

**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  
EARN FAIR AND ADEQUATE RATE OF RETURN  
ON ITS PROPERTY USED AND USEFUL IN FURNISHING  
WATER SERVICE TO ITS CUSTOMERS

DOCKET NO.  
06-00290

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**CITY OF CHATTANOOGA'S RESPONSE TO TAWC'S  
OBJECTIONS, PURSUANT TO THE SUPPLEMENTAL  
PROTECTIVE ORDER, TO DELIVERY OF  
HIGHLY CONFIDENTIAL INFORMATION TO  
DAN JOHNSON, MARLIN L. MOSBY, W. KEVIN THOMPSON  
AND/OR PFM, AND, IN THE ALTERNATIVE,  
MOTION TO STAY DISCLOSURE UNTIL THE STATUS  
OF THE SUPPLEMENTAL PROTECTIVE ORDER  
AND MARCH 1, 2007 ORDER COMPELLING  
PRODUCTION ARE FINALLY DETERMINED**

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TAWC objects to the Attorney for the City sharing the "Highly Confidential Information" with Dan Johnson, Chief of Staff for Chattanooga Mayor Ron Littlefield, and with W. Kevin Thompson and Marlin L. Mosby with PFM. This objection was legally premised upon the holding of a patent law case, *Safe Flight Instrument Corp. v. Sundstrand Data Control, Inc.*, 682 F. Supp. 20, 56 USLW 2661, 7 U.S.P.Q.2d 1823 (D. Del. 1988).

TAWC's brief raises the possibility that these individuals might use the information to the material prejudice of TAWC in other matters in the future. When the issue was raised in the Status Conference held on March 23, 2007; TAWC stated in more detail that it thought that Johnson, Thompson and Mosby might be able to discern the debt-equity position of the new entity that emerges from the Initial Public Offering whereby RWE seeks to sell its ownership of

American Water Works Company. They also inaccurately claimed that Thompson and Mosby had participated in the condemnation case involving the City and TAWC which occurred a number of years ago. In its brief, they also raised the issue of potential conflicts of interest of Thompson and Mosby.

Factually, neither Thompson nor Mosby participated in the condemnation action involving the City and TAWC. Mosby testified for the City in the 2003 TAWC rate case as an expert witness, and Thompson assisted in preparing that testimony. There is no known conflict of interest with TAWC or RWE. The Protective Order entered in this case clearly provides that he documents can be shared with expert witnesses. Although the order allows two days for TAWC to object to the sharing which it has exercised, as it bears a heavy burden in preventing these disclosures.

Dan Johnson as the Mayor's Chief of Staff is the second highest administrative official of the City. For all practical purposes, he and the Mayor are the "clients" supervising this litigation for the City. As attorney for the City, I need to consult with Mr. Johnson prior to incurring additional expenses in hiring PFM to analyze the data. As a CPA with many years of private practice, Mr. Johnson is in a far better position than counsel to analyze the "highly confidential" data and determine whether it is worthwhile for the City to incur additional expenses in retaining PFM to further analyze this data.

The Hearing Officer has already determined that the "Highly Confidential" data is relevant to this proceeding. The claim by TAWC that we might discover the debt-equity position in the new corporate structure is precisely what makes this information relevant to this proceeding. TAWC has admitted in prior proceedings in this matter that the TRA has the right to know what the debt-equity ratio will be, and has even stated that they will ultimately disclose

that information to the TRA. Considering the fact that the hearing is only three weeks away such a belated disclosure may be too late for the interveners herein to effectively challenge whatever proof TAWC might offer on this issue. To the extent the debt-equity ratio can be discerned from the "highly confidential" documents produced, we must be allowed to have those documents reviewed by individuals with the expertise, ability, and responsibility to assist counsel make determinations as to cross-examination of witnesses and whether to offer any independent proof on the issue.

The reliance of TAWC on the *Safe Flight* case is misplaced. The holding of the case was premised upon a peculiar Rule 26(c) of the U.S. Court of Federal Claims. It was also premised upon the fact that technical patent information at issue belonged to third parties who were not parties to that litigation, but were competitors of the CEO's company. Moreover, the CEO was an inventor of a similar patent himself in the spacecraft industry that would place him in a posture to gain an unfair competitive advantage against the company owning the patents at issue.

The subsequent case of *Standard Space Platforms Corporation v. United States*, 35 Fed.Cl. 505 (1996) is more closely aligned with the facts of the case at bar. The Claims Court distinguished the holding of *Safe Flight* and effectively limited its holding to its peculiar facts. In *Standard Space Platforms*, the United States attempted to restrict the disclosure of "confidential information" to the CEO of the party plaintiff. The Court stated that under Rule 26(c) of the Rules of the U.S. Court of Federal Claims (RCFC) the movant seeking to limit the disclosure of relevant documents must show that the disclosure will result in "a clearly defined and very serious injury to its business." (Citing cases). Accordingly, the requisite showing must be made from specific facts, not mere conclusory allegations of confidentiality or business harm.


The burden is on TAWC to show that it will suffer serious injury to its business if the documents produced to counsel are shared with Messers Johnson, Thompson, and Mosby.

TAWC has not articulated a sufficient basis to deny disclosure of the documents to Messers Johnson, Thompson, and Mosby. TAWC has already effectively delayed the production of these highly relevant documents until a month before the scheduled hearing before the TRA and now seeks to make it impossible for interveners to utilize the information contained in the documents. To deny the attorneys of the City the ability to consult with its client representative and expert witnesses will deny the City due process in this proceeding.

It has been stated before and bears repetition that TAWC has elected to bring this rate proceeding at a time when its parent company is undergoing an IPO. If these circumstances place an undue burden on TAWC, then it should withdraw this rate proceeding and re-file after the IPO is completed.


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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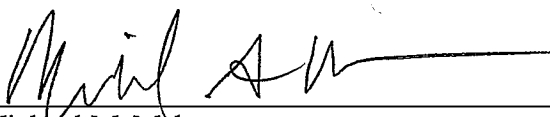
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This the 27<sup>th</sup> day of March, 2007.

  
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