

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS-AMERICAN WATER)
COMPANY, AMERICAN WATER)
WORKS COMPANY, INC., THAMES)
WATER AQUA US HOLDINGS, INC.,)
and THAMES WATER AQUA HOLDINGS)
GmbH)
) Docket No. 06-0336
Joint Application For Approval of Proposed)
Reorganization and Change In Control of)
Illinois-American Water Company)
Pursuant To Section 7-204 of the Illinois)
Public Utilities Act.)

**RESPONSE OF JOINT APPLICANTS IN OPPOSITION TO
THE ATTORNEY GENERAL'S AMENDED REQUEST FOR MODIFICATION OF
AUGUST 22, 2006 PROTECTIVE ORDER**

Illinois-American Water Company, American Water Works Company, Inc., Thames Water Aqua US Holdings, Inc. and Thames Water Aqua Holdings GmbH (collectively, "Joint Applicants"), by and through their undersigned attorneys, hereby respond to the Attorney General of the State of Illinois' (the "Attorney General") Amended Request For Modification of August 22, 2006 Protective Order ("Request for Modification"). In support of their response, the Joint Applicants state as follows:

1. Joint Applicants do not object to incorporating language into the Protective Order setting forth the Attorney General's obligations to protect Confidential Information pursuant to the Attorney General Act. Joint Applicants, however, do oppose the Attorney General's requested language, identified in paragraph 4 of the Request for Modification ("Proposed Language"), and instead recommend that the Protective Order be modified to include the

language identified in paragraph 5 of the Request for Modification ("Alternative Language").

The Alternative Language states:

The Office of the Attorney General is governed by 15 ILCS 205/6.5(a)-(d) and will receive information in this proceeding on behalf of the People of the State of Illinois. The Office of the Attorney General shall treat Confidential Information in accordance with the terms of this Order and shall file and distribute pleadings or testimony in accordance with the terms of this Order.

The Alternative Language provides a clear delineation of the Attorney General's obligations with respect to receipt of Confidential Information in this proceeding, as it confirms that the Attorney General is governed by the Attorney General Act and must treat Confidential Information in accordance with the terms of the Protective Order. Conversely, as described in paragraph 4 below, the Proposed Language creates the possibility of confusion about the extent of the Attorney General's obligation to protect Confidential Information received from the Joint Applicants.

2. The Alternative Language that Joint Applicants recommend is the same as the language in the proposed protective order offered by the Joint Applicants (without objection) in this proceeding in conjunction with their Motion for Entry of a Protective Order filed August 1, 2006.

3. The Alternative Language has also been incorporated in protective orders entered in several other recent Illinois Commerce Commission ("Commission") proceedings. *See, e.g.*, Dockets 05-0681/06-0094/06-0095 (cons.), Protective Order entered May 2, 2006 (Tr. at 6); Docket 05-0160/05-0161/05-0162 (cons.), Protective Order entered April 26, 2005; Docket 05-0159, Protective Order entered April 26, 2005.

4. The Proposed Language does not clearly define the Attorney General's responsibilities with regard to the protection of Confidential Information. The Proposed Language states that the Attorney General "is not subject to" the Protective Order except in two

circumstances. Where those circumstances do not apply, the Attorney General is apparently governed only by the Attorney General Act. However, the extent of the Attorney General's obligation under the Attorney General Act to protect Confidential Information produced by Joint Applicants may not be clear. The Attorney General Act provides:

Upon request, the Office of the Attorney General shall have access to and the use of all files, records, data, and documents in the possession or control of the Commission. The Office of the Attorney General may use information obtained under this Section, including information that is designated as and that qualifies for confidential treatment, which information the Attorney General's office shall maintain as confidential, to be used for law enforcement purposes only, which information may be shared with other law enforcement officials.

15 ILCS 205/6.5(d). If this section is read as being limited to information obtained from the Commission, or if the Attorney General obtains information from Joint Applicants in a manner other than "under this Section," there would be no requirement that the Attorney General protect information designated as Confidential by Joint Applicants. As a result, the Proposed Language creates the possibility of disputes regarding the Attorney General's handling of Confidential Information, in contrast to the Alternative Language, which is clear in its requirement that the Attorney General follow the Protective Order.

5. Joint Applicants also note that, in the Docket 06-0411 proceeding cited by the Attorney General in its Request for Modification, the adoption of language identical to the Proposed Language was subject to a Motion for Reconsideration, and although the parties subsequently agreed the Motion for Reconsideration was moot (Docket 06-0411, Tr. at 35-36), it appears that no protective order containing the Proposed Language was entered in that proceeding.

6. As a result, the Alternative Language offers a more reasonable approach, in that it eliminates any uncertainty about when the Attorney General must follow the Protective Order and it represents language commonly used in protective orders in other proceedings.

WHEREFORE, Joint Applicants respectfully request that the Commission deny the Attorney General's Amended Request For Modification of August 22, 2006 Protective Order and, in the alternative, modify the Protective Order to include the language in Paragraph 1, above.

Dated: September 28, 2006

Respectfully submitted,

ILLINOIS-AMERICAN WATER
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