

September 5, 2023

VIA ELECTRONIC FILING

Electronically Filed in TPUC Docket
Room on September 5, 2023 at 3:34 p.m.

Hon. Herbert H. Hilliard, Chairman
c/o Ectory Lawless, Docket Room Manager
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243
TPUC.DocketRoom@tn.gov

**RE: *Joint Petition of Tennessee-American Water Company and Catoosa Utility District
Authority for Approval of a Special Contract, Docket No. 23-00066***

Dear Chairman Hilliard:

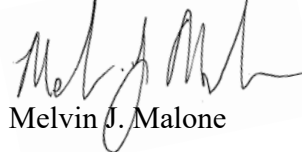
Attached for filing please find the *Joint Petition of Tennessee-American Water Company and Catoosa Utility District Authority for Approval of a Special Contract*, along with sworn testimony and exhibits.¹ Set forth within the *Joint Petition* is a request for the entry of a protective order.

As required, the original plus four (4) hard copies will be mailed to your office along with a check in the amount of \$25.00 for the required filing fee.

Should you have any questions concerning this filing, or require additional information, please do not hesitate to contact me.

Very truly yours,

BUTLER SNOW LLP



Melvin J. Malone

clw

Attachments

cc: Bob Lane, TAWC
Randall Crawford, CUDA
Karen H. Stachowski, Consumer Advocate Division
Vance Broemel, Consumer Advocate Division

¹ For administrative convenience, two USB drives of the *Joint Petition*, and supporting documentation, are enclosed.

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

**JOINT PETITION OF TENNESSEE-
AMERICAN WATER COMPANY AND
CATOOSA UTILITY DISTRICT
AUTHORITY FOR APPROVAL OF A
SPECIAL CONTRACT**

DOCKET NO. 23-00066

**JOINT PETITION OF TENNESSEE-AMERICAN WATER COMPANY
AND CATOOSA UTILITY DISTRICT AUTHORITY
FOR APPROVAL OF A SPECIAL CONTRACT**

Pursuant to Tennessee Public Utility Commission Rule 1220-4-03-.05,¹ Tennessee-American Water Company (“TAWC,” “Tennessee-American” or “Company”) and Catoosa Utility District Authority (“Catoosa” or “CUDA”), hereinafter collectively the Parties, submit this Joint Petition and a copy of the special contract between TAWC and Catoosa (the “Special Contract” or “Agreement”), consistent with the rules of the Tennessee Public Utility Commission (“TPUC” or “Commission”).² In compliance with Rule 1220-4-03-.05, the Parties submit this Special Contract to the Commission. For the reasons and support that follow, and to the extent this Special Contract must be approved by the Commission under Commission Rule 1220-4-01-.07, the Parties jointly request consideration and approval by the Commission.

I. THE PARTIES

1. The Catoosa Utility District was established in 1945 for the purpose of providing residents of Catoosa County, Georgia, with safe, potable drinking water. Catoosa provides service

¹ The Commission’s water regulations, specifically Rule 1220-4-03-.05, provides that water public utilities shall file a copy of each special contract for service.

² A copy of the Agreement is attached as **Exhibit A** to this Joint Petition.

to approximately 21,000 residents. Catoosa is a current TAWC customer pursuant to a November 1998 water purchase agreement. Catoosa's main office is located at 1058 Old Mill Road, Ringgold, GA 30736.

2. As outlined in the pre-filed direct testimony supporting the Joint Petition, Catoosa advised TAWC that it was aware that former TAWC customers have bypassed TAWC and that, absent good faith negotiations towards a new special contract between TAWC and Catoosa, Catoosa was positioned and prepared to take a similar path to bypass TAWC or to otherwise eliminate this arrangement from its operations. These negotiations led to the execution of the Agreement in July 2023.

3. TAWC is a Tennessee corporation authorized to conduct a public utility business in the State of Tennessee and provides residential, commercial, industrial and municipal water service, including public and private fire protection service, to the City of Chattanooga, Tennessee, and surrounding areas, including certain areas in Georgia. In addition to Whitwell, Tennessee-American currently provides water services for Powell's Crossroads and Suck Creek in Marion County and Jasper Highlands. TAWC provides water service to approximately 86,820 customers.

4. Pursuant to Chapter 4 of Title 65 of the Tennessee Code Annotated, TAWC is subject to regulation by the Commission.

5. TAWC's principal place of business is located at 109 Wiehl Street, Chattanooga, TN 37403.

6. All correspondence and communication with respect to this Joint Petition should be sent to the following:

Grady Stout
Tennessee-American Water Company
1500 Riverside Drive
Chattanooga, TN 37406
(423) 771-4713 (Office Telephone)
Grady.Stout@amwater.com

Melvin J. Malone
Katherine Barnes
Butler Snow LLP
The Pinnacle at Symphony Place
150 Third Avenue South, Suite 1600
Nashville, TN 37201
(615) 651-6700 (Office Telephone)
Melvin.Malone@butlersnow.com
Katherine.Barnes@butlersnow.com

Randall Crawford, Chairman
Catoosa Utility District Authority
P. O. Box 750
Ringgold, GA 30736

II. DESCRIPTION OF THE SPECIAL CONTRACT

7. As set forth in the Agreement, Catoosa has determined that it is in the best interest of Catoosa and its customers for it to enter into this negotiated arrangement with TAWC, and TAWC has concluded that it is in the best interest of TAWC and its customers for it to enter into this negotiated arrangement with Catoosa.

8. Pursuant to the Agreement, TAWC will provide potable water to Catoosa at such delivery points and in such quantities as outlined more specifically in the Agreement. The Agreement is a requirements contract, so Catoosa may not reduce its purchases from TAWC during the term of the Agreement.

9. Under the Agreement, the water purchased by Catoosa from TAWC shall be used solely for resale to Catoosa's customers within its service area. Such water may not be sold by Catoosa to any other water utility without the express, prior written consent of TAWC.

10. The initial term of the Agreement is five (5) years, with one (1) additional five (5) year renewal term unless terminated by either Party.

11. Catoosa shall pay the applicable rate in TAWC's tariffs on file with and approved by the Commission, including the TCJA impacts and the existing Capital Recovery and PCOP Riders (and/or other applicable mechanism approved by the Commission).

12. As outlined in the pre-filed direct testimony supporting the Joint Petition, the Agreement will benefit TAWC's existing ratepayers, as the additional water sales gained by TAWC pursuant to the Agreement will contribute to a portion of TAWC's fixed costs as well as offset certain declining average per customer use. Providing services under the Agreement will not negatively impact or interfere with TAWC's ability to service its other customers.

13. The Agreement is a continuation of the existing but expiring arrangement between TAWC and Catoosa.³ As this is a renewal, the only terms changed from the existing arrangement to the Agreement are the date of execution.

III. TAWC's TECHNICAL, MANAGERIAL AND FINANCIAL ABILITY

14. TAWC has a proud 133-year history of providing safe, reliable drinking water to its customers.

15. TAWC is a wholly owned subsidiary of American Water Works Company, Inc., which is the largest water holding company in the United States, providing water and wastewater services to approximately fifteen (15) million people in more than thirty (30) states.

16. As noted earlier herein, TAWC is regulated by the Commission. As such, the Commission is intimately familiar with the technical, managerial and financial ability of TAWC.

³ See *Order Approving Special Contract*, TPUC Docket No. 98-00885 (May 18, 1999).

Further, the official records of the Commission support TAWC's technical, managerial and financial ability to provide services within the areas served by the system.

17. The pre-filed testimony in support of this Joint Petition also demonstrates TAWC's technical, managerial and financial ability.

18. TAWC is familiar with and will adhere to all applicable Commission policies, rules and orders governing the provision of water service pursuant to the Agreement that is the subject of this Joint Petition.

IV. THE PUBLIC INTEREST

19. Catoosa believes it is in the best interests of Catoosa, the Catoosa County community and Catoosa's customers for it to enter into this negotiated renewal arrangement with TAWC, and TAWC believes it is in the best interests of TAWC and its customers for it to enter into this negotiated renewal arrangement with Catoosa.

20. As outlined in the pre-filed direct testimony supporting the Joint Petition, and consistent with the existing Commission-approved agreement between the Parties, the proposed Special Contract rates are TAWC's Commission-approved base rate for Catoosa plus TAWC's Capital Recovery and PCOP Riders, along with any applicable TCJA impact. As such, the proposed rates set forth in the Special Contract are fair, just and reasonable and are not unduly preferential or discriminatory.

V. CONFIDENTIAL INFORMATION AND PROTECTIVE ORDER

Also attached for entry by the Commission in this matter is a proposed Protective Order, which is necessary to facilitate the production of various commercially sensitive and confidential information related to this Joint Petition. *See Exhibit B.*

VI. CONCLUSION

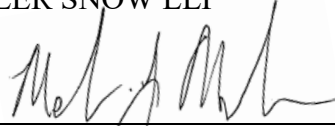
For the foregoing reasons, the TAWC and Catoosa, respectfully request the Commission to approve the Special Contract.

WHEREFORE, the Parties hereby request that the Commission:

- (1) Approve the Special Contract, attached hereto as **Exhibit A**; and,
- (2) Grant such other relief as may be required.

Respectfully submitted,

BUTLER SNOW LLP

By: 

Melvin J. Malone
Katherine Barnes
The Pinnacle at Symphony Place
150 Third Avenue South, Suite 1600
Nashville, TN 37201
(615) 651-6700 (Office Telephone)
Melvin.Malone@butlersnow.com
Katherine.Barnes@butlersnow.com

*Counsel for Tennessee-American Water
Company*

EXHIBIT A

WATER PURCHASE AGREEMENT

THIS WATER PURCHASE AGREEMENT ("Agreement") is executed this 14th day of July 2023, by and between TENNESSEE-AMERICAN WATER COMPANY, a Tennessee corporation and public utility, and the Catoosa Utility District Authority ("Authority"). The Effective Date of this Agreement will be the date the Agreement is approved by the Tennessee Public Utility Commission ("TPUC").

WHEREAS, TAWC, a Tennessee corporation, is a public utility which owns and operates a water utility system in and around the City of Chattanooga, Tennessee including the contiguous cities of Red Bank, East Ridge, Ridgeside, and Lookout Mountain, plus the cities of Rossville and Lookout Mountain, Georgia, and areas in the Georgia counties of Dade, Walker and Catoosa; and

WHEREAS, AUTHORITY, a Georgia Utility District Authority, was created by a legislative act by the General Assembly of the State of Georgia and serves residents in Catoosa County, Tennessee; and

WHEREAS, Authority and Utility currently have a water purchase agreement entered into on November 22, 1998 with an effective date of May 18, 1999; and

WHEREAS, the parties want to continue their water supply partnership;

NOW, THEREFORE, in consideration of the following covenants, the parties agree as follows:

1. SUPPLY OF WATER

- a. During the term of this Agreement and any extensions thereof, Utility agrees to provide to Authority, at the Points of Delivery, potable water in such quantity as is required in Section 2 herein. "Points of Delivery" shall mean the location(s) of metering equipment used to measure the quantity of water delivered to Utility.
- b. Water provided by the Utility shall be available at the Points of Delivery at normally available distribution system pressure. Failures of pressure or supply due to causes beyond the reasonable control of Utility, including but not limited to main supply line breaks, power failure, flood, fire and the use of water to fight fire, earthquake or other catastrophic events, or governmental or judicial action, shall relieve Utility of responsibility for providing service for such reasonable time as may be necessary to restore service without liability for loss, damage or injury to Authority or its customers. In the event of an extended water shortage resulting from drought restrictions, or if the supply of water available to Utility is otherwise diminished for reasons beyond the reasonable control of Utility, the supply of water available to Authority may be reduced by Utility, but the reduction

shall be in the same proportion as the reduction of supply to all of Utility's affected customers, to the extent feasible and within Utility's power.

- c. Utility shall not be required by this Agreement to provide, reduce or maintain water pressure within Authority's system and it is expressly understood to be the obligation of Authority to provide, reduce and maintain such pressure by boosting devices, pressure reducing valves, standpipes, elevated tanks, or by such other means as may be required or necessary to provide and maintain satisfactory pressure in the water mains and pipes within Authority's system.

2. PURCHASE OF WATER

- a. It is expressly understood that this is a requirements contract, and that Authority may not reduce its purchases from Utility during the term of this Agreement. Authority agrees that water purchased under this Agreement is solely for resale to its customers (within its service area and to Ringgold; and that, without the prior written consent of Utility, such water will not be sold to any other water utility). In addition, no water may be used outside the Tennessee River Basin.
- b. Authority shall pay the then-applicable rate in Utility's Rates, Rules, Regulations and Conditions of Water Service on file with and approved by the TPUC ("Tariffs"). Metering reading, billing, and payment terms shall be conducted as set forth in the then-applicable Tariffs. At the end of each year, if the Authority did not purchase the required annual gallons of water specified in 2.c. below, the Utility shall invoice Authority at the then-applicable Tariff rate for the difference between the number of gallons required to be purchased and the number of gallons purchased that year.
- c. Authority agrees to purchase a minimum of 93,000,000 gallons per year (0.25 million gallons/day average) of potable water from Utility during the term of this Agreement.

3. METERING AND CROSS-CONTAMINATION EQUIPMENT

- a. Metering equipment and appurtenances thereto are provided, installed, owned, and maintained by Utility, and shall be of standard type for properly measuring the quantity of water delivered. Authority shall own and be responsible for the cost, installation, and maintenance of the meter vault, piping, valves, and appurtenances thereto necessary for connection to Utility's metering equipment. Authority shall also be responsible for the cost of connecting its mains to the Utility's system at the Points of Delivery.
- b. Utility agrees to calibrate its metering equipment whenever requested by Authority, but not more frequently than once every twelve (12) months,

unless inaccuracy thereof is made clearly evident by Authority to Utility. A meter registering within the standards set by TPUC regulations and rules shall be deemed to be accurate and acceptable to the parties. If any meter fails to register within such standards, the TPUC regulations and rules shall determine whether a billing adjustment should be made and, if so, how the adjustment will be calculated.

- c. For each Point of Delivery, Authority agrees to provide and install at a location approved by Utility, and own and maintain in good working order, a double check valve and/or other cross contamination protection devices required by Utility and/or the Tennessee Department of Environment and Conservation or such other body that regulates such matters.

4. TERM AND TERMINATION

- a. The Initial Term of this Agreement shall be five (5) years from the Effective Date and shall be automatically renewed for one (1) additional five (5)-year renewal term unless either party provides written notice to the other party not less than one (1) year prior to the end of such Initial Term that the Agreement will be terminated at the conclusion of the Initial Term.

5. MISCELLANEOUS

- a. Water service shall be conducted in accordance with the then-applicable Tariffs. In the event of any conflict between the provisions of this Agreement and the then-applicable Tariffs, the Tariffs shall control.
- b. Authority is solely responsible and liable for construction, operation and maintenance of its water system in conformance with all applicable federal, state and local laws, ordinances, regulations and codes.
- c. This Agreement shall be binding upon Utility and Authority, their successors and assigns.
- d. All notices and correspondence regarding this Agreement shall be addressed to:

For Authority: Chairman, Randall Crawford
Catoosa Utility District Authority
PO Box 750
Ringgold, GA 30736

For Utility:

President
Tennessee-American
109 Wiehl Street
Chattanooga, TN 37402

Corporate Counsel
Tennessee-American
109 Wiehl Street
Chattanooga, TN 37402

Either party may change the person or address to which notices or correspondence to it should be sent by written notice to the other party. Notices provided for hereunder shall be deemed given on the date of receipt unless mailed by certified mail, return receipt requested, in which event the notice shall be deemed given on the date of mailing.

- e. This Agreement contains the entire understanding between the parties and no modification or alteration to this Agreement shall be effective unless reduced to writing and signed by both parties. This Agreement supersedes all prior agreement, representations, and proposals, either oral or written, heretofore made by or to or in effect between Authority and the Utility with respect to the subject matter hereof.
- f. This Agreement shall be governed and construed under the laws of the State of Tennessee.

UTILITY:

TENNESSEE-AMERICAN WATER COMPANY




Grant Evitts, President



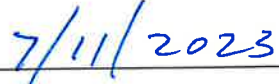
Date

AUTHORITY:

CATOSSA UTILITY DISTRICT AUTHORITY



Randall Crawford, Chairman



Date

EXHIBIT B

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION NASHVILLE, TENNESSEE

JOINT PETITION OF TENNESSEE-)
AMERICAN WATER COMPANY AND)
CATOOSA UTILITY DISTRICT)
AUTHORITY FOR APPROVAL OF A)
SPECIAL CONTRACT)

DOCKET NO. 23-_____

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, the Hearing Officer, as appointed by the Tennessee Public Utilities Commission (“TPUC”), 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 specifically 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 12 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 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) TPUC Directors and members of the staff of the TPUC;
- (c) Officers, directors, or employees of the parties, including employees of intervenors 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 (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, 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 TPUC 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 TPUC.

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 this case.

5. (a) Prior to disclosure of CONFIDENTIAL INFORMATION to any employee or associate counsel for a party, the counsel representing the party who is to receive the CONFIDENTIAL INFORMATION 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 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 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.

(b) Disclosure of CONFIDENTIAL INFORMATION other than as provided for in this Protective Order shall not be made to any person or entity except with the express written consent of the Producing Party or upon further order of the TPUC or of any court of competent jurisdiction.

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 TPUC, or any 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 TPUC'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 Commission, the recipients shall immediately treat the subject documents as CONFIDENTIAL.

The Tennessee Public Utilities Commission 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.

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 TPUC 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 TPUC 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 the proceeding, the docket number, the contents of the envelope sufficient to identify its subject matter and shall reference this Protective Order. Notwithstanding the foregoing, the Directors and the Staff of the TPUC may review any paper filed as CONFIDENTIAL without obtaining an order of the TPUC or the 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 or 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 TPUC 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 TPUC or the Hearing Officer prior to the Hearing on the Merits of the case, of the proposed use; and shall advise the TPUC 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 TPUC or the Hearing Officer to protect the confidential nature of the information.

10. Except for documents filed in the TPUC 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 TPUC or Hearing Officer as appropriate, for a ruling that the documents, information or testimony should not be so treated. Upon the filing of such a motion, the designating party shall bear the burden of supporting its designation of the documents or information at issue as CONFIDENTIAL

INFORMATION. All documents, information and testimony designated as CONFIDENTIAL or PROTECTED SECURITY MATERIALS, however, shall be maintained as such until the TPUC 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. Any Reply seeking to protect the status of 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 Commission 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 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 conclusion of any appeals resulting from such an order, except as to the Attorney General and TPUC, all the filings, exhibits and other materials and information designated CONFIDENTIAL or PROTECTED SECURITY MATERIALS and all copies thereof shall be returned to counsel of the Producing Party 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 TPUC 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 with respect to any electronic copies of CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS received or mentioned by the receiving party, all reasonable efforts have been undertaken to eliminate said information. If any electronic CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS cannot be eliminated through the use of reasonable efforts, any such remaining materials shall be subject to the continuing restrictions contained in paragraph eighteen (18) of this Order.

18. After termination of this proceeding, the provisions of this Order relating to the confidential nature of CONFIDENTIAL INFORMATION 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 TPUC Directors and members of the staff of the TPUC 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 TPUC 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 TPUC 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 TPUC Directors, TPUC staff and any other party shall treat all notes memoranda or opinions regarding or derived from the PROTECTED SECURITY MATERIALS as 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 TPUC staff, any party, Hearing Officer, or the TPUC 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 not signed a Nondisclosure Agreement.

25. 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.

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. CONFIDENTIAL INFORMATION is subject to this Protective Order, which is entered pursuant to the Tennessee Rules of Civil Procedure. If any person or entity subject to this Protective Order receives a request or subpoena seeking the disclosure or production of information labeled as “CONFIDENTIAL INFORMATION” by a party, such person or entity shall give prompt written notice to the TPUC Hearing Officer and the party within not more than five (5) days of receiving such a request, subpoena or order and: (i) shall respond to the request, subpoena or order, in writing, stating that the CONFIDENTIAL INFORMATION is protected pursuant to this Protective Order; and (ii) shall not disclose or produce such CONFIDENTIAL INFORMATION unless and until subsequently ordered to do so by a court of competent jurisdiction. This Protective Order shall operate as an exception to the Tennessee Public Records Act, as set forth in the language of Tenn. Code Ann. § 10-7- 503(a) “. . . unless otherwise provided by state law.” (See, e.g., Ballard v. Herzke, 924 S.W.2d 652 (Tenn. 1996); Arnold v. City of Chattanooga, 19 S.W.3d 779 (Tenn. Ct. App. 1999) (holding that “state law” includes the Tennessee Rules of Civil Procedure)). Because this Protective Order is issued pursuant to the Tennessee Rules of Civil Procedure, this Order creates an exception to any obligations of the

Attorney General, including attorneys and members of theirs, as to the Public Records Act and other open records statutes as to CONFIDENTIAL INFORMATION. In the event that any court of competent jurisdiction determines in the course of a lawsuit brought as a result of a person's or entity's fulfillment of the obligations contained in this paragraph that information designated as "CONFIDENTIAL INFORMATION" by a party is not CONFIDENTIAL INFORMATION as defined in paragraph 1 of this Protective Order, then the party designating the information as "CONFIDENTIAL INFORMATION" shall be responsible for all costs associated with or assessed in the lawsuit. This Protective Order acknowledges the role and responsibilities of the Attorney General and the Attorney General's staff, as set forth in Title 8, Chapter 6 of the Tennessee Statutes, beyond the duties associated with the Consumer Advocate and Protection Division, as prescribed in Tenn. Code Ann. § 65-4-118. This Protective Order is not intended to conflict with the Attorney General's role and responsibilities, especially the investigative functions, as set forth in Title 8, Chapter 6. For there to be compliance with this Protective Order, any CONFIDENTIAL INFORMATION shared outside of the Consumer Advocate and Protection Division must be provided the full and complete protection afforded other confidential or protected information in the control and custody of the Attorney General.

28. The designation of any information, documents or things in accordance with this Order as constituting or containing confidential or proprietary information the Attorney General's, or their respective 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 their respective 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 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 their respective 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 23 through 29 do not apply to PROTECTED SECURITY MATERIALS as set forth in paragraphs 20-22 of this Order. PROTECTED SECURITY MATERIALS shall be treated in accordance with paragraphs 20-22.

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 TPUC 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 TPUC or Intervenors.

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

**JOINT PETITION OF TENNESSEE-)
AMERICAN WATER COMPANY AND)
CATOOSA UTILITY DISTRICT)
AUTHORITY FOR APPROVAL OF A)
SPECIAL CONTRACT)**

DOCKET NO. 23-_____

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

WITNESS my hand, at office, this _____ day of _____, 2023.

NOTARY PUBLIC

My Commission Expires:_____

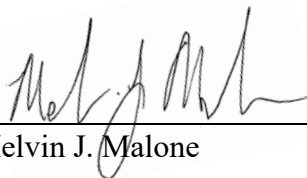
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

Vance L. Broemel, Esq.
Senior Assistant Attorney General
Office of the Tennessee Attorney General
Consumer Advocate Division
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Nashville, TN 37202-0207
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This the 5th day of September 2023.



Melvin J. Malone