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June 25, 2008

VIA HAND DELIVERY AND EMAIL

Hearing Officer Richard Collier
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

filed electronically in docket office on 06/26/08

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 Monday, June 23, 2008, all parties to this matter submitted comments regarding the proposed Amended Protective Order. Upon review of the Intervenor's separate responses, TAWC submits the following brief reply to each Intervenor's concerns for your consideration:

City of Chattanooga

The City argues that the Amended Protective Order "contradicts the intent of the present law, and would appear to clearly contradict the requirements of the amendment to the Public Records Act that has recently been passed." Clearly, the City misunderstands the plain language of the Tennessee Public Records Act ("TPRA") and *Ballard*, the Tennessee Supreme Court's seminal ruling on this issue.

Illustrating legislative intent, the TPRA made a specific exception for "state law" to take precedence over the right of public access. The Tennessee Supreme Court expressly held in *Ballard* that a protective order will constitute "state law" for purposes of the TPRA. Thus, the entry of a protective order is *entirely* consistent with the intent of the TPRA as the legislature expressly contemplated this exception to protect a public entity from any debate regarding the need for disclosure when state law, including a protective order, provide otherwise. Moreover, because the clear legislative language and *Ballard* create an indisputable exception to disclosure on which the City may affirmatively rely, no valid lawsuit can be brought against the City for refusing disclosure. Nothing in the amendment to the TPRA changes this analysis.

Chattanooga Manufacturers Association

As an initial matter, it is perplexing that the CMA filed an opposition to the Amended Protective Order at all. On June 13, 2008, the CMA filed a jointly requested "Highly Confidential Protective Order" on behalf of itself and TAWC, which included the very provisions that the CMA now decries. Moreover, the CMA noted at the status conference that it supported an enhanced protective order to facilitate more expeditious discovery. Perhaps the CMA's counsel could not resist the temptation to generate another pleading despite its previous agreement. Nonetheless, for the same reasons cited by the CMA at the status conference, TAWC supports the entry of the Amended Protective Order, which would allow it to promptly disclose highly sensitive materials, but with adequate protections.

Consumer Advocate and Protection Division

For purposes of this letter, TAWC will assume that the CAPD has abandoned its initial comments in opposition, which were based on the CAPD's belief that proposed Paragraph 5 would have the practical result of disclosing "the identity of consulting experts to TAWC." TAWC makes this assumption because, later in the same day the CAPD filed those comments, the CAPD proceeded to voluntarily disclose the identities of six experts, while reserving the right to identify additional experts. Thus, the CAPD's argument is either entirely undermined or moot.

Second, as noted above, the TPRA creates an express statutory exception to disclosure where a protective order forbids disclosure. The Amended Protective Order would therefore provide a statutorily-created affirmative defense to any claim by a party seeking public disclosure. Thus, the CAPD's concern regarding unlikely, hypothetical lawsuits is unfounded.

Finally, as to general matters, TAWC reaffirms its request to modify the definition of "producing party" for the reasons articulated in its June 23, 2008 letter and notes that nothing raised by any Intervenor has undermined the purpose or validity of that request. TAWC also reiterates that the universe of materials for which it seeks protected disclosure is very small and highly targeted. Only those documents containing sensitive proprietary, financial, or commercial information are subject to the Amended Protective Order. Additionally, the Amended Protective Order provides a mechanism whereby the parties may challenge any designation they believe unwarranted. Thus, arguments regarding the potential abuse of this designation are baseless.

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

Sincerely,

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

Ross I. Booher

cc: Hon. Ron Jones
Hon. Sara Kyle
Hon. Tre Hargett
Ms. Darlene Standley, Chief of Utilities Division
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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 25th day of June, 2008, upon the following:

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