

STATE OF TENNESSEE

Office of the Attorney General



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May 6, 2008

Chairman Eddie Roberson  
c/o Sharla Dillon  
Tennessee Regulatory Authority  
460 Robertson Parkway  
Nashville, Tennessee 37243-0505

filed electronically in docket office on 05/06/08

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:

On behalf of the intervenors in the above-referenced docket, please find enclosed an original and 4 copies of a Proposed Protective Order for your consideration and approval. We would like the opportunity to discuss this filing with the Hearing Officer at the next scheduled status conference.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Timothy Phillips".

Timothy Phillips  
Assistant Attorney General  
(615) 741-3533

cc: all parties of record  
enclosures  
119523

**IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

<b>IN RE:</b>	)	
<b>PETITION OF TENNESSEE AMERICAN</b>	)	
<b>WATER COMPANY TO CHANGE AND</b>	)	
<b>INCREASE CERTAIN RATES AND</b>	)	<b>Docket No. 08-00039</b>
<b>CHARGES SO AS TO PERMIT IT TO EARN</b>	)	
<b>A FAIR AND ADEQUATE RATE OF</b>	)	
<b>RETURN ON ITS PROPERTY USED AND</b>	)	
<b>USEFUL IN FURNISHING WATER</b>	)	
<b>SERVICE TO ITS CUSTOMERS</b>	)	

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**PROTECTIVE ORDER**

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To expedite the flow of filings, discovery, exhibits and other materials, and to facilitate the prompt resolution of disputes as to the confidentiality of 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 that:

1. For the purpose of this Protective Order ("Order"), proprietary or confidential information, hereinafter referred to as "CONFIDENTIAL INFORMATION", shall mean documents, or information in whatever form that are (a) protected from disclosure by applicable state or federal laws, or regulations or rules; (b) trade secrets, as defined in Tennessee's Uniform Trade Secrets Act, T.C.A. §§ 47-25-1701, et seq.; or (c) made confidential by an order of a court or regulatory authority if a copy of the order is provided 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 of any protected

materials containing Confidential Information, shall be entitled to protection under this Order. Documents containing or constituting CONFIDENTIAL INFORMATION shall be specifically marked as "CONFIDENTIAL" on each 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.

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 permitted to intervene in this matter after the date of entry of the Protective Order shall be subject to the terms and conditions of this Protective Order and will be allowed access to CONFIDENTIAL INFORMATION under the conditions prescribed herein.

3. CONFIDENTIAL INFORMATION shall be used only for the purposes of this proceeding, and shall be expressly limited and disclosed only to the following 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 intervenor City of Chattanooga ("Chattanooga") and the Office of the 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 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, provided that, to the extent that any party seeks to disclose CONFIDENTIAL INFORMATION to any

outside consultant or expert witness who is expected to testify on that party's behalf, the party shall give five (5) days written notice to the producing party of intention to disclose CONFIDENTIAL INFORMATION. During such notice period, the producing party may move to prevent or limit disclosure for cause, in which case no disclosure shall be made until the TRA or the Hearing Officer rules on the motion. Any such motion shall be filed within three (3) days after service of the notice. Any response shall be filed within three (3) days after service of the motion. A Pre-hearing conference may be called to confer with the parties on the Motions to Limit Disclosure. All service shall be by hand delivery, facsimile or email. All filings by email in this docket shall be followed up by delivering a hard copy of the filing to the Dockets Manager of the TRA.

4. Prior to disclosure of CONFIDENTIAL INFORMATION to any employee or associate counsel for a party, the counsel representing the party shall provide a copy of this Order to the recipient employee or associate counsel, who shall be bound by the terms of this Order. Prior to disclosure of CONFIDENTIAL INFORMATION to any outside consultant or expert witness employed or retained by a party, counsel shall provide a copy of this Order to such outside consultant or expert witness, who shall sign an Agreement to Comply With Protective Order in the form of that attached to this Order. The Agreement to Comply With Protective Order shall be signed in the presence of and be notarized by a notary public. Except in the case of consulting experts who are not expected to testify in this case, counsel of record for a party producing the CONFIDENTIAL INFORMATION to an expert or consultant shall provide the producing party a copy of each such Agreement to Comply With Protective Order and shall keep the Agreements executed by the parties' experts or consultants on file in their respective offices. In the case of consulting experts, the executed Agreements shall be retained on file by the counsel obtaining their execution.

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, the 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 commence treating the subject document as CONFIDENTIAL. In no event shall the TRA, or any party to this Order, be liable for any claims or damages resulting from the disclosure of a document provided while not 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 INFORMATION 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 Tennessee Regulatory Authority or the Hearing Officer 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 and state or federal law

7. Any papers filed in this proceeding that contain, quote, paraphrase, compile or otherwise contain CONFIDENTIAL INFORMATION 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. A copy of such papers shall be served upon counsel of record in similar envelopes to be opened by counsel of record or other persons authorized to review CONFIDENTIAL INFORMATION under the terms of this Order. The envelopes filed in this proceeding shall be maintained in a locked filing cabinet or other secure location. The envelopes filed with the TRA shall not be opened or their contents reviewed by anyone except upon order of the TRA or the Hearing Officer after due notice to counsel of record. The filing party shall also include with the filing a public version of the papers with any CONFIDENTIAL INFORMATION redacted. The public version shall reflect the style of this proceeding, the docket number, and shall describe the contents of the envelope in sufficient detail to identify its subject matter and shall reference this Protective Order. 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 the Hearing Officer provided the Directors and staff maintain the confidentiality of the paper in accordance with the terms of this Order and state and federal law.

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 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. Except for CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS to be used for rebuttal or cross-examination, any party intending to use CONFIDENTIAL INFORMATION 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 such 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 offices of the requesting party's counsel of record, kept in a secure place and returned to the Producing Party pursuant to paragraph 16 of this Order.

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 such party, or (c) that is disclosed to it by a third party where said disclosure does not itself violate any contractual (known to the using party) 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.

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 or the Hearing Officer, as appropriate, for a ruling that specified documents or information should not be treated as CONFIDENTIAL. Upon filing of such a motion, the producing party claiming that documents or information should be deemed as CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS shall have the burden of showing that documents or information addressed by the motion constitute CONFIDENTIAL

INFORMATION or PROTECTED SECURITY MATERIALS under the terms of paragraphs 1 or 19 of this Order. All documents and information designated as CONFIDENTIAL or PROTECTED SECURITY MATERIALS, however, shall be maintained as such until the TRA or the Hearing Officer orders otherwise. A motion to contest must be filed not later than fifteen (15) days prior to the Hearing on the Merits or within fifteen (15) days after the documents or information are produced, whichever is later. 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. In the absence of such a reply, the documents or information shall be deemed NOT CONFIDENTIAL or PROTECTED SECURITY MATERIALS.

12. Nothing in this Order shall prevent any party from asserting any objection to discovery other than an objection based upon the 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 designation of information as CONFIDENTIAL by a non-party witness may be challenged under paragraph 11 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 entry of a final order in this proceeding and conclusion of any appeals resulting therefrom, all the filings, exhibits and other materials and information designated as CONFIDENTIAL or PROTECTED SECURITY MATERIALS and all copies thereof shall be destroyed or returned to counsel of the party who produced (or originally created) the filings, exhibits and other materials within fifteen (15) days following the deadline for filing an action challenging such final order if no such action is filed. If such an action is filed, the use and disposition of CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS shall be determined by the court or courts before which such a challenge is pending. 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 cause intact

17. After termination of this proceeding, the provisions of this Order relating to the confidential nature of CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS shall continue to be binding upon parties herein and their officers, employers, employees, agents, and/or others unless this Order is vacated or modified or is supplanted by an order of the court or courts before which is pending a challenge to any order entered in this proceeding.

18. Nothing herein shall prevent entry of a subsequent order, upon an appropriate showing, requiring that any CONFIDENTIAL INFORMATION shall receive protection other than that provided herein.

19. In addition to the other provisions of this Order, Tennessee American Water Company, (the “Company”) may designate and label as PROTECTED SECURITY MATERIALS documents and information describing or disclosing security measures undertaken

by or for the benefit of the Company 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 the Intervenor in this docket.

20. The Company shall provide access by an authorized representative to PROTECTED SECURITY MATERIALS only after such authorized representative has executed a Nondisclosure Statement 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; and (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 this 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 staff and any other party shall treat all notes and 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 state or federal law permitting 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 INFORMATION in a secure place and will not permit it to be seen by any person who is not an employee of the State of Tennessee, the Office of the Attorney General and Reporter, or a person who has signed a Non-disclosure Agreement.

24. The Attorney General and his staff may make copies of CONFIDENTIAL INFORMATION 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. Should a public records request be made and 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. The obligations of the Attorney General and his staff and of Intervenor, Chattanooga and its staff and counsel under this Order are further subject to the state's Public Records Act and other open records statutes. Nothing in this Order is intended to violate or alter the state's Public Records Act. In the event that the Attorney General or member of his staff or Chattanooga and its staff and counsel is served with a subpoena, public records request, or other request that calls for the production of CONFIDENTIAL INFORMATION, the Attorney General or Chattanooga will notify the Company by notifying the undersigned of the existence of the subpoena, public records request, or other request at least five (5) business days before responding to the request to the extent permitted by state law and orders of a court, as long as the Attorney General or his staff or Chattanooga is able to respond to the request within a reasonable time. Following the five (5) day notice period, the Attorney General or his staff or Chattanooga may elect to wait to produce such information as allowed by state law in order to provide the Company an opportunity to challenge said subpoena or request or to make arrangements to preserve the confidentiality of the CONFIDENTIAL INFORMATION that is subject to such request.

27. The designation of any information, documents or things in accordance with this Order as constituting or containing CONFIDENTIAL INFORMATION and the Attorney General's or Chattanooga's treatment of such material as confidential in compliance with this Order is not an admission or agreement by the Attorney General or Chattanooga 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 right of the Attorney General or Chattanooga to challenge such designation or an acceptance of such designation. The Company agrees to designate information, documents or things provided to the Attorney General or Chattanooga as confidential commercial information or trade secret only if it has a good faith basis for the claim grounded in law. The Company will, upon request of the Attorney General or Chattanooga, 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 or information as CONFIDENTIAL INFORMATION if the documents or information:

- (a) have been distributed or made available 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 or federal officials and third parties of the facts of an investigation. The Attorney General will notify such state or federal official or third party of the existence of this Order. Without limiting the scope of this paragraph, nothing in this Order shall prevent the Attorney General from contacting consumers 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 21 through 27 do not apply to PROTECTED SECURITY MATERIALS as set forth in paragraphs 19-21 of this Order, to the extent that such materials qualify for protection from disclosure under the state's Public Records Act. Such 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, including paragraph 8, 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 Agreement is intended to restrict or alter federal or state laws, regulations or rules.

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 or employed by the TRA or Intervenors.

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HEARING OFFICER

**IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

<b>IN RE:</b>	)	
<b>PETITION OF TENNESSEE AMERICAN</b>	)	
<b>WATER COMPANY TO CHANGE AND</b>	)	
<b>INCREASE CERTAIN RATES AND</b>	)	<b>Docket No. 08-00039</b>
<b>CHARGES SO AS TO PERMIT IT TO EARN</b>	)	
<b>A FAIR AND ADEQUATE RATE OF</b>	)	
<b>RETURN ON ITS PROPERTY USED AND</b>	)	
<b>USEFUL IN FURNISHING WATER</b>	)	
<b>SERVICE TO ITS CUSTOMERS</b>	)	

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**AGREEMENT TO COMPLY WITH PROTECTIVE ORDER**

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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 acquainted, who  
acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

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