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June 23, 2008

VIA EMAIL

Hearing Officer Richard Collier
c/o Ms. Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

filed electronically in docket office on 06/23/08

Re: *Petition of Tennessee American Water Company To Change And Increase Certain Rates And Charge 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 Mr. Collier:

On Friday, June 20, 2008, Hearing Officer Collier distributed a proposed Amended Protective Order for the parties' consideration in this matter. Pursuant to the Hearing Officer's request for comment on the proposed Amended Protective Order, Tennessee American Water Company ("TAWC") submits the following:

Proposed Amended Protective Order

As an initial matter, TAWC submits that the proposed Amended Protective Order is entirely consistent with the proposed revisions to the Tennessee Public Records Act ("TPRA"). (Tenn. Code Ann. § 10-7-503 (Amendment No. 3 to HB3637)). The only relevant revision to Section 10-7-503 seeks to enlarge the length of time to seven days (instead of three) to respond to public records requests. Under the proposed Amended Protective Order, Intervenor must respond to TPRA requests within five days (§ 27). Accordingly, the Amended Protective Order does not conflict with the public entities' obligations under the proposed revisions to the TPRA. Instead, it merely imposes a shorter response time than the new law, which is entirely appropriate given the expedited fashion in which this matter proceeds. However, TAWC is not opposed to the proposed Amended Protective Order having the same 7-day response requirement as the TPRA, if Intervenor so wish.

Additionally, the revisions to the TPRA in no way affects the holding in *Ballard* that a protective order constitutes a valid exception to the TPRA.

Second, the definition of “Producing Party,” as it appears in Paragraph 1 of the Amended Protective Order, creates a repeated issue from its use throughout the Amended Protective Order. As presently defined, the term would include not only the party that created the information, but also any parties who subsequently receive it, including those parties that receive it pursuant to a discovery response in this docket. This definition has the effect of nullifying Paragraph 27 by having Paragraph 27 not apply to parties receiving confidential information in response to discovery requests. To remedy this problem, TAWC proposes defining “Producing Party” as “the party creating the confidential information or the party for whom the confidential information was created”¹.

With this proposed change, Paragraph 2 would read as follows:

For the purpose of this Protective Order (the “Order”), proprietary or confidential information, hereinafter referred to as “CONFIDENTIAL INFORMATION” shall mean documents 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 or the party for whom the confidential information was created. ~~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 specifically marked as “CONFIDENTIAL” on the cover and each page of the document. 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.

Finally, in Paragraph 27, TAWC proposes substituting the word “party” for “any person or entity subject to this Protective Order.” This proposed change would make it clear that this paragraph covers witnesses, consultants and all other persons or entities subject to the Order, not just the named parties to the action. With this proposed change, the paragraph would read as follows:

Confidential Information is subject to this Protective Order, which is entered pursuant to Tennessee Rules of Civil Procedure. If any person or entity subject to this Protective Order party, other than the Producing Party, receives a request or subpoena seeking the disclosure or production of Confidential Information, such party will give prompt written notice to the TRA Hearing Officer and the

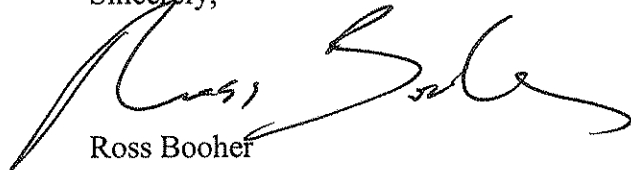
¹ While “created by a party” indicates that information created at the direction of a party is included in the definition of confidential information, the clause “or the party for whom the confidential information was created,” makes this unambiguously clear.

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.

TAWC has no other objections to the entry of the Hearing Officer's proposed Amended Protective Order and, subject to the above proposed revisions, supports its entry on this docket.

Should you have any questions concerning any of the enclosed, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ross Booher", written over a horizontal line.

Ross Booher

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*)