

STATE OF TENNESSEE

Office of the Attorney General



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November 1, 2018

Monica Smith-Ashford, Hearing Officer
Tennessee Public Utilities Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243

RE: TPUC Docket No. 18-00099, *Expedited Joint Petition of Tennessee-American Water Company and Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc. for Approval of an Asset Purchase Agreement and for the Issuance of a Certificate of Convenience and Necessity*

Dear Madam Hearing Officer:

This letter is in response to Joint-Petitioners' unilateral submission of a proposed procedural schedule. The Consumer Advocate will address a few key points and submit its own proposed procedural schedule that we believe is fair to the companies, the Consumer Advocate, and the Tennessee Public Utility Commission.

On October 31, 2018, Joint-Petitioners emailed a proposed procedural schedule to the Consumer Advocate. Before the Consumer Advocate could meet with its experts to determine the feasibility of a schedule and to draft a response, we were surprised to see Joint-Petitioners' filing this morning in the TPUC Docket Room of a unilateral proposal. In the filing, Joint-Petitioners seek to limit the Consumer Advocate to one round of discovery. Further, Joint-Petitioners would allow the Consumer Advocate one week after the submission of discovery requests to analyze the responses, identify issues, form recommendations, and file testimony. Nine days later, Joint-Petitioners would file rebuttal testimony, and Commission Staff would have less than two weeks to analyze the Parties' positions prior to a Hearing on the Merits.

It is important to note that Joint-Petitioners have provided no statutory basis that requires or even allows for an expedited procedural schedule. Instead, they claim the transaction must be closed before the end of the year, again with no facts or reasoning, and strive to limit the opportunity for discovery requests and analysis by the Consumer Advocate.

Joint Petitioners' proposal is not a simple or unimportant one. Many questions and deficiencies remain, including, but in no way limited to, the following:

- Why the *Petition* fails to contain, as established in TPUC Rules, information relating to customer notices of tariff changes and revision of rates
- Why no quarterly financial statements or proposed depreciation schedules are included in the record;
- Why the *Petition* fails to contain any support to determine the reasonableness of existing rates;
- How Thunder Air, Inc. justifies the operation of the utility without a Certificate of Public Convenience and Necessity;
- Why the *Petition* includes no details of the historic net book value of the acquired assets (such documentation would include audited financial statements with a verification of that portion of Thunder Air assets associated with the water distribution system);
- Why Thunder Air, Inc. includes no financial statements identifying the financial results of its utility operations;
- Why Joint-Petitioners include nothing in the record to indicate whether the scope of acquired assets is beyond that necessary to provide utility service;
- How Tennessee-American's acquisition costs should be addressed in rates, and whether existing Tennessee-American consumers will be assessed those costs as well;
- Why Tennessee-American intends to subject the service area to new fees, charges, and riders without customer notice;
- Whether Thunder-Air, Inc. has the "full power and authority to conduct the Business as it is now being conducted", as it has claimed;¹
- Why nothing in the record establishes whether the acquisition is in the public interest of Tennessee-American's existing customer base, including an explanation of whether customers will incur their specific Capital Rider charges and Production Costs and Other Pass-Throughs Rider charges, or if such amounts should be the same for existing Tennessee-American and Thunder Air, Inc. customers; and
- Whether the Tennessee Department of Environment and Conservation's Assessment of Natural Resources Damages, Civil Penalty Assessment, and Damages due to TDEC – totaling approximately \$239,118.62 – have been or will be assessed to ratepayers.²

Simply put, Joint Petitioners seek the Commission's approval of rates as just and reasonable absent the proper process. And moreover, Joint Petitioners are attempting to have these rates approved on an "expedited" basis, without the opportunity for meaningful review and to the detriment of TPUC's authority to set just and reasonable rates as well as the Consumer Advocate's statutory duty to represent ratepayers. To do so would in no way represent the public interest.

The following procedural schedule will allow for an appropriate amount of time to examine these issues as well as any more issues that may arise:

¹ See Joint-Petitioners' Petition, Exhibit A, at 3.

² See *In re Mr. John Thornton, Thunder Air, Inc., d/b/a Thunder Enterprises, and Thunder Investments, Inc., Commissioner's Order and Assessment*, Case Number WPC15-0050 (September 21, 2016).

Docket No. 18-00099 - Consumer Advocate Proposed Procedural Schedule

Deadline	Due Date
1st Intervenor Discovery Requests	11/9/2018
Joint-Petitioners' First Responses to Requests	11/26/2018
2nd Intervenor Discovery Requests	12/14/2018
Joint-Petitioners' Second Responses to Requests	1/4/2018
Intervenor Testimony	2/15/2018
Joint-Petitioners' Rebuttal Testimony	3/1/2019
Pre-Hearing Status Conference	TBD
Target Hearing Date	March 2019

We respectfully request that Joint-Petitioners' proposed procedural schedule be denied and the Consumer Advocate's proposed procedural schedule be adopted instead. We also believe that a status conference may be necessary to address the best steps for proceeding with this Docket. Thank you for your time, and please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "DP Whitaker, III", with a stylized flourish at the end.

Daniel P. Whitaker, III
Assistant Attorney General

cc: Melvin Malone, Esq. (*by email*)
Linda Bridwell (*by email*)
William H. Horton, Esq. (*by email*)