, as follows:

The consumer advocate division has the duty and authority to represent the interests of Tennessee consumers of public utilities services. The division may, with the approval of the attorney general and reporter, participate or intervene as a party in any matter or proceeding before the authority or any other administrative, legislative or judicial body and initiate such proceeding, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the rules of the authority.<sup>19</sup>

Thus, according to the statute, with the approval of the Attorney General and upon satisfaction of the requisite showing for intervention under the UAPA and the TRA's Rules, the Consumer Advocate may be permitted to intervene as a party for the purpose of representing those Tennessee consumers of public utility services that have legal rights or interests that may be determined in proceedings before the TRA. Tenn. Code Ann. § 65-4-118(b)(1) provides for the Consumer Advocate's qualification as an intervenor under law, but in no way confers upon the Consumer Advocate an automatic or absolute right to participate in any particular Authority proceeding.

In the instant proceeding, TAWC seeks approval to increase its Capital Riders' tariff percentage rates for the 2015 calendar year. As TAWC's requests directly implicate the rates and charges that will be paid by the consumers that it serves, the Hearing Officer finds that there exists a sufficient factual basis upon which to find that legal rights or interests held by those

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<sup>19</sup> Tenn. Code Ann. § 65-4-118(b)(1).

consumers may be determined in this proceeding, and that, under Tenn. Code Ann. § 65-4-118, the Consumer Advocate is qualified to represent those interests before the Authority.

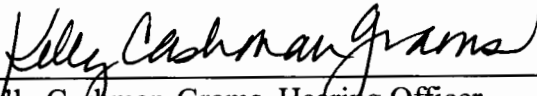
***Procedural Due Process***

Finally, Tenn. Code Ann. 4-5-310(a)(3) requires that the Hearing Officer grant a petition for intervention only upon determining that “the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing intervention.” The petitioner in this matter, TAWC, has not filed a response or objected to the City’s request to intervene in this matter. Therefore, given the nature of the proceeding, the promptness of the request to intervene, and lack of opposition thereto, the Hearing Officer finds that the Consumer Advocate’s intervention should not unduly delay or prejudice the administration of these proceedings.

THEREFORE, upon due consideration, the Hearing Officer concludes that the legal rights, duties, privileges, immunities or other legal interest of the City, which is a customer of the water services provided by TAWC, may be determined in this proceeding. Further, that the City’s request to intervene is timely-filed and its intervention should not impair the interests of justice or the orderly and prompt conduct of the proceedings. For these reasons, the Hearing Officer concludes that the City’s *Petition to Intervene* should be granted.

**IT IS THEREFORE ORDERED THAT:**

- 1) The *Petition to Intervene* filed by the City of Chattanooga, Tennessee, is granted.
- 2) The City of Chattanooga, Tennessee, may intervene and participate as a party in this proceeding and, as such, shall receive copies of any notices, orders, or other documents filed herein.

  
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Kelly Cashman-Grams, Hearing Officer