

equity position of TAWC. The object of discovery is not limited to relevant information but also seeks information that may lead to relevant evidence. This issue has already been briefed in the City's Motion to Compel filed on February 8, 2007.

We now know as a result of the various Motions to Compel in this case that RWE has offered to "hold harmless" TAWC with respect to the re-issuance of about Nineteen Million (\$19,000,000.00) Dollars of 4.75% debt to 5.65% debt. This information was not volunteered by TAWC as part of its pre-filed testimony and exhibits in this case. This re-issuance of debt is an integral part of the IPO process. Who knows what other "secrets" relevant to this proceeding can be discovered in the IPO documents.

TAWC says that public disclosure of IPO-related information could result in violations of the federal securities law. PO1 provides for the protection of "confidential commercial information" and "commercially sensitive information." The disclosure of the information is basically limited to parties and their representatives with a need to know and their experts.

The Attorney General and the City are bound by the Tennessee Public Records Act, T.C.A. 10-7-501, *et seq.* However, to the extent the IPO information being produced is protected by federal law or regulation, it would also be protected from public disclosure in this proceeding by virtue of the provisions of T.C.A. 10-7-504(9)(C), which states:

- (C) Information received by the state that is required by federal law or regulation to be kept confidential shall be exempt from public disclosure and shall not be open for inspection by members of the public.

The City contends that although it is an unreported decision that the case of *Contemporary Media, Inc. v. The City of Memphis*, 1999 Tenn. App. LEXIS 298, (199WL292264) correctly states the law of Tennessee.¹ This case has been cited with approval in three subsequent unreported Courts of Appeal decisions: *Coats v. Smyrna/Rutherford County Airport Authority*, (Tenn. Ct. App. 2001) (2001WL1589117); *Henderson v. City of Chattanooga*, (Tenn. Ct. App. 2003) (2003WL22254110); and *The Tennessean v. City of Lebanon*, (Tenn. Ct. App. 2004) (2004WL290705). The bottom line is that a government cannot enter into a confidentiality agreement with a private party that prevents the disclosure of “public records”. *Contemporary Media* recognized the power of the Legislature to declare some record confidential as it has done with respect to records that a federal law or regulation be required to be kept confidential. PO1 provides procedures for determining whether records are entitled to confidentiality and thereby serves the interest of all parties. Neither the City nor the Attorney General could be held to willfully withhold any documents determined to be entitled to the protection of federal law regulation by the Hearing Officer in this case.

To the extent that TAWC feels that any document it produces is confidential pursuant to the federal securities law, all it has to do is to mark the documents as being protected by federal law or regulation. Although the public records act will not permit us to agree in advance to bound by such a designation of documents by TAWC, the City and the other parties are under a duty to utilize the procedures contained in the Protective Order entered on January 18, 2007, prior to any disclosure.

¹Contrary to the assertion in TAWC’s brief, T.R.C.P. Rule 4(H)(1) provides, “unless designated ‘Not for Citation’, ‘DCRO’ or ‘DNP’ pursuant to subsection (F) of this rule, unpublished opinions for all other purposes shall be considered persuasive authority.”

If TAWC comes to the conclusion that it simply cannot disclose such documents at this time, then the problem was created by its own parent company. As noted by counsel for the Chattanooga Manufacturer's Association during the status conference on February 9, 2007, TAWC can withdraw its rate request and re-file it after the IPO has been completed. TAWC represented during this status conference that the IPO might occur prior to the end of the second quarter of 2007, so it would not be subjecting itself to an inordinate delay. However, without the IPO information which is being sought in discovery, the other parties to this proceeding will be without the ability to discover information which may have an impact not only on this rate proceeding but also rates of TAWC in the foreseeable future.

The City and other parties also object to the Affidavit attached to the proposed PO2. As parties to this proceeding, we are all subject to the jurisdiction of the TRA. We are also all subject to the jurisdiction of the Courts of Tennessee. However, venue in Davidson County may or may not be appropriate. None of us "consent" to being sued. If TAWC should have a cause of action against any of us, it knows where to find us.

It is therefore respectfully submitted that TAWC's Motion for Entry of Proposed Protective Order No. 2 be denied. It is further respectfully submitted that the Hearing Officer order the immediate production of the documents relative to the IPO contained in the City of Chattanooga's First Discovery Request submitted on January 11, 2007.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served a true and correct copy of the foregoing pleading by electronic mail and by depositing same in the United States mail, postage prepaid, and addressed to the following:

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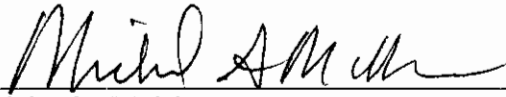
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This the 19th day of February, 2007.



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