

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE**

IN RE:)	
)	
TENNESSEE AMERICAN WATER)	
COMPANY'S RESPONSE TO)	
COMMISSION'S INVESTIGATION OF)	DOCKET NO. 18-00039
IMPACTS OF FEDERAL TAX REFORM)	
ON THE PUBLIC UTILITY REVENUE)	
REQUIREMENTS)	

SUPPLEMENTAL TESTIMONY

OF

DAVID N. DITTEMORE

January 21, 2020

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE**

IN RE:

**TENNESSEE AMERICAN WATER
COMPANY'S RESPONSE TO
COMMISSION'S INVESTIGATION OF
IMPACTS OF FEDERAL TAX REFORM
ON THE PUBLIC UTILITY REVENUE
REQUIREMENTS**

DOCKET NO. 18-00039

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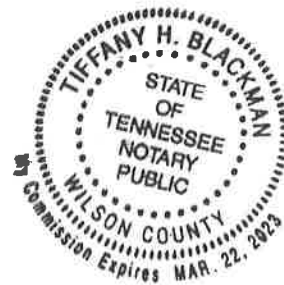
I, David N. Dittmore, on behalf of the Consumer Advocate Unit of the Attorney General's Office, hereby certify that the attached Supplemental Direct Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Unit.

David N. Dittmore
DAVID N. DITTEMORE

Sworn to and subscribed before me
this 21st day of January, 2020.

Tiffany H. Blackman
NOTARY PUBLIC

My commission expires: March 22, 2023



1 **Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND OCCUPATION FOR**
2 **THE RECORD.**

3 A1. My name is David N. Dittmore. My business address is Office of the Tennessee Attorney
4 General, War Memorial Building, 301 6th Ave. North, Nashville, TN 37243. I am a
5 Financial Analyst employed by the Consumer Advocate Unit in the Financial Division of
6 the Tennessee Attorney General's Office (Consumer Advocate).

7 **Q2. ARE YOU THE SAME DAVID DITTEMORE THAT CAUSED PRE-FILED**
8 **DIRECT TESTIMONY TO BE SUBMITTED IN THIS DOCKET?**

9 A2. Yes. My pre-filed direct testimony concerning Phase II of this Docket was filed on
10 November 21, 2019.

11 **Q3. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?**

12 A3. The purpose of my supplemental testimony is to provide a response to Tennessee-
13 American Water Company's (TAWC or Company) new-filed information, which it
14 submitted on December 20, 2019. In my testimony I will address the following issues:

15 I. Overview of New-Filed Information

16 II. Calculation of Unprotected and Protected Excess Accumulated Deferred
17 Income Taxes (EADIT) Amortization Credits

18 III. Support for Amortization Periods Recommended by the Consumer Advocate

19 a. Commission determinations in other jurisdictional tax dockets

20 b. Response to arguments made by TAWC witness Wilde in testimony
21 submitted December 19, 2019

1 I. OVERVIEW OF NEW-FILED INFORMATION

2 Q4. CAN YOU PROVIDE A DESCRIPTION OF THIS NEW-FILED INFORMATION?

3 A4. On December 9, 2019, the Company notified the Consumer Advocate and the Tennessee
4 Public Utility Commission of a “development” that necessitated a delay to its deadline to
5 provide rebuttal testimony. After two status conferences regarding updates to this
6 “development”, the Hearing Officer ordered TAWC to file its rebuttal testimony on
7 Thursday, December 19, 2019. The Company then submitted its rebuttal testimony on
8 Friday, December 20, 2019, and filed it under seal. Therefore, the Company has requested
9 that information related to the development not be made available to the public pursuant to
10 the terms of the Protective Order.

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

¹ Pre-filed Supplemental Testimony of John R. Wilde, p. 11 (December 20, 2019); Wilde Confidential Exhibit B.

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 **Q5. MR. DITTEMORE, HAS YOUR POSITION CHANGED** [REDACTED]

8 [REDACTED]?

9 **A5.** Yes, it has changed substantially, particularly with regard to a delay in these
10 proceedings. Initially, I indicated Repairs-related EADIT should be returned to consumers
11 as if the funds were protected until such time as the IRS issued new guidance. I then
12 suggested reopening these proceedings when the IRS did issue guidance and making a
13 recommendation on the appropriate period to apply to Unprotected EADIT at that time. [REDACTED]

14 [REDACTED], we no longer
15 need to delay or reopen proceedings, and the parties can make their recommendations now.

16 I will also address the new position provided by TAWC [REDACTED] and
17 addressed in Mr. Wilde's rebuttal testimony. While TAWC initially took the position that
18 it had to treat Repairs Deduction-related funds as Protected EADIT due to a Consent
19 Agreement with this IRS⁴, in Mr. Wilde's Rebuttal Testimony, [REDACTED]

² *Id.*
³ See Exhibit DND-5, Docket No. 18-00039 (November 21, 2019).
⁴ See Supplemental Testimony of John R. Wilde, p. 5, Docket No. 18-00039 (September 16, 2019).

1 [REDACTED], but this
2 Commission should nevertheless order the funds to be treated as normalized and returned
3 over a longer period.

4 Q6. [REDACTED]
5 [REDACTED]?

6 A6. As stated in my Direct Testimony⁵, I believed the appropriate classification of the Repairs
7 Deduction is “Unprotected” EADIT, with the practical impact that the Commission has the
8 discretion to establish the appropriate refund methodology to apply to this portion of the
9 EADIT balance.⁶ [REDACTED]

10 [REDACTED]. In TAWC’s proposal to address Phase II issues in this Docket, the
11 Company included funds related to the Repairs Deduction in its calculation of Protected
12 EADIT.

13 I initially argued in my pre-filed direct testimony that, while I believe funds related to the
14 Repairs Deduction should be considered Unprotected EADIT, the Company’s 2010
15 Consent Agreement would seem to call for these funds to be treated as Protected EADIT,
16 and therefore normalized. In the interest of an expeditious return of EADIT to consumers,
17 I proposed beginning the return of Repairs Deduction-related funds as well as other
18 Unprotected EADIT over the period required under the ARAM amortization method,

⁵ Pre-filed Direct Testimony of David N. Dittmore, p.4, lines 1-4 (November 21, 2019).

⁶ The IRS proscribes that protected EADIT must be amortized to the utilities cost of service using the Average Rate Assumption Method (ARAM) or if records do not exist to make such ARAM calculations, the Reverse South Georgia Method (RSGM).

⁷ Pre-filed Supplemental Testimony of John R. Wilde, p. 11 (December 20, 2019); Wilde Confidential Exhibit B.

⁷ Id

1 identical to the Protected EADIT, until such time as either 1) the IRS issues a PLR
2 determining that these funds are unprotected or 2) the IRS presents guidance in the form
3 of IRS Notice 2019-33, which included a request for comments on this issue. This allowed
4 for a cautious approach with the intent to avoid incurring administrative costs associated
5 with the submission of a separate PLR, [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED], the Commission is in a position to resolve all outstanding issues
10 in this Docket without the need to convene a separate proceeding, thus eliminating the
11 administrative burden and costs associated with yet another TAWC tax proceeding.

12 **II. CALCULATION OF UNPROTECTED AND PROTECTED EADIT**
13 **AMORTIZATION CREDITS.**

14 **Q7. HAVE YOU CALCULATED THE ANNUAL CREDIT ASSOCIATED WITH**
15 **EADIT YOU ARE PROPOSING THIS COMMISSION ADOPT FOR THE**
16 **PENDING TAWC CAPITAL RIDERS DOCKET?**

17 **A7.** Yes. I have prepared Supplemental Exhibit DND-1, which calculates the appropriate credit
18 to the pending TAWC Capital Riders filing as \$2,858,248. This incorporates ARAM
19 amortization rates presented by the Company applied to Protected EADIT balances for
20 2018 and 2019. It also includes \$1,905,735 in credits applicable to the amortization of all
21 Unprotected EADIT. The individual components that comprise each category of EADIT
22 are identified within this Exhibit. With the exception of the Repairs Deduction, which is

1 now determined to be Unprotected, the designations between the two categories are those
2 supported by the Company. These balances reflect an appropriate tax gross-up factor as
3 identified at the bottom of the Exhibit.

4 **III. SUPPORT FOR AMORTIZATION PERIODS RECOMMENDED BY THE**
5 **CONSUMER ADVOCATE**

6 **Q8. WHAT PERIOD DO YOU RECOMMEND BE USED TO RETURN**
7 **UNPROTECTED EADIT TO RATEPAYERS?**

8 **A8.** I recommend three years.

9 **Q9. WHAT IS THE BASIS FOR THE USE OF A THREE-YEAR AMORTIZATION OF**
10 **EADIT?**

11 **A9.** The three-year Unprotected EADIT period I am recommending in this Docket is in line
12 with periods adopted by this Commission in other tax dockets. A three-year amortization
13 period was adopted by the Commission as the appropriate period by which Piedmont
14 should flowback Unprotected EADIT in Docket 18-00040 in a litigated proceeding.⁸ The
15 Commission adopted a five-year amortization of Unprotected EADIT in a CGC general
16 rate case, Docket No. 18-00017.⁹ Finally, the Commission adopted a Settlement
17 Agreement between the Consumer Advocate and Kingsport Power Company in Docket
18 No. 18-00038 in which the parties applied the balance of EADIT to eliminate deferred
19 storm damage costs that would otherwise be recovered from ratepayers, with the remainder

⁸ Commission Order in Docket 18-00040 pages 14-15.

⁹ Commission Order in Docket 18-00017, pages 53-55.

1 reducing the outstanding balance of under-recovered purchased power costs; this
2 effectively provided Kingsport ratepayers with an immediate benefit. Despite these
3 varying amortization periods, the Commission's orders in these dockets all share one
4 attribute – a rapid return of Unprotected EADIT to ratepayers, which contrasts with
5 TAWC's current proposal to flow the refunds back over the remaining life of the assets.

6 **Q10. ARE THERE OTHER POLICY CONSIDERATIONS SUPPORTING A THREE-**
7 **YEAR AMORTIZATION OF EADIT TO RATEPAYERS IN ADDITION TO**
8 **FOLLOWING THE ESTABLISHED COMMISSION PRECEDENTS DESCRIBED**
9 **ABOVE?**

10 **A10.** Yes. These funds were provided by consumers to pay federal income taxes that, after the
11 2017 Tax Cuts and Jobs Act, were effectively cancelled. There is no reason that these
12 funds should be treated any differently than the remainder of Unprotected EADIT in this
13 Docket. The money should be returned to consumers over a three-year period. Since these
14 are ratepayer funds, I believe that customers should have discretion on the use of these
15 funds. The Commission should not extend the refund of these overpayments, which would
16 essentially allow the Company to use these funds over an extended period of time. Instead,
17 the Commission should ensure the rapid return of these funds to ratepayers, to whom they
18 belong.

19 **Q11. WOULD RATES BE LOWER IN THE FUTURE WITH ADOPTION OF THE**
20 **ARAM METHODOLOGY RECOMMENDED BY THE COMPANY FOR USE IN**
21 **AMORTIZING UNPROTECTED EADIT?**

1 **A11.** Yes. But this would be true of any policy in which ratepayers provided funding of capital
2 assets. Standard principles of utility ratemaking provide that utilities have an obligation to
3 fund utility investment, and, in return, utilities are afforded the opportunity to earn a
4 reasonable return on their investment. If the Commission adopted policies whereby
5 ratepayers routinely provided the financing for capital investments, then rates would be
6 lower going forward as shareholder funding of assets would be reduced with a
7 corresponding decrease to the rate of return. However, despite reducing rates in the long-
8 term, the retention of ratepayer funds is not a policy that should be adopted by this
9 Commission. Instead, ratepayer funds should be returned to ratepayers in short order to
10 allow customers to use their funds as they see fit. Otherwise, ratepayers would in essence
11 become captive investors.

12 **Q12. IS THERE ANOTHER MATTER OF EQUITY WHICH SUPPORTS THE**
13 **FLOWBACK OF THESE FUNDS RAPIDLY?**

14 **A12.** Yes. The EADIT represents that portion of Income Tax Expense collected by ratepayers
15 at the former 35% tax rate and in excess of the 21% rate adopted by the Tax Cuts and Jobs
16 Act. Thus, a portion of the Income Tax Expense of the Company (provided by ratepayers)
17 is effectively cancelled. It is legacy ratepayers who have provided the funding of balances
18 which are now EADIT, and equity suggests the refunds should be made quickly to better
19 match the refunds with the customers who provided those funds. A longer amortization
20 period applied to Unprotected EADIT would provide refunds to newer customers who did
21 not contribute to the Unprotected EADIT balances.

1 **Q13. DOES THIS COMPLETE YOUR TESTIMONY?**

2 **A13.** Yes. I reserve the right, however, to supplement my testimony if new information becomes

3 available.

TAWC Docket 18-00039
Determination of Excess ADIT Balances
Protected and Unprotected
1/15/2020

Total Federal and State Excess ADIT			Supplemental Exhibit DND-1
Item	Protected	Unprotected (2)	Source: TAWC Attachment 3-5)
Method/Life	\$ 12,869,192		
Cost of Removal	552,564		
Repairs - M/L		\$ 2,457,864	
Repairs Other		2,588,057	
All Other		(49,171)	
Federal NOL	(801,599)		
Plant Customer Advances		(460,203)	
Plant CWIP		11,763	
CIAC WIP		(5,619)	
Plant 481		110,156	
All Other Non Plant (Amortization)		(429,833)	
Totals	12,620,157	4,223,014	16,843,171
2018 ARAM Effective Rate	<u>2.6890%</u>		
2018 EADIT ARAM Amortization	\$ 339,356		
2019 ARAM Effective Rate	<u>2.8860%</u>		
2019 EADIT ARAM Amortization	\$ 364,218		
Unprotected Amortization Period		<u>3</u>	
Amortization Applicable to 2020 Capital Rider	\$ 703,574 (3)	\$ 1,407,671	\$ 2,111,245
Tax Gross-up Factor	1.3538	1.3538	1.3538
Gross of Tax Amortization	\$ 952,513	\$ 1,905,735	\$ 2,858,248

- (1) The Consumer Advocate's Office refers to this information as the first set of discovery in Phase 2 of the Tax Docket.
(2) Identified consistent with new information contained in TAWC testimony submitted December 19, 2019.
(3) Includes 2018 and 2019

Tax Gross-Up Calculation

State Tax Rate	6.50%
Income Subject to Federal Tax (1-6.5%)	93.50%
Federal Tax Rate	21.00%
Effective Federal Tax Rate	19.64%
Effective Composite Rate (Effective Federal + State)	26.14%
Reciprocal Gross-up Factor (1-Effective Gross-up Rate)	73.87%
Gross-up Factor (1/Reciprocal Gross-up Factor)	1.3538