

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

September 13, 2019

IN RE:)	
)	
PETITION OF TENNESSEE WATER SERVICE,)	DOCKET NO.
INC. FOR ADJUSTMENT OF RATES AND)	19-00028
CHARGES, APPROVAL OF A QUALIFIED)	
INFRASTRUCTURE INVESTMENT PROGRAM,)	
AND MODIFICATION TO CERTAIN TERMS)	
AND CONDITIONS FOR THE PROVISION OF)	
WATER SERVICE)	

**ORDER ON STATUS CONFERENCE AND ESTABLISHING PROCEDURAL SCHEDULE FOR
SUPPLEMENTAL HEARING**

This matter came before the Hearing Officer of the Tennessee Public Utility Commission (“Commission” or “TPUC”) during a telephone Status Conference held on September 11, 2019 with the parties Tennessee Water Service, Inc. (“TWS” or the “Company”) and the Consumer Advocate Unit in the Financial Division of the Office of the Attorney General (“Consumer Advocate”) to discuss a post-Hearing Supplemental Filing made by TWS on September 10, 2019.

RELEVANT BACKGROUND

The Hearing on the merits in this matter was held on September 9, 2019. During the Hearing, the Company admitted to some regulatory liability for failing to properly insure its assets but disagreed on the amount of the regulatory liability put forth in Consumer Advocate witness, Hal Novak’s testimony. TWS maintained that the amount of regulatory liability should be closer to a capital replacement project in Sugar Mountain, North Carolina. During the Hearing, the Company stated it could provide invoices regarding the cost of the Sugar Mountain project, and the Consumer Advocate stated it would need to seek discovery, file testimony, etc. if such information was

provided. There was some misunderstanding regarding the process for filing the supplemental information. Consequently, when TWS made the Supplemental Filing, the Consumer Advocate objected to the Filing and requested it be removed and that an immediate conference with the Hearing Officer be scheduled.¹ The Hearing Officer removed the Filing and scheduled a Status Conference with the parties for September 11, 2019 to discuss the Supplemental Filing.

SEPTEMBER 11, 2019 STATUS CONFERENCE

During the Status Conference, the Consumer Advocate reiterated its objection to the Supplemental Filing. The Consumer Advocate argued that the Hearing on the merits had concluded and additional filings should not be allowed. The Consumer Advocate disagreed with the process and questioned the Commission's authority to accept the Supplemental Filing and conduct a supplemental hearing on this issue. The Consumer Advocate expressed great concern about being able to conduct adequate discovery and prepare testimony in such a limited amount of time. TWS stated there was a misunderstanding about the process for providing the information, but it was providing the supporting documentation TWS witness, Catherine Heigel, stated the Company would be willing to provide to justify its amount of regulatory liability.

The Hearing Officer stated the Commission was interested in receiving the Company's supporting documentation but also as a matter of procedural due process wanted to give the Consumer Advocate an opportunity to conduct discovery on the Supplemental Filing and file testimony and have a supplemental Hearing limited to the singular issue of the amount of regulatory liability. The Hearing Officer informed the parties that the Supplemental Hearing had be conducted at the October 14, 2019 Commission Conference. Due to statutory deadlines regarding rate cases, this docket must be decided at the November 4, 2019 Commission Conference. The Hearing Officer recognized that this was a very compressed timeframe, but regulatory liability is an issue of

¹ Email from Wayne Irvin to Monica Smith-Ashford, 19-00028 –RE: TPUC – TWS Late Filed Exhibits (September 10, 2019).

first impression with respect to matters concerning what may be unforeseen damages and insurance, and this issue developed late in the proceedings. Due to the short timeframe, the discovery, testimony, and Supplemental Hearing would be limited to the singular issue of the appropriate amount of regulatory liability, if any, in light of the Company's admission that it failed to properly insure the destroyed assets.

During the Status Conference, the Consumer Advocate raised questions about Exhibit 6 to the Supplemental Filing and referred to it as another amended petition. The Company clarified that Exhibit 6 was an updated summary of its positions that came out at the Hearing. After the Status Conference, in an email to the Hearing Officer dated September 12, 2019, the Consumer Advocate stated it thinks it has identified some potential issues with Exhibit 6 but is still evaluating and complained that no witness had sponsored or explained it. The Consumer Advocate stated it has concerns that Exhibit 6 could broaden the scope of the Supplemental Hearing. In its September 12th email, the Consumer Advocate also raised the issue that the Company should be denied recovery from ratepayers of any direct or indirect costs associated with proceedings or after September 10, 2019.

FINDINGS AND CONCLUSIONS

Tenn. Comp. R. & Regs. 1220-02-.22 states:

In any contested case the Commission or the Hearing Officer:

- (1) May determine that there is no genuine issue as to any material fact. In reaching such determination, the Commission or Hearing Officer may, in its discretion, hear and determine all or any part of a case, without hearing oral testimony;
- (2) May, **on its own motion** or the motion of any party, allow amendments, consolidate cases, join parties, **sever aspects of the case for separate hearings**, permit additional claims or contentions to be asserted, bifurcate **or otherwise order the course of proceedings in order to further the just, efficient and economical disposition of cases consistent with the statutory policies governing the Commission**; and
- (3) Shall afford all parties an opportunity to be heard after reasonable

notice before exercising these general procedural powers. (emphasis added)

Supplemental Filing

The Hearing Officer finds that during the Hearing in this matter, an important issue was raised regarding TWS's admission of regulatory liability for not having adequate insurance for its assets that were subsequently destroyed by a wildfire. There is disagreement between the Company and the Consumer Advocate regarding the amount of the regulatory liability. Further, the Hearing Officer finds that the Commission has not deliberated or made a final determination in this matter. Therefore, the Hearing Officer concludes that pursuant to Tenn. Comp. R. & Regs. 1220-02-.22 (2) it is appropriate to conduct a Supplemental Hearing on the singular issue of the appropriate amount of regulatory liability, if any, in light of the Company's admission that it failed to properly insure the destroyed assets. No other issues will be considered. The Supplemental Hearing shall be held on October 14, 2019 and the Supplemental Filings and Proceedings will be conducted in accordance with the procedural schedule attached as **Exhibit A**. The Consumer Advocate should be prudent and reasonable in its use of discovery considering the compressed timeframe.

Exhibit 6

Regarding Exhibit 6, the Consumer Advocate's concerns with regard to Exhibit 6 are understandable since it has not had an opportunity to completely review the filing. The Company maintains it is a summary or an update of their position. The Hearing Officer agrees with the Company that Exhibit 6 is a summary of its position. It is not uncommon for utilities to file such summary spreadsheets post-Hearing to update positions, correct mistakes, etc. In fact, the Commission will often ask for such a summary. However, so that Exhibit 6 does not slow down the process for the Supplemental Hearing while the Consumer Advocate continues its review, the Hearing Officer concludes that Exhibit 6 should be made a separate docket filing from the rest of the Supplemental Filing. The Docket Room will handle separating the filing. Exhibit 6 will not be a

part of the Supplemental Hearing, but if the Consumer Advocate wants to make a filing in response to Exhibit 6 it may do so. If the Consumer Advocate sees any mistakes, I encourage the Consumer Advocate to work with TWS to address them. Another Status Conference can be scheduled to discuss Exhibit 6 if necessary.

TWS Supplemental Filing Expenses

In the September 12th email to the Hearing Officer, the Consumer Advocate also brought up the issue of whether TWS should be denied recovery from ratepayers of any of its “direct or indirect cost and expenses of the proceedings on and after September 10, 2019” since the Company filed the exhibits after the Hearing concluded. The Hearing Officer finds that the Consumer Advocate’s point is well taken. The Hearing Officer concludes that TWS should track and file all of its expenses related to the September 10, 2019 Supplemental Filing. This includes all work related to the Supplemental Filing through the Supplemental Hearing.

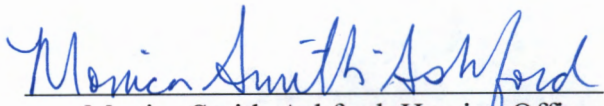
IT IS THEREFORE ORDERED THAT:

1. The following single issue has been established for supplemental proceedings: **The appropriate amount of regulatory liability, if any, in light of the Tennessee Water Service Inc.’s admission that it failed to properly insure the destroyed assets.** No other issues should be raised at the Supplemental Hearing.

2. The parties shall adhere to the Procedural Schedule attached to this Order as **Exhibit A**.

3. Exhibit 6 of the Tennessee Water Service Inc.’s September 10, 2019 Supplemental Filing will be made a separate docket filing.

4. Tennessee Water Service, Inc. shall track its expenses related to the Supplemental Filing through the date of the Supplemental Hearing and submit those expenses within three (3) days after the conclusion of the Supplemental Hearing.


Monica Smith-Ashford, Hearing Officer

SUPPLEMENTAL HEARING PROCEDURAL SCHEDULE

Docket No. 19-00028

September 13, 2019

Due Date	Filing/Activity
September 16, 2019	TWS Pre-Filed Testimony
September 23, 2019	Consumer Advocate Discovery Requests
September 27, 2019	TWS Responses to Consumer Advocate Discovery Requests
October 7, 2019	Consumer Advocate Pre-Filed Testimony
October 9, 2019 (close of business)	TWS Pre-Filed Rebuttal Testimony
October 14, 2019	Target Hearing Date

- All filings shall be filed in the TPUC docket room by 2:00 p.m. (central) on the date due, except where noted.
- Nothing herein restricts the parties from participating in additional informal discovery.
- Copies of all discovery exchanged between the parties shall be filed with TPUC within 3 business days of the exchange of information.
- For all spreadsheets, a copy shall be filed in Excel format with working formulas intact. This includes spreadsheets that are exhibits to Pre-filed Testimony.
- Rebuttal Testimony is limited only to issues raised in the Intervenor's Direct Testimony and should include the page and line number of the Intervenor's testimony that is being rebutted.