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May 9, 2008

TH 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:

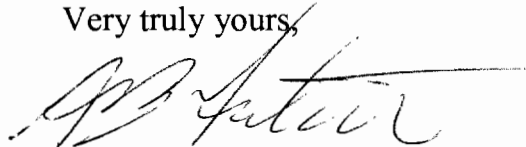
Enclosed please find an original and sixteen (16) sets of copies of Tennessee American Water Company's Response to Joint Motion to Modify Procedural Schedule and Tennessee American Water Company's Response in Opposition to Intervenors' Proposed Protective Order.

Please return three copies of each of these Responses, 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

By Permission

RDG/smb  
Enclosures

Chairman Eddie Roberson, PhD

May 9, 2008

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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:**

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

**TENNESSEE AMERICAN WATER COMPANY’S RESPONSE IN OPPOSITION TO  
INTERVENORS’ PROPOSED PROTECTIVE ORDER**

On May 6, 2008, pursuant to the Hearing Officer’s Order Granting Petitions to Intervene and Establishing a Procedural Schedule, Tennessee American Water Company (the “Company”) proposed the Hearing Officer enter orders substantially identical<sup>1</sup> to those entered in the Company’s most recent rate case, Docket No. 06-00290. These orders, a Protective Order for Confidential Information (the “Confidential Protective Order”) and a Supplemental Protective Order for Highly Confidential Information (the “Highly Confidential Protective Order”), functioned in Docket No. 06-00290; there is no reason to complicate this case by re-inventing the wheel. The Intervenor’s have proposed a different protective order (the “Intervenor’s New Order”). The company hereby opposes the entry of the Intervenor’s New Order for the reasons set forth below.

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<sup>1</sup> The proposed Supplemental Protective Order (attached as Exhibit B) is identical to the Amended Supplemental Protective Order entered in Docket 06-00290 except that it omits paragraph 13 and footnote 2, both of which were specific to Docket 06-00290. Additionally, the text of the proposed Protective Order for Confidential Information (attached as Exhibit A) is identical to the Protective Order entered in Docket 06-00290 except that the formatting of paragraph 3(e) and the docket number of the Nondisclosure Statement are inadvertently inconsistent with that of the original order.

The New Order contains a number of inconsistencies and ambiguities, and does not provide adequate protections for Confidential or Highly Confidential Information. For example:

1. Paragraph 1 of the Intervenor's New Order defines "Confidential Information" far more narrowly than does the Confidential Protective Order. To the Company's knowledge, the definition of Confidential Information in the Confidential Protective Order is the same one used regularly and without controversy in previous protective orders entered by the TRA. The Intervenor's New Order uses a wholly new and different definition, apparently in an attempt to limit the scope of information that parties may protect.

The Intervenor's New Order defines Confidential Information as:

"documents, or information in any form that are:

- (a) protected from disclosure by applicable state or federal laws, or regulations or rules;
  - (b) trade secrets, as defined in Tennessee Uniform Trade Secrets Act, T.C.A. §47-25-1701, et seq.; or
  - (c) made confidential by order of a court or regulatory authority, if a copy of the order is provided by the producing party."
- (Intervenor's New Order, ¶1).

This definition of Confidential Information proposed by the Intervenor would leave out a great deal of sensitive business and proprietary information that the TRA has regularly protected. Unlike the untested and apparently narrow definition proposed by the Intervenor, the Confidential Protective Order defines confidential information in a manner that is reasonably specific, but broad enough to protect a more comprehensive body of confidential information:

"'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."  
(Confidential Protective Order, ¶1).

This definition was unanimously agreed to in Docket No. 06-00290. A similar definition has been used in other contested cases before the TRA. This docket should not be complicated by experimenting with a new, untested, narrow definition of Confidential Information.

2. Unlike the Confidential Protective Order, the Intervenor's New Order does not explicitly prohibit disclosure of Confidential Information to competitors of the party producing the Confidential Information. The absence of such protection leaves the Company exposed to the prospect of its direct competitors, serving as experts or consultants to the Intervenor, being granted access to the Company's confidential information. For obvious reasons, this is an untenable circumstance.

3. Paragraph 6 of the Intervenor's New Order is inconsistent with Paragraph 5 of the same Order. Specifically, Paragraph 5 provides:

"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."  
(Intervenor's New Order, ¶5).

Paragraph 6 then provides that if a party inadvertently fails to designate documents as Confidential Information, and that failure "is not discovered in time to provide a five (5) day notification to the recipient of the confidential nature of the documents", the failure to do so will not constitute waiver of the confidentiality of the documents, and the producing party may, by motion, request designation of the documents as Confidential Information. (Intervenor's New Order, ¶6).

Paragraphs 5 and 6 of the Intervenor's New Order are inconsistent and apparently require the parties to litigate the retrieval of inadvertently designated documents in every instance.

Because Paragraph 5 appears to allow producing parties five days following the discovery that documents were mis-designated to give notice of that fact to the recipient, and Paragraph 6 appears to contemplate the producing party giving notice of mis-designation at least five days prior to some event (presumably the discovery that documents were mis-designated), the provisions are internally inconsistent.

4. The Confidential Protective Order provides that if the Confidential Information is shared with any consultant or expert retained by the parties, counsel of record will provide a copy of the Nondisclosure Statement signed by that consultant or expert to the producing party. This important facet of the protection afforded by the Confidential Protective Order helps ensure the producing party has a record of those individuals with whom the Confidential Information was shared. The Intervenor's New Order does not require counsel to forward a copy of a Nondisclosure Statement signed by non-testifying consultants and experts.

5. The Intervenor's New Order does not require parties to provide notice to the Hearing Officer, the TRA, or the producing party prior to using and discussing Confidential Information on cross-examination or rebuttal. The Confidential Protective Order requires advance notice any time Confidential Information is to be used or discussed, for the purpose of affording the TRA or the Hearing Officer an opportunity to take appropriate measures to protect the information. It is just as important that the hearing room be closed to unauthorized persons when Confidential Information is discussed during cross-examination or rebuttal as it is when such information is discussed during direct examination or argument. The omission of any notice requirement for the use of Confidential Information during cross-examination or rebuttal is not justifiable in light of the producing parties' compelling interest in protecting such information.

6. The Intervenor's New Order creates a timing problem that could result in Confidential Information being stripped of that designation as a consequence of an unavoidable default in responding to a motion to contest that designation. Paragraph 11 of the Intervenor's New Order provides that a motion to contest the designation of Confidential Information 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 for a ruling. In the absence of such a reply, the documents or information shall be deemed NOT CONFIDENTIAL or PROTECTED SECURITY MATERIALS.” (Intervenor's New Order, ¶11).

Under the timing set forth above, if Company produces Confidential Information at any time less than 25 days prior to the Hearing on the Merits, an Intervenor would be able to move to contest the designation of the information as Confidential by motion filed less than ten days prior to the Hearing on the Merits, and the Company would have no opportunity to respond. In such an instance, Paragraph 11 risks exposing Confidential Information merely as a consequence of a timing technicality.

7. The Intervenor's New Order provides no additional protections for Highly Confidential Information. In Docket No. 06-00290, this Hearing Officer entered the Amended Supplemental Protective Order for the purpose of providing an extra level of protection for extremely sensitive Highly Confidential Information. If the Intervenor requests Highly Confidential Information in this docket, that information will require greater protection than that afforded to Confidential Information in the Intervenor's New Order. To address this contingency, the Company has proposed entry of a Highly Confidential Protective

Order materially identical to the Amended Supplemental Protective Order entered in Docket No. 06-00290.<sup>2</sup>

The Amended Supplemental Protective Order was the product of considerable legal research, discussion among the parties, and litigation before this Hearing Officer. It represents an effective and acceptable compromise position between the more stringent protections the Company would prefer for Highly Confidential Information, and the Intervenor's desire to afford that information less protection.

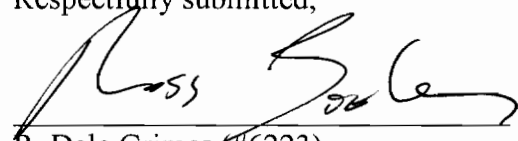
### **Conclusion**

The Intervenor's New Order needlessly complicates this docket. It is deficient in multiple respects, including those set forth above. The Intervenor's New Order would need to be significantly rewritten simply to be internally consistent, and even more so to address the gaps in reasonable protections that it contains. In contrast, the orders proposed by the Company have already been determined by the TRA to afford adequate protection, have been entered and tested in one or more previous rate cases, and should be entered in this docket. Therefore, the Company respectfully requests the Hearing Officer decline to enter Intervenor's New Order and instead enter a Confidential Protective Order and a Highly Confidential Protective Order in the forms submitted by the Company on May 6, 2008.

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<sup>2</sup> The Company does not believe that any Highly Confidential Information will be relevant to this docket. Accordingly, if the Intervenor's agree not to seek any Highly Confidential Information, the Company agrees that the entry of the Supplemental Protective Order would not be necessary in this docket.

Respectfully submitted,

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

R. Dale Grimes (#6223)

Ross I. Booher (#019304)

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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 9<sup>th</sup> day of May, 2008, upon the following:

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

