

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

October 29, 2024

IN RE:

**TENNESSEE WATER SERVICE, INC. PETITION
FOR APPROVAL OF ITS 2024 ANNUAL RATE
REVIEW FILING PURSUANT TO TENN. CODE
ANN. § 65-5-103 (d)(6) AND REQUEST FOR RATE
STRUCTURE MODIFICATION**

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**DOCKET NO.
24-00028**

**ORDER DENYING JOINT MOTION TO FILE LATE-FILED SETTLEMENT
AGREEMENT**

This matter is before the Administrative Judge of the Tennessee Public Utility Commission (“Commission” or “TPUC”) to consider the *Parties Joint Motion for Leave to File a Stipulation and Settlement Agreement* (“*Joint Motion*”) filed by Tennessee Water Service (“TWS”) and the Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate” on July 25, 2024.

RELEVANT BACKGROUND

On April 30, 2024, Tennessee Water Service, Inc. (“TWS”) filed its *Petition for Approval of 2024 Rate Review Filing and Rate Structure Modification* (“*Petition*”) pursuant to the Annual Rate Review Mechanism (“ARRM”) established as part of the *Stipulation and Settlement Agreement* (“*Settlement Agreement*”) with the Consumer Advocate that was approved by the Commission in Docket No. 23-00046. This is the first annual filing since the ARRM approval.

THE *JOINT MOTION*

In the *Joint Motion* the Parties seek to file a Settlement Agreement after the July 22, 2024, deadline established in the Procedural Schedule and instead file it on July 25th. The Parties maintain:

The Parties arrived at this Stipulation and Settlement Agreement on July 22, 2024 in principle after lengthy arm's length negotiations, and thereafter needed to obtain the necessary authorizations and signatures from authorized signators. The Parties believe the Stipulation and Settlement Agreement meets the criteria for entering and filing into settlement agreements under the Administrative Procedures Act and the Rules of the Tennessee Public Utility Commission ("TPUC"). Therefore, the Parties should be permitted to file this Stipulation and Settlement Agreement outside of the Order Establishing Procedural Schedule.¹

The Parties state they informed the Administrative Judge on July 22nd they were working towards a settlement and an extension of time was necessary to file the settlement agreement in the docket.² According to the Parties, the Administrative Judge informed them on July 23rd via email that they could not file the settlement agreement in the docket file because it was after the deadline in the procedural order. The Parties argue that they should not be “prejudiced or impeded from settling this Docket.”³ According to TWS and the Consumer Advocate,

[t]his settlement is integral to expression of the Parties' current positions in this Docket, is an effort to resolve the disputed issues, and is necessary to complete the proceedings as efficiently as possible. While the Parties understand there is a 120-day statutory deadline for TPUC to render a decision in this matter, there is no statute or rule that sets limitations on the time frame in which the Parties can settle a matter before the Commission. The primary factor to be considered is the overall policy consideration of encouraging settlements with no limitations or impediments being imposed on the Parties.⁴

¹ *Joint Motion*, p. 1 (July 25, 2024).

² *Id.* at 2.

³ *Id.*

⁴ *Id.*

Further, the Parties maintain:

If TPUC were to require a contested hearing in this case without allowing the Parties the opportunity to settle this matter, it is both redundant, since the issues are settled, and inefficient since it discourages the Parties' attempts at cooperative resolution. The Parties believe settlements should be encouraged and the attached Stipulation and Settlement Agreement will provide a prompt and efficient conclusion to this Docket, ensuring both Parties' positions are considered and the result being just and reasonable rates for consumers. The Parties believe that settlement also promotes a reduction in cost of continued litigation to all stakeholders.⁵

FINDINGS & CONCLUSIONS

Tenn. Code Ann. § 4-5-105 provides:

Except to the extent precluded by another provision of law, informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is encouraged. **Agencies may establish specific procedures for attempting and executing informal settlement of matters.** This section does not require any party or other person to settle a matter pursuant to informal procedures.

The Commission encourages parties to reach agreement on some or all of the issues in a docket when possible. Regardless of whether the *parties* reach an agreement, the Commission will conduct its own, independent analysis of the issues and make its own decision on the issues in a docket. The Commission does not rubber stamp settlement agreements. Therefore, Commission Advisory Staff must be given adequate time to review and analyze docket filings in order to make a recommendation to the Commissioners, and the Commissioners must be afforded adequate time to review the docket filings and Commission Advisory Staff's recommendation. Because Tenn. Code Ann. § 65-5-103(d)(6)(C) requires that the Commission review the annual rate review filings within 120 days, it is crucial that the deadlines established in the Administrative Judge's

⁵ *Id.*

Procedural Order be met to ensure that the statutory deadline will be met.

The Administrative Judge issued the *Order Establishing Procedural Schedule* on June 11, 2024, which included a deadline of July 22, 2024, for the filing of a settlement agreement. This deadline established the minimum length of time necessary to afford Commission Advisory Staff time to review and analyze the docket filings and prepare a recommendation to the Commissioners and for the Commissioners to review the docket filings and Commission Advisory Staff's recommendation prior to the hearing on the merits. This timeframe reflects a balance between providing the parties a reasonable amount of time for the procedural docket deadlines and allowing a reasonable amount of time for Commission review. Such timeframe is standard for most of the Commission's dockets and certainly the standard timeframe for the annual rate review filing dockets.

When the Administrative Judge informed the parties on July 23rd that a late-filed settlement agreement would not be accepted, the Administrative Judge did not tell the parties they were prohibited from presenting their agreed issues to the Commission. In fact, the Administrative Judge presented the parties with other options to reflect the settled issues besides filing a formal settlement agreement. The Administrative Judge told the parties they could stipulate to issues or file a letter indicating there were no contested issues in the docket.⁶ The Consumer Advocate has been a party in other dockets where such a letter indicating there were no contested issues remaining in the docket has been filed, or the Consumer Advocate has filed such letters in other dockets before the Commission.

The Administrative Judge finds that the internal procedures of the Commission must be safeguarded to allow for thorough analysis and review of the docket filings before the

⁶ See July 23, 2024, email from Monica Smith-Ashford, Administrative Judge, to the Parties. (Attachment A to this Order).

Commissioners must decide a docket. Further, the Administrative Judge finds there are other ways to reflect the parties' agreements if a timely settlement agreement cannot be filed. Therefore, the Administrative Judge concludes that the filing of a settlement agreement on July 25, 2024, does not adhere to the deadlines set forth in the *Order Establishing Procedural Schedule* and the *Joint Motion* should be DENIED.⁷

IT IS HEREBY ORDERED THAT:

The *Parties Joint Motion for Leave to File a Stipulation and Settlement Agreement* is denied.


Monica Smith-Ashford, Administrative Judge

⁷ The Administrative Judge informed the parties via email dated July 30, 2024, that the *Joint Motion* was denied.

ATTACHMENT A

Monica Smith-Ashford

From: Monica Smith-Ashford <Monica.Smith-Ashford@tn.gov>
Sent: Tuesday, July 23, 2024 12:43 PM
To: Karen H. Stachowski; Shilina B. Brown; Vance Broemel (Vance.Broemel@ag.tn.gov); Victoria Glover; Freeman, Ryan; Terra N. Allen
Cc: Ryan McGehee
Subject: Re: 24-00028 TWS Update

Shilina and Ryan,

I appreciate the Parties' efforts to reach an agreement in this matter, however, due to the statutory deadline for Annual Rate Review filings, July 22nd was the last day in which a settlement agreement could be filed in this matter. Staff must have adequate time to review, analyze, and advise the Commissioners on the docket, and the Commissioners must have time to review the filings and Staff's recommendation. Due to the statutory deadline, this matter must be heard during the August 12th Commission Conference as planned.

At this point, the parties could file a "no contested issues" letter or stipulate to certain issues or witness testimony. Then, on August 12th, the hearing would proceed on any remaining contested issues, or we would have a "no contested issues" hearing if all issues have been resolved by the Parties.

Please let me know how you all plan to proceed. In addition, I am available for a Status Conference if the Parties have any questions or need to discuss this matter further.

Thank you



Monica Smith-Ashford | Administrative Judge
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243
p. 615-770-6858
monica.smith-ashford@tn.gov
tn.gov/tpuc

From: Shilina B. Brown <Shilina.Brown@ag.tn.gov>
Sent: Monday, July 22, 2024 3:13 PM
To: Monica Smith-Ashford <Monica.Smith-Ashford@tn.gov>
Cc: Freeman, Ryan <rffreeman@bakerdonelson.com>; Dante Destefano <Dante.Destefano@nexuswg.com>; Phil Drennan <Phil.Drennan@nexuswg.com>; Tiffany Van Horn <Tiffany.Vanhorn@nexuswg.com>; Victoria Glover <Victoria.Glover@AG.TN.GOV>; Karen H. Stachowski <Karen.Stachowski@ag.tn.gov>; Vance Broemel <Vance.Broemel@ag.tn.gov>; Terra N. Allen <Terra.Allen@ag.tn.gov>
Subject: 24-00028 TWS Update

Monica,

The parties are writing to provide an update on the progress of Tennessee Public Utility Commission (“TPUC”) Docket No. 24-00028, Tennessee Water Service, Inc. Petition for Approval of its 2024 Annual Rate Review Filing Pursuant to Tenn. Code Ann. § 65-5-103 (d)(6) and Request for Rate Structure Modification.

Tennessee Water Service, Inc. and the Consumer Advocate Division have been involved in cooperative discussions concerning settling this docket and have been diligently working on a Settlement Agreement. We would request an extension of time to finalize and hopefully file a Settlement Agreement.

Thanks,

Shilina

Shilina B. Brown | Senior Assistant Attorney General

Office of the Tennessee Attorney General

Financial and Regulatory Section - Consumer Advocate Division

500 Dr. Martin L. King Jr. Blvd., Nashville, TN 37243

P.O. Box 20207, Nashville, Tennessee 37202

p. 615.741.2357

f. 615.741.1026

Shilina.Brown@ag.tn.gov



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