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February 16, 2007

**VIA HAND-DELIVERY**

Chairman Sara Kyle  
c/o Sharla Dillon  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

***Re: Petition Of Tennessee American Water Company To Change And Increase Certain Rates And Charges So As To Permit It To Earn A Fair And Adequate Rate Of Return On Its Property Used And Useful In Furnishing Water Service To Its Customers  
Docket No. 06-00290***

Dear Chairman Kyle:

Enclosed please find the original and sixteen (16) copies of Tennessee American Water Company's Motion for Entry of Proposed Protective Order No. 2 for the Protection of Highly Confidential Information, and [proposed] Protective Order No. 2.

Please return two copies of this letter, which I would appreciate your stamping as "filed," and returning to me by way of our courier.

Should you have any questions concerning any of the enclosed, please do not hesitate to contact me. Thank you very much for your continued assistance in this matter.

With kindest regards, I remain

Very truly yours,



R. Dale Grimes

RDG/smb  
Enclosures

Chairman Sara Kyle  
February 15, 2007  
Page 2

cc: Hon. Pat Miller (*w/o enclosure*)  
Hon. Ron Jones (*w/o enclosure*)  
Hon. Eddie Roberson (*w/o enclosure*)  
Ms. Darlene Standley, Chief of Utilities Division (*w/o enclosure*)  
Richard Collier, Esq. (*w/o enclosure*)  
Mr. Jerry Kettles, Chief of Economic Analysis & Policy Division (*w/o enclosure*)  
Ms. Pat Murphy (*w/o enclosure*)  
Michael A. McMahon, Esq. (*w/enclosure*)  
Vance Broemel, Esq. (*w/enclosure*)  
Henry Walker, Esq. (*w/enclosure*)  
David Higney, Esq. (*w/enclosure*)  
Mr. John Watson (*w/o enclosure*)  
Mr. Michael A. Miller (*w/o enclosure*)

# PROPOSED

## BEFORE THE TENNESSEE REGULATORY AUTHORITY NASHVILLE, TENNESSEE

IN RE:

PETITION OF TENNESSEE AMERICAN	)	
WATER COMPANY TO CHANGE AND	)	
INCREASE CERTAIN RATES AND	)	
CHARGES SO AS TO PERMIT IT TO	)	Docket No. 06-00290
EARN A FAIR AND ADEQUATE RATE	)	
OF RETURN ON ITS PROPERTY USED	)	
AND USEFUL IN FURNISHING WATER	)	
SERVICE TO ITS CUSTOMERS	)	

### TENNESSEE AMERICAN WATER COMPANY'S MOTION FOR ENTRY OF PROPOSED PROTECTIVE ORDER NO. 2 FOR THE PROTECTION OF HIGHLY CONFIDENTIAL INFORMATION

As discussed at the Status Conference on Friday, February 9, 2007, in an effort to resolve one of the objections raised to certain of the Intervenor's discovery requests, Petitioner Tennessee American Water Company has offered to produce to the parties certain highly confidential information upon the entry of an additional protective order which Tennessee American Water submits will adequately protect such information. Accordingly, Tennessee American Water hereby respectfully moves for the entry of proposed Protective Order No. 2 ("Proposed Order"), submitted contemporaneously herewith.

As explained at the Status Conference, the information Tennessee American Water has agreed to produce under additional protections consists of highly sensitive proprietary and commercial information or trade secrets, which if released to the public could result in significant harm to Tennessee American Water, and its parent company American Water Works Company, and its ultimate parent company, RWE. The Proposed Order would also protect other information requested by the Intervenor's that is related to the proposed initial public offering of shares of American Water stock -- information which is totally irrelevant to this rate case and is

objectionable for a host of other reasons set forth in Tennessee American Water's discovery responses. Public disclosure of the IPO-related information could result in violations of the federal securities laws, potentially leading to extremely negative consequences for the IPO such as enforcement actions by the Securities Exchange Commission, which could result in forced postponement of the effectiveness of the registration statement of the IPO to cure an alleged violation of the anti-gun jumping provisions of the federal securities laws, and/or potential liability for unauthorized disclosures. The period of time leading up to the registration is highly critical and subject to scrutiny by the SEC, and therefore the need is great for extra caution to prevent even inadvertent disclosure of potentially prohibited information.

The Proposed Order provides these necessary added protections, which are not found in the protective order for confidential information entered on January 19, 2007 ("Order No. 1"). That previous order was agreed to and entered by the Hearing Officer before the Intervenor served their expansive discovery requests that intrude, inappropriately and unnecessarily, into highly confidential matters that Tennessee American Water could not reasonably have expected to be subject to discovery in a rate case. Order No. 1 is thus inadequate because it was crafted only to protect confidential information, defined as:

documents, testimony and information in whatever form which the producing party, in good faith, deems to contain or constitute trade secrets, confidential commercial information, confidential research, development, financial statements, confidential data of third parties, or other commercially sensitive information

The Proposed Order, however, contains the additional protections necessary to protect Highly Confidential Information, defined as:

highly sensitive proprietary and commercial information or trade secrets the public release of which could result in significant harm to the Producing Party, including but not limited to information that is required by state or federal laws or regulations to be kept confidential...

\* \* \*

Expressly including, but not limited to, information the public disclosure of which by the Producing Party may result in any publicity that may contribute to conditioning the public mind or arousing public interest in any offer or offering (as those terms are defined by federal law) by the Producing Party in violation of Section 5(c) of the Securities Act of 1933....

\* \* \*

[And including] information and/or documents that, if publicly disclosed in advance of the effective date of a registration statement for the IPO, could (1) delay the Securities and Exchange Commission's declaration of effectiveness of the registration statement for the IPO to cure an alleged violation of the anti-gun jumping provisions of the U.S. securities laws; and/or (2) subject AWW to liability with respect to such disclosures.

In light of the highly sensitive nature of this information, the Proposed Order's additional protections, include, but are not limited to:

- Providing that each person, except Tennessee American Water, counsel of record, and TRA personnel, having access to Highly Confidential Information, not just outside consultants and experts, must sign an affidavit acknowledging the terms of the order, which will be furnished to Tennessee American Water.
- Providing a finding that unauthorized disclosure of Highly Confidential Information will cause irreparable harm thereby enabling Tennessee American Water to promptly obtain an injunction to prevent a violation or threatened violation of the TRA's order.
- Providing those subject to the order with meaningful notice of the risks of unauthorized disclosure and of the potential consequences of violating the order.
- Providing a procedure for protecting Highly Confidential Information (*including testimony*) that is inadvertently not initially so designated.
- Providing mechanisms for the use of Highly Confidential information during hearings.
- Providing Tennessee American Water advance notice of and the opportunity to object for good cause to the disclosure of Highly Confidential Information to individuals other than counsel of record and TRA personnel.

- Placing the responsibility on parties who choose to possess Highly Confidential information to make lawful efforts to protect such information from public disclosure.

Tennessee American Water has made extensive good faith efforts to explain the Proposed Order and support its language with applicable legal authority and to obtain the support of the Intervenor. These other parties, however, have stated that they oppose the entry of the Proposed Order. The reasons they have offered for opposing the Proposed Order are without merit or otherwise do not outweigh Tennessee American Water's legitimate interest in protecting Highly Confidential Information.

**1. Public Records Act Concerns**

The CAPD and the City claim that the Proposed Order would cause them to undertake obligations that they believe could place the City or CAPD in conflict with the Public Records Act. The City has cited Contemporary Media, Inc. v. The City of Memphis, 1999 Tenn. App. LEXIS 298 (Tenn. App. 1999), for the proposition that "a refusal of a public agency to disclose a public record based on the existence of a confidentiality agreement or protective order would constitute a knowing and willful violation of the Public Records Act." *See* Letter From Mr. McMahan dated February 13, 2007. Contemporary Media is an unreported case and has no precedential effect. *See* TENN. S. CT. R. 4. Additionally, the facts of Contemporary Media make it clear it is inapposite. The City of Memphis was found to be in violation of the Public Records Act where the records request at issue sought information that had not been placed under seal by the protective order in the case. The City has also cited a 1996 Attorney General's opinion that indicates that attempts by government entities to enter into private agreements to withhold information that must be disclosed under the Public Records Act are often unenforceable. TENN. ATT. GEN. OP. 96-144. This Opinion is also irrelevant to the present

situation. Tennessee American Water is not proposing that the City and CAPD enter into a private agreement with Tennessee American Water, but instead that the TRA enter a protective order which places Highly Confidential Information under seal and orders the parties to treat such information in a certain manner.

In Arnold v. City of Chattanooga, which was decided after Contemporary Media, and is binding precedent that Tennessee American Water has cited to the parties, the Court, in the context of holding that work product is not subject to public disclosure, confirmed that information subject to a protective order entered pursuant to the Tennessee Rules of Civil Procedure is also not subject to disclosure under the Public Records Act. 19 S.W.3d 779, 785 (Tenn. Ct. App. 1999). In reaching this conclusion, the Arnold court cited Ballard v. Herzke, 924 S.W.2d 652 (Tenn. 1996). In Ballard, the Tennessee Supreme Court held:

Tenn Code Ann. § 10-7-503(a) provides that governmental records shall be subject to public access, "unless otherwise provided by State law." In Appman v. Worthington, 746 S.W.2d 165 (Tenn. 1987), we held that the Public Records Act does not authorize public inspection of documents in a criminal case that are exempt from discovery by Rule 16, Tennessee Rules of Criminal Procedure. We reasoned that the Rules of Criminal Procedure are the law of this State, and therefore, are encompassed within the phrase, "unless otherwise provided by State law." Accordingly, we concluded that materials exempt from discovery by the rules of criminal procedure are not subject to inspection under the Tennessee Public Records Act.

The same reasoning applies in this case. The Rules of Civil Procedure are the "law" of this state. The protective order therefore was entered pursuant to "State law." Accordingly, documents sealed by the protective order are not subject to inspection under the Tennessee Public Records Act.

Id. at 662 (citations omitted).

Based on Ballard and Arnold, information protected from disclosure by a protective order entered by the TRA pursuant to the Tennessee Rules of Civil Procedure is not subject to

disclosure under the Public Records Act. *See also* Tenn. Atty. Gen. Op. 02-075 (June 12, 2002). The CAPD and City have refused repeated requests to provide binding authority for their claim that Ballard and Arnold are invalid.

## **2. Need For the Order**

Intervenors have stated the view that Order No. 1 is sufficient protection for this case. Tennessee American Water has demonstrated above both the need for additional protection and the elements of that protection that are not contained in the existing order. The CAPD has expressed concern about making the CAPD subject to any consequences if the CAPD violates the Proposed Order. The apparent efforts by parties to avoid any responsibility or consequences for violations of TRA orders further highlight the need for the Proposed Order. The CAPD and City argue that the Proposed Order is unnecessary while at the same time arguing that the Public Records Act prevents them from protecting from public disclosure any information provided by Tennessee American Water. These arguments highlight the inability of Order No. 1 to adequately protect information which if publicly disclosed would result in significant harm to Tennessee American Water. CAPD and the City have effectively announced that they do not believe that any protective order – presumably including Order No. 1 – protects Tennessee American Water information from public disclosure. As a result, absent the entry of the Proposed Order, Tennessee American Water is faced with the prospect that every time the City and CAPD receive a request for Tennessee American Water’s most highly confidential information, CAPD and the City will publicly disclose such information unless Tennessee American Water, *within five days*, obtains a court order enjoining them from doing so. Tennessee American Water respectfully submits that the parties seeking Tennessee American Water’s most highly confidential information should be held responsible for safeguarding such



information and if they cannot do so, Tennessee American Water should not be forced to provide them with such information.

Even taking at face value the CAPD's and City's claims that they are incapable of lawfully protecting Highly Confidential Information in their possession, a possible alteration in the Proposed Order may remedy these concerns. While not its first choice, Tennessee American Water proposes that the following paragraph, or words to its effect, could be added to the Proposed Order:

If any party or individual subject to this Order believes in good faith that it cannot protect from public disclosure Highly Confidential Information if such information is in such party's possession, custody or control, then such party shall give notice of such belief to the TRA and all parties. Additionally, any such party ("Concerned Party") shall not receive or accept possession, custody or control of any such information. Instead, all Concerned Parties shall receive access to and may review Highly Confidential Information upon reasonable notice during regular business hours at the TRA, at the offices of Tennessee American Water in Chattanooga or at the offices of the Tennessee American Water's counsel of record in Nashville. Concerned Parties may also receive access to and review such information at the offices of any other Party subject to this Order if such Party consents. Parties shall not serve copies of Highly Confidential Information on any Concerned Parties but shall give written notice to Concerned Parties of the filing of Highly Confidential Information. To the extent pleadings are filed that contain Highly Confidential Information, the party filing such a pleading shall serve Concerned Parties with a copy of such pleading that has all Highly Confidential Information redacted.

Language such as that proposed in this paragraph should enable all parties to review Highly Confidential Information while negating any concerns that the City or CAPD will have to produce Tennessee American Water's most sensitive information as a result of the Public Records Act.

### **Conclusion**

For all the foregoing reasons, Tennessee American Water respectfully requests that the Proposed Order be entered. While entry of the Proposed Order will allow Tennessee American Water to produce Highly Confidential Information it has already agreed to produce under such protections, it does not resolve the other objections Tennessee American Water has raised concerning the Intervenor's extremely overbroad, burdensome, unreasonable, and irrelevant requests. Discovery in this rate case needs to be focused on the issues necessary for the TRA Directors to determine just and reasonable rates, and should not be abused to obtain information for other unrelated reasons. Tennessee American Water is available to present oral arguments on this motion if desired by the Hearing Officer.

Respectfully submitted,



R. Dale Grimes (#6223)

J. Davidson French (#15442)

Ross I. Booher (#019304)

BASS, BERRY & SIMS PLC

315 Deaderick Street, Suite 2700

Nashville, TN 37238-3001

(615) 742-6200

*Counsel for Petitioner*

*Tennessee American Water Company*

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via the method(s) indicated, on this the 16<sup>th</sup> day of February, 2007, upon the following:

<input type="checkbox"/> Hand	Michael A. McMahan
<input type="checkbox"/> Mail	Special Counsel
<input type="checkbox"/> Facsimile	City of Chattanooga (Hamilton County)
<input checked="" type="checkbox"/> Overnight	Office of the City Attorney
<input checked="" type="checkbox"/> Email	Suite 400
	801 Broad Street
	Chattanooga, TN 37402
<input type="checkbox"/> Hand	Frederick L. Hitchcock, Esq.
<input type="checkbox"/> Mail	Shareholder
<input type="checkbox"/> Facsimile	Chambliss, Bahner & Stophel, P.C.
<input checked="" type="checkbox"/> Overnight	1000 Tallan Building
<input checked="" type="checkbox"/> Email	Two Union Square
	Chattanooga, TN 37402
<input checked="" type="checkbox"/> Hand	Vance Broemel
<input type="checkbox"/> Mail	Stephen Butler
<input type="checkbox"/> Facsimile	Consumer Advocate and Protection Division
<input type="checkbox"/> Overnight	Office of Attorney General
<input checked="" type="checkbox"/> Email	2nd Floor
	425 5th Avenue North
	Nashville, TN 37243-0491
<input checked="" type="checkbox"/> Hand	Henry M. Walker, Esq.
<input type="checkbox"/> Mail	Boult, Cummings, Conners & Berry, PLC
<input type="checkbox"/> Facsimile	Suite 700
<input type="checkbox"/> Overnight	1600 Division Street
<input checked="" type="checkbox"/> Email	P.O. Box 340025
	Nashville, TN 37203
<input type="checkbox"/> Hand	David C. Higney, Esq.
<input type="checkbox"/> Mail	Grant, Konvalinka & Harrison, P.C.
<input type="checkbox"/> Facsimile	633 Chestnut Street, 9 <sup>th</sup> Floor
<input checked="" type="checkbox"/> Overnight	Chattanooga, TN 37450
<input checked="" type="checkbox"/> Email	



BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

IN RE:

PETITION OF TENNESSEE AMERICAN )  
WATER COMPANY TO CHANGE AND )  
INCREASE CERTAIN RATES AND CHARGES )  
SO AS PERMIT IT TO EARN A FAIR AND )  
ADEQUATE RATE OF RETURN ON ITS ) Docket No. 06-00290  
PROPERTY USED AND USEFUL IN )  
FURNISHING WATER SERVICE TO ITS )  
CUSTOMERS )

**PROTECTIVE ORDER NO. 2**

Pursuant to the Tennessee Rules of Civil Procedure, to ensure that information which is highly sensitive proprietary and commercial information or trade secrets the public release of which could result in significant harm to the Producing Party, including but not limited to information that is required by state or federal laws or regulations to be kept confidential<sup>1</sup>, (hereafter collectively and individually referred to as “Highly Confidential Information”) is adequately protected, and to ensure that such protection is afforded only to material so entitled, the Hearing Officer, as appointed by the Tennessee Regulatory Authority (“TRA”), hereby orders that information designated by the producing party (“Producing Party”) as Highly Confidential Information shall receive all of the protections that apply to “Confidential Information” as set forth in the protective order entered on January 19, 2007 (“Protective Order No. 1”), as well as the following additional protections:

1. Should a party believe that information has been improperly designated as Highly Confidential Information, the party may petition the TRA Hearing Officer to remove the designation, explaining in the petition the basis for the party’s belief. Any such petition and any

<sup>1</sup> Expressly including, but not limited to, information the public disclosure of which by the Producing Party may result in any publicity that may contribute to conditioning the public mind or arousing public interest in any offer or offering (as those terms are defined by federal law) by the Producing Party in violation of Section 5(c) of the Securities Act of 1933.

responses thereto shall be filed under seal and shall remain under seal until the dispute has been resolved and the Hearing Officer has ordered that they be unsealed in whole or part. Any such petition must be filed not later than twenty (20) days prior to the Hearing on the Merits, or within five (5) days of receipt of the information designated Highly Confidential Information, whichever is later. Any Reply from the Producing Party seeking to protect the status of its Highly Confidential Information must be received not later than ten (10) days prior to the Hearing on the Merits or within four (4) days of service on the Producing Party of any petition to contest such designation, whichever is later. Any such petition may request that the information only be treated as Confidential Information or may request that the information be treated as neither Highly Confidential Information nor Confidential Information. In the event the designation of Highly Confidential Information is removed for certain information by a valid order, but the Confidential designation is not expressly removed, such information shall be considered designated as Confidential Information and shall be entitled to all the protections of Confidential Information unless and until such Confidential Information designation has been or is also ordered removed pursuant to Paragraph 11 of Protective Order No. 1.

2. Notwithstanding the terms of paragraphs 10 and 11 of Protective Order No. 1, the Hearing Officer shall only remove the designation of Highly Confidential Information if the Hearing Officer expressly finds that there is a reasonable basis for the information in question to be considered Highly Confidential Information as set forth in this order. All parties shall continue to treat all information designated "Highly Confidential Information" in accordance with the terms of this Protective Order, pending resolution of any dispute as to the status of such information by the TRA unless the disclosure of such information is otherwise permitted by this order.

3. Protective Order No. 1 and Protective Order No. 2 (collectively the "Protective Order") entered in this case shall not:

- (a) Operate as an admission for any purpose that any documents or information produced as Highly Confidential Information pursuant to the Protective Order are admissible or inadmissible in the trial or other hearing in these or any other proceedings;
- (b) Prejudice in any way the right of the Producing Party, at any time, on notice given in accordance with any applicable rules and regulations of the TRA, to seek appropriate relief in the exercise of discretion by the TRA or a court of competent jurisdiction for violations related to Highly Confidential Information of any provision of the Protective Order including, without limitation, injunctive<sup>2</sup> and declaratory relief, sanctions and penalties.

4. In the event that any of the parties seek to use Highly Confidential Information in the course of one or more hearings, or as part of the record of this proceeding, the party seeking to so use Highly Confidential information shall provide the Hearing Officer and all parties written notice of such request ("Request") not less than 3 days before the earlier of: (i) the first requested use of such Highly Confidential Information; or (ii) the final status conference before the Hearing on the Merits. However, if the Highly Confidential Information is first received by a

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<sup>2</sup> Parties in this proceeding have requested information that TAWC contends may bear upon TAWC's approved request for approval of a change in control to be effected through the public offering of the common stock of American Water Works ("AWW") through an initial public offering ("IPO"). TAWC represents that certain Highly Confidential Information consists of information and/or documents that, if publicly disclosed in advance of the effective date of a registration statement for the IPO, could (1) delay the Securities and Exchange Commission's declaration of effectiveness of the registration statement for the IPO to cure an alleged violation of the anti-gun jumping provisions of the U.S. securities laws; and/or (2) subject AWW to liability with respect to such disclosures. Accordingly, it is hereby found, that unauthorized disclosure (as defined herein) of Highly Confidential Information would constitute irreparable harm to TAWC, AWW and/or AWW's parent, RWE Aktiengesellschaft ("RWE") for the purposes of allowing an injunction to enter.

party later than eight (8) days prior to the final status conference, notice of the Request may be served within five (5) days after receipt but not less than two (2) days before the date of the requested use of such information unless otherwise ordered by the Hearing Officer. The Request shall set forth the specific Highly Confidential Information that the requesting party wishes to use and when the requesting party requests to use such information. If, after considering a Request to use Highly Confidential Information and considering the response, if any, of the Producing Party, the Hearing Officer permits the use of such Highly Confidential Information in any Hearing, or to be placed on the record: (i) the TRA or the Hearing Officer shall cause the portion of the record containing Highly Confidential Information to be placed under seal and; (ii) the TRA or the Hearing Officer shall clear the hearing room of all persons who are not subject to this Protective Order during any period of time when the Highly Confidential Information may be discussed during or used in a hearing.

5. Highly Confidential Information (including any quotes, excerpts or references to Highly Confidential Information) which is filed or placed on the record of these proceedings shall be filed under seal and shall remain with the TRA under seal after the conclusion of the proceeding. If such Highly Confidential Information is provided to courts for the purposes of appeal(s) from these proceedings, such information shall be provided, and shall continue to remain, under seal to the maximum extent permitted by law.

6. With respect to all Highly Confidential Information:

- (a) Highly Confidential Information shall only be used for this proceeding. After this proceeding has concluded, each party or individual that has received access to Highly Confidential Information other than the Producing Party and the TRA shall within 10 days either: (i) destroy or return all such Highly

Confidential Information; and (ii) certify in writing that such party or individual has returned or destroyed all Highly Confidential Information in its possession.

- (b) Absent an order of the TRA or other court of competent jurisdiction, only those identified in Paragraph 3 of Protective Order No. 1 who require access to such Highly Confidential Information for this proceeding and have fully executed a copy of the Affidavit Regarding Access to Highly Confidential Information ("Affidavit"), attached hereto, may receive access to Highly Confidential Information. A copy of each such executed Affidavit shall be provided to the Producing Party within 4 business days of its execution. Notwithstanding the foregoing, TRA directors, the Hearing Officer and members of the staff of the TRA shall not be required to execute the Affidavit.
- (c) Absent an order of the TRA or other court of competent jurisdiction OR prior written consent from the producing party, no person other than counsel of record for the parties, the Hearing Officer, TRA Directors and members of the staff of the TRA may receive access to Highly Confidential Information until at least 2 business days after the Producing Party has been given written notice that said person is to be provided with access to Highly Confidential Information. Such notice shall include the person's full name, address, employer and the category of authorized



person, identified in paragraph 3 of Protective Order No. 1, if any, to which such person qualifies.

- (d) If the Producing Party objects to a person, other than a counsel of record for a party, the Hearing Officer, TRA Directors and members of the staff of the TRA, receiving access to Highly Confidential Information, Producing Party may, within 2 business days of receiving notice that an individual is to receive access to Highly Confidential Information, file a written objection with the Hearing Officer setting forth the basis for the objection. Until any such objection is resolved by the Hearing Officer, the individual in question shall not be provided access to Highly Confidential Information.
- (e) No other disclosure of Highly Confidential Information shall be made to any person or entity except with the express written consent of the Producing Party or upon further order of the TRA or of any Court of competent jurisdiction, including those which may review these matters.

7. If any party or non-party subject to the Protective Order inadvertently fails to designate testimony as Highly Confidential Information prior to such testimony being provided, this failure shall not constitute a waiver of the Highly Confidential Information designation, provided the party or non-party who has provided the testimony shall notify the Hearing Officer and all parties in writing within five (5) days of discovery of such inadvertent failure to designate the testimony as Highly Confidential Information. Upon receiving such notice, all those subject to the Protective Order, including the Hearing Officer, shall immediately cause the subject

testimony to be treated as Highly Confidential Information and each party shall provide such notice to any employees, consultants or other individuals subject to the Protective Order who are affiliated with such party and who received or heard such testimony. The Hearing Officer shall thereafter promptly make a written determination whether a reasonable basis exists for the Producing Party to so designate such information as Highly Confidential and, if no such reasonable basis exists, shall so find in writing and shall remove the Highly Confidential designation. An inadvertent failure to designate testimony in advance as Highly Confidential Information, shall not, in any way, affect the TRA's determination as to whether the testimony is entitled to Highly Confidential Information status. No recipient of information that the Producing Party has inadvertently failed to designate as Highly Confidential Information shall have any liability, so long as the recipient treats such information as Highly Confidential Information upon receiving notice of such designation by the TRA or Producing Party.

8. For the avoidance of doubt, the language of Protective Order No. 1 and Protective Order No 2 should be interpreted together such that Highly Confidential Information receives the maximum protection possible permitted under the law and no less protection than Confidential Information.

9. Highly Confidential Information is not subject to the Tennessee Public Records Act because Highly Confidential Information is subject to this protective order, which is entered pursuant to the Tennessee Rules of Civil Procedure. *See e.g., Ballard v. Herzke*, 924 S.W. 2d 652 (Tenn. 1996); *Arnold v. City of Chattanooga*, 19 S.W. 3d 779 (Tenn. Ct. App. 1999). Additionally, even if Highly Confidential Information was subject to the Public Records Act, such information shall not be disclosed if it is exempt from disclosure under the Public Records Act. *See e.g., TENN. CODE ANN. § 10-7-504*. Accordingly, paragraphs 22-28 of Protective Order No. 1 do not apply to Highly Confidential Information. If a party, other than the Producing


Party, receives a request or subpoena seeking the disclosure or production of Highly Confidential Information, such party shall give prompt written notice to the TRA Hearing Officer and the Producing Party within not more than five (5) days of receiving such a request, subpoena or order and shall: (i) oppose the production or disclosure of Highly Confidential Information and; and (ii) shall not disclose or produce such information unless and until subsequently ordered to do so by a court of competent jurisdiction.

10. Any person who signs the Highly Confidential Affidavit is bound by the terms of Protective Order No. 1 and Protective Order No. 2. Any disclosure or use of Highly Confidential Information by a party other than the Producing Party not expressly authorized by the terms of this Protective Order shall be considered an "unauthorized disclosure."

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Hearing Officer

RESPECTFULLY SUBMITTED FOR ENTRY:

By: 

R. Dale Grimes  
Ross Booher  
BASS, BERRY & SIMS PLC  
315 Deaderick Street  
Nashville, TN 37238  
(615) 742-6200

*Attorneys for Tennessee American Water Company*

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:**

<b>PETITION OF TENNESSEE AMERICAN</b>	)	
<b>WATER COMPANY TO CHANGE AND</b>	)	
<b>INCREASE CERTAIN RATES AND CHARGES )</b>		
<b>SO AS PERMIT IT TO EARN A FAIR AND</b>	)	
<b>ADEQUATE RATE OF RETURN ON ITS</b>	)	<b>Docket No. 06-00290</b>
<b>PROPERTY USED AND USEFUL IN</b>	)	
<b>FURNISHING WATER SERVICE TO ITS</b>	)	
<b>CUSTOMERS</b>	)	

**AFFIDAVIT REGARDING ACCESS TO HIGHLY CONFIDENTIAL INFORMATION**

I acknowledge that I have fully reviewed the protective orders attached hereto as Exhibits A and B entered in the above-captioned matter and understand that I am bound by their terms. I understand that unauthorized disclosure of information or documents labeled or designated "Confidential," "Protected Security Information" or "Highly Confidential" will be a violation of the protective orders in this case. I understand that the unauthorized disclosure of information or documents labeled or otherwise designated "Highly Confidential" may result in securities law violations and/or irreparable harm to others and may result in sanctions, damages, injunctive relief or other relief being awarded against me. I agree and warrant that I will safeguard all information and documents designated "Confidential," "Protected Security Information" and "Highly Confidential" and I will take all reasonably necessary steps to prevent the unauthorized disclosure of any such information or documents received by me. I hereby consent to the jurisdiction of the Tennessee Regulatory Authority and consent to be sued regarding any alleged violation of the protective orders in this case or the obligations I have undertaken in this Affidavit in state and/or federal court in any jurisdiction where the Tennessee Regulatory Authority may be found.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME

STATE OF \_\_\_\_\_)  
COUNTY OF \_\_\_\_\_)

Personally appeared before me, \_\_\_\_\_, with whom I am personally acquired or whom I identified with a state or federal photo ID, and who executed this document before me.

WITNESS my hand, at office, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via the method(s) indicated, on this the 16<sup>th</sup> day of February, 2007, upon the following:

<input type="checkbox"/> Hand	Michael A. McMahan
<input type="checkbox"/> Mail	Special Counsel
<input type="checkbox"/> Facsimile	City of Chattanooga (Hamilton County)
<input checked="" type="checkbox"/> Overnight	Office of the City Attorney
<input checked="" type="checkbox"/> Email	Suite 400
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	Chattanooga, TN 37402
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