

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:)
)
TENNESSEE AMERICAN WATER)
COMPANY'S REQUEST FOR) Docket No. 09-00086
PROPOSAL FOR A MANAGEMENT)
AUDIT)

PROTECTIVE ORDER

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

1. 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 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 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.

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 this 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 authorized 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 the Office of 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 (and their staff) 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 Docket Manager of the TRA.

4. Notwithstanding the provisions in Paragraph 3 above, under no circumstances shall any CONFIDENTIAL INFORMATION be disclosed to or discussed with anyone associated with the marketing of products, goods or services that may be in competition with the products, goods or services of the Producing Party. Counsel for the parties are expressly prohibited from disclosing CONFIDENTIAL INFORMATION produced by another party to their respective clients, except for in-house counsel and persons who need to know in order to assist counsel of record with preparation of the case.

5. Prior to disclosure of CONFIDENTIAL INFORMATION to any employee or associate counsel for a party, the party who is to receive the CONFIDENTIAL INFORMATION shall provide a copy of this Order to the recipient employee, 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 the Nondisclosure Statement in the form of that attached to this Order attesting that he or she has read a copy of this Order, that he or she understands and agrees to be bound by the terms of this Order, and that he or she understands that unauthorized disclosure of the documents labeled "CONFIDENTIAL" constitutes a violation of this Order. The Nondisclosure Statement shall be signed in the presence

of and be notarized by a notary public. Counsel of record for each party shall provide the Producing Party a copy of each such Nondisclosure Statement and shall keep the Nondisclosure Statements executed by the parties' experts or consultants on file in their respective offices.

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 the documents this 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 treat the subject document as CONFIDENTIAL. In no event shall the TRA, or any other party to this Order, be liable for any claims or damages resulting from the disclosure of a document provided while not so 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 status.

7. 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 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.

8. Any papers filed in this proceeding that contain, quote, paraphrase, compile or otherwise 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 and labeled to reflect the style of this proceeding, the docket number, the contents of the envelope sufficient to identify its subject matter and this Protective Order. The envelopes shall be maintained in a locked filing cabinet. The envelopes shall not be opened or their contents reviewed by anyone except upon order of the TRA or 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 the proceeding, the docket number, the contents of the envelope sufficient to identify the 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 Hearing Officer provided the Directors and Staff maintain the confidentiality of the paper in accordance with the terms of this Order.

9. Documents, information and testimony designated as CONFIDENTIAL or PROTECTED SECURITY MATERIALS (as defined in Paragraph 20) in accordance with this Order, may be used in testimony at the Hearing of this proceeding and offered into evidence used 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. Any party intending to use documents, information, or testimony

designated CONFIDENTIAL 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 the 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.

10. 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 17 of this Order.

11. 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 the party, or (c) that is disclosed to it by a third party, where said disclosure does not itself violate any contractual 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. The burden of establishing the existence of (a) through (e) shall be upon the party attempting to use or disclose the information.

12. Any party may contest the designation of any document or information as CONFIDENTIAL or PROTECTED SECURITY MATERIALS by filing a Motion with the TRA, Hearing Officer, as appropriate, for a ruling that the documents, information or testimony should not be so treated. All documents, information and testimony designated as CONFIDENTIAL or PROTECTED SECURITY MATERIALS, however, shall be maintained as

such until the TRA, 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. 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.

13. Nothing in this Order shall prevent any party from asserting any objection to discovery other than an objection based upon grounds of confidentiality.

14. 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 non-party witness' designation of information as CONFIDENTIAL by a non-party witness may be challenged under Paragraph 12 of this Order.

15. 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 5 of this Order.

16. Any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

17. Upon entry of a final order in this proceeding, and the conclusion of any appeals resulting therefrom, all the filings, exhibits and other materials and information designated CONFIDENTIAL or PROTECTED SECURITY MATERIALS and all copies thereof shall be returned to counsel for the party who produced (or originally created) the filings, exhibits and other materials, within fifteen (15) days. Notwithstanding any provision herein to the contrary,

the requirement of this paragraph shall become operative immediately upon any intervenor who withdraws or otherwise ceases to be a party to the case, even though the case itself may continue to be pending. Subject to the requirements of Paragraph 8 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 case intact. Counsel who received the filings, exhibits and other materials, designated as CONFIDENTIAL or PROTECTED SECURITY MATERIALS shall certify to counsel for the Producing Party that all the filings, exhibits and other materials, plus all copies or extracts, notes or memorandums from the filings, exhibits and other materials, and all copies of the extracts from the filings, exhibits and other materials thereof have been delivered to counsel for the Producing Party or destroyed and that any electronic copies of CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS received or mentioned by the receiving party have been eliminated.

18. After termination of this proceeding, the provisions of this Order relating to the confidential nature of CONFIDENTIAL DOCUMENTS or PROTECTED SECURITY MATERIALS, information and testimony 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.

19. Nothing herein shall prevent entry of a subsequent order, upon an appropriate showing, requiring that any documents, information or testimony designated as CONFIDENTIAL shall receive protection other than that provided herein.

20. 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 related to security measures undertaken 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.

21. The Company shall provide access to 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; (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.

22. 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 or 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 the 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 Directors, TRA staff and any other party shall treat all notes 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 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.

23. 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.

24. The Attorney General and his staff agree to keep CONFIDENTIAL INFORMATION in a secure place and will not permit them to be seen by any person who is not an employee of the State of Tennessee, the Office of Attorney General and Reporter, or a person who has signed a Nondisclosure Agreement.

25. The Attorney General and his staff may make copies of CONFIDENTIAL INFORMATION or trade secrets 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.

26. 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.

27. The obligations of the Attorney General and his staff 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 or Freedom of Information Act ("FOIA"). In the event that the Attorney General, a member of his staff or an intervenor subject to the Public Records Act or FOIA is served with a subpoena, public records request, FOIA request, or other request that calls for the production of confidential commercial information labeled as "CONFIDENTIAL" by the Company, the Attorney General will notify the Company by notifying the undersigned of the existence of the subpoena, public records request, FOIA 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 the court as long as the Attorney General is able to respond to the request within a reasonable time. Following the five (5) day notice period, the Attorney General, or his staff, 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 commercial information labeled as "CONFIDENTIAL" by the Company that is subject to such request.

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

- (a) have been distributed 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.

29. 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 officials and third parties of the fact of an investigation, as needed, to conduct the investigation. Without limiting the scope of this paragraph, nothing in this Order shall prevent the Attorney General from contacting consumers whose names were provided by the Company 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.

30. The terms of the foregoing paragraphs 22 through 28 do not apply to PROTECTED SECURITY MATERIALS as set forth in paragraphs 19-21 of this Order. PROTECTED SECURITY MATERIALS shall be treated in accordance with paragraphs 19-21.

31. 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 9 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.

32. Nothing in this Order is intended to restrict or alter federal or state laws, regulations or rules.

33. 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 employed or engaged by the TRA or Intervenors.

Hearing Officer

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:	)	
	)	
TENNESSEE AMERICAN WATER COMPANY'S REQUEST FOR PROPOSAL FOR A MANAGEMENT AUDIT	))))))	Docket No. 09-00086

NONDISCLOSURE STATEMENT

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 information or documents labeled "CONFIDENTIAL" or "PROTECTED SECURITY MATERIALS" will be a violation of the Protective Order.

DATE	NAME
STATE OF _____)	
COUNTY OF _____)	

Personally appeared before me, _____, a Notary Public,
_____ with whom I am personally acquired, who acknowledged that he
executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this _____ day of _____, 2010.

NOTARY PUBLIC

My Commission Expires: