

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

IN RE:)	
)	
PETITION OF TENNESSEE-AMERICAN)	
WATER COMPANY REGARDING THE)	Docket No. 14-00121
2015 INVESTMENT AND RELATED)	
EXPENSES UNDER QUALIFIED)	
INFRASTRUCTURE INVESTMENT)	
PROGRAM RIDER, THE ECONOMIC)	
DEVELOPMENT INVESTMENT RIDER,)	
AND THE SAFETY AND)	
ENVIRONMENTAL COMPLIANCE RIDER)	

PRE-HEARING BRIEF OF THE CITY OF CHATTANOOGA

The City of Chattanooga, Tennessee, a municipal corporation (“Chattanooga”), by and through counsel, submits this Pre-Hearing Memorandum addressing aspects of the Petition of the Tennessee American Water Company (“TAWC”) regarding 2015 investment and related expenses under alternative regulatory methods authorized by Tenn. Code Ann. § 65-5-103(d).

I. INTRODUCTION AND BACKGROUND

TAWC submitted its petition in this matter on October 29, 2014, seeking approval by the Authority of increased rates to recover investments and expenses under alternative regulatory methods, which TAWC refers to as a qualified infrastructure investment rider (“QIIP”), an economic development investment rider (“EDI”), and a safety and environmental compliance rider (“SEC”)¹.

¹ The statute does not authorize an “environmental” rider, as TAWC has acknowledged. TAWC has apparently coined the phrase “safety and environmental compliance rider” in support of its effort to recover environmental compliance expenses that are not authorized by law. For convenience, Chattanooga will use TAWC’s “SEC” acronym in this memorandum.

Because no contested case had been opened, and because TAWC did not request one, Chattanooga filed a complaint opposing TAWC's proposed increased tariffs and requesting that a contested case be opened.² TAWC filed a motion to dismiss, seeking to prevent Chattanooga's participation in the Authority's review of TAWC's proposed rate increases. Subsequently, the Authority convened a contested case in Docket No. 14-00121, and Chattanooga was permitted to intervene in this docket.

The petition in this Docket is the second in which TAWC has sought approval of revised tariffs under alternative regulatory method riders. In its Petition in Docket No. 13-00130, TAWC sought approval of revised tariffs under the same three (3) tariff riders, plus a fourth pass-through mechanism addressing fuel, purchased power, chemicals, purchased water, wheeling water costs, waste disposal, and TRA inspection fee. TAWC asked that Chattanooga agree not to intervene in Docket No. 13-00130 and, in exchange for the City's forbearance, provided written assurances to Chattanooga concerning the TAWC's interpretation and application of pertinent provisions of Tenn. Code Ann. § 65-5-103(d). TAWC also agreed that it would provide specified information and would engage in consultations with Chattanooga officials to demonstrate that TAWC was applying the riders in a manner consistent with Tennessee law and the public interest. As explained by Mr. Nick Wilkinson, Chattanooga's Deputy Administrator for Economic Development, these assurances were contained in a letter from TAWC's President to Chattanooga's City Attorney dated November 25, 2013.³

Unfortunately, as Mr. Wilkinson explains, TAWC did not fulfill its agreement with Chattanooga. For example:

² See Docket No. 14-00139.

³ See Chattanooga Exhibit B and Pre-Filed Direct testimony of Nick Wilkinson.

- TAWC failed to provide “by January 1 each year . . . on an annual basis” a “detailed infrastructure investments/improvement plan for the upcoming year [2014], including the nature and locations of planned infrastructure improvements and how such investments will benefit customers within the Company’s current service territory.”⁴
- Just as TAWC failed to provide the promised detailed infrastructure investments/improvement plan, it failed to provide quarterly reports outlining progress on the absent plan.⁵
- TAWC failed to provide “advance notice to the City of all proposed expenditures related to economic development efforts under the Rider” as it promised. It provided such advance notice and consultation as to only one economic development project, involving an extension of mains to serve a new Coca-Cola bottling distribution facility.⁶ TAWC did not provide the promised notice as to

⁴ Chattanooga Exhibit B at 1-2; Wilkinson Direct at 6:5 – 8:10. In her rebuttal testimony, Ms. Bridwell made the remarkable claim that TAWC fulfilled its November 25, 2013 agreement with Chattanooga by filing an investment plan with this Authority as an exhibit to its Petition in Docket No. 13-00130 *nearly two months before it reached its agreement with Chattanooga*. See Birdwell Rebuttal at 1:13 – 1:22.

⁵ See Chattanooga Exhibit B at 1-2; Wilkinson Direct at 8:11 – 8:15. Mr. Wilkinson reports that TAWC provided two (2) reports containing certain information on TAWC expenditures, but neither included TAWC’s annual infrastructure plan or information describing progress on that plan. *Id.* at 8:16 – 8:20.

⁶ See Chattanooga Exhibit B at 2; Wilkinson Direct at 9:1 – 10:2. Chattanooga does not challenge the appropriateness of TAWC’s expenditures related to the successful efforts to locate the new bottling company distribution facility in Chattanooga, within TAWC’s service area.

any other proposed expenditures that it claims in the Petition in this cause to involve economic development efforts under the EDI Rider.⁷

- TAWC failed to provide “quarterly reports to the City sufficiently demonstrating that any environmental compliance sought by the Company under [the SEC] rider . . . are being spent only on recovery of safety requirements consistent with the statute.”⁸

To be clear, Chattanooga does not ask the Authority to “enforce” TAWC’s promises to Chattanooga. However, TAWC’s agreement with Chattanooga is important to this proceeding for two key reasons. First, TAWC described in the agreement the proper interpretation and application of key provisions of Tenn. Code Ann. § 65-5-103(d). For example, TAWC acknowledged that QIIP investments should benefit customers within TAWC’s current service territory.⁹ TAWC also acknowledged that Tenn. Code Ann. § 65-5-103(d)(2) does not “expressly use the language ‘environmental compliance’” and that any recoverable environmental expenditures must be mandated by safety requirements.¹⁰ It is appropriate for the Authority to give effect to TAWC’s voluntary description of the proper interpretation and application of the Statute and for the Authority to reject contrary positions that TAWC is now asserting. As would be expected, the Courts often look to the understanding of the parties affected by a statute to determine whether the language of the statute is clear and unambiguous.

⁷ TAWC failed to provide the promised advance notice of expenditures for meters, services, valves, hydrants, or alternative fuel vehicles, all of which it now claims were proper EDI expenditures. *See* Wilkinson Direct at 10:3 – 10:11.

⁸ Chattanooga Exhibit B at 2; *see* Norris Direct Testimony at 6:12 – 17.

⁹ *See, e.g.,* Chattanooga Exhibit B at 2.

¹⁰ *Id.*

Where there is no disagreement concerning the statute's meaning, the agreed, and obviously plain, meaning of the legislature's words should be applied without the need for further inquiry.¹¹

Second, TAWC acknowledged that its compliance with its agreed procedures would be important to a determination of whether TAWC's actions were in the public interest. For example, TAWC acknowledged that "[i]t is beneficial to both the consumers and the Company for the Company to learn of and discuss the City's feedback, input and observations" concerning information in TAWC's promised annual investment plan and quarterly updates of that plan.¹² TAWC also acknowledged that the disclosures it promised concerning planned EDI expenditures would "help ensure that any Company expenses related to the promotion of economic development serve the public interest"¹³ Chattanooga provides information to the Authority concerning TAWC's actions, and its failures to act, for the Authority's consideration in determining whether the types of expenditures for which TAWC seeks recovery are in the public interest.

As Chattanooga points out below, TAWC's agreement with Chattanooga is only one of several factors that the Authority should consider in its evaluation of TAWC's proposed revised tariffs. In support of its position that TAWC's proposed revised tariffs should be reduced, Chattanooga rely upon, in addition to TAWC's agreement, the plain meaning of Tenn. Code Ann. § 65-5-103(d), the absence of any legislative history contradicting the plain meaning of that statute, the direct testimony and exhibits submitted by TAWC in support of its petition, TAWC's responses to Chattanooga's data requests, direct testimony submitted by Chattanooga, and rebuttal testimony submitted by TAWC.

¹¹ See *State v. Wilson*, 132 S.W.3d 340, 341 (Tenn. 2004) (citing *Owens v. State*, 908 S.W.2d 923, 926 (Tenn.1995)) (finding a statute is ambiguous when parties legitimately derive different interpretations).

¹² See, e.g., Chattanooga Exhibit B at 2.

¹³ *Id.*

Upon consideration of the applicable law and the relevant facts, Chattanooga respectfully requests that the Authority find that significant portions of TAWC's requested rate increase are not authorized by law and/or are not in the public interest.

II. TAWC HAS THE BURDEN OF ESTABLISHING THAT ITS PROPOSED REVISED TARIFFS ARE AUTHORIZED BY APPLICABLE LAW, ARE JUST AND REASONABLE, AND ARE IN THE PUBLIC INTEREST

Tenn. Code Ann. § 65-5-103(a) sets forth the burden of proof that must be met by a utility seeking to increase rates:

When any public utility shall increase any existing individual rates, joint rates, tolls, fares, charges, or schedules thereof, or change or alter any existing classification, the authority shall have power either upon written complaint, or upon its own initiative, to hear and determine whether the increase, change or alteration is just and reasonable. *The burden of proof to show that the increase, change, or alteration is just and reasonable shall be upon the public utility making the same.* In determining whether such increase, change or alteration is just and reasonable, the authority shall take into account the safety, adequacy and efficiency or lack thereof of the service or services furnished by the public utility.

Tenn. Code Ann. § 65-5-103(a) (emphasis added).

Tenn. Code Ann. § 65-2-109(5), similarly provides that “[t]he burden of proof shall be on the party or parties asserting the affirmative of an issue; provided, that when the authority has issued a show cause order pursuant to the provisions of this chapter, the burden of proof shall be on the parties thus directed to show cause.” Tenn. Comp. R. & Regs. Rule 1220-1-2-16(2), mirrors the provisions of Tenn. Code Ann. § 65-2-109(5).

Tenn. Code Ann. § 65-5-103(d)(1)(A) permits the Authority “to implement alternative regulatory methods in lieu of a general rate case proceeding”. The statute does not shift the burden from the utility seeking a rate increase. Indeed, under § 65-5-103(d), the utility has an enhanced burden of showing to the satisfaction of the Authority that the expenses or costs sought

to be recovered under an alternative regulatory method are in the public interest.¹⁴ The required showing under § 65-5-103(d) is broader than that required under § 65-5-103(a), because, of course, a rate increase that is not just and reasonable could not be found to be in the public interest.

The legislative history of Tenn. Code Ann. § 65-5-103(d) makes clear that the Authority is to consider at every stage whether rate increases under the alternative regulatory methods are in the public interest. As Majority Leader Gerald McCormick, who was prime sponsor of the House Bill, explained,

I'm carrying the legislation but I think we need to ask tough questions about legislation that we carry, not just other people's legislation and *something that keeps cropping up that reassures me is that the commission [sic] will have the ability as the words are written to act in the public interest which is vaguely defined which I think gives them a lot of authority to go in if the system is being abused to step in and change things if they need to in the public interest.*¹⁵

III. TAWC SHOULD NOT BE PERMITTED TO INCREASE RATES TO RECOVER INVESTMENTS AUTHORIZED FOR RECOVERY UNDER A PREVIOUS RATE PROCEEDING

TAWC contends that it may seek rate increases to recover investments for which it has been granted recovery in a prior general rate case or alternative regulatory method proceeding so long as TAWC has invested the money it was granted by the rate increase in *something*. Thus,

¹⁴ See, e.g., Tenn. Code Ann. § 65-5-103(d)(2)(A) (“if such expenses or costs are found by the authority to be in the public interest”); § 65-5-103(d)(3)(A) (“if such expenses or costs are found by the authority to be in the public interest”); § 65-5-103(d)(B) (“upon a finding that such mechanism or adjustment is in the public interest”); § 65-5-103(d)(4)(A)(i) (“if such expenses are found by the authority to be in the public interest”); § 65-5-103(d)(4)(B) (“upon a finding that such mechanism or adjustment is in the public interest”); § 65-5-103(d)(5)(A) (“operational expenses, capital costs or both that are in the public interest”); § 65-5-103(d)(5)(C) (“Upon a finding that such programs are in the public interest”).

¹⁵ Transcript of Legislative Hearings on House Bill.191 on Mar. 13, 2013, attached as Exhibit A (emphasis supplied).

TAWC argues, if it has shown in one proceeding that a rate increase to pay for an investment is just and reasonable and/or in the public interest, it can ask for another rate increase for the *same investment* in a later proceeding, so long as its rate base additions equal the investment in the authorized project. Even if the *something* that increased its rate base was never shown to be used and useful to provide service to its ratepayers; even if the *something* was not a necessary and reasonable investment; and even if the *something* was not an investment that was in the public interest.¹⁶

In response to data requests submitted by Chattanooga, TAWC has identified projects that are again included in current capital plans after rate increases were approved to finance them in previous dockets.¹⁷ The record is not yet clear whether there are others.

In an expedited alternative regulatory method procedure, in order to raise rates to recover identified investments, TAWC should be required to specifically show that it has not been permitted to recover those same investments in any other proceeding. TAWC's proposed tariff should be revised to remove recovery for any investment for which recovery was permitted in a previous proceeding. It is fundamentally not in the public interest to permit multiple rate increases to recover the same investment. Nor is it in the public interest to permit a utility to raise rates for an investment found to be just and reasonable and to then spend the rate revenue on some other investment that has not been reviewed by the Authority. It certainly is not in the public interest to permit a utility to be its own regulator, unilaterally selecting and substituting what it will raise rates to fund, without any of the review that the law requires.

¹⁶ See, e.g., Bridwell Rebuttal Testimony, at 10-11.

¹⁷ *Id.* Ms. Bridwell reported that the two projects she referenced were first approved in Docket Nos. 10-00189 and 12-00049.

IV. APPLICABLE LAW DOES NOT PERMIT TAWC TO RECOVER EXPENSES OR INVESTMENTS FOR ALTERNATIVELY FUELED VEHICLES

TAWC seeks recovery of various capital expenses and costs under its “Economic Development Investment Rider” (“EDI Rider”) pursuant to Tenn. Code Ann. §§ 65-5-103(d)(3) and (d)(4). Under the EDI Rider, TAWC has included expenditures to purchase new alternative fuel vehicles, claiming that this is authorized by Tenn. Code Ann. § 65-5-103(d)(3)(A)(i). It is not.

The plain language of Tenn. Code Ann. § 65-5-103(d)(3)(A)(i) authorizes only recovery for expansion of alternative fueling *infrastructure* and does not contemplate or permit the recovery for vehicles fueled by alternative fuels. Tenn. Code Ann. § 65-5-103(d)(3)(A) provides:

(3)(A) A public utility may request and the authority may authorize a mechanism to recover the operational expenses, capital costs or both *related to the expansion of infrastructure for the purpose of economic development*, if such expenses or costs are found by the authority to be in the public interest. Expansion of economic development infrastructure may include, but is not limited to, the following:

(i) *Infrastructure and equipment associated with alternative motor vehicle transportation fuel;*

(ii) Infrastructure and equipment associated with combined heat and power installations in industrial or commercial sites; and

(iii) Infrastructure that will provide opportunities for economic development benefits in the area to be directly served by the infrastructure.

Tenn. Code Ann. § 65-5-103(d)(3)(A)(emphasis supplied).

TAWC’s witness Linda Bridwell asserts that “[t]he purchase of new vehicle and equipment that utilize alternative fuel is an expansion of infrastructure that is associated with alternative motor vehicle transportation fuel, and recovery of these investments is specifically

allowed under the statute.”¹⁸ ***Ms. Bridwell is wrong.*** “Infrastructure” and “vehicles” are not the same. The Merriam-Webster Dictionary defines “infrastructure” as “the basic equipment and structures (such as roads and bridges) that are needed for a country, region or organization to function properly.” <http://www.merriam-webster.com/dictionary/infrastructure>. It defines “vehicle” as “a machine that is used to carry people or goods from one place to another.” <http://www.merriam-webster.com/dictionary/vehicle> .

The primary objective when interpreting a statute is to ascertain and give effect to the legislature’s intent without broadening the statute beyond its intended scope.¹⁹ If a statute’s language is clear and unambiguous, legislative intent is derived from the plain and ordinary meaning of the statutory language, “without a forced interpretation that would extend the meaning of the language.”²⁰ “Words ‘must be given their natural and ordinary meaning in the context in which they appear and in light of the statute’s general purpose.’ . . . [C]ourts ‘must be circumspect about adding words to a statute that the General Assembly did not place there.’”²¹ Courts, and this Authority, may refer to dictionary definitions where appropriate.²²

The plain and ordinary meaning of the words of Tenn. Code Ann. §§ 65-5-103(d)(3) shows that the legislature intended to permit recovery for investments in alternative fuel ***infrastructure***, not alternative fuel ***vehicles***.

¹⁸ Bridwell Rebuttal at 7:22 – 8:1.

¹⁹ *State v. Wilson*, 132 S.W.3d 340, 341 (Tenn. 2004) (citing *Kite v. Kite*, 22 S.W.3d 803, 805 (Tenn.1997); *State v. Sliger*, 846 S.W.2d 262, 263 (Tenn.1993)); *Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009).

²⁰ *Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009); *State v. Wilson*, 132 S.W.3d 340, 341 (Tenn. 2004).

²¹ *Johnson v. Hopkins*, 432 S.W.3d 840, 848 (Tenn. 2013) (citations omitted).

²² *See State v. Majors*, 318 S.W.3d 850, 859 (Tenn. 2010).

Although the language of the statute is clear and unambiguous and there is thus no need to refer to the statute's legislative history, a review of that history discloses no evidence of any legislative intent to permit the alternative regulatory method to be used to recover for costs of alternative fuel **vehicles**. Legislative hearings on House Bill 191, which included § 103(d), indicate that the provision allowing recovery of alternative transportation fuel infrastructure was intended to apply to utilities, such as natural gas utilities, installing infrastructure to permit vehicle fueling. Even in those cases, the legislative history makes clear that recovery would only be permitted if the infrastructure expenditures were found by the Authority to be in the public interest. For example, Director James Allison answered questions from representatives addressing the financing of alternative fueling facilities, such as natural gas fueling facilities, through an alternative rate mechanism. Director Allison made clear that recovery of such investments would not be permitted if the recovery resulted in a cross subsidization.²³

The legislative hearings on House Bill 191/Senate Bill 197 provide no indication, whatsoever, that § 103(d) was ever intended to permit recovery of alternative fuel **vehicles** purchased by utilities. This is evidenced by the complete absence of any reference in the transcripts to utilities being permitted to recover the cost of purchase of motor vehicles, combined with Mr. Allison's testimony explaining the alternative fuel infrastructure provision in the context of natural gas companies and fueling stations.²⁴

²³ Transcript of Legislative Hearings on House Bill 191 on Mar 6, 2013 at 13 and Mar 13, 2013 at 19-20, attached as Exhibit A.

²⁴ See Transcript of Legislative Hearings on House Bill 191 on Mar 6, 2013 and Mar 13, 2013 at 13; 19-20 (discussing the alternative fuel provision in the context of natural gas companies), attached as Exhibit A; Transcript of Legislative Hearings on Senate Bill 197 attached as Exhibit B and House Bill 191 (providing no mention of recovery for the purchase of alternative fuel vehicles).

Because the statute is clear and subject to no reasonable alternative interpretation, TAWC should not be permitted to raise its rates under the EDI Rider to recover investments in alternative fuel vehicles.

For the same reason, the Authority should consider establishing as a minimum filing requirement under Tenn. Code Ann. § 65-5-103(d)(1)(B), certification by the utility that operational expenses or capital costs sought to be recovered under Tenn. Code Ann. § 65-5-103(d)(3)(A) are not for vehicles fueled by alternative fuels.

V. THE STATUTE REQUIRES TAWC TO SHOW THAT ECONOMIC DEVELOPMENT INVESTMENTS HAVE A DIRECT IMPACT ON ECONOMIC DEVELOPMENT IN THE AREA SERVED BY THE INVESTMENT

Tenn. Code Ann. § 65-5-103(d)(3)(A)(iii) permits recovery only for “[i]nfrastructure that will provide opportunities for economic development benefits *in the area to be directly served by the infrastructure*” (emphasis supplied). The statutory language is clear and unambiguous and is to be given effect in accordance with the plain and ordinary meaning of the statutory language.²⁵ In its agreement with Chattanooga, TAWC agreed with this interpretation that investments for which it sought recovery under the EDI Rider must have direct economic development benefits and agreed that it would demonstrate those benefits to Chattanooga in advance of the expenditures:

To help ensure that any Company expenses related to the promotion of economic development serve the public interest, the Company, as requested by the City, will coordinate with the City, which has central responsibility for planning and promoting the community’s economic development. In doing so, and as requested by the City, the Company will provide advance notice to the City of all proposed expenditures related to economic development efforts under the Rider. The Company will provide the City with such advance notice on a reasonable timeframe, so that the City and the Company will have an opportunity

²⁵ See *Carter v. Bell*, 279 S.W.3d 560, 564 (Tenn. 2009); *State v. Wilson*, 132 S.W.3d 340, 341 (Tenn. 2004).

to review and discuss the same. *This coordination will support the City's efforts to ensure that the Company's investments under this proposed mechanism have the intended economic benefit within the Company's current service area.*²⁶

The Authority should acknowledge and give effect to TAWC's agreement concerning the meaning of the statute's requirement that recovery of an economic development infrastructure investment requires a substantial showing that the investment will have direct economic development benefits in the area served.

Contrary to the plain meaning of the statute, as acknowledged by TAWC, the Petitioner seeks approval for recovery of expenses and investments, even though it has not, and cannot, show that the expenditures will provide any "opportunities for economic development benefits in the area to be directly served by the infrastructure." The expenditures for which recovery is sought include services, laterals, meters, valves, and hydrants that have no direct or ascertainable economic development benefit, but are simply part of TAWC's cost of serving its customer base, replacing failed system components, or providing the essential services it is obligated to supply as a water utility.

TAWC has supplied nothing more than vague and conclusory statements, without any substantive support, concerning the economic development benefit of TAWC's routine infrastructure investments that it seeks to recover under § 65-5-103(d)(3)(A)(iii).²⁷ TAWC has made no showing, whatsoever, that its recovery of these routine investments under an alternative regulatory method instead of in a later general rate case is in the public interest, as the statute requires. Because it has not shown that routine investment in services, laterals, meters, valves, and hydrants "provide opportunities for economic development benefits *in the area to be*

²⁶ Chattanooga Exhibit B, p. 2.

²⁷ *See, e.g.,* Bridwell Rebuttal Testimony at 6.

directly served by the infrastructure” and are in the public interest, TAWC should be required to revise its proposed tariffs to remove recovery for these items.

Because the statute specifies that a specific showing must be made to permit recovery of investments under § 65-5-103(d)(3)(A)(iii), the Authority should consider requiring, as a minimum filing requirement under Tenn. Code Ann. § 65-5-103(d)(1)(B), certification by the utility that the operational expenses or capital costs sought to be recovered under Tenn. Code Ann. § 65-5-103(d)(3)(A)(iii) will fund infrastructure that will directly provide opportunities for economic development benefits in the area to be directly served by the infrastructure.

**VI. TAWC MAY NOT RECOVER OPERATIONAL EXPENSES OR INVESTMENTS
FOR ENVIRONMENTAL COMPLIANCE ACTIONS THAT ARE NOT MANDATED
BY SAFETY REQUIREMENTS IMPOSED BY THE STATE OR FEDERAL
GOVERNMENT**

Tenn. Code Ann. § 65-5-103(d)(2)(A)(i) provides:

(2)(A) A public utility may request and the authority may authorize a mechanism to recover the operational expenses, capital costs or both, if such expenses or costs are found by the authority to be in the public interest, related to any one (1) of the following:

(i) *Safety requirements imposed by the state or federal government;*

...

Tenn. Code Ann. § 65-5-103(d)(2)(A)(i) (emphasis supplied).

In this proceeding, TAWC seeks to recover expenditures for environmental compliance, not for safety requirements imposed upon it by the state or federal government. TAWC’s request contradicts the plain language of the statute and contradicts TAWC’s acknowledgment that the statute only permits recovery of expenditures related to mandated safety requirements.

In its November 25, 2013 agreement with Chattanooga, TAWC agreed that Tenn. Code Ann. § 65-5-103(d)(2) does not “expressly use the language ‘environmental compliance’”.²⁸

Because of this, TAWC promised:

As the statute does not expressly use the language “environmental compliance,” the City is concerned that the use of this term under this proposed alternative regulatory method to recover safety and environmental expenses could lead to the improper classification of some “non-safety” environmental compliance expenses as “safety requirements.” Recognizing this concern, the Company will provide quarterly reports to the City *sufficiently demonstrating that any environmental compliance sought by the Company under this Rider, should it be approved by the TRA, are being spent only on recovery of safety requirements consistent with the statute.*²⁹

In spite of its promises, TAWC did not provide any quarterly reports “sufficiently demonstrating” that any environmental compliance expenditures for which TAWC would seek recovery “are being spent only on recovery of safety requirements consistent with the statute.” *TAWC provided no reports at all.*³⁰

Nor has TAWC shown in this proceeding that the millions of dollars in environmental compliance expenses sought to be recovered under its proposed revised tariffs “are being spent only on recovery of safety requirements consistent with the statute.” TAWC has not identified *any* federal or state *safety mandate* that requires TAWC to make the environmental compliance expenditures that it seeks to recover under Tenn. Code Ann. § 65-5-103(d)(2).

TAWC asserts that a substantial portion (but not all) of the environmental compliance expenditures for which it seeks recovery are related to the method it has chosen to comply with wastewater discharge standards established by the City of Chattanooga. Chattanooga’s witness, Mr. Norris, testified that the City wastewater discharge standards are established by the City of

²⁸ See Chattanooga Exhibit B at 2.

²⁹ *Id.* (emphasis supplied).

³⁰ See Norris Direct at 5:13 – 6:17.

Chattanooga and are not mandated safety standards imposed upon TAWC by the state or federal governments.³¹ Although TAWC offered extensive testimony in response to Mr. Norris' testimony, the rebuttal testimony failed to contradict Mr. Norris' assertion. The TAWC rebuttal witness cited the following in support of his conclusory, and incorrect, assertion that the City's wastewater discharge standards applicable to TAWC are safety standards imposed by the state or federal government:

- Testimony of a TAWC witness in the 2013 docket (in which, at TAWC's request, Chattanooga did not participate). Mr. O'Neill reports that the TAWC witness in Docket No. 13-00130 testified that "Tennessee American believes that environmental compliance investments are specifically related to the safety of the drinking water and in the public interest."³² ***Chattanooga understands that TAWC did not include in the record in Docket No. 13-00130 the letter from its president, Mr. Allen, which directly contradicts the quoted testimony.***³³
- TAWC's responses to Chattanooga's data request No. 37, in which TAWC referenced EPA standards found at 40 C.F.R. § 257 which ***relate to disposal of solid waste***. The only reference cited by TAWC to any provision mentioning water is simply a provision of the solid waste regulations, 40 C.F.R. § 257.3—3, that says that the operator of a solid waste facility is not to discharge solid waste or other pollutants into waters of the United States.³⁴ ***EPA's solid waste disposal***

³¹ Norris Direct at 5:3 – 5:12.

³² See O'Neill Rebuttal at 6:19 – 6:22 (quoting 2013 Direct Testimony of Gary VerDouw in Docket No. 13-00130).

³³ Chattanooga Exhibit B.

³⁴ See O'Neill Rebuttal at 6:22 – 7:9.

standards have no application, whatsoever, to Chattanooga's wastewater discharge standards and are not safety requirements imposed upon TAWC by the state or federal government.

TAWC's president agreed with Chattanooga that Tenn. Code Ann. § 65-5-103(d)(2) does not permit recovery of expenditures for environmental compliance requirements unless those environmental compliance matters are safety mandates imposed by the state or federal government. TAWC has made no showing, whatsoever, that the environmental compliance expenditures that it seeks to recover are required by safety mandates. Nor can TAWC show that its president was wrong, because the plain language of the statute requires exactly what Mr. Allen promised – that the amounts sought to be recovered under § 65-5-103(d)(2) would be “spent only on recovery of safety requirements consistent with the statute.”

The Authority should find that it is not in the public interest to permit recovery pursuant to Tenn. Code Ann. § 65-5-103(d)(2)(A)(i) for expenses or investments associated with environmental compliance actions that are not actually mandated by safety requirements imposed upon the utility by the state or federal government, and TAWC's proposed tariffs should be reduced to reflect removal of non-safety mandated environmental expenses. The Authority should also consider requiring, as a future minimum filing requirement under Tenn. Code Ann. § 65-5-103(d)(1)(B), certification by the utility that operational expenses or investments sought to be recovered under Tenn. Code Ann. § 65-5-103(d)(2)(A)(i) are for environmental compliance actions that are actually mandated by safety requirements imposed upon the utility by the state or federal government.

VII. CONCLUSION

Chattanooga respectfully requests that the Authority find (i) that it is not in the public interest for TAWC to recover the costs of investments if the Authority has approved the recovery of those same costs in any prior rate case or alternative regulatory method proceeding; (ii) that Tenn. Code Ann. § 65-5-103(d)(3)(A)(i) does not permit recovery of the cost of purchase of alternative fuel vehicles, and that it is not in the public interest to permit recovery of such costs; (iii) that Tenn. Code Ann. § 65-5-103(d)(3)(A)(iii) does not permit recovery of expenditures for infrastructure if the utility does not demonstrate that the infrastructure will have a direct impact on economic development in the area served by the infrastructure investment, and that it is not in the public interest to permit recovery of such expenditures; (iv) that Tenn. Code Ann. § 65-5-103(d)(2)(A)(i) does not permit recovery of expenses or investments for environmental compliance actions that are not actually mandated by “safety requirements imposed by the state or federal government,” and that it is not in the public interest to permit recovery of such expenses or investments.

Chattanooga further requests that the Authority require TAWC to file revised tariffs removing recovery of all disallowed expenditures.

Finally, Chattanooga respectfully requests that the Authority consider the establishment for future proceedings of minimum filing requirements under Tenn. Code Ann. § 65-5-103(d)(1)(B) requiring the petitioning utility to certify that proposed revised tariffs comply with the requirements and limitations of Tenn. Code Ann. § 65-5-103(d). Chattanooga believes that such requirements could help avoid lengthy alternative regulatory method proceedings, thus supporting the goals of the statute.

Respectfully Submitted,

CITY OF CHATTANOOGA

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing pleading was served upon the following person(s) via email with copy by ☐ hand delivery or ☒ United States first class mail with proper postage applied thereon to ensure prompt delivery:

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This 15th day of April, 2015.

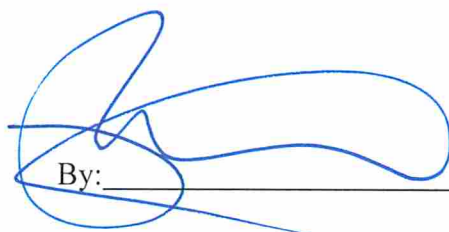
By:  _____

Exhibit A

HOUSE BILL 191
HOUSE BUSINESS AND UTILITIES SUB COMMITTEE
02/26/2013

Video: http://tnga.granicus.com/MediaPlayer.php?view_id=269&clip_id=7192

Click on link and scroll down in index and click HB 0191

Mr. Chairman: Leader McCormick, you are recognized on HB191.

Rep. McCormick: Thank you Mr. Chairman. This one's a little more complicated than the last one and I'll be glad to go into as much detail as you'd like to. House Bill 191 is a bill that the administration is working with along with the TRA. It has several components and basically does a realignment of the TRA's funding mechanism which will result in over a million dollars in fee reductions and the rest of it—there are a number of things in it—it also has to do with some best practices that a lot of other states are doing right now to try to make these rate cases go a little more efficiently. And with that explanation and certainly pending any questions, I'd move, no I wouldn't move to pass that, I'd ask for a motion.

Mr. Chairman: Got a motion and a second. There is an amendment, 3640.

Rep. McCormick: Yes sir, and the amendment, the amendment does make the bill.

Mr. Chairman: Ok. So do we have a motion on the amendment? And second? Alright. Are you ready to vote or discussion on the amendment? All in favor say aye. (Aye). Opposed, no. Amendment passed.

That's it, isn't it? Back on the bill. Any discussion? None. We do have one question.

Rep. Wirgau: Hey representative, thank you. My question is I know there is a substantial amount of savings here by the providers. What I'd like to ask is this money that we are saving, it is the intention of this money to be passed on to the consumer as the end result?

Rep. McCormick: We'll it'll be a little over a million dollars which should go to the consumers and to the utilities also, which of course their expenses are passed on anyway, but what they've done is they have cut spending and then they've redone the fee schedule basically to reflect who is being regulated. So the ones actually being regulated are the ones being charged the fees. Previous to this we've had some landline telephone companies that were paying a whole lot of fees and weren't even being regulated. That's the gist of it. Now the tradeoff for that is some of these utilities are paying a little bit more in fees. The tradeoff is that rather than going through expensive and long rate cases that are contentious, the TRA is

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going to keep more of an eye on them on a year-to-year basis and be able to do things a little quicker than they used to with the rate cases. So there's a cost to it, but there is also a benefit to it for the companies. I would say though, the companies being regulated are in agreement and they're ok with the bill, but even more importantly the TRA and the administration are ok with the bill. They feel like consumers are protected and that their powers are protected enough so they can keep an eye on these things.

Mr. Chairman: Further discussion? Ready to vote? All in favor say aye. (Aye). Opposed, no. Bill passes. Thank you.

Rep. McCormick: Thank you Mr. Chairman, members of the committee.

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Video: http://tnga.granicus.com/MediaPlayer.php?view_id=269&clip_id=7320

Click on link and scroll down in index and click HB 0191

Mr. Chairman: No. 7, House Bill 191. Leader McCormick, you are recognized.

Rep. McCormick: Thank you Mr. Chairman. I thought I'd come up here because we will probably need to call on a couple of folks to come up here and give their opinions on the bill, of course with permission of the committee. This is the TRA bill that's brought jointly by the administration and the TRA and it does several things. If I could I will go over the basic outline of it and focus in on one section which I think will have the most discussion on, but I think this is the place to have the discussion. There are basically five sections that make changes. Section 1 would say that the TRA directors are eligible for state employee health insurance benefits and those type things. That was the original intention and this makes that more clear. The second section also clarifies some—there is actually some ambiguity relative to the conflict of interest prohibitions for the directors. This does not make it easier, it just makes it clearer what they can and can't do and it's cleanup language. Section 3 talks about implementing optional cost-based services at the request of the utilities and cover the costs for doing so. Again, that's not a huge change. Section 4 will realign the fee structure to basically to reflect who is being regulated and let them pay the fees rather than have companies that are not being regulated any or very much and reduce their fees. This will also result in a savings of over a little over a million dollars a year in the budget which the TRA has worked very hard to make sure they can meet that and hopefully save rate payers over a million dollars in the process. Now Section 5 is the section that I'm sure our folks here will want to focus in on and what this does is it creates a new section authorizing the implementation of alternative regulatory methods for utility rate reviews and cost recovery and this is in lieu of the current process of where they have general rate cases every few years. Sometimes they settle them, sometimes they hire lots of lawyers and spend lots of money and take lot of time and we read about it a lot in the newspaper and they have very contentious issues. Basically what they are wanting to do in this is to have more of an annual review rather than having those big rate cases. This won't keep us from having rate cases, we can still have them, but hopefully we will have less of them. In my opinion, I think a good way to say it is we're bringing in CPAs to review it more regularly and probably not using lawyers as much to have big rate review cases.

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Mr. Chairman: We have a motion on the bill to hear a second? We have a motion in second and we do have an amendment on it. Do you want to talk about it?

Rep. McCormick: I believe that is what I just explained was the amendment.

Mr. Chairman: Alright. Do we have a motion on the amendment? We have a motion to second on the amendment. We will—anybody have any questions on the amendment? Representative Pody.

Rep. Pody: Yes, I've got one. Where it says it's going to empower the TRA to make these rules, are these rules that have to come before gov ops?

Mr. Chairman: Who oversees the rules that they're making to make sure that, who checks them?

Rep. McCormick: I think all rules have to come through gov ops at some point for review.

Rep. Pody: So even TRA. These rules will come. . .ok.

Rep. McCormick: Yes. Yes. They'll come through and I'll let them. . .if that's not correct then they'll get a chance in a second. That is correct and Mr. Chairman, I think it's only fair. We have had some objections to the bill especially for that last section from the Attorney General's office and with your permission I would like to have them come up and state their case and then hopefully have the TRA directors come up and state theirs.

Mr. Chairman: We want to go ahead, do we have any more questions on the amendment? If not, I think we are going to go ahead and vote this amendment. Without objection, we'll go ahead and vote on the amendment. All in favor please say aye. (Aye). Opposed. And that is amendment number 3640. The amendment passes.

Now we're back on the bill and I think if it's okay with you, leader, we will go out a recess and hear from whoever you want to bring up or however you want to work it. We want to hear from the attorney general's . . . did anybody hear from the attorney general's office? Would you all like to come up and let us hear from you please?

If you wouldn't mind stating your name and your position and then we will hear your testimony. Turn your microphone on please.

Vance Broemel: My name is Vance Broemel. I'm with the Consumer Advocate and Protection Division of the Office of the Attorney General. And with me here today is Ryan McGehee who is also from the Consumer Advocate and Protection Division and under the statute that created us we have the duty and authority to have cases at the Tennessee Regulatory Authority

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and also to participate in legislative and judicial proceedings and that's what we're here today on, this House Bill 191, and in particular, Section 5. As leader McCormick pointed out, there are numerous sections here. We are not speaking on the inspection fee portion of the bill which has to do with fees paid by regulating companies. They're going down for some and up for others but we're not speaking on that. We simply note that those fees, whatever they are, can be recovered by the companies from rate payers. We are here today to speak on Section 5 which changes greatly the way rates will be set in Tennessee if its passed. What this does in our opinion is make it more likely that rates will increase for businesses and households who are customers of regulated companies and the reason for this is that this bill greatly reduces the risk that the regulated companies, the utilities gas and water, in particular, will have as businesses because they will be allowed to recover virtually immediately their expenses and capital investments. Now heretofore as was pointed out by leader McCormick, we had rate cases and in that you have a general hearing, you consider all the expenses, all the capital investments of a company, and then you project going forward what they think their expenses will be for the coming year and a rate is set on that with the addition that any investment that the company has made they get to recover a rate of return on that. And this is similar to any business. If you have a startup company and its difficult to attract capital you would want a high rate of return. Similarly, if you had a safe investment in bonds or a CD, the rate of return would be less. And what the TRA does is look at the company and decide what level of risk does it have and that's usually expressed as a percentage, usually just say take a round figure, you get, a utility could get a rate of return 10%. That means on all their investments, if they have 50 million dollars of investments, they get their projected expenses plus a rate of return of 10% of that 50 million. And each side presents testimony. Our group has accountants that we have. Now they are contract accountants and they present testimony. The TRA has a hearing and then decides the case, sets the rate. What this bill does is it takes the last rate case, and that's still in effect, the rates are still there, but in addition, it allows companies to come in and say, "We want recovery for this expense. We've had some new project, or whatever." Well, in the traditional rate case, all those things are supposed to have been figured in their projected rates and they're covered in the rates here. What we're afraid of is that the risk, since the companies are recovering these expenses virtually immediately, the risks should go down, but there is nothing in the bill to reflect that decrease or decline in risk. Therefore, we think rates will be unnecessarily high for consumers and we would point out that the TRA has full authority to do this without this bill. They have set what are called alternative rate making mechanisms in the past. They could do this today and we think it would be better to do that because then you would have

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input from concerned persons, you would have more flexibility and it wouldn't necessarily be the legislators, legislature's framework, it would be the TRA who, that's their responsibility to set rates and they have expertise to say how this should be done and we think it would be better in that kind of hearing. We would also point out that, and I know this is fairly complicated, this office did send a letter with a memo that is attached and we hope you all have it and if not we'd be glad to get it to you and the idea is that we're, we are concerned about this potential increase in rates and we would also point out that by and large the utilities of Tennessee, particularly the larger ones, are doing very well financially. If you look at their stock prices from 2008 to the present, in some cases it has virtually doubled. And so they're not under financial stress. There is no idea in the bill that that is the reason this is being done. Another one of our major concerns is that not only will this likely increase rates, but the way rate cases work, once this rate is set and you have a rate of return on it, if the company can become more efficient, they get the benefit of the savings. In other words, if you set a rate and the customer is charged, say, \$50 a month and the company gets real efficient and do things that cost them less than they projected, they get that savings. Under this system where they just simply submit a bill and say we want reimbursement, we think they'll lose that efficiency. In summary, that's our concern, that's this is really a big shift in the way rates are set. I know there has been some concern about rate cases expense. We agree that that can be a problem. We think that can be addressed at the TRA. I would point out that we have had 3 major cases with Tennessee American Water, Atmos and Piedmont in the last few years. We have settled them. There were no hearings. The expenses were rather minimal. The expenses come when there are problems in discovery as we call it. It's kind of a legal term, trying to get information from a company. We are very aware of that. We are conscience of it and we do try to hold the expenses down. So, if there are any questions, we will be glad to entertain them. Either myself or Mr. McGehee. So that concludes our remarks.

Mr. Chairman: Mr. Broemel, I think, I thought you just said that they can currently do this now.

Mr. Broemel: Yes.

Mr. Chairman: If they can currently do it now, why do you object to them doing it in the bill?

Mr. Broemel: Well because we think that there would be more input from more concerned parties and there could be more flexibility. In the bill itself it states that they can develop rules and procedures. We think it would be better to do that all at the same time. And in the past there was a bill here

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about something called decoupling where the idea was that if consumers conserve there was concern that the companies would not be making their projected rate of return. The legislature made a general policy statement about the TRA should hear cases where the companies could present this concern with conservation and then they will make a determination. They did that and they developed a system to cover those cases. So in other words, until you really have a full case with all the implications, we think it is not a wise idea to set this kind of framework, as it were, in a vacuum. It would be better to have them do it when there is much more to consider.

Mr. McGehee: And if I may, if you lock in these specific mechanisms here that you have now with guaranteeing the return on equity and the procedures that encompass that, it makes it difficult for the TRA and our office to present safeguards for consumers—to prevent overearning, to adjust the return on equity because their risk of being shifted to the customers. Here you are locking them in under the old system when they were slightly more riskier. Here we are moving to a system where you are shifting the risk and there should be an adjustment with a return on equity. We actually had a company on the record agree with us on a past case that these things do shift risk, but this bill does not address that, it does not allow for that flexibility.

Mr. Chairman: Right.

Mr. McGehee: Another aspect of the bill is that it does not have a rate cap which previous legislation from 2009, legislation from this committee, or the commerce committee, chose to put a similar study, there was a rate cap in there, but there is not one here so there are some similar things that are locked in that are going to limit flexibility in the future.

Mr. Chairman: I believe we have a question from Representative Curtiss.

Rep. Curtiss: Thank you, Mr. Chairman. Toward the end of your statement you made the, I believe I heard this correctly, in estimating what their expenses are going to be, they could end up overestimating what their expense is going to be and if they were conservative and had a savings, they would keep that, they would retain that as profit.

Mr. Broemel: Right.

Rep. Curtiss: I understood that correctly?

Mr. Broemel: Yes.

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Rep. Curtiss: So is there anything new that you could think of? We are given through the rulemaking authority the TRA is going to have to go through rulemaking procedures, is there anything in this statute that is being proposed that would prevent them through rulemaking to recapture that money?

Mr. Broemel: I suppose they could try it but it, it, there is nothing in the statute that allows them to do that and we just don't know how that would work.

Rep. Curtiss: I'll just ask that question while they're presenting.

Mr. Broemel: Ok.

Rep. Curtiss: Thank you sir.

Mr. Chairman: Leader McCormick.

Rep. McCormick: Thank you, Mr. Chairman. I've got a couple of questions. Did you all say the TRA could do this without legislative, without legislation they could basically implement this program right now or just that section?

Mr. Broemel: Section 5. Yes, in the past they have done extensive regulation. I believe it was in the early '90s with phone companies going to what we would call an alternative form of ratemaking where they allowed them to have a projected rate of return and if there were overearnings then they would have a review of that and recapture it. They did that all without legislation, yes.

Rep. McCormick: Okay.

Mr. McGehee: There are a number of items they have already done as well, like the commodity cost of gas is passed on to consumers, rates are addressed annually for gas companies based on the weather. If you have a mild winter the rates go up. If you have a very cold winter the rates can go down. There are already a number of pass throughs already in effect and that's all without legislative authority.

Rep. McCormick: Ok. And I'll ask the same question when the TRA folks get up. But if they can go ahead and implement this without legislation then I'd rather get three votes than 50 so we'll see what the TRA folks say about that. I know if Section c of 5, the last sentence, it says, talking about recovering operational expenses, capital costs or both, associated with the investment in other programs including the rate of return approved by the authority, at the public utilities most recent rate case. Now could I take that to mean, let's say the water company's electric rates go up because TVA raises them

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and the power board raises them in return and they have to pay an extra \$10,000 in their bill next year, are you saying they will be able to charge \$11,000 if they get a 10% rate of return on a simple bill, a simple expense like that, or is it just things that have to do with capital improvements?

Mr. Broemel: Yeah, I think it would be capital improvements and they would get a recovery of that increase perhaps, depending on the circumstances and that's one of our concerns. When you have a rate case, you take into consideration all expenses. Here they are singling out one that went up, but they may have gotten more efficient with their labor costs and that's gone on down, but there is no provision in this bill to look at what went down. It's only to look at what goes up and that's our concern. In a rate case you look at all expenses. Some go up, some go down and you come to a global understanding. But here, that's a good example, if the electric went up, they could come in with a higher electric bill and say we need to raise rates, but they wouldn't be telling you that they've got a new computer system, or smart meters that read meters more efficiently and they don't need as many people doing that and there is not offset. So that the kind of thing we are very concerned with about looking what just goes up.

Rep. McCormick: But would the TRA not be able to take that into account or would they be legally prohibited from taking that into account?

Mr. Broemel: Well there is nothing in the bill that talks about that you're authorized to get this expense and in fact it says you just look at the rate of the last rate case. There is nothing about other expenses. And that's another concern. When you quoted the last rate case we all know that capital markets can change. Some of these companies haven't been in for years and years, they might have a rate of return of say 12% and the TRA is prohibited from adjusting that. So you need, this bill says you look at what happens as of the last rate case and as well all know with the economy you need much more current financial data and that's another concern of ours.

Rep. McCormick: So you're saying that if a company had a good rate case 5 or 6 years ago they might never have won a rate case, but I suppose you guys could initiate a rate case, couldn't you?

Mr. Broemel: We have in the past. I mean it's getting into the history, I suppose, we did it once with Atmos. It was expensive and very contentious, if I can use that word, in the sense that they were overearning by some 5 or 6 million dollars a year. We did do that, and brought it in, and did reduce their rates. So we do have that power at the current time, but with these annual rate review and these trackers, it's, to me, very unclear if we will be able to do that in the future.

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- Mr. McGehee: And Leader McCormick, another big concern here is that not every company can decide to do annual rate review. They can cherry pick with a specific tracker and the rest of their rates will not be looked at. It would be just those expenses that flow into that tracker and the return that's guaranteed on that.
- Rep. McCormick: You could still initiate a rate review but you're saying it would very expensive and very difficult . . .
- Mr. Broemel: And it would really be at cross-purposes with this bill. I think the companies would complain that they've chosen an annual rate review and these trackers and they don't need to have a rate case. It would just be up in the air as to what would happen—we would probably ask for one, but whether we would get. I will point out with the Atmos case our initial request that those rates be reduced was dismissed and we had to come back again. And so, as anybody knows with the law, you can make an argument, but whether the agency will accept it, I don't know.
- Rep. McCormick: Ok, ok. And I would certainly want to have the legislative intent to be such that a company couldn't take advantage, well, for instance, we had a long period of low interest rates and cheap capital and that kind of thing and if somebody is hanging on to 14% returns from 10 years ago that's something we would need to guard against and make sure in the legislative intent if this were to pass that we'd want to do that. One other question. Is the rate cap that you're talking about, what would be a reasonable rate cap as far as annual increases go do you think and again, having to put it into the law?
- Mr. McGehee: I would have to, I would like to, this is me speaking, I haven't discussed this with General Cooper specifically, a rate cap of not only on the annual rate review but also on the trackers themselves and I think, I think just off the top of my head a 3% cap would be good.
- Mr. Broemel: Well, you're not old enough to remember the 70s.
- Rep. McCormick: But if you'd done that in 1974, you could have wiped out some of these, even these monopolies you could have wiped them out based on that.
- Mr. McGehee: I know some people speculate that we're heading back that way, but we're not in that kind of an inflationary period just yet. It's coming.
- Rep. McCormick: Thank you, Mr. Chairman.
- Mr. Chairman: Representative Pody.

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- Rep. Pody: Thank you, Mr. Chairman. I want to go back to the TRA. I thought if somebody came for a rate increase, TRA had the right to look at their entire budget, and their entire profit and loss. They're not going to just look at one section so I'm not following where this would happen. If they had a profit in one area because they recouped that money, the next time they came for a rate increase that would be taken into account. Is that not correct?
- Mr. Broemel: That's correct under the current situation under a rate case, but this bill changes that entirely. For 2 or 3 pages it goes on and on about all you can recover is for a singled out expense. It will not look at their total expense. No.
- Rep. Pody: So if this goes through TRA would not have that authority to look.
- Mr. Broemel: No. Under this bill they wouldn't. As we were speaking with Leader McCormick, I suppose we could ask for an entirely new rate case, but the intent of this bill is to avoid, or not have rate cases which means you would not be looking at their entire expenses.
- Mr. McGehee: And there are several mechanisms under the bill, not just annual rate review that would allow companies to cherry pick specific issues where you don't look at the other operations and revenues.
- Mr. Chairman: Ok. Thank you.
- Mr. Broemel: I would like to point out that this office is very concerned about investments in Tennessee and to the best of my recollection we have never opposed a capital project to put in pipes, valves, whatever, particularly with the water company in Chattanooga. So it's not that we want to cut down on recovery of capital expenses, we just want to do it in a way that we think is fair to all parties.
- Mr. Chairman: Alright, do we have any other questions? If not, we will let you all go back and ask the other side to come up and give their side. Is it going to be you, Mr. Allison?
- If you wouldn't mind, if you would state your name and who you're with and we will hear your testimony.
- Mr. Allison: I'm Jim Allison. I'm the chairman of the Tennessee Valley Regulatory Authority and with me today are Jean Stone, our general counsel and Earl Taylor, our executive director. I'll make some comments and we'll do our best to answer any questions you may have. This bill basically does 2 things. The first thing it does is reduce the regulatory burden on the utility

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companies in the state of Tennessee by about 1 million dollars a year by reducing our regulatory fees. The second primary piece of the bill is what was just discussed, is this alternative regulation. I want to make it clear to the committee that this is not new stuff. Georgia, South Carolina, Mississippi, Alabama, Virginia, and a whole host of other states across this country have already done a number of these things. It's procedural in nature, it does not substantively change what the TRA can do or not do. Now the attorney general's office has focused in a very narrow sense in what the bill says on the rate of return. What they've missed is that before the regulatory authority will allow a company to enter into one of these alternative rate making processes, is that we have to go through a process to establish and conclude that going into one of these alternative methods is in the public interest. And in doing that, we will look at a whole variety of things including the rate of return. Now there's another piece of the alternative bill that will permit companies—and it's all permissive. None of the companies have to do any of this and the TRA does not have to accept any of this. We have to agree that it's in the public interest before we enter into any of these alternative methods. But another piece of the bill requires, would require if the company opts into it, is annual, an annual rate filings. By making an annual rate filing it will keep us more up to date on the cost, the returns, the expenses of all these companies so when we are dealing with the rate of return issue that was brought up earlier, we are not going to be in a position of not having looked at it for 5 or 6 or 8 years. Matter of fact, the law requires them to have a general rate case within the last 5 years to enter into this annual rate review. So we will be looking at their rates every year if they opt into this annual rate review. If their rate of return get out of kilter with the current market conditions, the authority can and in the past we have brought proceedings to open up the entire rate spectrum and we can do that here even if they go into this. As far as the trackers are concerned, again, these are in wide use around the country, it's an effort to streamline the regulatory process. The example that was used here earlier was a good one. If a water company uses a lot of power to pump their water, has a major rate increase from TVA, why open up every piece of their rates just to look at that? Now, again, we would have to certify it's in the public interest before we do that, but why not have a proceeding that would allow you to just look at that 1 piece? You may have just had a general rate case the past year. Again, we can stay on top of that on a regular basis by this annual review and we will look at that. We've got a staff that will be looking at that on a regular basis. If the rate of return gets out of kilter, we can open up a rate case to look at the rate of return. There is nothing in here that prohibits us from doing that and we will continue to do that just like we've done in the past. I'm going to kind of shut up and try to answer any questions you have, but the bottom line is that the authority has looked at this. We are very

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comfortable that we can continue to carry out our responsibilities with this bill as it is written. Again, it's permissive, both on the part of the utility system to opt into it and it's permissive on our part to allow them to opt into it because we have to certify it being in the public interest.

Mr. Chairman: Thank you very much. And I have a question. When I heard about some of these parts of this bill I understood that this change should help do away with a lot of legal expenses on both sides of bringing up a host of lawyers to argue and all that savings, the way I understand it, will go back to the rate payer. Is that correct?

Mr. Allison: That's correct. The intent of this bill is to make the process more accounting driven, analyst driven, than it is attorney driven. Again, I know there are a lot of attorneys in the legislature so I don't want to say too much bad about attorneys, but I've been on both sides of rate cases now. I've spent my career working in the utility industry. I've testified before regulatory agencies in 6 states. I know how frustrating it is to have to write those million dollar checks to your law firms and I also know how frustrating it is on the part of a regulator for us to have to say ok, it's okay for you to go recover that million dollar check that you wrote to the law firm from your rate payers. And what we're interested in doing is trying to make government more efficient, more streamlined, and we're prepared to do everything we can at the Tennessee Regulatory Authority to make that happen and we think this bill moves in that direction.

Mr. Chairman: I have one other question that might be a little off. I was asked to ask this by the fuel and convenience store association. Is it the intent of this legislation to permit regulated natural gas companies to subsidize their retail or wholesale alternative motor vehicle transportation fuel operations with rate payer funds?

Mr. Allison: The answer to that is no. The bill again is procedural in nature, there is no substantive change to policy of the state of Tennessee in there other than the fact that it will hopefully streamline the regulatory process.

Mr. Chairman: Thank you. Leader McCormick.

Rep. McCormick: Thank you, Mr. Chairman. And I need to ask some questions. I'm the sponsor of the bill and I support the bill, but I also have an obligation not only to the rate payers in my area, but to the members of my caucus and the general assembly so I want to ask a couple of questions along those lines. You talked a minute ago about let's say Chattanooga, the water company had a bigger electric bill and it went up and you could look at the line item and see where it went up. Would that be considered an operational expense?

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- Mr. Allison: That is an operational expense. Yes sir.
- Rep. McCormick: Well the law says that any operational expenses can be recovered plus the rate of return. So they're going to make a 10% or 12% profit on paying their water bill? That's what I'm reading here.
- Mr. Allison: No sir. The rate of return is on invested capital. It's intended to cover the cost of the capital is the way we apply it through a rate case. So if there is a capital component to the, added, and I don't specifically which section you are looking at, but it involves operating expenses as well as capital expenditure, the rate of return is on capital expenses, not operating expenses.
- Rep. McCormick: Well, I better read it to you then. It's in Section 5c and it says the authority shall grant recovery and shall authorize a separate recovery mechanism or adjust rates to recover operational expenses, capital costs, or both associated with the investment in other programs. So maybe that's how you get out of just paying the bill, but certainly if I were the company I would say that my light bill is associated with investment and other programs including the rate of return approved by the authority at the public utilities most recent rate case. Well maybe we need to get somebody from the industry to come up here and say if your light bill goes up by 10 thousand dollars are you going to give us a bill for 11 thousand and let our rate payers pay for it, that's the real question.
- Mr. Allison: If you want industry to address it, you're welcome, but it's well settled in rate case methodology that the rate of return is applied only to capital expenditures and it involves both debt as well as equity returns so you have both elements of the return in there.
- Rep. McCormick: Well, maybe we'll settle, but we're changing it with this right here from the way I'm reading it, but I'm not a lawyer. We may need to go to the Senate and find some lawyers to come over here, but, but I mean that's what it says so I think we probably need to find out if it says what it means or if it means something else, but it specifically says recover operational expenses including the rate of return approved by the authority of the public utilities most recent general rate case so I'll ask some of the people with some of these companies maybe after the meeting if they could give me some feedback on that.
- Mr. Allison: Our attorney is here with us and she can address it in more detail if you wish to but the rate of return in there is intended to apply to the capital costs piece of that paragraph. It says to recover operational expenses, capital costs, or both including the rate of return approved by the authority of the public utilities most recent general rate case pursuant to . . . that rate

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of return would apply only to the capital investment not the operating expenses.

Rep. McCormick: Thank you very much.

Mr. Chairman: Representative Curtiss.

Rep. Curtiss: Thank you, Mr. Chairman. You heard the question I asked the attorney general's office when he made the comment that an entity before the TRA on a rate review or a case they would say they are going to do some capital expenditures and it's going to be x amount of dollars and the rate was based upon that but through efficiencies they brought in way under the budget. You would have the ability to still look at that, that they calculated that incorrectly? I mean because without that ability the incentive would always be to overestimate your expenditures to have a higher rate and reap the profits.

Mr. Allison: Not only will we still have the opportunity, we'll have an enhanced opportunity with the annual rate filing. Otherwise, in the current situation we may look at it every 3, 4, 5, 6 years. All of our utilities except 1 has been in a fairly recent period of time for a general rate case. We don't have anybody out there that has gone 20 years without a general rate case or anything like that. This bill would give us an enhanced opportunity to look at those expenses.

Rep. Curtiss: Right. And the other thing that occurred to me while they were testifying, you're not preventing the attorney general's office to ask questions about a rate setting or something like that. They are still going to have the ability to bring something to your attention, am I correct?

Mr. Allison: That's correct and at any time and we focused earlier some comments on the rate of return, anytime they feel like a company's rate of return is excessive they are certainly permitted by statute to file a petition requesting us to look at that and we historically have always accepted those.

Rep. Curtiss: Thank you sir. I think that the fact that is a little bit, seems like it's a little vague in the bill at places but the fact that you're going to have rule making authority, that's not preventing you from being able to address all these areas that are not spelled out.

Mr. Allison: That's correct, sir.

Rep. Curtiss: Thank you.

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Mr. Chairman: Representative Hill.

Rep. Hill: Thank you, Mr. Chairman. And of course, Mr. Chairman, thank you for being here and I appreciate the intent of the legislation. Just a couple of quick questions. You said earlier in your statement, you said this is really conforming in to what other states are doing and that, I think some of the questions on I believe it's section 5 of the legislation, do other states do that as well as it sits?

Rep. McCormick: Yes, they're, and I don't have the exact number, but it's a long list of states that have entered into some of these alternative rate making and the attorney general quoted at our last audit report, in theirs if you read the entire paragraph, it will say in there this is clearly a national trend to move in this direction.

Rep. Hill: Ok, alright. Thank you so much.

Mr. Chairman: Representative Pody.

Rep. Pody: Ah, 2 questions. One is that what would you say is a good rate of return right now that would be approved?

Mr. Allison: The overall rate of return will reflect both the cost of debt as well as the cost of equity. The debt costs right now are fairly low. We've seen some rate cases and I'm going to look at staff to correct me if I misspeak here where the overall rate of return is around 6-7% but the debt component of that is on the low end of that. The equity number is up on the higher end of that. It's set in an individual case depending on the riskiness of it. We've got some utilities that are well established with relatively low equity numbers, return numbers. We've got others that are fairly risky propositions. We've got one that just bought a company out of bankruptcy and it's a pretty risky proposition and it has a higher equity rate of return than any others.

Rep. Pody: Alright. And my last question. You said that most of the utilities are fairly current in their—you've ordered and such. What's the one that's oldest, what's the longest one out there?

Mr. Allison: Again, I'm going to look to staff to correct me if I misspeak, but I believe it's Kingsport Power, the electric utility we regulate in upper East Tennessee and I believe they're somewhere around 8 or 9 years out?

Ms. Stone: I believe they're more like 18 or 19 years at this point but their rates are extremely low in comparison to other electric rates in that area.

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- Mr. Chairman: Do we have any other questions while we are out of session? Leader McCormick.
- Rep. McCormick: Thank you, Mr. Chairman. And one more, you may have answered this in a sidebar conversation, but my question is in Section 5, can the TRA, do you have the authority to do this without a vote of the legislature to make these changes?
- Mr. Allison: We have instituted some trackers in some fairly limited situations and I ought to defer to our attorney to comment on the legalities of it, but we feel like it's prudent to clarify the nature of these and to get legislative authorization before we go further with it and that's the reason we are supporting the bill. We think it clarifies it and resolves any question about whether or not instituting some of these trackers is appropriate or not and I would invite Ms. Stone to comment on the legality piece of it.
- Ms. Stone: Well I think that's absolutely correct and I will just add that rate setting is traditionally a legislative function and so it is entirely appropriate in my opinion to come to the legislature to ask you all the set the policy and the parameters for rate setting including alternative methods.
- Rep. McCormick: Thank you.
- Mr. Chairman: Do we have any other questions while we are out of session? If not, we'll go back in session. Thank you all for coming up. Representative Towns, we're proud to see you come into town today. Welcome.
- We are back on the bill. Do we have any other discussions on the bill? If not, are we ready to vote on the bill? In favor, please say aye. (Aye) Opposed. Ayes have it. This bill moves out to Finance, Ways and Means.
- Rep. McCormick: Thank you, Mr. Chairman, members of the committee.

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HOUSE FINANCE, WAYS AND MEANS SUB COMMITTEE
03/13/2013

Video: http://tnga.granicus.com/MediaPlayer.php?view_id=269&clip_id=7407

Click on link and scroll down in index and click HB 0191

Chairman: Okay we'll take item 39, House Bill 191 out of order. Leader McCormick you are recognized.

Rep. McCormick: Thank you Mr. Chairman. House Bill 191 is an administration bill in cooperation with the TRA. It has several components but basically it realigns the TRAs funding mechanism which will result in over one million dollars in fee reductions passed down to utilities and hopefully to the consumers too. It also enables the adoption of best practices for more efficient rate reviews which means we're gonna bring in

Chairman: Bill has been moved and properly seconded. Do we have questions on the Bill? Chairman Sargent you are recognized.

Sargent: Thank you Mr. Chairman. Leader McCormick, I have two questions I would like to ask. I think you probably know what they are. One of these we're going to do an annual rate review and normally we did a review after 4 or 5 years and had a full blown hearing. When we do this will it actually be a review or is it going to be just if they ask for ½ percent or a ¾ percent increase is that going to be automatic or will they actually have an annual review and see why they needed that increase?

Rep. McCormick: That's a good question. What they're going to do as you know in the past they'd wait several years 3-5 years and longer sometimes and go in and have a full blown case where a lot of lawyers were hired and a lot of fights and negotiating positions and that type thing. What this does is gives the TRA the ability to really on a constant basis keep an eye on these companies and give them some rate usually increases I would suspect based on some expenses they really don't have any control over. And it will be more of I'd say a CPA driven process rather than a legal driven process but with the clear understanding that it could turn into a legal process if the system breaks down so it has the safeguards of the old system but some efficiencies in the new system.

Sargent: So you feel doing it like this the consumers are still going to be protected and have all the protections they had before.

Rep. McCormick: I do feel like it and I had some questions myself. I'm carrying the legislation but I think we need to ask tough questions about legislation that we carry, not just other people's legislation and something that keeps

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cropping up that reassures me is that the commission will have the ability as the words are written to act in the public interest which is vaguely defined which I think gives them a lot of authority to go in if the system is being abused to step in and change things if they need to in the public interest.

Sargent: Chairman, thank you for those answers. I just wanted to make sure we have that on the record. And the other question I have is under Section 5. Section 5 as you know where natural gas companies would be able to set up and there's been lot of talk about this, set up their own substation or sell natural gas for cars and trucks. Do you see that as the intent of the legislation?

Rep. McCormick: You know Chairman, this is one that just came up yesterday and I hate to make this last any longer but I don't want to give you the wrong answer. If I have the committee's permission I would like to call up possibly Chairman Alison to address that question if that's okay with the Chairman too. And both Chairmen.

Chairman: Without objection we are out of session if you would come forward and state your name for the record.

Alison: I'm Jim Alison. I'm the Chairman of the Tennessee Regulatory Authority. The answer to your question is what it deals with is a procedural change in how we would go about looking at those rates. It does not guaranty recovery. It does not say that there will be any cross subsidization of the motor fuel dispenser by residential consumers or anything of that nature but the alternative rate making procedures, all of them, are permissive and it would require finding of the public interest like the Leader stated.

Chairman: You are recognized.

Rep. Sargent: Thank you Mr. Chairman. My question is, is it the intent of natural gas companies to go into set up I'll say natural gas stations throughout the state and have the rate payers paying for that infrastructure and not as a commercial entity. I want to make sure that we don't have rate payers paying for infrastructure when we have commercial entities out there that have to basically pay for their own infrastructure.

Alison: There is no intent in this legislation to allow any other class of consumers to subsidize the facilities that would go in to providing natural gas as a motor fuel.

Rep. Sargent: And it is also your understanding that the natural gas companies do not intend to set up stations throughout the state and go and then left that to

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the retailers of the Mapcos and the Exxons and the Shell stations of the world to do that?

Alison: I can't really address what the intentions of the natural gas companies are but as the regulatory authority we will assure there is no cross subsidization going on as we implement the various rates.

Rep. Sargent: Okay. Thank you. Thank you Mr. Chairman.

Chairman: Representative Armstrong you are recognized.

Rep. Armstrong: Thank you Mr. Chairman and Chairman Sargent brings up a very interesting question as it relates to natural gas vehicles and of course realizing that natural gas is becoming the transportation fuel. Certainly I didn't know if the agency had looked at the conversion from petroleum based fuel to natural gas and setting up the rules and regulations along that line. Even if you look at available information that's out there, all our utilities, they're converting the coal fire plants, TVA has just converted to natural gas and some of their largest facilities over to natural gas and then with all the reports about how much natural gas is available in this Country with all the findings of the Shell gas and the fracking and all this have we looked at a comprehensive study of Tennessee looking at the use of natural gas and also as a transportation fuel because I think the last statistic I saw that natural gas on a BTU level would cost about \$1.29 per gallon if we switched over from gas that's costing what \$4.40 a gallon now and has this agency looked at going in that direction for natural gas fuel and providing those infrastructures.

Alison: There's a lot of talk nationally about not only natural gas but other alternative fuels. For example, I drove up here from Shelbyville in an electric car yesterday. So, it's an emerging part of the technology of our Country. At the TRA we have had some limited experience with natural gas as a motor fuel. We do have at least one and I think perhaps two natural gas companies that have established refueling stations. They're not on the side of the interstate where everybody knows where they are but they are for people that have limited natural gas vehicles already and we have established tariffs for those dispensing facilities already. So we have looked at it in a limited sense but I would have to say probably in a comprehensive sense we haven't had a formal study like you're suggesting.

Rep. Armstrong: And when you mention tariffs, of course we know we've got taxes on our fuel to pay for road costs but when it comes to electric vehicles when it comes to natural gas vehicles, there's no money being collected for infrastructure and it kind of following along with the German was talking about. Certainly we can even get into how other states actually distribute

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gas to not only commercial but to residential. In Georgia an individual gets to choose which marketer they buy gas from and the utility only is the deliverer of that. In Tennessee we've got a different type of structure and I didn't know if you looked at that where the utility only charges you for the transportation but you pay a commodity price from someone else and Texas has a totally deregulated both in electric and natural gas. Are we looking at some of these because the significant difference in natural gas prices to consumers in Georgia is a big difference that we pay here in Tennessee and in Tennessee we pay different rates between different consumers. The only ones subject to any type of hedge whether it's low or high are the private companies but certainly those utilities out here that are making money off the commodity price have we looked at basically talking to them and saying hey, put in your infrastructure cost and let the consumer have a choice and let the businesses have a choice where they buy their natural gas.

Alison: There is some of that going on in the natural gas industry already in Tennessee. For example, we have a number of large users of natural gas that buy directly from alternative sources and then use the local distribution company just for a delivery mechanism. So there is situations in place in Tennessee where that is occurring as well. It hasn't penetrated to the individual homeowner level. I used to work in Georgia. It's got its plusses and its minuses to deal with that. It becomes a very complex arena but it hasn't penetrated down to the individual level here in Tennessee yet but we do have a number of large consumers that already do just that.

Rep. Armstrong: Okay but with your experience in Georgia certainly I think it would benefit the residential consumers to look at that option and see if it would be some savings on that residential user. And I didn't know if you had plans within the TRA to look at things of that nature.

Alison: We don't have anything specifically planned but we'll certainly talk about it after the discussion today.

Rep. Armstrong: Thank you.

Chairman: Any further questions for the Chairman? Seeing none, thank you for being with us today. Without objection we are back in session. Leader McCormick.

Rep. McCormick: I renew my motion Mr. Chairman.

Chairman: Any further questions? Seeing none is there objection to question? Hearing none, all in favor of moving House Bill 191 to Full Finance say Aye, opposed? Bill moves out.

HOUSE BILL 191
HOUSE FINANCE, WAYS AND MEANS
03/19/2013

Video: http://tnga.granicus.com/MediaPlayer.php?view_id=269&clip_id=7498

Click on link and scroll down in index and click HB 0191

Chairman: House Bill 191. Leader McCormick

Rep. McCormick: Thank you Mr. Chairman. This is a bill that is brought to us by the Administration and the TRA and it has several components that make the agency.

Chairman: Hear a motion and a second on the Bill. Is there any further discussion? Hearing none is there an objection to the question? Seeing none, we're voting on House Bill 191. Those in favor say aye, opposed say no. The ayes have it. Bill goes out to Calendar and Rule.

Rep. McCormick: Thank you Mr. Chairman and Committee.

HOUSE BILL 191
HOUSE CALENDAR AND RULES
03/21/2013

Video: http://tnga.granicus.com/MediaPlayer.php?view_id=269&clip_id=7533

Click on link and scroll down in index and click HB 0191

Mr. Chairman: Brings us to page 8, item 40, House Bill 191. Leader McCormick

Rep. McCormick: Thank you Mr. Chairman. House Bill 191 is an Administration Bill brought with the TRA that has several components.

Mr. Chairman: We have a motion properly seconded. Any discussion? Seeing none we're voting on House Bill 191. All in favor say aye, opposed no. The aye's have it. Thursday's regular calendar.

HOUSE BILL 191
HOUSE SESSION – 22ND LEGISLATIVE DAY
03/28/2013

Video: http://tnga.granicus.com/MediaPlayer.php?view_id=269&clip_id=7634

Click on link and scroll down in index and click HB 0191

Clerk: House Bill 0191 by McCormick relative to Tennessee Regulatory Authority and the regulation of public utilities and carriers.

Speaker Harwell: Leader McCormick, you are recognized.

McCormick: The Senate Bill is not on the desk?

Clerk: No.

McCormick: Thank you, Madam Speaker. I move for a passage on third and final consideration.

Speaker Harwell: Leader McCormick, moves passage, properly seconded. Mr. Clerk, call for first amendment.

Clerk: House Business Utilities Committee Amendment One is put on the member's desk.

Speaker Harwell: Chairman Marsh, you're recognized.

Marsh: Thank you, Madam Speaker. This amendment makes the bill. It authorizes the TRA to offer optional services to providers, changes the fee structure for providers operating under market regulation, empowers TRA to adopt policies and procedures to streamline the regulatory process. Move to adopt.

Speaker Harwell: Chairman Marsh, moves adoption, amendment one, properly seconded. Any discussion on the amendment? (pause) All those in favor of amendment number one, say aye...those oppose, say no. You adopt. Next amendment.

Clerk: No further amendments, Madam Speaker.

Speaker Harwell: Leader McCormick.

McCormick: Thank you, Madam Speaker, and I will add to the explanation we just got. This is an administration bill in partnership with the Tennessee Regulatory Authority. It has several components that Chairman Marsh just mentioned. One that's very important is it will result in over 1 million dollars in fee reductions passed down to utilities and consumers and also

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enables the adoption of some best practices for more efficient rate reviews and pending questions or comments, I would renew my motion.

Speaker Harwell: Leader McCormick renews his motion. Discussion on the bill. Representative Hardaway.

Hardaway: Thank you, Madam Speaker. I would... would the sponsor yield, please?

McCormick: Sponsor yields.

Hardaway: Would you elaborate on the section that addresses state employees?

McCormick: Well, there are several things about state employees. Are you referring to the one where it makes...

Hardaway: Section two in particular.

McCormick: Is that the part that makes the members of the board state employees... they get state employee benefits?

Hardaway: Uh...

McCormick: And that is part of the bill.

Hardaway: ...be eligible for participation and any insurance plan offered by the committee, etcetera.

McCormick: Yes, that is part of the bill, and I think that was the intent of the bill last year that we passed but this clarifies that the board members on the TRA would be eligible for health insurance and for pension benefits and those type things just like any other state employee would.

Hardaway: Alright...thank you, sir. Thank you, Madam Speaker.

Speaker Harwell: Further discussion? Is there objection to the question? Seeing none, all those in favor of House Bill 0191 as amended vote aye when the bell rings, those oppose vote no.

McCormick: Thank you, Madam Speaker.

Speaker Harwell: Has every member voted? (pause) Does any member wish to change their vote? Mr. Clerk, take the vote.

Clerk: Ayes 98, no nays.

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Speaker Harwell: House Bill 0191, having received a constitution majority, I hereby declare it passed without objection. The motion to reconsider is tabled. Next bill.

SENATE BILL 197
SENATE COMMERCE AND LABOR COMMITTEE
03/13/2013

Video: http://tnga.granicus.com/MediaPlayer.php?view_id=269&clip_id=7401

Click on link and scroll down in index and click SB 0197

Senator Norris: This is Senate Bill 197 and again, it's another Tennessee Regulatory Authority bill. I declare rule 13 for the reasons previously expressed but it's an administration bill that they've asked me to bring in the wake of last year's reorganization of the Authority. This, this bill does five things in the wake of those reforms. First, it will redefine state employees under the employee group insurance plan to include TRA directors. Secondly, it attempts to clear up what the administration considers to be an ambiguity relative to the conflict of interest prohibitions for directors of the TRA. It deletes some language and replaces it with, with as you can see in Section 2, clearer language about what they may or may not invest in. Section 3 permits the agency to implement optional cost-based services at the request of one or more utilities and cover the costs for doing so. Section 4 is a realignment of the fee structure. As a result of last year's reforms and the changes in which industries are regulated and to what extent, the TRA says there's an overall reduction of about \$1.1 million in annual regulatory fees, which, which consumers ultimately pay and so there's a realignment of their fee structure accordingly and Section 5, and this has gotten some attention, some correspondence and other attention, but this authorizes the implementation of alternative regulatory methods in place of what has traditionally been, been held the "general rate cases." It provides for alternatives which are listed in the bill, like safety and reliability cost recovery, economic development, annual review, and, and the like. The, it's my understanding that the Consumer's Advocate Division of the Attorney General's office can still intervene in a case if they choose to, but there have been difficulties under the previous structure in terms of getting general rate review cases handled expeditiously. I've got some examples, three or four examples that have gone on for months and months if not years. We've got both the Chairman of the TRA here today, James Allison, and, and our Director, Earl Taylor, are both present to answer any questions or to explain more fully the highlights of the bill, but those are the five things covered and I'd appreciate a, a motion if you're of, of the mind. We've got a bill and then the amendment that makes the bill.

Chairman: OK, we've got a motion on the bill. Seconded. Is there a motion on the amendment? It's been moved and seconded. We are on the amendment at, I'm sorry Leader Norris, she says the amendment makes the bill.

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Senator Norris: Makes the bill.

Chairman: So, you've heard the explanation. Is there an objection or question on the amendment? Those in favor say aye. Opposed, no. We're on the bill as amended. Is there any desire to hear from representatives of the TRA? Okay. None. Are there questions for the sponsor on the bill? Is there an objection to the question? _____, call the roll.

Clerk: Senator Burkes. Senator Burkes votes aye. Senator Green.

Senator Green: Aye.

Clerk: Senator Green votes aye. Senator Gresham. Senator Gresham votes aye. Senator Sutherland.

Senator Sutherland: Aye.

Clerk: Senator Sutherland votes aye. Senator Tate.

Senator Tate: Aye.

Clerk: Senator Tate votes aye. Senator Tracey. Senator Watson.

Senator Watson: Aye.

Clerk: Senator Watson votes aye. Senator Yager.

Senator Yager: Aye.

Clerk: Senator Yager votes aye. Chairman Johnson.

Chairman Johnson: Aye.

Clerk: Chairman Johnson votes aye. Eight ayes.

Chairman: Eight ayes. The motion is to calendar.

Senator Norris: I believe that's right. Thank you very much.

Chairman: Senator Norris, is that the only one you wish to deal with?

Senator Norris: That's it for today. Thank you.

SENATE BILL 197
SENATE FINANCE, WAYS AND MEANS COMMITTEE
04/02/2013

Video: http://tnga.granicus.com/MediaPlayer.php?view_id=269&clip_id=7685

Click on link and scroll down in index and click SB 0197

Mr. Chairman: Senator Norris on Senate Bill 197

Senator Norris: Mr. Chairman.

Mr. Chairman: Go ahead.

Senator Norris: Thank you Mr. Chairman. I'll move the bill to get it before us. This is the latest in TRA regulatory amendments, and if there's a second, I'll present. I think the amendment travelled with the bill here from, from Commerce.

Mr. Chairman: Senator Norris moves Senate Bill 197, seconded by the Chair. The amendment is from the Commerce Committee 3640 and travels with the bill and I believe Senator Kyle, was this the one you had a witness on?

Senator Norris: Mr. Chairman, I had asked, and Senator Kyle and I had been like ships passing in the night, I had asked, of course, our Chairman, Jim Allison's here, and Earl Taylor, the Director of TRA, are here and they've been stalwarts. They've been here a lot waiting for this moment, but I'd also corresponded with the Attorney General's office with Bob Cooper and I think the Consumer Advocates Counsel, who I can't see, but I asked them to come and I think Senator Kyle did as well on this because the bill does, the bill does essentially five things only one of which has really drawn on a lot of attention and that, that is the section that, that authorizes implementation of authorization of alternative regulatory methods. The so-called trackers that we've heard about. That is where the Consumer Advocate Division has concerns and we have received, I think we all probably received correspondence not only from the Consumer Advocates Division, but also from Mr. Allison addressing some of those concerns. As I always do, I declare Rule 13 when the TRA's involved and I'll do that again but I am at the will of the committee Mr. Chairman if you'd like to stand in recess to hear from, from whomever, or if you'd like me to explain more about the contents of the, the other provision of the bill.

Mr. Chairman: Senator Norris, it's up to you. Do you want to proceed with a...

Senator Norris: Well,

Mr. Chairman: explanation, then hear from the witnesses?

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Senator Norris: Thank you. Yes, the things that have apparently not drawn much question or concern are, are as follows. There's a provision in the bill relative to the state employee group insurance plan. This will make it clear that TRA directors are eligible for that. There's another section in the bill that attempts to clarify any ambiguities that may exist relative to conflicts of interest. It, it, it, it provides clarifying language deleting a phrase that, that, that, that currently says "or who has any current interest personally in any way or manner in any business or entity" substituting that with clearer language. Section three of the bill permits the agency to implement some optional cost-based services at the request of one or more utilities and to cover the costs for doing so. Section four of the bill realigns the fee structure to reflect today's regulatory environment resulting in a reduction of about, I think it is \$1.1 million in fees paid to the agency to the benefit of, of consumers and utilities. Section, I think it's section five of the bill that deals with the manner in which the TRA reviews and approves rates proposed by utilities, which from the TRA's perspective and the administration's perspective is, is litigious and lengthy and costly. And, and so by this, this section authorizes the implementation of, of trackers and alternative regulatory method for utility rate reviews and cost recovery in place of the current process to the general rate case which, which can involve such litigation. From the administration's point of view, it expands the agency's toolkit for how rates are determined, again maintaining the public interest and you'll hear about some of these, the different methods that, safety and reliability, cost recovery, economic development and annual review. As this was presented to me, it has remained my understanding and I think that Chairman Allison has pointed out in his correspondence if not elsewhere, that third parties, whether it's the Consumer Advocate or, or others, are still able to intervene and participate in these proceedings and I think that's key. But, because of the concerns that have been raised, I wanted everybody to, I wanted to have an opportunity for the committee to hear from them on, on both sides of the issue.

Mr. Chairman: Alright, without objection, we'll stand in recess and hear from Chairman Allison and Senator Kyle who

Senator Kyle: Now Mr. Chairman, I, I appreciate Senator Norris inviting the Consumer Advocate. I just wanted to give the committee a brief history lesson as to the office of the Consumer Advocate. In 1994, my wife ran for the Public Service Commission, and whether or not we would create a Consumer Advocate was the dominate issue of that particular political campaign and subsequent to her election and her support of that particular area, previously the Public Service Commission took the position that there was

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no need for a public advocate because as public service commissioners, they were public advocates and, but there was a desire upon the legislature ultimately, that there should be a divi, there should be someone who would be monitoring the actions of the agency and through that, the decision was made that we would have the office of the Consumer Advocate, which is housed in the Attorney General's office and I know there are two representatives who I'm, I don't know if this is all they do or what they do, but that's why they are here as members of the Consumer Advocate. My, I had read comments that they had made publicly and, and the testimony before the House and thought that it was worthy that we at least hear their view and viewpoint at least of the office and what, where they're, where they're coming from. But I think it's only appropriate that the agency make its presentation and then those who would have rebuttal, and I would as they come forward Mr. Chairman and as I mentioned to you, to some of those in, in the, in the government operations committee I think, an issue that we have, that I think we need to be comfortable with before this is all over is how you can remove this much revenue from the agency and then still be able to do their, do their, do their tasks. I'm not saying we shouldn't remove the revenue, but you can only, you can only drive, you can only go as far as a tank of gas will take you and so I think that something relevant to see where we are.

Mr. Chairman: With that objection, we'll stand in recess.

Jim Allison: Thank you Mr. Chairman. I'm Jim Allison. I'm the Chairman of the Tennessee Regulatory Authority and I appreciate the opportunity to visit with the committee today. With me today are Earl Taylor, our Executive Director, and Laura Foreman, our Financial Director at the, at the Authority. The bill before you essentially does two things or a few minor things it does, but basically it reduces the regulatory burden on the organizations that the TRA regulates by about \$1.1 million a year. In response to the leaders' questions about the Authority's ability to absorb that kind of reduction, the Authority's been preparing that for some time. As the committee is likely well aware, the TRA was substantially restructured last year that resulted in very substantial cost savings to the consumers of the State of Tennessee. A big chunk of those cost savings are part of that \$1.1 million. We have some vacancies that we've held open as we became aware that this bill was going to be offered and we're sitting on some open positions that if the bill passes, we will not fill. We'll absorb the costs in that regard and another big piece of the savings that we expect to absorb this year is a move from our current facility, a move in to smaller facilities as part of the state project that's underway in that regard. That'll save a substantial amount of rent. Those are the three

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largest pieces of the cost savings that we'll experience to absorb the reduction to the citizens of Tennessee of about \$1.1 million. The area that seems to have attracted the most attention with the Consumer Advocate's response to it is the alternative rate making authority section of the bill. This is something that we at the agency, the staff, have examined very closely. We are very comfortable with what this does. It essentially is another step in the direction of trying to make the agency as efficient as we possibly can and in keeping with what this body did last year. To try to streamline our processes, to try make them more cost effective and it's one of the pieces that we'll take to try to make sure that we are able to live within the lower budget that we'll have by the fact that we will reduce our fees substantially. These are not necessarily new steps. They've been undertaken in several states around the country including most of our neighboring states that have adopted various methods of alternative rate making. They have been to some limited degree, adopted by the TRA already. For example, we have trackers with our, our major utility systems that we do now for fuel and things of that nature that are major, relatively non-discretionary type of costs that have to be passed on that are major cost expenses. We've looked at it very closely and we feel comfortable that we'll be able to continue to operate. The Consumer Advocate's concern about the bill seems to stem primarily from the provisions in the proposed bill that would assure the ability to pass costs through on and recover at the currently authorized rate of return and we feel like that will be addressed in the proceeding up front whereas the sponsor pointed out, the Consumer Advocate is able to intervene and if there is an issue with the rate of return that's on the books for that facility, that can be dealt with at that time because we have to go through that process to establish it's in the public's interest before we enter into one of these alternative rate making authorities. I'll be happy to answer, try to answer any other questions you have if you have any for me.

Mr. Chairman: Questions by members of the committee.

Mr. Chairman: Well, thank you. I appreciate your testimony. Thank you. Senator Kyle, did you have

Someone talks in the distance but is unintelligible.

Senator Norris: Well, thank you Mr. Chairman, he, he

Mr. Chairman: Senator Norris.

Senator Norris: deferred. He yielded to me to do so. I think that we have and I see them now. I think that we have Vance Broemel, Broemel.

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Vance Broemel: Broemel.

Senator Norris: Broemel, and perhaps the, Ryan McGehee, I think. And forgive me if I've got you wrong but thank you for coming over and thank you. You've probably been here several times just as Chairman Allison had after I emailed General Coopers several weeks ago for all hands on deck, but, but thank you for coming over and thank you for expressing your concerns about the, the bill.

Vance Broemel: Yes, and thank you and we appreciate the opportunity to be here and the opportunity to have spoken with the TRA, and, and

??? If you could, your name and

Vance Broemel: Oh, oh excuse me. Vance Broemel with the Consumer Advocate Division of the, of the Attorney General and, and Senator Kyle spoke a little about our office. We are a separate division within the office created by statute to represent households and businesses who are consumers of public utilities. Public utilities meaning for profit utilities and some of you undoubtedly are familiar with these in your district and Nashville. It would be Piedmont, Williamson County, Rutherford County, Atmos Gas. Chattanooga, you would have Chattanooga Gas and Tennessee American Water and Kingsport has Kingsport Power. These are regulated by the TRA and it's, it's been stated, our concern is with one section of the bill and that is the alternative rate making and what this is, heretofore rates were set in what was known as a rate case and that's when a company who wanted to raise its rates would come before the TRA and present all its financial data, and I'm sure you, you know, listening to some of these budget discussions, I can see that, you know, this committee's used to dealing with the big picture like that and what this is, is, you look at all their expenses – labor, chemicals, pensions – and if they need an increase, they, you give them, the company's allowed to recover its expenses and then they get a profit called a rate of return on their investment and some expenses may go up or down in the coming years, but as long as they're earning the rate of return, they're in good financial shape. What this bill does is allow a company to come in under an alternative rate making mechanism and pick one expense, and, and ask the TRA to allow them to increase rates to recover this one expense. So, in other words, if you had an increase as we all know in gasoline, they could say their, their fuel costs have gone up that year and they need to raise rates to recover that. But if you don't know that their labor costs have gone down in, in a way that would offset that fuel expense, there would be, there would be no need for a rate increase. Under this bill that's proposed, you're looking at what's called a tracker, which means that you track one expense and we

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feel that the better picture is to look at the whole picture of the company and, and have what we call a rate case, and in the past three, past year, we've had, what, three major rate cases. They've all settled, and, and we recognize that litigiousness as it's called, and increasing expenses to having a rate case is an issue, but we feel that this can be dealt with in a way other than this alternative rate making and we would point out that we've been very successful in settling cases without any undue expense in recent years. So, those are our concerns. We think the TRA has the ability to do this with its own rules if it wants to rather than legislation where it can be done with more participation from interested parties and we would also point out that at this point, the companies that I've referred to, Tennessee American, Piedmont, Atmos, Chattanooga Gas, all are very healthy financially. There's no testimony evidence or implication that this is driven at all by a need to allow companies to survive financially. They're all doing very well. So, that is our position. As I say, we're only looking at this one section of the bill and, and we'd be glad to answer any questions you might have.

Mr. Chairman: Senator Henry.

Senator Henry: Thank you Mr. Chairman. Mr. Broemel, did you say they could single out these items without this bill?

Vance Broemel: You mean currently? TRA could have rulemaking that would allow this or have a case. In fact, that, that was done several years ago. Chattanooga Gas wanted what we called a tracker and they came in and put on proof and, and then they could make a case for it, for an individual case, and then we could all participate, so they do have the authority to do this at the present in our opinion and we would rather see it done at the TRA level than legislation.

Senator Henry: TRA, by action of the TRA could do what the bill will let them do by statute. Is that correct?

Vance Broemel: Correct (whispers to Mr. McGehee "is that right, Mike.")

Ryan McGehee: Yes sir, yeah.

Senator Henry: Well, then the bill has no effect, do no harm, did it?

Vance Broemel: Well, it, it, it, it allows it to be done on a very broad level that, that we don't, it would be much better if they had either a rule making to do it for, with participation of all parties on a more, infor, you know, you could have more participation, testimony, that kind of thing or you could do it on

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a case by case. In other words, Atmos could come in and say we need a fuel tracker and then you could expl, they could explain why they wanted it rather than just giving them cart blanche authority to do it at this point.

Senator Henry: So if TRA internally, they would not have to, if, if the TRA did this by rule we'll say, they would not have to incorporate as much information into, into the case as, as, as they, well no, they could, he just said they could.

Vance Broemel: Yes, yes, they could. Yes, they could do it as much as they feel would be necessary and it would be tailored to an individual utility rather than, than this legislation.

Senator Henry: But the statute, what would the statute do? What does the statute, the statute _____ the, the trackers. Does the statute, the statute list them singling out a single expense like gasoline, I think you said?

Vance Broemel: Yes.

Senator Henry: It allows them to single out gasoline and raise their rates with regard because of the gasoline expense without having to look at the whole picture. Is that right?

Vance Broemel: That, that's our, that's our position. Now, now I will agree (Senator Henry interrupts, but it is unintelligible) that as Chairman Allison said, there is a provision that talks about looking at the public interest, but we don't feel that that's precise enough and that's why we prefer a rate case because you would look at all, a number of expenses.

Senator Henry: Suppose they did what you just described (coughs) and they looked at the single item and they said, yes, we served, but we've looked at the public interest too. Do you have standing to take them into court and disagree with that?

Vance Broemel: Well, the bill does not refer to us being able to participate. Which is not to that we can't, and he, we've just heard that we can but it will be a new, new procedure and I, I think everyone would agree that there, there's a lot of established practice for rate cases but this is a brand new area and we don't know if, for instance, there'll be testimony, if it will be called what's technically called a contested case, any number of items like that which will be, you know, if the bill passes, will be learning soon enough and then of course, you know, the, the, our office, let me just assure everyone that we're prepared to, to act, you know, for consumers under any regime of law. You know, we gone from full-time directors to part-time directors,

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so we're not disputing, you know, that, that we're going to represent consumers to the best of our ability, we're just pointing out that

Senator Henry: If they, if they do this, if they use a tracker of just a single expense, and you don't think they've served the public interest, you have standing to take them to court, is that right?

Vance Broemel: Oh yes, yes. We will have a hearing and then I think under the, the law, I think it would still be in effect. It could be appealed, yes. (Whispers to Ryan McGehee.)

Ryan McGehee: Yes, so they could appeal it, but the Court of Appeals and the Tennessee Supreme Court have in the past invested a lot of discretion into what the TRA decision, the decisions the TRA makes because frankly, I don't think the courts want to get too involved in to the accounting part of the case.

Senator Henry: But you have a broad appeal to de novo or do you have to show passion, prejudice or caprice?

Ryan McGehee: Yes, that's correct.

Senator Henry: Wait, which way? Do novo, or passion, prejudice and caprice? What would you have to show?

Vance Broemel: It would be abuse of discretion.

Ryan McGehee: Yes.

Vance Broemel: Basically, there'd be, it's the way the law reads, no support in fact and, and generally speaking, an abuse of discretion. It's a, a administrative procedures act appeal because the cases are contested cases.

Senator Henry: So you'd take them before one of the Secretary of State's judges.

Vance Broemel: No, it would go directly to the Court of Appeals.

Senator Henry: You go to the Court of Appeals and you would allege that, that the public interest was not taken into account. Now, would you be allowed to put up proof to that effect or would you have to go on the record made below?

Vance Broemel: It would be the record made below, yes. At the TRA.

Senator Henry: You would have to show some certiorari type reason to be there, right?

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Vance Broemel: Yes, and we are, our staff, well we don't currently have them on staff, but we contract with accountants and economists and they, they would testify most likely and that would be in the record.

Senator Henry: (Unintelligible.) That's a good back system. I'd like to ask the majority leader on that point. I think that's a strong point.

Mr. Chairman: Do we have other questions?

Mr. Chairman: Senator Kyle, and if we could, Mr. Broemel, the other attorney's name for the record.

Ryan McGehee: Ryan McGehee. Thank you sir.

Mr. Chairman: Thank you.

Vance Broemel: He's also with the Consumer Advocate Division. We're both Attorney Generals there.

Mr. Chairman: Alrighty. Thank you. Senator Kyle.

Senator Kyle: Yes sir. I guess it begs to question, if you're no longer having rate cases and you no longer have rate cases for, in the telecommunications area, what is there left for ya'll to do? Just to be, I mean, if we have essentially this nebulous phrase "in the public interest," I mean, I'm, I'm not trying to be flippant or anything but I'm just curious as where, how would the Consumer Advocate advocate if there isn't a forum for the Consumer Advocate to advocate in because it appears to me from my reading of the bill and I'd be curious what the TRA thinks, if this is all going to be managed administratively within the agency and unless there is some gross abuse of discretion, whatever they say they're going to do, they're going to do. Am I oversimplifying the situation?

Vance Broemel: Well, it, it will be different. And again, we're not, the bill does not specify the way hearings will be held. We would prefer what we call pre-filed testimony. That's what you do in a rate case, when an expert will write out questions and answers in very detailed form, going into a lot of accounting or economics and then the company, both the company and the Consumer Advocate file this kind of testimony. We would hope that there would be that here, but we're not certain and we would, you know, we would hope, well, we expect to still have some function for sure whatever the, if, if we can only file a brief, we'll do that or affidavits, we'll, we'll do that.

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- Senator Kyle: But the, (talking over each other – unintelligible). From the dollar standpoint from the Attorney General's budget, I mean all due respect, we're not having hearings, I mean, just, I raise that question from a financial side to the committee that, that if we're, if we're funding a watch dog program that does nothing to watch because you're not put in a posture. I do think Mr. Chairman, it would be, what I, what I hear the gentleman saying, correct me if I'm wrong, but if you are a, if you were let's say, a water company, you would pick out the costs that you could justify, in other words, the costs that had gone up, and you would you would ignore the costs that would equal it off, and that, is that not correct?
- Vance Broemel: That, that
- Senator Kyle: And then therefore, you justify your rate increase even though you haven't counterba, and you're not, you're not, will not be given a, an ability to counterbalance that with additional information, will you?
- Vance Broemel: Well, again, it's not specified in the bill. We would hope there would be discovery and that we would do our best to, to bring out the other costs, but again it is a new scenario and it's not like a rate case, and, and that's in fact why we're concerned because the, these things just track like one expense.
- Senator Kyle: Well, then this would be interesting to the sponsor. I'd be curious what the agency thinks all this means since they're essentially in the driver's seat and these folks are, are in the rumble seat.
- Mr. Chairman: Later cut, later.
- Senator Norris: Mr. Chairman, I think that would be fine. I think they should be heard on this point because the way that this bill is crafted, it adds to the provisions of Title 65-5-103. It's not deleting. This is an alternative for them. As I understand it, they may for some reason decide they may still want to have a rate case per se. These are alternatives that they may use and as you've correctly pointed out, they could probably have done through rulemaking but the administration thought it was better to bring it here so we could have an open discussion about it. But I see Mr. Allison is prepared to answer those questions specifically if I haven't done it generally.
- Vance Broemel: Yeah and, and let me assure you that is correct. That does not eliminate rate cases and, and there may, there's hope there'll still be need for one. It could be ordered. We could request it. That kind of thing, yes.
- Mr. Chairman: Mr. Allison, do you wish to comment?

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- Mr. Allison: I think it's important to understand that all the alternative rate making arrangements are permissive. They're not required. It requires the company to ask for the alternative rate making treatment and then the Authority enters into a deliberation as to whether or not agreeing to that alternative arrangement is in the public interest. Now the Consumer Advocate Division will have full and ample opportunity to participate in that hearing. The example I've used before some of the other committees, just take for example a water company that spends a considerable amount of money on electricity to run their pumps, to keep the pressure up in their water system. If TVA has a large rate increase, they have little opportunity but to pay their, their bill and is there any need at that point in time to hop in their whole set of books and look at all their costs as opposed to just go through an expedited proceeding and allow those costs to pass on. Now, having said that, if there is a concern about other costs because we're going to be tracking their costs and a much more frequent basis than we do now through the annual rate review if they've opted into that system and if there are concerns about other costs, pension costs or the rate of return, or whatever it is, then you can enter a proceeding – a full rate case. We're not doing away with full rate cases. These are just alternatives that are available on a permissive basis. But if the Consumer Advocate or any other allowable party has a concern about other costs, they have can come to the Authority and say "we need to look at the whole ball of costs," and if the Authority agrees to that, we will go to the full rate case route as opposed to the alternative rate making.
- Mr. Chairman: Senator Kyle.
- Senator Kyle: But you pretty much have a carte blanche, don't you sir, in whether you decide you're want to do it or not. I mean there's not like five factors, and you've got to review the five factors and see whether you hit the mark, or whether there's three factors. I mean, it's just what ya'll decide to do, whether you want to do it or not. I mean, it's, wouldn't that be up to a pretty great deal of discretion, wouldn't you say?
- Mr. Allison: We will have a great deal of discretion, just as we do now in general rate cases. It, it's just, it's a procedural change, the way you go about doing things. But we have to, our overall objective is to balance the interest of the consumers with the companies that are operating in those environments.
- Senator Kyle: And how will ya'll be reporting your decision making to the General Assembly?

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Mr. Allison: We issue official orders of everything that we do that are public record and available. As far as reporting to the General Assembly, I know we file an annual report. Beyond that, I'd probably have to get some help from the staff to tell you the answer to that question any more specifically.

Senator Kyle: Will the agency have a problem, and I ask this to the sponsor, if there was, if the annual report of the agency indicated to the General Assembly, we had these petitions and we ruled this way.

Mr. Allison: We have

Senator Kyle: Therefore, therefore, because I don't think we get that data today.

Mr. Allison: Petitions just as

Senator Kyle: I mean, I'm just asking you, a water company says we need TVA rates so you, rates. Power, electric power, Piedmont comes to you and says we've had some bit of flood in, in our community, and you know, we had this or that. I'm just saying to you the variances and ya'll determined, ya'll made a decision because in the public interest, you know, I went to a process yesterday that was allegedly in the public interest. I disagreed at the end. But, but I would just say to you, I mean that, I mean that's wide open and I, but I do think, and that if these people at the Consumer Advocate, I mean, the whole idea at the General Assembly when the Consumer Advocate was created was to not to be having to monitor what was going on at the Public Service Commission 'cause there was concerns that things they'd had, they'd had so much discretion they were digressing the wrong way, contrary to the public interest. That was the, at least that was the, that was the street talk. And therefore we said, we had to have a professional group to be, to be sitting at the table, to be sitting in the courtroom, to be, and then therefore if there was a problem, they'd come up here and tell us there was going to be a problem. Now, since these folks have a more limited role, and it's such, it just seems to me and just take it the, to you and to Mr. Taylor who's running the show at this time that there ought to be some mechanism where, where a legislator from Chattanooga, Kingsport, Nashville, Williamson County or whatever could look and see that well they tried. They did this and they ruled this way and might say, I might with a little more, like, know a little bit more about that because I do think that legislators do get calls when rates change as you could imagine. I don't think they're going to find you, Mr. Allison, but they'll sure find us – before it's all over and so, I'd, I'd ask for the sponsor to consider that there be, that in the end, that we make clear that the annual report is going to have a summary of petitions, of matters brought, decision we're not doing a rate case, we did it like this, and therefore

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people could look and see whether or not, if they agreed that what you were doing and was in the public interest.

Mr. Allison: We would be happy to do that sir. We're a creature of this body and we will, we will provide whatever information. Everything we have is public information and we will make a point in our next annual report to provide some additional information on petitions of this nature that we get and what we did with them.

Mr. Chairman: Other questions.

Mr. Chairman: Thank you gentlemen. Appreciate your testimony. Back on the bill, but before we get to it, Youth Leadership Warren County is here with us. If ya'll could stand and we'll recognize you. (Everyone claps as they stand.) Appreciate you coming to the Finance Committee here. Senator was here earlier. See, questions, other questions for the sponsor.

Mr. Chairman: Seeing none, I'll ask the Secretary to call the role. The motion will be to calendar.

Secretary: Senator Dickerson.

Senator Dickerson: Aye.

Secretary: Votes aye. Senator Finney.

Senator Finney: Aye.

Secretary: Votes aye. Senator Hale.

Senator Hale: Aye.

Secretary: Votes aye. Chairman Henry.

Chairman: Pass.

Secretary: Present, not voting. Senator Hensley.

Senator Hensley: Aye.

Secretary: Votes aye. Senator Ketron.

Senator Ketron: Aye.

Secretary: Votes aye. Senator Kyle. Senator Norris.

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Senator Norris: Aye.

Secretary: Votes aye. Senator Overbee.

Senator Overbee: Aye.

Secretary: Votes aye. Senator Watson.

Senator Watson: Aye.

Secretary: Votes aye. Chairman McNally.

Chairman McNally: Aye.

Secretary: Votes aye. Nine ayes Chairman.

Mr. Chairman: Nine ayes. The bill is referred to the Calendar Committee.

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Video: http://tnga.granicus.com/MediaPlayer.php?view_id=269&clip_id=7736

Click on link and scroll down in index and click SB 0197

Clerk: Item number three, Senate Bill 197, by Senator Norris on third and final consideration. Mr. Speaker, the House Bill is on the desk.

Mr. Speaker: Senator Norris, you're recognized.

Senator Norris: Thank you Mr. Speaker. Move to substitute and conform to the House Bill.

Mr. Speaker: Senator Norris moves to associate and conform to the House Bill without objection. We're on House Bill 191. Senator Norris, you're recognized.

Senator Norris: Thank you Mr. Speaker. I move passage of House Bill 191 on third and final consideration.

Mr. Speaker: Senator Norris moves passage of House Bill 191 on third and final consideration. That's the second amendment Mr. Clerk.

Clerk: Item number one, Senate and Congress Committee of Amendment in the House Bill.

Mr. Speaker: Chairman Johnson.

Chairman Johnson: Thank you Mr. Speaker. I move to withdraw.

Mr. Speaker: Objection withdrawn. Further amendment Mr. Clerk?

Clerk: Mr. Speaker, there are no further amendments.

Mr. Speaker: Norris, you're recognized.

Senator Norris: Thank you Mr. Speaker and members. This is continuing part of the administration's top to bottom reforms, the Tennessee Regulatory Authority and in this instance this bill does five things. Relative to state employee group insurance plans, it makes clear that the TRA directors are eligible. Secondly, it attempts to clarify any ambiguities relative to conflicts of interest and prohibitions relative thereto for directors of the TRA. Thirdly, the legislation will permit the agency to implement optional cost based services at the request of one or more utilities and also cover its costs for doing so. Fourthly, the legislation realigns the fee structure to reflect today's regulatory environment resulting in

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approximately \$1.1 million of reductions and fees paid to the agency which in turn will benefit consumers. Fifthly, and this is what's really attracted most of the attention throughout, the bill creates a new section authorizing implementation of alternative regulatory methods for utility rate reviews and cost recoveries instead of just general rate cases, provides other measures based on trackers. We had, we had good testimony in committee from the Chairman, Jim Allison, and Director, Earl Taylor. Also from the Attorney General's office, we had Vance Broemel and Assistant Attorney General, Ryan McGehee, to address our concerns that there not be any disadvantage to rate payers. The bottom line is Mr. Broemel testified that the A.G.'s office, the Consumer Affairs Division, will still be able to intervene in any cases. It doesn't change the underlying law but adds additional alternatives for particular rate making cases if the TRA decides to use them. Having said that, I'll yield for any questions.

Senator Norris: Renew my motion.

Mr. Speaker: On amendment number one, on a move by Senator Johnson including amendment, doesn't require a second. Would a voice vote, oh excuse me that was Mr. _____. That was my fault. We're on a House Bill. My fault, my fault, my fault, we're on a House Bill as amended. So, we're on a bill. Objection, question?

Mr. Speaker: Seeing none, we're on the board. Those who want to pass House Bill 191 on third and final consideration vote aye when the bell rings. Those opposed vote no. Has every member voted? Mr. Clerk, take a vote.

Clerk: Ayes, 29; 1 Nay.

Mr. Speaker House Bill 191 _____ constitutes the majority and hereby declare passes. Objections? Motion reconsider goes to table.