

BASS, BERRY & SIMS PLC
A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

R. DALE GRIMES
TEL: (615) 742-6244
FAX: (615) 742-2744
dgrimes@bassberry.com

AMSOUTH CENTER
315 DEADERICK STREET, SUITE 2700
NASHVILLE, TN 37238-3001
(615) 742-6200

www.bassberry.com

OTHER OFFICES

NASHVILLE MUSIC ROW
KNOXVILLE
MEMPHIS

March 15, 2007

VIA HAND-DELIVERY

Chairman Sara Kyle

c/o Sharla Dillon

Tennessee Regulatory Authority

460 James Robertson Parkway

Nashville, Tennessee 37243-0505

filed electronically in docket office on 03/16/07

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 an original and sixteen (16) copies of Tennessee American Water Company's Discovery Response to Consumer Advocate and Protection Division's Motion to Reconsider Supplemental Protective Order, or in the Alternative, for Interlocutory Review by the Tennessee Regulatory Authority.

Please return three copies of the Discovery Requests, 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.

With kindest regards, I remain

Yours very truly,



R. Dale Grimes

RDG/ms

Enclosures

Chairman Sara Kyle

March 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*)
Frederick L. Hitchcock, 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*)

**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 RESPONSE TO CONSUMER
ADVOCATE AND PROTECTION DIVISION’S MOTION TO RECONSIDER
SUPPLEMENTAL PROTECTIVE ORDER, OR IN THE ALTERNATIVE, FOR
INTERLOCUTORY REVIEW BY THE TENNESSEE REGULATORY AUTHORITY**

The Consumer Advocate’s Motion to Reconsider Supplemental Protective Order, or in the Alternative, for Interlocutory Review by the Tennessee Regulatory Authority (“CAPD’s Motion to Reconsider”) should be denied. Two weeks ago, the Hearing Officer entered the supplemental protective order (“SPO”)¹ that CAPD’s Motion now seeks to have set aside. In entering the SPO, the Hearing Officer recognized the important legal, commercial, and reputational interests that would be threatened by public disclosure of the information protected by the SPO. Granting the SPO was a necessary and reasonable precaution to protect these important interests. This was true two weeks ago, and it is still true today.

CAPD’s Motion to Reconsider certainly does not present any argument to suggest otherwise. Instead, that motion presents a scattershot of concerns and worries about the SPO that misconstrue its nature, the role of the Tennessee Regulatory Authority in this case, CAPD’s own role in this case, and Tennessee law. As will be discussed below, CAPD’s arguments, taken

¹ A copy of the supplemental protective order at issue is attached hereto as Exhibit A.

together or individually, do nothing to show the SPO is anything but an appropriate protection of Tennessee American Water Company's ("TAWC") highly confidential information. CAPD's Motion, therefore, should be denied.

I. CAPD's Motion is based on a misperception of the Tennessee Regulatory Authority's role in this case.

In its motion, the Consumer Advocate and Protection Division ("CAPD") argues that the SPO should be set aside because it will allow the Tennessee Regulatory Authority, as an agency of the state, to bind another state agency – the CAPD. Specifically, the CAPD complains that the SPO allows the TRA to make determinations that bind the CAPD regarding the application of the Tennessee Public Records Act to information covered by the SPO. (*See* CAPD's Motion to Reconsider, p. 2). Although the CAPD is correct that the TRA has this power under the SPO, the argument that this authority is inappropriate misperceives the respective roles of the TRA and CAPD in this case, and conflates the Hearing Officer's status as a court of record in this case with the TRA's status as an administrative body of the state.

Even though the Tennessee Regulatory Authority is clearly an administrative agency of the State of Tennessee, for the purposes of this rate case, the TRA, and its designee the Hearing Officer, acts as a court of record, operating under the Tennessee Rules of Civil Procedure and authorized to enter orders on all matters properly before it. *See generally Disc. Communs. v. Bellsouth Telcoms.*, 2002 Tenn. App. LEXIS 399, * 4 (Tenn. Ct. App.) (affirming the order of the TRA under arbitrary and capricious review and remanding for further proceedings, indicating TRA shares stature with a trial court). The CAPD, on the other hand, is a party to this case, subject to the Hearing Officer's jurisdiction. As a result, the CAPD's argument that the Order is somehow improper because it subjects the CAPD to the Hearing Officer's determinations is without any basis. In fact, the CAPD, as an intervenor, is under the jurisdiction of the TRA and

its Hearing Officer, and subjecting the CAPD to the Hearing Officer's determinations is completely appropriate. As the decision maker in this rate case, the Tennessee Regulatory Authority has the express power to bind the CAPD, just like any other party in this case, with its decisions. Any rule to the contrary would eviscerate the Tennessee Regulatory Authority's jurisdiction to regulate on matters of public concern, especially because state agencies like the CAPD are often interested parties in those matters.

II. CAPD's Motion overlooks the fact that the Public Records Act is, by its own express terms, inapplicable to the "highly confidential" information protected by the Order.

CAPD's Motion makes the correct assertion that only the legislature may create exceptions to the Tennessee Public Records Act. (CAPD's Motion to Reconsider, p. 4.) In arguing that the Order should be set aside, however, the CAPD fails to recognize that the legislature has created such an exception directly applicable in this case and that, as a result, the Tennessee Public Records Act is of no effect or import with regard to any information designated "highly confidential" pursuant to the Order.

The Public Records Act provides, in pertinent part,

"all state, county and municipal records and all records maintained by the Tennessee performing arts center management corporation, except any public documents authorized to be destroyed by the county public records commission in accordance with § 10-7-404, shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, **unless otherwise provided by state law.**" (emphasis added)

Tenn. Code Ann. § 10-7-503(a) (2007) (emphasis added).

Tennessee courts have consistently interpreted this provision in accordance with its plain language to find that the Tennessee Public Records Act does not apply to records placed under seal, subject to a protective order, or otherwise protected in a proceeding before a Tennessee

court. As those decisions have determined, court actions to protect documents clearly brings those documents under the “unless otherwise protected by state law” exception to the Tennessee Public Records Act. *See Arnold v. City of Chattanooga*, 19 S.W.3d 779, 785-86 (Tenn. Ct. App. 1999) (finding that documents containing attorney work product, as protected by the Tennessee Rules of Civil Procedure, fall under this “otherwise provided by state law” exception to the Tennessee Public Records Act).

In *Ballard v. Herzke*, for example, the Supreme Court of Tennessee held that documents filed with the trial court under seal pursuant to a protective order were not subject to inspection under the Tennessee Public Records Act. 924 S.W.2d 652, 662 (Tenn. 1996). In reaching this decision, the Court found that, because “the Rules of Civil Procedure are the ‘law’ of this state,” the Tennessee Public Records Act specifically exempts from public inspection all records sealed pursuant to a court order. *Ballard*, 924 S.W.2d at 662. The Court determined, therefore, that the documents that had been filed under seal in that case were exempt from the Act. *Id.*

The same analysis applies in this case to the documents designated as “highly confidential” in connection with the Order. *See Tennessee American's Motion for entry of the Highly Confidential Information Protective Order and Reply to Response thereto.* In this rate case, the Tennessee Regulatory Authority, and through its designee Hearing Officer, functions as a court of record and, thereby, has the authority to issue orders pursuant to the Tennessee Rules of Civil Procedure and the Tennessee Administrative Procedures Act. *See generally Disc. Communs.*, 2002 Tenn. App. LEXIS 399, * 4. Thus, the Order entered by the Hearing Officer is effectively a court action falling under the “otherwise provided by state law” exception to the Public Records Act, and the documents designated as “highly confidential” in accordance with the Order are exempt from the Act. The CAPD’s complaint that only the legislature can create

exemptions to the Public Records Act, therefore, is irrelevant because the documents protected by the Order clearly fall within an exception the legislature has already created. The CAPD's argument in this regard is entirely without merit.

III. The CAPD is not entitled to “look behind” the highly confidential status of documents protected by the Order.

CAPD's Motion to Reconsider also argues that, because the courts of this state will “look behind claims of confidentiality to determine whether a governmental agency responded appropriately to a public records request,” the CAPD should be allowed to make its own *ad hoc* decision regarding the highly confidential nature of documents protected by the Order. (CAPD's Mot., p. 6). The CAPD is entirely correct that Tennessee law provides *courts* the authority to “look behind” claims of privilege or confidentiality.

The CAPD's argument fails, however, because it once again confuses its role as a party to this case with the role of the decision maker– the Tennessee Regulatory Authority Hearing Officer. With regard to the “highly confidential” information protected by the Order, the Hearing Officer – in accordance with his role as the decision maker in this case – has already “looked behind” the TAWC's claims of confidentiality, and based on that examination, issued the Order recognizing the validity of the TAWC's concerns regarding the public release of the highly confidential information.

Further, to the extent the CAPD finds it necessary to play a role in “looking behind” the highly confidential designation of information protected by the Order, the Order expressly provides that parties may petition the Hearing Officer for review of the highly confidential designation of any document protected by the Order. (Order ¶¶1-2). While this procedure may not allow the CAPD to unilaterally release highly confidential documents to the public, CAPD has no such right. Instead, as made clear in the cases referred to in CAPD's own Motion, the

decision maker in this case has that right under Tennessee law, as expressly recognized in the Order itself. In other words, despite the CAPD's suggestion to the contrary, the Order is in complete accord with the discretion granted by Tennessee law for the Hearing Officer, not the parties themselves, to determine whether documents are subject to the Public Records Act..

The CAPD's assertion that, despite this, the CAPD itself "should have the ability to consider the possibility that Tennessee courts would be willing to look behind the supplemental protective order to determine whether a document designated as 'highly confidential' has been designated appropriately" is tantamount to asserting that the CAPD should have the authority to disregard the Hearing Officer's orders as it deems appropriate. This is completely inappropriate. As discussed above, Tennessee law gives the responsibility for determining whether a document is properly designated as highly confidential to the courts and, in this rate case, the TRA and its designated Hearing Officer. The SPO is in complete accord with this grant of authority, and the CAPD's argument that, nevertheless, the CAPD should be allowed to second guess the Hearing Officer's determinations is without merit. CAPD's Motion, therefore, should be denied.

IV. The CAPD's concerns with the nondisclosure statement required by the SPO are unfounded and, certainly, do not outweigh the concerns supporting the grant of the SPO.

In its motion, the CAPD identifies three concerns regarding the SPO's requirement that all individuals who are given access to highly confidential information protected by the SPO must execute a nondisclosure statement acknowledging that they have reviewed the SPO and agreeing to abide by its terms. None of these concerns, however, have merit and certainly do not justify the revocation, or even a revision, of the SPO.

The CAPD first complains that complying with the SPO's requirement that the CAPD execute an affidavit before receiving information protected by the SPO could be construed as the

CAPD entering into a confidentiality agreement in violation of the Tennessee Public Records Act. (CAPD's Motion to Reconsider, pp. 6-7.) This concern was repeatedly raised and addressed by the parties prior to submission of the proposed Order. (See Letter to City Counsel dated February 13, 2007 and Tennessee American's Motion for Highly Confidential Protective Order and Reply to Response thereto, attached hereto as Exhibit B). As stated in these pre-submission discussions, an affidavit signed in connection with the Order can in no conceivable way equate to a voluntary agreement by the CAPD, or any other party, to keep records confidential in violation of the Tennessee Public Records Act. Instead, the affidavit is simply a recognition by an individual signatory that that person has reviewed the Order – an order entered by the Tennessee Regulatory Authority and not independently agreed to by the parties – and will abide by its terms. (See Affidavit, attached to the SPO). It is routine for courts to require litigants to execute affidavits in which the litigants acknowledge they understand the terms of a protective order and agree to abide by such terms. Accordingly, the CAPD's first concern about the affidavit required by the SPO is without merit.

The CAPD's second concern about the affidavit is also unpersuasive. The CAPD expresses concern that the affidavit could be viewed as a contract waiving the state's sovereign immunity under Tenn. Code Ann. § 9-8-307(a)(1)(L). This concern is baseless, both because the affidavit binds individuals, not the State or the CAPD, and because, as explained above, courts routinely require litigants to execute such affidavits before receiving access to Highly Confidential Information that has been filed under seal.

Finally, the CAPD opposes the requirement of a statement because it "might be interpreted as a voluntary waiver of rights or defenses by the signatories" and, thereby, waive Tennessee's statutory immunity provided to state officers operating in their official capacity.

This concern is unfounded. First, this worry is entirely hypothetical and, assuming, as TAWC does, that the state officers have no intent of violating the requirements of the SPO, unlikely to ever become anything more than a theoretical concern. Second, to the extent a state officer's potential waiver of rights or defenses upon his or her violation of the Order is a genuine concern, it is clearly outweighed by the numerous more significant interests underlying the Hearing Officer's decision to enter the Order in the first place. The CAPD's problems with the nondisclosure statement required by the Order, are unfounded, and CAPD's Motion should be denied.

V. The CAPD's argument against the closed hearings required by the Order is without merit.

The CAPD worries that "if the Tennessee Attorney General's Office determines that it should not consent to the supplemental protective order, the employees of the Tennessee Attorney General's Office would be excluded from portions of the hearing on the merits of the rate case." (CAPD's Mot., p. 8). This, of course, is true. Due to the extremely sensitive nature of the highly confidential information, the Order provides that any party not subject to the SPO shall be cleared from a hearing when highly confidential information is being discussed. Contrary to CAPD's suggestion, however, this is entirely appropriate.

By entering the SPO, the Hearing Officer has adopted a mechanism to provide effective protection for TAWC's documents of a highly confidential nature. It would wholly undermine that purpose if parties not subject to the SPO were allowed to attend hearings where such confidential information is discussed. In recognition of this, parties not subject to the SPO are required to leave hearings when protected information is being discussed.

The fact of the matter is that the CAPD is entirely in control of its access to the Highly Confidential information and any hearings in which it may be discussed. CAPD counsel are

more than welcome to sign the nondisclosure statement and, thereby, become entitled to participate in hearings in which confidential information is discussed. Certainly, CAPD's concern that it must choose whether to sign onto the Order or be excluded from the hearings is not sufficient to override the concerns for confidentiality and securities law integrity that underlie the SPO itself.

VI. The CAPD's complaint of an "arbitrary" distinction between the Tennessee Regulatory Authority and the CAPD is also without basis.


The CAPD claims that the Order "draws an arbitrary distinction between the employees of the Tennessee Regulatory Authority and the Tennessee Attorney General's Office." (CAPD's Motion to Reconsider, p. 8). Not so. Rather, the distinction is reasonable, necessary, and in complete accord with the Rules of the Tennessee Regulatory Authority, which provide that TRA staff will have access to information submitted under a protective order. *See Tennessee Regulatory Authority Rules, Practice and Procedure, 1220-1-1-03(8)*. This, of course, makes sense because TRA staff must have access to all information before the Hearing Officer, and ultimately the Directors comprising the TRA hearing panel, in order to make a proper, fully informed decision on the merits of this case. Presumably, the TRA staff take their privilege of having access to confidential information seriously and will absolutely refrain from making the highly confidential information available to the public. Just as with court personnel, therefore, it is reasonable to allow TRA staff to have access to the information in this case, while at the same time, providing access to the information to CAPD – a party to the case – only upon compliance with the terms of the Order.

Conclusion

In conclusion, for all of the foregoing reasons, CAPD's Motion is without merit and should be denied. The supplemental protective order is a reasonable and necessary protection of

TAWC's confidential information and should continue to apply to the information produced in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Dale Grimes", written over a horizontal line.

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 15 day of March, 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 checked="" type="checkbox"/> Hand	Timothy C. Phillips, Esq.
<input type="checkbox"/> Mail	Vance L. Broemel, Esq.
<input type="checkbox"/> Facsimile	Office of the Attorney General
<input type="checkbox"/> Overnight	Consumer Advocate and Protection Division
<input checked="" type="checkbox"/> Email	P.O. Box 20207
	Nashville, TN 37202
<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 th Floor
<input checked="" type="checkbox"/> Overnight	Chattanooga, TN 37450
<input checked="" type="checkbox"/> Email	
<input type="checkbox"/> Hand	Frederick L. Hitchcock, Esq.
<input type="checkbox"/> Mail	Chambliss, Bahner & Stophel, P.C.
<input type="checkbox"/> Facsimile	1000 Tallan Building
<input checked="" type="checkbox"/> Overnight	Two Union Square
<input checked="" type="checkbox"/> Email	Chattanooga, TN 37402



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

MARCH 1, 2007

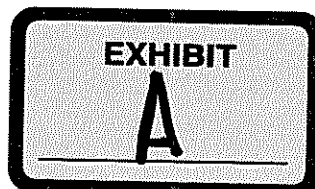
IN RE:

**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)**

SUPPLEMENTAL PROTECTIVE ORDER

Pursuant to the Tennessee Rules of Civil Procedure, to ensure that documents or information produced by Tennessee American Water Company ("Tennessee American" or "Producing Party") during the discovery process in this docket related to or dealing with an Initial Public Offering ("IPO"), including such documents filed with the Securities and Exchange Commission, and other filings with federal and state agencies., which are deemed to be highly sensitive proprietary and commercial information or trade secrets that the public release of which could result in harm to the Producing Party, including but not limited to information that is required by state or federal laws or regulations to be kept confidential¹ (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

¹ Expressly including, but not limited to, public disclosure of information by the Producing Party that 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.



designated by the 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"), as well as the following additional protections set forth in this Supplemental Protective Order, as follows:

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 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 be treated as Highly Confidential Information or not Highly Confidential. In the event the designation of Highly Confidential Information is removed for certain information by a valid order, but the document is deemed to be a confidential document, such information shall be considered designated as Confidential Information and shall be entitled to all the protections of Confidential Information under the Protective Order unless and until such Confidential Information designation has been or is also ordered removed pursuant to Paragraph 11 of the Protective Order.

2. Notwithstanding the terms of paragraphs 10 and 11 of the Protective Order, 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 not 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 Supplemental Protective Order, pending resolution of any dispute as to the status of such information by the Hearing Officer unless the disclosure of such information is otherwise permitted by this order.

3. Persons granted access to Highly Confidential Information in accordance with the terms of this Supplemental Protective Order agree that that they will safeguard all information and documents designated as "Highly Confidential."

4. Persons granted access to Highly Confidential Information in accordance with the terms of this Supplemental Protective Order understand that unauthorized disclosure of information or documents labeled or otherwise designated "Highly Confidential" may result in securities law violations and may result in sanctions, damages, injunctive relief or other relief in state and/or federal court.

5. The Protective Order and Supplemental Protective Order (collectively the "Protective Orders") 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 Orders 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 Orders including, without limitation, injunctive², declaratory relief, sanctions, and penalties.

6. 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 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

² 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 may(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.

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.

7. 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 until 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.

8. 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 herein who require access to such Highly Confidential Information for this proceeding and have fully

executed a copy of the Nondisclosure Statement for Highly Confidential Information ("Nondisclosure Statement"), attached hereto, may receive access to Highly Confidential Information. A copy of the executed Nondisclosure Statement shall be provided to the Producing Party prior to being granted access to the Highly Confidential Information. Notwithstanding the foregoing, TRA directors, the Hearing Officer and members of the staff of the TRA shall not be required to execute the Nondisclosure Statement.

- (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, expert witnesses, 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. Notwithstanding the foregoing, TRA directors, the Hearing Officer and members of the staff of the TRA shall not be required to provide written notice to the Producing Party.
- (d) If the Producing Party objects to a person, other than a counsel of record for a party, expert witness(es), 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.

9. If any party or non-party subject to the Supplemental 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 Supplemental Protective Order, including the Hearing Officer, shall immediately cause the subject testimony to be treated as Highly Confidential Information and each party shall notify any employees, consultants or other individuals who are affiliated with such party and who received or heard such testimony. The

Hearing Officer shall thereafter 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.

10. For the avoidance of doubt, the language of the Protective Order and Supplemental Protective Order 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.

11. Highly Confidential Information is subject to this Supplemental 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). Accordingly, paragraphs 22-28 of the Protective Order 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.

J. Richard Collier
Hearing Officer

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)

NONDISCLOSURE STATEMENT FOR HIGHLY CONFIDENTIAL INFORMATION

I have reviewed the Supplemental Protective Order entered in the above-captioned matter and agree to abide and be bound by its terms. I understand that prior to receiving access to designated as Highly Confidential Information, I must make a written request to the Producing Party and submit this Nondisclosure Statement prior to being granted access to such information. I understand that unauthorized disclosure of any documents labeled and/or designated as "HIGHLY CONFIDENTIAL INFORMATION" will be a violation of the Order.

DATE _____

NAME _____

STATE OF _____)
COUNTY OF _____)

Personally appeared before me, _____, a Notary Public,
_____ with whom I am personally acquainted, who acknowledged that he
executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this _____ day of _____, 2007.

NOTARY PUBLIC

My Commission Expires:

BASS, BERRY & SIMS PLC
A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

ROSS BOOHER
TEL: (615) 742-7764
rbooh@bassberry.com

AMSOUTH CENTER
315 DEADERICK STREET, SUITE 2700
NASHVILLE, TN 37238-3001
(615) 742-6200

www.bassberry.com

OTHER OFFICES
NASHVILLE MUSIC ROW
KNOXVILLE
MEMPHIS

February 13, 2007

VIA EMAIL AND U.S. MAIL

Michael A. McMahan, Esq.
Special Counsel
City of Chattanooga
Office of the City Attorney
Suite 400
801 Broad Street
Chattanooga, TN 37402

Vance Broemel, Esq.
Stephen Butler, Esq.
Consumer Advocate and Protection Division
Office of Attorney General
2nd Floor
425 5th Avenue North
Nashville, TN 37243-0491

Frederick L. Hitchcock, Esq.
Chambliss, Bahner & Stophel, P.C.
1000 Tallan Building
Two Union Square
Chattanooga, TN 37402

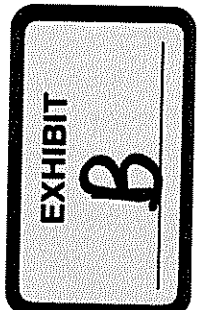
Henry M. Walker, Esq.
Boult, Cummings, Connors & Berry, PLC
Suite 7001, 600 Division Street
P.O. Box 340025
Nashville, TN 37203

David C. Higney, Esq.
Grant, Konvalinka & Harrison, P.C.
633 Chestnut Street, 9th Floor
Chattanooga, TN 37450

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

Gentlemen:

As discussed at the Status Conference on Friday, February 9, 2007, in an effort to resolve the pending motions to compel, Petitioner Tennessee American Water Company ("TAWC") has offered to produce to the parties certain highly confidential information upon the entry of an additional protective order which TAWC agrees will adequately protect such information. Accordingly, late yesterday TAWC circulated a proposed Protective Order No. 2 ("Proposal No. 2"). Today, TAWC received feedback from CMA, the City and the CAPD regarding each parties' respective concerns and proposed



revisions to Proposal No. 2. In an effort to address these concerns and proposed revisions, TAWC attaches a Revised Proposal No. 2. A black-line courtesy copy comparing the revised version with the version circulated yesterday is also attached for your convenience.

Here is a summary of the revisions that TAWC believes are most material:

A. Public Records Act Revisions – Mr. Broemel of the CAPD and Mr. McMahan of the City both expressed concerns regarding undertaking obligations that they believe could place the City or CAPD in conflict with the Public Records Act. The City 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. The Arnold case, which was decided after Contemporary Media, and is binding precedent which TAWC cited in Proposal No. 2, states that information subject to a protective order entered pursuant to the Tennessee Rules of Civil Procedure is not subject to disclosure under the Open Records Act. Arnold v. City of Chattanooga, 19 S.W.3d 779, 785 (Tenn. Ct. App. 1999). In reaching this conclusion, the Arnold court cites 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. Regardless, in an effort to address any remaining concerns the parties may have regarding the Contemporary Media opinion, TAWC has made changes in revised Proposal No. 2 which: (i) define "Highly Confidential Information" so it includes only information that is exempt from disclosure under the Public Records Act pursuant to TENN. CODE ANN. § 10-7-504(a)(9)(C); and, (ii) change the proposed order from an Agreed Order to a proposed regular order.

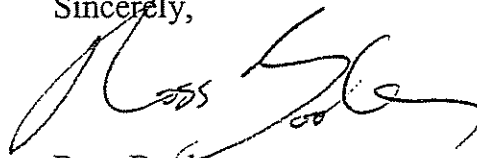
B. Paragraph 2 – Mr. Walker noted on behalf of CMA that it was unclear whether paragraph 11 in Protective Order No. 1 applies to Highly Confidential Information. To make it clear that the designation of information as Highly Confidential Information may be challenged, paragraph 2 has been added to the Revised Proposal No. 2.

C. Paragraph 3 – Mr. Higney expressed concerns on behalf of CMA regarding the inclusion of the words, "sanctions and penalties" in subparagraph (b). TAWC believes that the words "sanctions and penalties" should remain because they ensure that those who review Revised Proposal No. 2 before executing the Affidavit receive express notice that those who are bound by the order are subject to sanctions and penalties for the unauthorized disclosure of Highly Confidential Information.

D. Affidavit – (1) Mr. Higney questioned on behalf of CMA why parties should be subject to jurisdiction in Nashville for violating the TRA's order. Mr. Higney also indicated CMA's apparent desire to be able to bring suit related to violations of the order in Chattanooga. To address CMA's question and concern, TAWC has revised the Affidavit to provide for jurisdiction "wherever the TRA may be found." (2) Mr. McMahan on behalf of the City indicated concern about his clients executing the Affidavit due to his concerns over the applicability of the Public Records Act. The changes outlined in paragraph (A) above and corresponding changes to the Affidavit hopefully have resolved such concerns.

In addition to the revisions discussed above, multiple other more minor revisions were made at the suggestion of the parties or as a result of concerns raised by the parties. To the extent you may have sought a revision that you believe was not made or otherwise addressed in Revised Proposal No. 2, please do not hesitate to contact me to discuss. Please also let me know if you have any questions regarding any of TAWC's revisions or further comments regarding Revised Proposal No. 2. Thank you.

Sincerely,



Ross Booher

/RB

cc: Hon. J. Richard Collier
Mr. Stephen Butler
Ms. Catherine Giannasi
R. Dale Grimes, Esq.