

**IN 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)	DOCKET NO. 08-00039
PERMIT IT TO EARN A FAIR AND)	
ADEQUATE RATE OF RETURN ON)	
ITS PROPERTY USED AND USEFUL IN)	
FURNISHING WATER SERVICE TO)	
ITS CUSTOMERS)	

**RESPONSE TO TAWC'S REPLY TO THE COMMENTS OF THE CONSUMER
ADVOCATE OF JUNE 23, 2008**

The Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), responds to Tennessee American Water Company's ("TAWC" or "Company") reply of June 23, 2008 to the concerns of the Consumer Advocate. The Consumer Advocate reaffirms its concerns made on June 23, 2008 and offers this response to TAWC's reply of June 25, 2008.

Tennessee Law Does Not Require Disclosure of Consultants

Requiring the Intervenors in this matter to identify consultants to TAWC through notice requirements when confidential information is reviewed is simply a backdoor effort to discover the identity of consultants of the Intervenors. The Company seeks and supports a provision that is incongruent to the *Tennessee Rules of Civil Procedure*. Tenn.R.Civ.P.26.02(4)(B). Further, the Company's assumption that the Consumer Advocate's grounds are undermined, moot or abandoned

because it disclosed some potential expert witnesses side-steps the legal issue at the heart of matter.¹ In order for this point to be moot, the Company would have to further assume that all parties in this matter have identified all consultants. The Consumer Advocate disclosed “experts”, not consultants, that may offer testimony in this docket as a precautionary step related to the Agreed Order Regarding Information Related to Frank Impagliazzo.² Further, our investigation of TAWC’s proposed rate increase continues. Other “experts” may be identified in supplemental responses. This action by the Consumer Advocate does not undermine its argument that disclosing all consultants would infringe on the work product and investigation of the Consumer Advocate.

The Proposed Amended Protective Order Does Not Decrease The Likelihood of Possible Disclosure of “Confidential Information”

The Protective Order in place now prevents disclosure. Through TAWC’s additional requests, the Company simply seeks to gain an advantage in this docket by lengthening the discovery process by its pursuit of an amended order, which has the effect of shortening the time the parties have to analyze the information and prepare their pre-filed testimony. TAWC even proposes to go as far as limiting the Consumer Advocate’s use of information gathered on its own by changing the definition of “producing party.”

In dismissing the Consumer Advocate’s concerns as to the need to clarify who would bear the burden of defending against a public records request, the Company admits that the Protective

¹ The Consumer Advocate does not agree to waive any of its rights or arguments available to it now, previously presented to the TRA, or that may arise in the future.

² Specifically, paragraph 6 of the Agreed Order Regarding Information Related to Frank Impagliazzo provides important protections related to the witnesses identified as of the date of the order.

Order issue concerns “unlikely, hypothetical lawsuits.”³ Furthermore, the fact that a public records lawsuit may be unlikely does not alleviate the need to enter a proper Protective Order on this point.

The federal regulation TAWC has cited has no bearing on whether there is a deficiency in the Protective Order entered in this matter already.⁴ While the federal regulation may be relevant to justify a protective order, the argument has moved beyond that as a Protective Order has been in place since May 23, 2008. What this issue boils down to is the meaning of “state law” as it appears in the current Protective Order, specifically the notice provision contained in Paragraph 27 that the Company submits is a cause for concern. Paragraph 27 would allow disclosure of confidential information as “allowed by state law.” As is clearly evident in *Ballard*, the term “state law” has been interpreted in Tennessee jurisprudence to mean protective orders that create exceptions to the Public Records Act. [GIVE A FULL CITE TO BALLARD] This includes the Protective Order already issued by the TRA. Similarly, the Consumer Advocate would submit that “state law” also includes court opinions such as the holding in *Ballard*.

In practice, the notice provision in Paragraph 27 requires the government entity subject to the Protective Order to notify the Company in the event of a public records request of the materials protected by the Protective Order. Paragraph 27 does not give the Consumer Advocate or the City of Chattanooga license or discretion to simply turn over such materials after a request is made.

³ In fact, since TAWC thinks the possibility of a lawsuit over the public records laws is so unlikely it should not be resistant to accepting the burden of defending the suit.

⁴ Federal Regulation F-G, which was briefed for all of a paragraph by the Company on May 20, 2008, provides exceptions for disclosure in legal proceedings such as the one before the TRA. Transcript of Status Conference, June 19, 2008 p. 19. The Consumer Advocate rightfully assumed this issue had been decided on May 23, 2008 upon entry of the Protective Order by the Hearing Officer.

Doing so would be against “state law” under the terms of the Protective Order and *Ballard*. Thus, the concerns of the Company ring hollow, particularly as TAWC makes the exact same conclusion as to the meaning of “state law” in responding to the concerns of the City of Chattanooga.⁵ Thus, it is evident that the recent arguments that Paragraph 27 is deficient are without merit. TAWC’s argument is slight of hand. By citing the securities laws, TAWC redirects the proper focus away from the ultimate concern of public disclosure. The present Protective Order prevents public disclosure. Amending the Protective Order will not increase the likelihood that public disclosure will not take place.

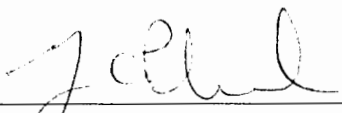
Although a Protective Order is in place in this docket, the Company is withholding some supplemental discovery responses requested by the Intervenor pending a resolution of the Company’s newly articulated concerns. This is rather curious considering that the Company has already produced “confidential information” in the record. Consider TAWC’s comments in the June 25, 2008 letter that: “Only those documents containing sensitive proprietary, financial, or commercial information are subject to the Amended Protective Order.” This begs the question as to whether TAWC has previously labeled information as confidential that does not contain “sensitive proprietary, financial, or commercial information.” This highlights at least two concerns: first, what definition is TAWC actually using when it stamps confidential on certain documents; and second, is TAWC presently following the good faith efforts provisions of the Protective Order in place now.

Perhaps the parties’ difference regarding the sufficiency of the current Protective Order stems from the Company’s extreme classification of information into “regular” confidential information of the common variety and “super” confidential information of the extraordinary variety.

⁵ See last paragraph of page 1 of TAWC’s Reply to the Comments of the Intervenor, June 25, 2008.

Information is either confidential, and therefore should not be revealed outside the confines of this contested case proceeding unless a court of competent jurisdiction orders its disclosure, or it is not. The Company is free to label the information as it chooses. There is no reason and no authority for the extra-procedural and extra-legal protection sought by the Company. The protection afforded the Company under state laws, which are fully incorporated into the current Protective Order, should govern.

RESPECTFULLY SUBMITTED,



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Dated: June 30, 2008

CERTIFICATE OF SERVICE

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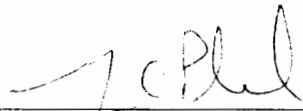
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This the 30th day of June, 2008.



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