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

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

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

www.bassberry.com

OTHER OFFICES
KNOXVILLE
MEMPHIS

2008 MAY 20 PM 5 00

May 20, 2008

TN REGULATORY AUTHORITY
DOCKET ROOM

VIA HAND-DELIVERY
Chairman Eddie Roberson, PhD
c/o Ms. Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

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. 08-00039

Dear Chairman Roberson:

Enclosed please find an original and sixteen (16) sets of copies of Tennessee American Water Company's Reply to the Consumer Advocate's Response to Tennessee American's Motion for Entry of Confidential Protective Order.

Please return three copies of this, 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

Very truly yours,

R. Dale Grimes

RDG/smb
Enclosures

cc: Hon. Ron Jones (*w/o enclosure*)
Hon. Sara Kyle (*w/o enclosure*)
Hon. Tre Hargett (*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*)
Timothy C. Phillips, Esq. (*w/enclosure*)
David C. Higney, Esq. (*w/enclosure*)
Henry M. Walker, Esq. (*w/enclosure*)
Michael A. McMahan, Esq. (*w/enclosure*)
Frederick L. Hitchcock, Esq., (*w/enclosure*)
Mr. John Watson (*w/o enclosure*)
Mr. Michael A. Miller (*w/o enclosure*)

6814099.1

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 A FAIR AND ADEQUATE RATE OF RETURN ON ITS PROPERTY USED AND USEFUL IN FURNISHING WATER SERVICE TO ITS CUSTOMERS	)	**Docket No. 08-00039**

TENNESSEE AMERICAN WATER COMPANY'S REPLY TO THE CONSUMER ADVOCATE'S RESPONSE TO TENNESSEE AMERICAN'S MOTION FOR ENTRY OF CONFIDENTIAL PROTECTIVE ORDERS

Tennessee American Water Company (the "Company") respectfully submits that the protective orders it has tendered to the Authority should be entered. They are nearly verbatim copies of, and in all material respects identical to, the Orders entered in the Company's last rate case; the proposed order for Confidential Information is virtually identical to the order the Authority has developed over a number of years with the consent and approval of the Intervenors; the orders are completely consistent with Tennessee law under Rule 26; and the Company can show more than adequate grounds under the federal securities laws for the entry of an additional order providing greater protection for Highly Confidential Information.

I. The Company's Proposed Protective Order for Confidential Information is Standard, Appropriate, and Consistent with State Law and *Ballard*

The Company has submitted one protective order to address the need to protect private and proprietary information at the most basic level of confidentiality. It is identical in almost all respects with the protective orders that the Authority has entered dozens of times, usually with the agreement of the parties including the Intervenors in this case. The Consumer Advocate now argues, for the very first time, that the basic structure of the Company's proposed Protective

Order as a prophylactic measure is procedurally flawed as a matter of law under Rule 26.03 of the Tennessee Rules of Civil Procedure and *Ballard v. Herzke*, 924 S.W.2d 652 (Tenn. 1996). The Consumer Advocate's attempts to persuade this Hearing Officer that prophylactic protective orders are inappropriate or impractical fails for a number of reasons:

A. The Company's Proposed Protective Order is Structurally Consistent with Tennessee State Law.

First, the structure of the Company's proposed Protective Order is entirely consistent with the mandate of state law. The Company's proposed Protective Order is designed to facilitate the free flow of information by allowing the parties to immediately produce highly sensitive business information. If there are disputes as to the designation of information as Confidential, the Company's proposed Protective Order establishes an orderly mechanism to address those disputes, without requiring the parties to withhold information while litigating whether and the extent to which it should be protected. Ironically in light of the Consumer Advocate's current position, the proposed order sponsored by all the Intervenors just days ago in this case utilizes the same procedure. In contrast, to require a pre-production determination of "good cause" underlying each and every piece of Confidential Information would prolong and frustrate the resolution of this rate case – the opposite intention of Rule 26.03. Thus, the Consumer Advocate's newly suggested alternative to the Company's proposed Order is far more burdensome on all parties involved.

Consequently, the Consumer Advocate's argument that the Company's proposed Order is "impractical" is wholly unconvincing. As *Ballard* recognized, the essence of Rule 26 is that in many circumstances prophylactic protective orders are not only appropriate, but also "aid the progression of litigation" and "strike a balance between public and private concerns." *Ballard*, 924 S.W.2d at 658. Here, the Company's proposed Protective Order strikes the appropriate

balance of interests by preserving the resources of this Hearing Officer, protecting the interests of the Intervenors, and facilitating the timely and efficient exchange of discovery between the parties.[1]

B. The Consumer Advocate's Arguments Contradict Its Own Submissions in Prior and the Current Proceedings.

1. In prior proceedings, the Consumer Advocate consented to the entry of the same protective order.

Second, although the Consumer Advocate now argues that the Company's proposed Protective order violates the Tennessee Rules of Civil Procedure and *Ballard*, the Consumer Advocate never raised such a challenge to the entry of a materially identical protective order in Docket No. 06-00290. To be sure, the Consumer Advocate should have been aware at that time of the 1996 *Ballard* decision, but only now attempts to adopt a contrary position by arguing that *Ballard* somehow prohibits the Company's current proposed Order. As noted above, this is simply not the case.

In reality, the Consumer Advocate advocated the entry of that same prophylactic protective order in Docket No. 06-00290, no doubt because it employed the procedures and standards widely utilized by the TRA and complied with the applicable procedural rules. In fact, as recently as February 1, 2008, the Consumer Advocate agreed in yet another docket to a prophylactic protective order that is substantively indistinguishable from the Company's standard proposed Protective Order. *See* Agreed Protective Order, entered Feb. 1, 2008, Docket No. 08-00012. Consequently, the Consumer Advocate's unprecedented reversal in this docket

---

[1] The Company's proposed Supplemental Protective Order possesses the same prophylactic structure as the standard Protective Order. Accordingly, for the same reasons articulated in Section I of this Reply, the Company's Supplemental Protective Order is structurally sound as a matter of law.

now undermines the credibility of its claims that prophylactic protective orders are unlawful in Tennessee.

2. In the current proceeding, the Consumer Advocate proposes a protective order that is structurally indistinguishable from the Company's.

Oddly, the Consumer Advocate argues that the Company's proposed Order is unlawful when the Intervenors' own proposed order uses the same procedural mechanisms for the designation and challenge of Confidential Information.[2] For instance, both sides' proposed orders allow the producing party to generally designate information, in good faith, as "Confidential." Additionally, both parties' proposed orders allow the recipient to challenge the "Confidential Information" designation. Finally, both parties' proposed orders leave the ultimate determination to the discretion of the Hearing Officer.

Notwithstanding the parallel mechanisms proposed, the Consumer Advocate now attacks the Company's proposed Protective Order as violating the structural requirements of Rule 26.03 of the Tennessee Rules of Civil Procedure and *Ballard.* If the Consumer Advocate's arguments were valid, however, its own proposed protective order would fail as a matter of law. As this is surely not what the Consumer Advocate intended, its position is clearly without merit.

C. The Company's Proposed Protective Order is the Standard Structure Accepted and Utilized by the TRA.

Finally, the Company's proposed Protective Order employs the same structure and terms commonly used in TRA contested rate cases. As *Ballard* was decided in 1996, the TRA has had 12 years to refine its compliance with *Ballard's* standards. To argue now that the TRA's standard protective order somehow falls short of *Ballard* rings hollow to say the least. In reality,

---

[2] It must be noted that, although the Consumer Advocate has proposed an order with the same structure as the Company's, the Consumer Advocate's proposed order in no way offers the same level of protection as the Company's proposed Order.

the TRA's standard protective order is structurally consistent with Tennessee law and is appropriate here as a legal matter for the general protection of the Company's confidential business information.

II. TAWC Has Shown "Good Cause" for the Company's Proposed Orders

The Consumer Advocate generally asserts that the Company cannot meet the showing of "good cause" pursuant to Rule 26.03 of the Tennessee Rules of Civil Procedure and *Ballard* to support either of the protective orders tendered by the Company. But the Consumer Advocate overstates the scale of the requirement. In fact, Rule 26.03 establishes a relatively low threshold for issuing a protective order: "The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Tenn. R. Civ. P. 26.03. Under *Ballard*, good cause is established by a showing of "specific harm" to a party. Based on these standards, neither of the Company's proposed Protective Orders circumvents the "good cause" standard of the Rule and *Ballard*. To the contrary, the Company satisfies the good cause standard based on several solid grounds:

A. It is Undisputed that the Company's Confidential Information Should be Afforded Protection.

The Intervenors do not contest that Confidential Information should be protected. *See* CAPD's Response to TAWC's Mot. for Entry of Confidential Protective Orders at 5. Instead, the parties are only in dispute as to the terms of that protection. As the Intervenors have conceded the need for a fundamental degree of protection, the Company focuses on the additional, contested aspects of the Company's proposed orders.

B. Good Cause Unquestionably Exists for Protecting the Parent Company's Highly Confidential Information.

The real point of contention relates to the enhanced protective measures requested by the Company to ensure the protection of its parents' most sensitive business information. The

Company seeks such heightened protection for a relatively limited universe of materials. In contrast to the operational data of TAWC already produced to the TRA, the Company seeks to protect highly sensitive information primarily sought from TAWC's parent corporation, American Water Works Company ("AWK"), such as forecasting models, earnings projections, and certain financial data or proprietary business information. Such information is materially distinct from the operational information already produced by TAWC and requires additional protection to the extent that disclosure of such information threatens liabilities under the federal securities laws or poses a significant risk of creating market instability. Indeed, the fact that the Company has previously produced other, less-sensitive prospective materials is a testament to the Company's good faith effort in this proceeding.

As discussed below, the Company and its parent, AWK, face multiple risks of "specific harm" because they actually possess, and Intervenors actually seek, information that is "Highly Confidential" the disclosure of which could create liability under the federal securities law or generate market instability. Such specific harm is more than sufficient to establish "good cause" under the Tennessee Rules of Civil Procedure and *Ballard*. Only with the additional protections afforded by the proposed Supplemental Protective Order can AWK and TAWC fully protect against these specific harms.

1. AWK and TAWC Possess and Intervenors Seek Highly Confidential Information Subject to Production.

As a publicly-traded company, AWK and/or TAWC are in possession of certain highly-sensitive materials such as financial forecasting models, raw prospective data, and earnings projections for the Company or its parents. Such material is precisely the type of information in need of heightened protection to ensure that appropriate safeguards oversee its disclosure. Moreover, Intervenors actually seek discovery of Highly Confidential Information. For example,

the Consumer Advocate seeks "any study, document, emails and all written material where RWE or RWE Aqua Holdings GmbH consider what circumstances financial, and otherwise, constitute conditions that 'are reasonably practicable, subject to market conditions' for the public offerings of common stock." *See* First Discovery Request of the Consumer Advocate and Protection Division to Tennessee American Water Company, Part III, #7. Documents and data of this nature, and especially information containing AWK projected financials, are being sought by Intervenors, and therefore merit the heightened protection afforded by the Supplemental Protective Order.

2. Heightened Protection Is Still Needed Because Disclosure of this Highly Confidential Information Creates Potential Securities Law Issues.

Contrary to the Consumer Advocate's arguments, heightened protection for the information being sought is still needed in this proceeding. The Consumer Advocate argues that because the AWK's initial public offering ("IPO") is complete, the "gun-jumping" concerns expressed in the last rate case no longer exist, and therefore the entry of the Supplemental Protective Order is unnecessary. This assertion woefully oversimplifies the current situation, however, by overlooking the undeniable fact that the public dissemination of highly sensitive business and financial information has other severe implications under the securities laws of the United States and may result in unnecessary confusion and instability in the market.[3]

Although the Company does not expect that a "gun-jumping" risk is likely to recur,[4] the Company is still within the highly sensitive, post-IPO "quiet period" mandated by the federal

---

[3] The Company does not concede that any of the information requested in this or any other discovery request is relevant to this docket.

[4] AWK's "quiet period" is set to expire on June 1, 2008. Although a violation of a company's obligations during its "quiet period" has onerous penalties and consequences, the Company does not anticipate these obligations to create significant problems given its impending termination. The securities laws, however, are extremely complex and the Company is constantly vigilant to ensure full compliance with the laws at all times.

securities laws, which prohibits the Company from disseminating certain information to the market. This quiet period will still be in effect on May 28, when the Company must respond to Intervenors' First Discovery Requests. Even after that quiet period ends on June 1, 2008, however, the Company must protect against making certain forward-looking statements to the public without proper disclaimers. The Company's ability to ensure that such disclaimers accompany the information would be hampered, if not altogether destroyed, if required to produce materials without the assurance of additional protection.

For example, without the necessary protections afforded by the Supplemental Protective Order, the Company and its parents could potentially violate the U.S. Securities and Exchange Commission's Regulation F-D, which prohibits the selective disclosure of an issuer's "material, nonpublic information regarding that issuer." Regulation F-D, 17 C.F.R. §§ 243.100-103 (2007). The only way information covered by Regulation F-D can be disclosed without liability would be for the Company and AWK to simultaneously disclose the entire universe of its discovery to the market through a Form 8-K. This would constitute an unreasonably onerous and costly burden by virtue of the volume of discovery requested. Moreover, without the additional protections afforded by the Supplemental Protective Order, the Company would be hard-pressed to prevent improper disclosures because it would not have the tools to know when or by whom the disclosures might be made. These very real problems could be avoided altogether by entering the Supplemental Protective Order.

3. Heightened Protection Is Still Needed to Avoid the Risks Associated with Market Instability.

More importantly, the unprotected disclosure of the Company's highly sensitive information poses a particularly dangerous proposition because much of the material sought is undigested, out of context, and highly technical raw data that, without extensive technical

knowledge and intimate understanding of the industry, is uniquely susceptible to misinterpretation. Whereas this Authority's knowledge and understanding of the utilities industry allow it to make accurate assessments based on the information produced, the general investing public lacks such knowledge. The disclosure of incomplete or confusing information about AWK to the general investing public could cause serious market instability in the Company's stock price. A decrease in the share price of AWK stock, however minimal, can have dramatic effects. For instance, a decrease of less than $1 dollar in the share price results in the loss of over $100 million in value to the shareholders of AWK.

Changes in share value pose multiple risks to the Company, including shareholder lawsuits and charges by indirect parties, which would affect not only TAWC ratepayers but also ratepayers nationwide. For example, a decrease in stock value affects the Company's access to capital. That, in turn, impacts the Company's interest costs, which imposes greater expense on the Company to conduct its ordinary business. To cover its higher operating costs, the Company would ultimately have to seek higher rates.[5]

4. The Supplemental Protective Order Offers Critical Additional Safeguards that Can Avoid Such Specific Harm.

Finally, there is good cause for implementing the Supplemental Protective Order because the additional safeguards afforded by the Supplemental Protective Order are critical to ensure the adequate protection of AWK's and TAWC's most sensitive material. For instance, the Supplemental Protective Order's provisions regarding the Tennessee Public Records Act ("TPRA") (at ¶¶ 11-12) provide for automatic protection against disclosures pursuant to record requests under the TPRA, Tenn. Code Ann. § 10-7-503(a). These provisions are essential to the

[5] Even if the general investing public could readily understand such information, the instability caused while the general investing public took the time to digest and interpret such data could have serious consequences.

efficient protection of highly sensitive materials because the standard Protective Order, standing alone, is insufficient to protect against the disclosure of especially sensitive information. Without this enhanced protection, the Company must jump through multiple hoops to see that the TRA enforces its protective order each time a third party requests those materials. Because the consequences of violating Regulation F-D or of the disclosure of this type of information are so high, the Company cannot take the chance that it will be caught with insufficient time to block the disclosure of such information.[6]

Importantly, the Consumer Advocate has conceded that the TPRA provides an exception for records protected from disclosure by "state law," and that the "state law" exception includes those records subject to protective orders issued by this Authority. *See* Resp. to TAWC's Mot. for Entry of Confidential Protective Orders, p. 2; *Ballard v. Herzke*, 924 S.W.2d 652, 662 (Tenn. 1996). Thus, by its own admission, the Consumer Advocate recognizes that the TRA can establish a one-stop, blanket protection against disclosure, which would save the time and resources of all parties. There is no just reason that the TRA should not now eliminate the risk of TPRA disclosure of this type of especially sensitive information. Otherwise, the Company and the TRA would have to issue a preventative ruling every time a public records request is received. It is therefore in all parties' interests to have this provision included.

The Supplemental Protective Order also contains a notice requirement (at ¶ 8) whereby written notice must be provided to the producing party whenever another party wishes to provide access to Highly Confidential Information to someone other than a carefully circumscribed set of "need-to-know" recipients. This notice would identify any such person and provide a reasonable

---

[6] Indeed, the Company's proposed Protective Order proposes only five days notification for the Company's Confidential Information. Incredibly, the Intervenors' proposed order contemplates providing even less advance notice before the possible dissemination of materials to third parties.

opportunity for the Company to object to the request. The notice provision is critical to the Company because, given the consequences associated with inappropriate disclosure discussed above, the Company needs to know when a party seeks its business information and who that party is. Moreover, because inadvertent disclosure also poses such an extreme risk, the Company needs to be aware of the universe of individuals in possession of its sensitive materials to identify the party responsible for the disclosure to seek damages against them. Finally, history has demonstrated the City of Chattanooga's willingness to provide highly sensitive materials to inappropriate parties. *See* Order Granting, In Part, Tennessee American Water Company'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, dated 4-4-07, Docket 06-00290 (attached as Exhibit A). In that instance, only this advance notice procedure enabled the Company to prevent the inappropriate disclosure of its most highly sensitive materials by order of this Hearing Officer, who justly determined that such disclosure would have caused avoidable harm to the Company. It is instructive that the City of Chattanooga had also argued in that last case that heightened protections were unnecessary.[7]

Of similar importance, the Protective Order would be meaningless if the information it seeks to protect is ultimately disclosed during the hearing. To avoid this, the Supplemental Protective Order delineates specific procedures for handling Highly Confidential Information during the hearing so that it is not left to separate determination prior to the hearing.

---

[7] Of note, the Consumer Advocate's also argue that the Company's Supplemental Protective Order (¶ 6) seeks disclosure of Intervenors' work product. The Company is sensitive to such concerns and is therefore willing to strike the request to specify the exact Highly Confidential Information that Intervenors plan to introduce at the hearing. Specifically, the company has no objection to modifying paragraph 6 of the proposed Supplemental Protective Order as follows: "The Request shall set forth ~~the specific Highly Confidential Information that the party wishes to use and~~ when the requesting party requests to use Highly Confidential information."

Given the potentially costly, grave, and irreparable consequences of the disclosure of extremely sensitive Highly Confidential Information, good cause for the enhanced protection of such information has been established. Such an approach reduces the risk of inadvertent disclosure, avoids emergency efforts to prevent an unwarranted disclosure through a TPRA request, prohibits improper access by persons with possible ulterior motives, and establishes reasonable procedures for protecting the information throughout these proceedings. The heightened protection of the Supplemental Protective Order is therefore necessary to provide the most efficient and effective protection of the Company's Highly Confidential Information.

III. The Company's Proposed Compromise

Although the Company believes that the most straightforward way to handle the discovery issues would be to simply adopt the same orders that proved effective in the last hearing, the Company is willing to forego certain arguments until the Hearing Officer may decide them separately in order to reach agreement now. Accordingly, although the Company believes that all provisions of the Supplemental Protective Order are necessary to the extent they provide heightened protections and specifically address the procedures for handling such particularly sensitive materials, the Company is willing to defer the resolution of certain aspects of the Supplemental Protective Order to the pretrial conference.[8] To that end, and in the interest of avoiding further litigation and facilitating a more expeditious exchange of discovery, the Company would be willing to agree to a single order designating materials as "Confidential," provided that the single protective order includes two additional provisions to address the company's most sensitive information.

---

[8] For instance, the Company's proposed Supplemental Protective Order details the method for handling material presented at the hearing whereas the standard proposed Protective Order is silent on this issue. Consequently, in lieu of entering the Company's two proposed orders, the Hearing Officer would have to separately resolve this issue prior to the hearing.

The Hearing Officer may accomplish this compromise by entering the standard "Confidential" Protective Order with two critical provisions included from the Supplemental Protective Order: First, the protective order must include the Supplemental Protective Order's provision regarding the Tennessee Public Records Act (¶¶ 11-12). As noted above, this provision is essential to the efficient protection of highly sensitive materials because the standard Protective Order, standing alone, merely delays the disclosure of information. Second, the proposed, single protective order would include the Supplemental Protective Order's notice requirements (¶ 8), to provide for notification to the Company when a party seeks to disclose Confidential Information to an unauthorized person or entity.

By incorporating these two provisions into the standard Protective Order proposed by the Company, the Hearing Officer would sufficiently address the Company's most immediate concerns regarding its most sensitive information without needing two separate orders. For the Hearing Officer's convenience, a proposed single Protective Order is attached that is comprised of the TRA's standard protective order, with the two supplemental provisions included in bold print. (Attached as Exhibit B).

Conclusion

For the foregoing reasons, as well as those set forth in the Company's Motion for Entry of Confidential Protective Orders, the Company's proposed Protective Order and Supplemental Protective Order should be entered in this docket. In the alternative, the Company requests that the standard Confidentiality order be entered alone, but with the addition of the enhanced TPRA and notice protections provided for in the Company's proposed Supplemental Protective Order. Pursuant to TRA Rule 1220-1-2-.06(4), the Company requests oral argument on its Motion for Entry of Confidential Protective Orders and this Reply.

Respectfully submitted,

R. Dale Grimes (#6223)
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 20 day of May, 2008, upon the following:

[x] Hand-Delivery [ ] U.S. Mail [ ] Facsimile [ ] Overnight [x] Email	Timothy C. Phillips, Esq. Consumer Advocate and Protection Division Office of Attorney General 2nd Floor 425 5th Avenue North Nashville, TN 37243-0491
[ ] Hand-Delivery [ ] U.S. Mail [ ] Facsimile [x] Overnight [x] Email	David C. Higney, Esq. Counsel for Chattanooga Manufacturers Association Grant, Konvalinka & Harrison, P.C. 633 Chestnut Street, 9th Floor Chattanooga, TN 37450
[x] Hand-Delivery [ ] U.S. Mail [ ] Facsimile [ ] Overnight [x] Email	Henry M. Walker, Esq. Counsel for Chattanooga Manufacturers Association Boult, Cummings, Conners & Berry, PLC Suite 700 1600 Division Street Nashville, TN 37203
[ ] Hand-Delivery [ ] U.S. Mail [ ] Facsimile [x] Overnight [x] Email	Michael A. McMahan, Esq. Special Counsel City of Chattanooga (Hamilton County) Office of the City Attorney Suite 400 801 Broad Street Chattanooga, TN 37402
[ ] Hand-Delivery [ ] U.S. Mail [ ] Facsimile [x] Overnight [x] Email	Frederick L. Hitchcock, Esq. Harold L. North, Jr., Esq. Counsel for City of Chattanooga Chambliss, Bahner & Stophel, P.C. 1000 Tallan Building Two Union Square Chattanooga, TN 37402

Exh. A

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 4, 2007

IN 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**

ORDER GRANTING, IN PART, TENNESSEE AMERICAN WATER COMPANY'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

This matter came before the Hearing Officer upon the filing of *Tennessee American Water Company'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* (the *"Objections"*) filed with the Tennessee Regulatory Authority ("TRA" or "Authority") immediately before the Status Conference on March 23, 2007. The *Objections* were addressed at the March 23, 2007 Status Conference and the parties argued their positions in more detail when the Status Conference reconvened on March 27, 2007.

Tennessee American Water Company ("TAWC" or the "Company") filed its *Objections* in accordance with the provisions set forth in the Supplemental Protective Order issued on

March 1, 2007. TAWC timely objected to the request of counsel for the City of Chattanooga (the "City") to disclose Highly Confidential Information to Dan Johnson ("Mr. Johnson"), the Chief of Staff for Mayor Ron Littlefield, City of Chattanooga, and to Marlin L. Mosby ("Mr. Mosby") and W. Kevin Thompson ("Mr. Thompson") of Public Financial Management ("PFM"). The City was permitted to obtain the Highly Confidential Information through the *Order Granting Motions to Compel Discovery Relating to Initial Public Offering (IPO) Information and Materials* issued by the Hearing Officer on March 1, 2007 and was provided access to copies of the Highly Confidential Information after counsel for the City executed the Nondisclosure Statement pursuant to the Supplemental Protective Order, also issued on March 1, 2007.[1]

During the March 23, 2007 Status Conference, TAWC argued that Mr. Mosby and Mr. Thompson are not entitled to access to Highly Confidential Information because they have no present role in this rate case. They have not been employed or retained as experts by the City in this case and therefore, neither Mr. Mosby nor Mr. Thompson would qualify as a person authorized to receive protected information pursuant to the Supplemental Protective Order or the Protective Order.[2] TAWC asserted that this reason alone is sufficient to prevent these individuals from having access to Highly Confidential Information.

The major concern TAWC expressed was its contention that allowing Mr. Mosby and Mr. Thompson, or any other employee of PFM, access to the Highly Confidential Information would cause irreparable harm and unreasonable prejudice to TAWC's business. According to TAWC, PFM was directly involved in assisting the City in an earlier attempt by the City to

[1]Michael McMahan, counsel for the City, executed the Nondisclosure Statement on March 12, 2007 and was provided copies of the Highly Confidential Information by TAWC. Special Counsel for the City, Frederick Hitchcock, however declined to execute the Nondisclosure Statement and was not provided copies.
[2] Supplemental Protective Order ¶ 8(c) (March 1, 2007); Protective Order ¶ 3 (January 19, 2007).

exercise eminent domain to condemn TAWC, with the intent to acquire TAWC and convert it to a municipally-owned utility. TAWC argues that through involvement in the condemnation action, PFM and its employees have taken action that is a direct competitive threat to TAWC's business and therefore, it is unreasonable to require TAWC to deliver Highly Confidential Information to them.

TAWC argues Mr. Johnson's position of influence with the City is the reason he should not be permitted access to the Highly Confidential Information. TAWC contends that it is foreseeable that Mr. Johnson, whether consciously or subconsciously, could use the information he would glean from the Highly Confidential Information in a way that might prejudice TAWC in its future dealings with the City. In support of its position, TAWC relies upon the case of *Safe Flight Instrument Corp. v. Sundstrand Data Control, Inc.*,[3] for the proposition that denying party employees access to commercially sensitive information may be justified where it is foreseeable that abuse of the confidential information might occur. Specifically, the court in the *Safe Flight* case prevented the president of a corporate party access to commercially sensitive information because of the court's concern as to "his human ability during future years of research to separate the applications he has extrapolated from (the other party's) documents from those he develops from his own ideas."[4] For similar reasons, TAWC objects to the disclosure of Highly Confidential Information to Mr. Johnson.

Notwithstanding its *Objections*, during the March 23, 2007 Status Conference, TAWC agreed that Mr. Johnson may be permitted access to certain information contained within the Highly Confidential Information, such as the projected post-IPO capital structure of the Company. For this reason, the Hearing Officer directed the Company to review the Highly

[3] *Safe Flight Instrument Corp. v. Sundstrand Data Control, Inc.*, 682 F. Supp. 20 (D.Del. 1988).
[4] *Id.* at 22.

Confidential Information and submit a letter to the City detailing the exact pages of any materials to which Mr. Johnson could have access. However, the Company maintained its objection as to any disclosure to Mr. Mosby, Mr. Thompson and any employees of PFM. The Hearing Officer suspended further argument on the *Objections* to allow time for the Company to provide a letter to the City and for the City to respond to the *Objections*.

On March 26, 2007, TAWC provided a letter to the City, in which TAWC maintained its objection to Mr. Johnson having access to Highly Confidential Information. TAWC agreed to the disclosure of a specific document, TAWC-HC-00571-00572, referenced in TAWC's Second Supplemental Response to the Consumer Advocate and Protection Division's First Discovery Request No. 8. TAWC stated that this production should not be considered a waiver of "protections of the Supplemental Protective Order with respect to this document."[5]

On March 27, 2007, the City filed its *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 ("Response to Objections").* In its *Response to Objections*, the City addressed TAWC's concern that Mr. Mosby or Mr. Thompson "might use the information to the material prejudice of TAWC in other matters in the future."[6] The City first stated "TAWC inaccurately claimed that Thompson and Mosby had participated in the condemnation case involving the City and TAWC which occurred a number of years ago."[7] The City further asserted, "Factually, neither Thompson nor Mosby participated in the condemnation

[5] Letter from Ross Booher, Esq. to Michael A. McMahan, Esq. (March 26, 2007).
[6] *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,* p. 1 (March 27, 2007).
[7] *Id.*, p. 2.

action involving the City and TAWC."[8] The City pointed out that these individuals had prepared or provided expert testimony for the City in TAWC's 2003 rate case proceeding before the TRA. According to the City, "no known conflict of interest" exist between Mr. Thompson or Mr. Mosby and TAWC.[9] The City asserts that, inasmuch as expert witnesses come within the purview of the protective order providing for access to documents in this case, TAWC has a heavy burden in preventing such disclosures.

As to Mr. Johnson, the City argues that he is the second highest-ranking administrative official of the City and that both Mr. Johnson and the Mayor of Chattanooga are the "clients" supervising this case on behalf of the City. As a result, consultation with Mr. Johnson, who is an experienced Certified Public Accountant, is crucial to the City's determination of whether to hire PFM to analyze data in the preparation of its case. For these reasons, the City argues that Mr. Johnson should be permitted access to the Highly Confidential Information.

The City cites the case of *Standard Space Platforms Corporation v. United States,*[10] in support of its position that a movant seeking to limit the disclosure of relevant documents must show that the disclosure will result in a "clearly defined and serious injury to its business,"[11] and that "the requisite showing must be made from specific facts, not mere conclusory allegations of confidentiality or business harm."[12] The City asserts that TAWC has not demonstrated a sufficient basis for denying disclosure to the City's client representative and expert witnesses, and that to deny access would constitute a denial of due process to the City in this case.

During the Status Conference, reconvened on March 27, 2007, the parties presented additional arguments to support their respective positions on the Company's *Objections*. Ross

---

[8] *Id.*
[9] *Id.*
[10] *Standard Space Platforms Corporation v. United States,* 35 Fed.Cl. 505 (1996).
[11] *Id.* at 507, citing *United States v. Exxon Corp.,* 94 F.R.D. 250, 251 (D.D.C. 1981) (quoting *United States v. IBM Corp.,* 67 F.R.D. 40, 46 (S.D.N.Y. 1975)).
[12] *Id.* at 508, referencing *Wall Indus., Inc. v. United States,* 5 Cl.Ct. 485, 487 (1984).

Booher, Esq., argued the *Objections* on behalf of TAWC. Michael McMahan, Esq., argued the City's position.

During its argument, TAWC presented documentation to refute the City's arguments that Mr. Mosby did not participate in the condemnation action brought by the City against TAWC. The Company provided copies of the reported case of *Arnold v. City of Chattanooga,*[12] and a deposition given by Mr. Mosby in that case. TAWC pointed out that in the *Arnold* case, as part of its findings, the Court referred specifically to Mosby's involvement:

> Third, the Trial Judge stated that the witnesses (Decosimo, Adams, and ***Mosby***) testified that they were not told they were being hired as experts in anticipation of litigation. However, what the parties were told is not completely dispositive. Whether an expert was consulted in anticipation of litigation must be determined from the intent of the party and its attorneys. The Mayor specifically stated in his deposition that at the time the experts were consulted, he was anticipating an eminent domain action. He testified:
> It was clear to me that in order for the City to acquire the water company we would have to initiate a condemnation action and I asked [special counsel] [Frederick Hitchcock] to make sure that we could follow through on that on the ability to acquire the company through eminent domain.
>
> Both City Attorney Randall Nelson and Special Counsel Frederick Hitchcock swore in their affidavits that they contacted Decosimo and PFM in anticipation of litigation with the Water Company. (Emphasis added)[13]

Next, TAWC referred to deposition testimony of Mr. Mosby filed in the Hamilton County Chancery Court action of the *Arnold v. City of Chattanooga* case. Counsel for TAWC, quoted from Mr. Mosby's testimony as follows:

> . . . we [PFM] found out that the mayor actually was considering the acquisition of the utility company. And we went back to the City and said, "Oh, by the way, do you know we have some expertise in this area?" . . . But at that point a team was basically

[12] *Arnold v. City of Chattanooga,* 19 S.W.3d 779 (Tenn. Ct. App. 1999), *perm app denied* (2000).
[13] *Id.* at 784.

> put together and that team included the city attorney, us, and the finance director's office.[14]

The deposition transcript revealed that Mr. Mosby was represented in the deposition by Frederick Hitchcock, special counsel for the City in this matter. As to Mr. Johnson, TAWC reiterated its argument as to the prejudice that might result from disclosure to Mr. Johnson.

Counsel for the City, Mr. McMahan, responded to the documentation presented by TAWC, asserting that he had conducted inquiries, including reviewing pay vouchers issued by the City in the condemnation case, and he personally did not find evidence suggesting that Mr. Mosby had been involved or had participated in the condemnation action.[15] Additionally, counsel stated that he had checked with the City Attorney in the *Arnold* case, and that the City Attorney advised him that he was unaware of any involvement by PFM in the *Arnold* matter.[16]

Turning to the objection as to Mr. Johnson, the City argued that the seminal issue is the relative ratio of debt to equity in the post-IPO TAWC.[17] It is this information contained within the Highly Confidential Information that the City requests that Mr. Johnson, a person with financial expertise, have access.[18] TAWC responded in agreement with the City that the capital structure of TAWC is the central issue and stated that it had already offered to provide such information to the parties. TAWC offered to discuss with the City the scope of documents contained within the Highly Confidential Information that by agreement may be viewed by Mr. Johnson. The City agreed to communicate with the Company in an attempt resolve this issue.

Based on the arguments of the parties and the information provided, the Hearing Officer determined that Mr. Mosby and Mr. Thompson should not be provided access to Highly

---

[14] Transcript of Status Conference, pg. 56 (March 27, 2007); *Arnold v. City of Chattanooga*, Deposition of Marlin L. Mosby, pg. 54 (March 5, 1999).
[15] *Id.* at pg. 58, ln. 18-24.
[16] *Id.* at pg 58, ln. 25 to pg. 59, ln. 5.
[17] *Id.* at pg. 59, ln. 20 to pg. 60, ln. 1.
[18] *Id.* at pg. 60, ln. 1-5.

Confidential Information. The Hearing Officer found that Mr. Mosby and Mr. Thompson have not been retained by the City as experts in this case and that TAWC had sufficiently demonstrated that as to PFM and its employees, including Mr. Mosby and Mr. Thompson, a potential conflict of interest exists that could result in irreparable business harm to TAWC if Highly Confidential Information is shared as requested by the City. Additionally, the parties have agreed to discuss the extent of the Highly Confidential Information to which Mr. Johnson will be permitted access. Therefore, the Hearing Officer directed the parties to work together in an attempt to reach an agreement as to the documentation that can be disclosed to Mr. Johnson.

IT IS THEREFORE ORDERED THAT:

1. Tennessee American Water Company's *Objections* as to Public Financial Management (PFM) and its employees, including specifically, Marlin L. Mosby and W. Kevin Thompson, receiving Highly Confidential Information in this case is **granted** and such Highly Confidential Information shall not be disclosed to PFM, Mr. Mosby or Mr. Thompson.

2. The parties shall discuss the extent of the Highly Confidential Information that will be available to Mr. Johnson and shall report to the Hearing Officer as soon as possible if an agreement cannot be reached.[19]

J. Richard Collier

J. Richard Collier
Hearing Officer

[19] On April 2, 2007, the parties filed a *Joint Notice of Agreement Between Tennessee American Water Company and The City of Chattanooga Regarding Access to Highly Confidential Information to Dan Johnson,* evidencing their agreement as to the disclosure of Highly Confidential Information to Mr. Johnson and specifying those documents that would be made available to him for review.

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 PROPERTY USED AND USEFUL IN FURNISHING WATER SERVICE TO ITS CUSTOMERS	))))))))	**Docket No. 08-00039**

PROTECTIVE ORDER

To expedite the flow of filings, discovery, exhibits and other materials, and to facilitate the prompt resolution of disputes regarding confidentiality of the material, adequately protect material entitled to be kept confidential and to ensure that protection is afforded only to material so entitled, and the parties being in agreement as to the entry of this Protective Order, the Hearing Officer, as appointed by the Tennessee Regulatory Authority ("TRA"), hereby orders the following:

1. For the purpose of this Protective Order (the "Order"), proprietary or confidential information, hereinafter referred to as "CONFIDENTIAL INFORMATION" shall mean 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, and which has been specifically designated by the producing party. A "Producing Party" is defined as the party creating the confidential information as well as the party having actual physical possession of information produced pursuant to this Order. All summaries, notes, extracts, compilations or other direct or indirect

reproduction from or of any protected materials, shall be entitled to protection under this Order. Documents containing CONFIDENTIAL INFORMATION shall be conspicuously and specifically marked as "CONFIDENTIAL" on each page containing confidential information and on the cover page with the accompanying page numbers listed either on the cover or on a subject index page. The document must be produced in a way that will clearly identify to others that it contains CONFIDENTIAL INFORMATION. Any document so designated shall be handled in accordance with this Order. The provisions of any document containing CONFIDENTIAL INFORMATION may be challenged under Paragraph 11 of this Order.

2. Any individual or company subject to this Order, including producing parties or persons reviewing CONFIDENTIAL INFORMATION, shall act in good faith in discharging their obligations hereunder. Parties or nonparties subject to this Order shall include parties who are allowed by the TRA to intervene subsequent to the date of entry of this Protective Order.

3. CONFIDENTIAL INFORMATION shall be used only for the purposes of this proceeding, and shall be expressly limited and disclosed only to the following authorized persons:

(a) Counsel of record for the parties and other legal counsel for the parties in this case and associates, secretaries and paralegals actively engaged in assisting counsel of record in this proceeding;

(b) TRA Directors and members of the staff of the TRA;

(c) officers, directors, or employees of the parties, including employees of the Office of Tennessee Attorney General; provided, however, that CONFIDENTIAL INFORMATION shall be shown only to those persons having a need to know;

(d) Representatives of the parties who need to know because they are actively engaged in assisting counsel of record in preparing for this proceeding; and

(e) Outside consultants and expert witnesses (and their staff) employed or retained by the parties or their counsel, who need access to CONFIDENTIAL INFORMATION solely for evaluation, testing, testimony, preparation for trial or other services related to this docket.

Under no circumstances shall any CONFIDENTIAL INFORMATION be disclosed to or discussed with anyone associated with the marketing of products, goods or services that may be in competition with the products, goods or services of the Producing Party. Counsel for the parties are expressly prohibited from disclosing CONFIDENTIAL INFORMATION produced by another party to their respective clients, except for in-house counsel and persons who need to know in order to assist counsel of record with preparation of the case.

4. (a) **Absent an order of the TRA or other court of competent jurisdiction, only those identified herein who require access to such CONFIDENTIAL INFORMATION for this proceeding and have fully executed a copy of the Nondisclosure Statement, attached hereto, may receive access to CONFIDENTIAL INFORMATION. A copy of the executed Nondisclosure Statement shall be provided to the Producing Party prior to any person being granted access to the CONFIDENTIAL INFORMATION.**

(b) **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 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 CONFIDENTIAL INFORMATION. Such notice shall include the person's full name, address, employer and the category of authorized person.**

(c) **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 CONFIDENTIAL INFORMATION, the Producing Party may,**

within 2 business days of receiving notice that an individual is to receive access to 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 CONFIDENTIAL INFORMATION.

(d) No other disclosure of 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.

(e) Notwithstanding any provisions in this Protective Order to the contrary, this Paragraph No. 4, together with its subparts (a) - (f), and the terms of this Protective Order shall apply to members of the Consumer Advocate and Protection Division of the Office of the Attorney General, including attorneys and staff, and advisory staff members of the Tennessee Regulatory Authority.

(f) This Paragraph No. 4, together with its subparts (a) - (f), shall not apply to TRA Directors and their immediate staff, the Tennessee Attorney General, the Chief Deputy Attorney General, the Associate Chief Deputy Attorney General, or the Tennessee Solicitor General and their immediate staff and the Deputy of the Consumer Advocate and Protection Division.

5. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing the documents this failure shall not constitute a waiver of confidentiality, provided the party or non-party who has produced the document shall notify the recipient of the document in writing

within five (5) days of discovery of such inadvertent failure to designate the document as CONFIDENTIAL. At that time, the recipients will immediately treat the subject document as CONFIDENTIAL. In no event shall the TRA, or any other party to this Order, be liable for any claims or damages resulting from the disclosure of a document provided while not so labeled as "CONFIDENTIAL." An inadvertent failure to designate a document as CONFIDENTIAL, shall not, in any way, affect the TRA's determination as to whether the document is entitled to CONFIDENTIAL status.

6. If any party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing such documents and the failure is not discovered in time to provide a five (5) day notification to the recipient of the confidential nature of the documents referenced in the paragraph above, the failure shall not constitute a waiver of confidentiality and a party by written motion or by oral motion at a Pre-hearing Conference or at the Hearing on the merits may request designation of the documents as CONFIDENTIAL, and if the motion is granted by the Hearing Officer or the Authority, the recipients shall immediately treat the subject documents as CONFIDENTIAL. The Hearing Officer or the Tennessee Regulatory Authority may also, at his or her discretion, either before or during the Pre-Hearing Conference or Hearing on the Merits of the case, allow information to be designated CONFIDENTIAL and treated as such in accordance with the terms of this Order.

7. Any papers filed in this proceeding that contain, quote, paraphrase, compile or otherwise disclose documents covered by the terms of this Order, or any information contained therein, shall be filed and maintained in the TRA Docket Room in sealed envelopes marked CONFIDENTIAL and labeled to reflect the style of this proceeding, the docket number, the

contents of the envelope sufficient to identify its subject matter and this Protective Order. The envelopes shall be maintained in a locked filing cabinet. The envelopes shall not be opened or their contents reviewed by anyone except upon order of the TRA or Hearing Officer after due notice to counsel of record. Notwithstanding the foregoing, the Directors and the Staff of the TRA may review any paper filed as CONFIDENTIAL, without obtaining an Order of the TRA or Hearing Officer provided the Directors and Staff maintain the confidentiality of the paper in accordance with the terms of this Order.

8. Documents, information and testimony designated as CONFIDENTIAL or PROTECTED SECURITY MATERIALS (as defined in Paragraph 19) in accordance with this Order, may be used in testimony at the Hearing of this proceeding and offered into evidence used in any hearing related to this action in a manner that protects the confidentiality of the information, subject to the 'Tennessee Rules of Evidence and to such future orders as the TRA or the Hearing Officer may enter. Any party intending to use documents, information, or testimony designated CONFIDENTIAL or PROTECTED SECURITY MATERIALS shall inform the Producing Party and the TRA or the Hearing Officer, prior to the Hearing on the Merits of the case, of the proposed use; and shall advise the TRA or the Hearing Officer, and the Producing Party before use of the information during witness examinations so that appropriate measures can be taken by the TRA or the Hearing Officer to protect the confidential nature of the information.

9. Except for documents filed in the TRA Docket Room, all documents covered by the terms of this Order that are disclosed to the requesting party shall be maintained separately in files marked CONFIDENTIAL and labeled with reference to this Order at the off-ices of the requesting party's counsel of record, kept in a secure place.

10. Nothing herein shall be construed as preventing any party from continuing to use and disclose any information (a) that is in the public domain, or (b) that subsequently becomes part of the public domain through no act of the party, or (c) that is disclosed to it by a third party, where said disclosure does not itself violate any contractual or legal obligation, or (d) that is independently developed by a party, or {e} that is known or used by it prior to this proceeding. The burden of establishing the existence of (a) through (e) shall be upon the party attempting to use or disclose the information.

11. Any party may contest the designation of any document or information as CONFIDENTIAL or PROTECTED SECURITY MATERIALS by filing a Motion with the TRA, Hearing Officer, or the courts, as appropriate, for a ruling that the documents, information or testimony should not be so treated. All documents, information and testimony designated as CONFIDENTIAL or PROTECTED SECURITY MATERIALS, however, shall be maintained as such until the TRA, the Hearing Officer, or a court orders otherwise. A Motion to contest must be filed not later than fifteen (15) days prior to the Hearing on the Merits. Any Reply from the Company seeking to protect the status of their CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS must be received not later than ten (10) days prior to the Hearing on the Merits and shall be presented to the Authority at the Hearing on the Merits for a ruling.

12. Nothing in this Order shall prevent any party from asserting any objection to discovery other than an objection based upon grounds of confidentiality.

13. Non-party witnesses shall be entitled to invoke the provisions of this Order by designating information disclosed or documents produced for use in this action as CONFIDENTIAL, in which event the provisions of this Order shall govern the disclosure of

information or documents provided by the non-party witness. A non-party witness' designation of information as CONFIDENTIAL may be challenged under Paragraph 1 1 of this Order.

14. No person authorized under the terms herein to receive access to documents, information, or testimony designated as CONFIDENTIAL shall be granted access until such person has complied with the requirements set forth in Paragraph 4 of this Order.

15. Any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

16. Upon an order becoming final in this proceeding or any appeals resulting from such an order, all the filings, exhibits and other materials and information designated CONFIDENTIAL or PROTECTED SECURITY MATERIALS and all copies thereof shall be returned to counsel for the party who produced (or originally created) the filings, exhibits and other materials, within fifteen (15) days or authorized persons in possession of such documents shall certify to counsel for the producing party that all filings, exhibits, and other materials, plus all copies or extracts from the filings, exhibits and other materials, and all copies of the extracts from the filings, exhibits and other materials thereof have been destroyed. Subject to the requirements of Paragraph 7 above, the TRA shall retain copies of information designated as CONFIDENTIAL or PROTECTED SECURITY MATERIALS as may be necessary to maintain the record of this case intact. Counsel who received the filings, exhibits and other materials, designated as CONFIDENTIAL or PROTECTED SECURITY MATERIALS shall certify to counsel for the Producing Party that all the filings, exhibits and other materials, plus all copies or extracts, notes or memorandums from the filings, exhibits and other materials, and all copies of the extracts from the filings, exhibits and other materials thereof have been delivered to counsel for the Producing Party or destroyed and that any electronic copies of CONFIDENTIAL

INFORMATION or PROTECTED SECURITY MATERIALS received or mentioned by the receiving party have been eliminated.

17. After termination of this proceeding, the provisions of this Order relating to the confidential nature of CONFIDENTIAL DOCUMENTS or PROTECTED SECURITY MATERIALS, information and testimony shall continue to be binding upon parties herein and their officers, employers, employees, agents, and/or others unless this Order is vacated or modified.

18. Nothing herein shall prevent entry of a subsequent order, upon an appropriate showing, requiring that any documents, information or testimony designated as CONFIDENTIAL shall receive protection other than that provided herein.

19. In addition to the other provisions of this Order, Tennessee American Water Company ("the Company") and its affiliates may designate and label as "PROTECTED SECURITY MATERIALS" documents and information related to security measures undertaken to protect public health and safety. The Company shall provide access to PROTECTED SECURITY MATERIALS to TRA Directors and members of the staff of the TRA and further only to authorized representatives of Intervenors in this docket. Authorized representatives shall be limited to the following: in the event that TRA staff becomes a party, one counsel of record and one other staff member or person under contract to the staff, each authorized in writing by a senior official of the TRA to have such access; and with respect to any other party, two counsel of record and a single other person, employed by or under contract to the party, authorized by that party in a written certification mutually agreeable to the parties.

20. The Company shall provide access to an authorized representative to PROTECTED SECURITY MATERIALS only after such authorized representative has executed

an Affidavit in the form of that attached to this Order and provided a copy to the Company. Except with consent of the Company: (i) access shall be at the offices of the Company or its counsel of record and under supervision of the Company; (ii) PROTECTED SECURITY MATERIALS shall not be removed from the offices of the Company or its counsel; (iii) no copies shall be provided to an authorized representative except as provided herein. Authorized representatives may make notes or memoranda from a review of the PROTECTED SECURITY MATERIALS and may remove such notes and memoranda. In all other respects such notes and memoranda shall remain PROTECTED SECURITY MATERIALS and subject to the provisions hereof, PROTECTED SECURITY MATERIALS shall be used only to assist TRA staff or any other party to prepare for and to try this proceeding and shall not be used for any other purpose in this or any other jurisdiction.

21. Except as provided in this Order, the contents of PROTECTED SECURITY MATERIALS to which the TRA staff or other party is given access, and any notes, memoranda, or any form of information or opinions regarding or derived from the PROTECTED SECURITY MATERIALS shall not be disclosed to anyone other than an authorized representative in accordance with the Order, except that an authorized representative may disclose his or her conclusions or findings solely within, and for the purposes of, this proceeding and in accordance with this Order. PROTECTED SECURITY MATERIALS shall not otherwise be published, disclosed or divulged except as expressly provided herein. The TRA Directors, TRA staff and any other party shall treat all notes memoranda or opinions regarding or derived from the PROTECTED SECURITY MATERIALS as highly confidential and shall keep them in a secure location with access limited to an authorized representative, and the contents of PROTECTED SECURITY MATERIALS and any information derived from them shall be considered highly

confidential, and shall not be deemed public records. The TRA staff, any party, Hearing Officer, or the TRA Directors may discuss any position or conclusion regarding security expenditures and testimony in briefs, orders, pleadings, or hearings in this proceeding without disclosing protected information to the public in accordance with this Order.

22. The Attorney General and his staff have authority to enter into Nondisclosure Agreements pursuant to Tenn. Code Ann. § 65-4-118 which are consistent with state and federal law, regulations and rules.

23. The Attorney General and his staff agree to keep confidential commercial information and/or trade secrets in a secure place and will not permit them to be seen by any person who is not an employee of the State of Tennessee, the Office of Attorney General and Reporter, or a person who has signed a Nondisclosure Agreement.

24. The Attorney General and his staff may make copies of confidential commercial information or trade secrets or any portion thereof. To the extent permitted by state and federal law, regulations and rules, all notes utilizing supporting information shall be subject to the terms of this Order to the extent factual assertions are derived from the supporting information.

25. To the extent permitted by state law, the Attorney General will provide timely notice of filing or disclosure in the discharge of the duties of the Office of the Attorney General and Reporter, pursuant to Tenn. Code Ann. §10-7-504(a)(5)(C) or any other law, regulation or rule, so that the Company may take action relating to disclosure.

26. **CONFIDENTIAL INFORMATION is subject to this Protective Order, which is entered pursuant to the Tennessee Rules of Civil Procedure. If a party, other than the Producing Party, receives a request or subpoena seeking the disclosure or production of 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: (i) shall respond to the request, subpoena or order, in writing, stating that the CONFIDENTIAL INFORMATION is protected pursuant to this Protective Order and the Protective Order; and (ii) shall not disclose or produce such CONFIDENTIAL INFORMATION unless and until subsequently ordered to do so by a court of competent jurisdiction. This Protective Order shall operate as an exception to the Tennessee Public Records Act, as set forth in the language of Tenn. Code Ann. § 10-7-503(a) ". . . unless otherwise provided by state law." (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) (holding that "state law" includes the Tennessee Rules of Civil Procedure). Because this Protective Order is issued pursuant to the Tennessee Rules of Civil Procedure, this Order creates an exception to any obligations of the Attorney General and the City of Chattanooga, including attorneys and members of their staffs, as to the Public Records Act and other open records statutes as to CONFIDENTIAL INFORMATION. This Protective Order acknowledges the role and responsibilities of the Attorney General and the Attorney General's staff, as set forth in Title 8, Chapter 6 of the Tennessee Statutes, beyond the duties associated with the Consumer Advocate and Protection Division, as prescribed in Tenn. Code Ann. § 65-4-118. This Order is not intended to conflict with the Attorney General's role and responsibilities, especially the investigative functions, as set forth in Title 8, Chapter 6. For there to be compliance with this Protective Order, any CONFIDENTIAL INFORMATION shared outside of the Consumer Advocate and Protection Division must be provided the full and complete

protection afforded other confidential or protected information in the control and custody of the Attorney General.

27. The designation of any information, documents or things in accordance with this Order as constituting or containing confidential or proprietary information and the Attorney General's or his staff's treatment of such material as confidential or proprietary in compliance with this Order is not an admission or agreement by the Attorney General or his staff that the material constitutes or contains confidential commercial information or trade secret information and shall not be deemed to be either a waiver of the state's right to challenge such designation or an acceptance of such designation. The Company agrees to designate information, documents or things provided to the Attorney General as confidential commercial information or trade secret if it has a good faith basis for the claim. The Company will upon request of the Attorney General or his staff provide a written explanation of the details, including statutory authority, that support its confidential commercial information or trade secret claim within five (5) days of a written request. The Company also specifically agrees that it will not designate any documents as CONFIDENTIAL INFORMATION or label such documents as "CONFIDENTIAL" if the documents:

(a) have been distributed to the public, consumers or others, provided that proprietary customer information provided by the Company to its customers or their marketers may be designated as CONFIDENTIAL INFORMATION; or

(b) are not maintained by the Company as confidential commercial information or trade secrets or are not maintained by the Company as proprietary customer information.

28. Nothing in this Order shall prevent the Attorney General from using the CONFIDENTIAL INFORMATION received for investigative purposes in the discharge of the duties of the Office of the Attorney General and Reporter. Additionally, nothing in this Order shall prevent the Attorney General from informing state officials and third parties of the fact of

an investigation, as needed, to conduct the investigation. Without limiting the scope of this paragraph, nothing in this Order shall prevent the Attorney General from contacting consumers whose names were provided by the Company or from discussing with any consumer any materials that he or she allegedly received from the Company or confirming that a consumer actually received the materials, to the extent that the Attorney General or his staff does so in a manner that complies with the provisions of this Order.

29. The terms of the foregoing paragraphs 22 through 28 do not apply to PROTECTED SECURITY MATERIALS as set forth in paragraphs 19-21 of this Order. PROTECTED SECURITY MATERIALS shall be treated in accordance with paragraphs 19-21.

30. All information, documents and things designated as CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS and produced in accordance with this Order may be disclosed in testimony or offered into evidence at any TRA or court hearing, trial, motion or proceeding of this matter, subject to the provisions of this Order and the applicable Rules of Evidence. The party who produced the information, documents and things designated as CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS agrees to stipulate to the authentication of such information, documents and things in any such proceeding.

31. Nothing in this Order is intended to restrict or alter federal or state laws, regulations or rules. The parties bound by this order understand, and by their acceptance of CONFIDENTIAL INFORMATION acknowledge, that certain CONFIDENTIAL INFORMATION produced pursuant to this Order may contain commercially-sensitive and material non-public information, the disclosure of which in violation of this Order could

constitute violations of the federal securities laws, among other applicable laws, and may result in imposition of civil or criminal penalties.

32. Any person who has signed a Nondisclosure Statement or is otherwise bound by the terms of this Order shall continue to be bound by this Order and/or Nondisclosure Statement even if no longer engaged by the TRA or Intervenors.

_____
Hearing Officer

APPROVED FOR ENTRY:

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

Attorneys for Tennessee American Water Company

By: _____
Timothy Phillips
Consumer Advocate and Protection Division
Office of Attorney General
425 5th Avenue North
Nashville, TN 37243-0491

Attorneys for the Consumer Advocate and Protection Division of the Attorney General's Office

By: _____
David C. Higney
Harold L. North, Jr.
Grant, Konvalinka & Harrison, P.C.
Ninth Floor, Republic Center
633 Chestnut Street
Chattanooga, TN 37450-0900

and

By: _____

Henry M. Walker
Boult, Cummings, Conners, & Berry
1600 Division Street, Suite 700
Nashville, TN 37203
Attorneys for the Chattanooga Manufacturers Association

By: _____

Michael A. McMahan
801 Broad Street, Suite 400
Chattanooga, TN 3740-0900

Attorneys for the City of Chattanooga

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 _____ day of May, 2008, upon the following:

[ ] Hand-Delivery
[ ] U.S. Mail
[ ] Facsimile
[ ] Overnight
[ ] Email

Timothy C. Phillips, Esq.
Consumer Advocate and Protection Division
Office of Attorney General
2nd Floor
425 5th Avenue North
Nashville, TN 37243-0491

[ ] Hand-Delivery
[ ] U.S. Mail
[ ] Facsimile
[ ] Overnight
[ ] Email

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

[ ] Hand-Delivery
[ ] U.S. Mail
[ ] Facsimile
[ ] Overnight
[ ] Email

Henry M. Walker, Esq.
Counsel for Chattanooga Manufacturers Association
Boult, Cummings, Conners & Berry, PLC
Suite 700
1600 Division Street
Nashville, TN 37203

[ ] Hand-Delivery
[ ] U.S. Mail
[ ] Facsimile
[ ] Overnight
[ ] Email

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

[ ] Hand-Delivery
[ ] U.S. Mail
[ ] Facsimile
[ ] Overnight
[ ] Email

Frederick L. Hitchcock, Esq.
Harold L. North, Jr., Esq.
Counsel for City of Chattanooga
Chambliss, Bahner & Stophel, P.C.
1000 Tallan Building
Two Union Square
Chattanooga, TN 37402

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 PROPERTY USED AND	)	**Docket No. 08-00039**
USEFUL IN FURNISHING WATER	)	
SERVICE TO ITS CUSTOMERS	)	

NONDISCLOSURE STATEMENT

I have reviewed the Protective Order entered in the above-captioned matter and agree to abide and be bound by its terms. I understand that unauthorized disclosure of documents labeled "CONFIDENTIAL" or "PROTECTED SECURITY MATERIALS" 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 acquired, who acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this ____ day of _____, 2008.

_____
NOTARY PUBLIC

My Commission Expires:

6823190.3