

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 26, 2016

IN RE:	)	
	)	DOCKET NO.
PETITION OF TENNESSEE-AMERICAN WATER	)	15-00111
COMPANY REGARDING THE 2016 INVESTMENT	)	
AND RELATED EXPENSES UNDER THE	)	
QUALIFIED INFRASTRUCTURE INVESTMENT	)	
PROGRAM RIDER, THE ECONOMIC	)	
DEVELOPMENT INVESTMENT RIDER AND THE	)	
SAFETY AND ENVIRONMENTAL COMPLIANCE	)	
RIDER	)	

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ORDER GRANTING THE PETITION TO INTERVENE FILED BY  
CONSUMER ADVOCATE

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This matter is before the Hearing Officer of the Tennessee Regulatory Authority (“Authority” or “TRA”) to consider the *Petition to Intervene* filed in the docket by the Consumer Protection and Advocate Division of the Office of the Attorney General (“Consumer Advocate”) on December 14, 2015.

**BACKGROUND**

Tennessee-American Water Company (“TAWC”) is a public utility providing residential, commercial, industrial and municipal water service to approximately 78,000 customers in Tennessee. Pursuant to the Stipulation and Capital Riders approved in TRA Docket No. 13-00130, TAWC filed a *Petition* on November 12, 2015 regarding its qualifiable 2016 investment and related expenses.

During the regularly scheduled Authority Conference held on November 23, 2015, the voting panel of Directors assigned to this docket appointed General Counsel or her designee to act as Hearing Officer to prepare this matter for hearing.

## **CONSUMER ADVOCATE'S *PETITION TO INTERVENE***

On December 14, 2015, the Consumer Advocate filed a *Petition to Intervene* seeking to intervene in the docket pursuant to Tenn. Code Ann. § 65-4-118, which qualifies the Consumer Advocate to represent the interests of Tennessee consumers of public utility services in proceedings before the Authority. The Consumer Advocate asserts that the interests of consumers may be affected by the proposed rate increase under the *Petition*. As such, it seeks to intervene in these proceedings to represent the interests of Tennessee consumers. In conclusion, the Consumer Advocate states that only by participating in this proceeding can it work to adequately protect the interests of consumers. TAWC does not oppose the Consumer Advocate's intervention in these proceedings.

## **FINDINGS & CONCLUSIONS**

Under Tenn. Code Ann. § 65-2-107, “[a]ll 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.
- (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>1</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>2</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>3</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

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<sup>1</sup> Tenn. Code Ann. § 4-5-310.

<sup>2</sup> Tenn. Code Ann. § 4-5-310(c) and (d).

<sup>3</sup> Tenn. Comp. R. & Regs. 1220-01-02-.08.

intervention must be filed at least seven (7) days prior to the date of the contested case hearing. The petition filed by the Consumer Advocate was received in the early stages of the case, before a procedural schedule was established, and well in advance of the anticipated hearing date. Therefore, the Hearing Officer considers the Consumer Advocate's petition timely-filed.

***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 that 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>4</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.

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

In the instant proceeding, TAWC seeks approval of its qualifiable 2016 investment and related expenses which could result in a rate increase for its customers. Under Tenn. Code Ann. § 65-4-118, the Consumer Advocate is qualified to represent the interests of TAWC's customers before the Authority. Therefore, as TAWC's requests will directly impact the rates and charges paid by its customers, the Hearing Officer finds that there is a sufficient factual basis to find that legal rights or interests held by those consumers may be determined in this proceeding.

***Procedural Due Process***

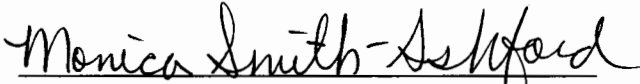
Finally, Tenn. Code Ann. 4-5-310(a)(3) requires that the Hearing Officer grant a petition for intervention only upon determining that "the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing intervention." TAWC does not oppose the Consumer Advocate's intervention in this matter. Therefore, given the nature of the proceeding, the promptness of the *Petition 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 TAWC's customers may be determined in this proceeding. Further, the Hearing Officer finds that the Consumer Advocate qualifies under law as an intervenor for the purpose of representing those consumer interests, and its *Petition to Intervene* was timely-filed and 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 Consumer Advocate's *Petition to Intervene* should be granted.

**IT IS THEREFORE ORDERED THAT:**

The *Petition to Intervene* filed by the Consumer Protection and Advocate Division of the

Office of the Attorney General is granted. The Consumer Protection and Advocate Division of the Office of the Attorney General 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.

  
Monica Smith-Ashford, Hearing Officer