

BUTLER | SNOW

November 6, 2019

VIA ELECTRONIC FILING

TPUC.DocketRoom@tn.gov

Hon. Robin L. Morrison, Chairman
c/o Ectory Lawless, Docket Room Manager
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243

RE: *Tennessee-American Water Company's Response to Commission's Investigation of Impacts of Federal Tax Reform on the Public Utility Revenue Requirements, TPUC Docket No. 18-00039*

Dear Chairman Jones:

Attached for filing please find *Tennessee-American Water Company's Responses to the Consumer Advocate's Second Discovery Requests Concerning Phase II* in the above-caption docket.

As required, an original of this filing along with four (4) hard copies will follow. Should you have any questions concerning this filing, or require additional information, please do not hesitate to contact me.

Very truly yours,

BUTLER SNOW LLP



Melvin J. Malone

clw

Attachments

cc: Elaine Chambers, Tennessee-American Water Company
Daniel Whitaker, Assistant Attorney General, Consumer Advocate Unit (via email)
Karen H. Stachowski, Assistant Attorney General, Consumer Advocate Unit (via email)

*The Pinnacle at Symphony Place
150 3rd Avenue South, Suite 1600
Nashville, TN 37201*

MELVIN J. MALONE
615.651.6705
melvin.malone@butlersnow.com

T 615.651.6700
F 615.651.6701
www.butlersnow.com

50098728.v1

BUTLER SNOW LLP

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

Tennessee-American Water Company (“TAWC”), by and through counsel, hereby submits its Responses to the Second Discovery Requests propounded by the Consumer Advocate Unit (“CAU”) concerning Phase II of this docket.

1. TAWC objects to all requests that seek information protected by the attorney-client privilege, the work-product doctrine and/or any other applicable privilege or restriction on disclosure.

50077008.v1

3. The specific responses set forth below are based on information now available to TAWC, and TAWC reserves the right at any time to revise, correct, add to or clarify the objections or responses and supplement the information produced.

4. TAWC objects to each request to the extent that it is unreasonably cumulative or duplicative, speculative, unduly burdensome, irrelevant or seeks information obtainable from some other source that is more convenient, less burdensome or less expensive.

5. TAWC objects to each request to the extent it seeks information outside TAWC's custody or control.

6. TAWC's decision, now or in the future, to provide information or documents notwithstanding the objectionable nature of any of the definitions or instructions, or the requests themselves, should not be construed as: (a) a stipulation that the material is relevant or admissible, (b) a waiver of TAWC's General Objections or the objections asserted in response to specific discovery requests, or (c) an agreement that requests for similar information will be treated in a similar manner.

7. TAWC objects to those requests that seek the identification of "any" or "all" documents or witnesses (or similar language) related to a particular subject matter on the grounds that they are overbroad and unduly burdensome, and exceed the scope of permissible discovery.

8. TAWC objects to those requests that constitute a "fishing expedition," seeking information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence and is not limited to this matter.

9. TAWC does not waive any previously submitted objections to the CAU's discovery requests.

**TENNESSEE AMERICAN WATER COMPANY
DOCKET NO. 18-00039
SECOND DISCOVERY REQUEST OF THE
CONSUMER ADVOCATE DIVISION
PHASE II**

Responsible Witness: John R. Wilde

Question:

1. Regarding the Company's response to Request No. 3-13, describe the status of the regulatory proceedings in Missouri as it relates to the classification of the Repair Deduction between protected and unprotected Accumulated Deferred Income Taxes ("ADIT"). Provide the docket number in which the Missouri Public Service Commission has addressed (or will address) this issue.

Response:

As demonstrated by the Company's response to Request No. 3-13, Missouri is not among the jurisdictions that have addressed the disposition of excess ADIT by an AWW company. It is TAWC's understanding that excess ADIT issues will be addressed by the Missouri Public Service Commission in Missouri-American Water Company's next rate case.

**TENNESSEE AMERICAN WATER COMPANY
DOCKET NO. 18-00039
SECOND DISCOVERY REQUEST OF THE
CONSUMER ADVOCATE DIVISION
PHASE II**

Responsible Witness: John R. Wilde

Question:

2. The excel worksheet in the Company's response to Request No. 3-5 contains no cell references for those amounts highlighted in green. Provide this excel file with cell references and calculations intact.

Response:

The tabs that have the color green are standard system reports from power tax. Specifically, these are Report 259. This report is commonly used to determine the effects of ARAM. The report was produced in excel for convenience, so that numbers could be referenced instead of keyed in off a PDF.

As such, there are no missing or eliminated formulas.

**TENNESSEE AMERICAN WATER COMPANY
DOCKET NO. 18-00039
SECOND DISCOVERY REQUEST OF THE
CONSUMER ADVOCATE DIVISION
PHASE II**

Responsible Witness: John R. Wilde

Question:

3. Refer to Mr. Wilde's testimony. On page 12, regarding the proposal to flow back amortizations of the excess ADIT through the Capital Riders, please specify whether 2018, 2019, and 2020 amortizations should be summed and used as a total credit in the Company's next Capital Riders filing. If not, please discuss in detail how the Company proposes to match the amortization credits with the implementation dates of the TAWC Capital Riders surcharges.

Response:

Neither the tax normalization rules or the provisions of the consent decree would preclude the amount to be amortized in the next capital rider filing from including 2018, 2019, and 2020 amortization amounts.

**TENNESSEE AMERICAN WATER COMPANY
DOCKET NO. 18-00039
SECOND DISCOVERY REQUEST OF THE
CONSUMER ADVOCATE DIVISION
PHASE II**

Responsible Witness: John R. Wilde

Question:

4. Regarding the 2018 Rpt259 tab within the attachment to TAWC Discovery Response No. 3-5, provide a comprehensive discussion discussing the nature of the calculations within the section titled Jurisdiction: Fed-Off-TN (beginning on row 56), including why such calculations are used to offset the balances of excess ADIT as reflected within the Summary tab.

Response:

State income taxes are deductible for federal income tax purposes. This means that for a given amount of income, the amount subject to federal and state income taxes is different. The amount of state taxes paid is the income times the state tax rate. The state tax is deducted from the income and the net amount is multiplied by the federal rate to get the federal tax.

Assume a state tax rate of 6.5% and a federal income tax rate of 35%. Assume 100 dollars of income. State taxes paid is 6.50 ($100 \times 6.5\%$). Federal tax is 32.75 ($(100 - 6.50) \times 35\%$)

Doing the same thing using a 21% federal rate we see the following:

Assume a state tax rate of 6.5% and a federal income tax rate of 21%. Assume 100 dollars of income. State taxes paid is 6.50 ($100 \times 6.5\%$). Federal tax is 19.64 ($(100 - 6.50) \times 21\%$).

Thus, when the federal rate is 35% and the state rate is 6.5%, the effective federal rate is 32.75% ($32.75 / 100$). When the federal rate is 21% and the state rate is 6.5%, the effective federal rate is 19.64%. As such, while the TCJA reduced the federal rate by 14%, the effective rate change in Tennessee was 13.11% ($32.75\% - 19.64\%$).

Power tax software tracks the difference between the statutory federal rate and the effective federal rate in a separate bucket called Fed-Off-TN.

TENNESSEE AMERICAN WATER COMPANY
DOCKET NO. 18-00039
SECOND DISCOVERY REQUEST OF THE
CONSUMER ADVOCATE DIVISION
PHASE II

Responsible Witness: John R. Wilde

Question:

5. Refer to tab 2018 Vintage 2008-2017 and describe in detail the difference between the line items labeled "Fed-Repair 481a", "1026 Fed- Repair M/L", and "1026 Fed – Tax Repairs".

Response:

Before the accounting method change occurred in 2008, there was a depreciation difference that existed. After the change, this amount no longer increases but begins reversing with book depreciation. This difference is tracked separately in Powertax under the name 1026 Fed- Repair M/L.

At the time of the method change, the remainder of undepreciated plant is deducted as a repair. Additionally, after the method change, the company deducts amounts that qualify for repairs. These additional amounts are tracked in the lines "Fed-Repair 481a" and "1026 Fed – Tax Repairs."

**TENNESSEE AMERICAN WATER COMPANY
DOCKET NO. 18-00039
SECOND DISCOVERY REQUEST OF THE
CONSUMER ADVOCATE DIVISION
PHASE II**

Responsible Witness: John R. Wilde

Question:

6. Refer to the excel spreadsheet provided in TAWC Discovery Response No. 3-5, and specifically to the 2019 Rpt 259 and 2018 Vintage 2008-2017 tabs. Please describe the differences and reconcile the amounts between the ending difference identified as Depreciation Differences (Ending APB11 DFIT Balance) within the 2019 Rpt 259 tab (\$35,242,780) and the Depreciation Difference as referenced in the 2018 Vintage 2008-2017 tab (Ending Difference) identified as \$34,462,182.

Response:

The referenced columns are different items, and the requested reconciliation would be an “Apples / Oranges” comparison. The Depreciation Differences (Ending APB11 DFIT Balance) is ADIT related to the depreciation difference. The Depreciation Difference as referenced in the 2018 Vintage 2008-2017 tab (Ending Difference) is the pretax timing difference for property whose vintages are between 2008 and 2017.

See response to request 7 for an explanation of why there are two versions of the 259 report.

TENNESSEE AMERICAN WATER COMPANY
DOCKET NO. 18-00039
SECOND DISCOVERY REQUEST OF THE
CONSUMER ADVOCATE DIVISION
PHASE II

Responsible Witness: John R. Wilde

Question:

7. Provide the Company's justification, including all related supporting documents or other information, for reducing excess ADIT Liability by the portion of the excess Net Operating Loss Asset.

Response:

The first reason that the company reduces the excess ADIT liabilities related to plant is basic economics. ADIT liabilities represent a zero cost loan from the federal and state governments. However, when these deductions generate more deductions than income, the company no longer pays tax. As such the company can only have as much zero cost capital as it has negative taxes from the deductions. Once tax payments reach zero, the government promises future tax reductions through the ability to carryforward the NOL

Accounting rules dictate that the ability to reduce future taxes be recorded as a deferred tax asset. In general, at any point in time, the total deferred tax liability, net of the NOL deferred tax asset, represents the amount of zero cost capital actually achieved

When the deferred tax rate changed, it created excess ADIT. The working assumption in a regulated environment is that when the loan comes due, the company will not have to pay the loan at the amount measured by a 35% tax rate but instead, a lesser amount. Of course the company believes this money should be paid to rate payers. Regarding the deferred tax asset, that amount represented a promise by the government to allow the company to achieve the tax benefits of its previous deductions. Similar to ADIT liabilities, that amount was measured at 35%. However, when the NOL is used, it will only generate a benefit at 21%. This means that the excess ADIT on the deferred tax liabilities are overstated as some of those liabilities actually will only generate benefits at 21%.

Therefore, the excess Deferred tax liability net of the excess NOL deferred tax asset represent the true economical excess deferred tax to be refunded to customers.

The second reason is that the federal tax normalization rules require the inclusion of the NOLC DTA balance in this context. The inclusion of the NOLC in these cases has been covered in a number of IRS private letter rulings or PLR's.

In the near future the IRS will likely issue guidance on the treatment of the impact NOLC DTA should have on protected and unprotected EADIT balances. Guidance on this specific subject was requested as part of Notice 2019-33. The company in absence of specific guidance believes the NOL DTA excess should net against the excess on a proportional basis. However, the company only utilizes the vintage years 2008 to 2017, as those are the years that the consolidated group has been in an NOLC carryforward position.

In order to do this proportional calculation, the company runs the report 259 for the specific range of vintages (2008 to 2017) and utilizes the ARAM impact from these vintages to determine the amount of negative excess from the NOL to net against the positive excess from plant related items.

**TENNESSEE AMERICAN WATER COMPANY
DOCKET NO. 18-00039
SECOND DISCOVERY REQUEST OF THE
CONSUMER ADVOCATE DIVISION
PHASE II**

Responsible Witness: John R. Wilde

Question:

8. Refer to the excel spreadsheet provided in TAWC Discovery Response No. 3-5, and specifically to the Summary Workpaper tab. Provide supporting workpapers along with a comprehensive explanation supporting the balances contained on lines 18-22 of the spreadsheet. The amounts in these cells are either hard-coded numbers or contain links to other cells which contain hard-coded data.

Response:

See attached, "TAW_R_CPADDR4_NUM008_11062019 Attachment".

GL Account if Applicable / Description	Tax Basis	Book Basis	Difference	Effective Federal Rate			Excess
				Post TCJA	Pre TCJA	Difference	
Plant Customer Advances							
25212000 Advances for Construction - NT Ext Deposits		(3,296,577)	3,296,577				
25215000 Advances for Construction - NT Hydrants		(44,570)	44,570				
25217000 Advances for Construction - NT WIP		(77,208)	77,208				
25223000 Advances for Construction - Tax Services		(102,503)	102,503				
25227000 Advances for Construction - Tax WIP		-	-				
25280000 Advances for Construction - Reclassed to Current		239,000	(239,000)				
25299900 Advances for Construction - Current		(239,000)	239,000				
Total	-	(3,520,859)	3,520,859	19.602%	32.673%	-13.071%	(460,203.04)
Plant CWIP							
10700000 CWIP	3,975,381	4,009,123	(33,742)				
10780000 CWIP - Workbasket Accrual		56,253	(56,253)				
Total	3,975,381	4,065,376	(89,994)	19.602%	32.673%	-13.071%	11,762.96
CIAC WIP							
27117000 CIAC-Non Taxable - WIP		(42,991)	42,991	19.602%	32.673%	-13.071%	(5,619.25)
Plant 481							
Unamortized 481	(842,764)		(842,764)	19.602%	32.673%	-13.071%	110,155.66
NOL							
Nol Carryforwad	5,725,508		5,725,508	21.000%	35.000%	-14.000%	(801,571.12)

Text for B/S P&L item	Total of the comparison period	Absolute difference	Account Number	Company Code	Sort code	Modified TBBS Code	Footnote Code	Total of reporting period	Tax Basis	Difference
10700000 CWIP	2,247,208	1,761,915	10700000	1026	Plant CWIP T100.7		L1	4,009,123	3,975,805	(33,318)
10780000 CWIP - Workbasket Accrual	72	56,181	10780000	1026	Plant CWIP T100.7		L1	56,253		(56,253)
Transfer Plant 481 out of Powertax classification					Plant 481				(572,764)	(572,764)
CWIP Correction					Plant CWIP				(424)	(424)
25212000 Advances for Construction - NT Ext Deposits	(3,642,740)	346,163	25212000	1026	Plant Custc T108		A1	(3,296,577)		3,296,577
25215000 Advances for Construction - NT Hydrants	(65,157)	20,586	25215000	1026	Plant Custc T108		A1	(44,570)		44,570
25217000 Advances for Construction - NT WIP	(204,507)	127,299	25217000	1026	Plant Custc T108		A1	(77,208)		77,208
25223000 Advances for Construction - Tax Services	(112,623)	10,120	25223000	1026	Plant Custc T108		A1	(102,503)		102,503
25227000 Advances for Construction - Tax WIP	(32,532)	32,532	25227000	1026	Plant Custc T108		A1	-		-
25280000 Advances for Construction - Reclassed to Current	271,000	(32,000)	25280000	1026	Plant Custc T108		A1	239,000		(239,000)
25299900 Advances for Construction - Current	(271,000)	32,000	25299900	1026	Plant Custc T108		A1	(239,000)		239,000
27117000 CIAC-Non Taxable - WIP	(72,759)	29,768	27117000	1026	CIAC WIP T108		A1	(42,991)		42,991

TENNESSEE AMERICAN WATER COMPANY
DOCKET NO. 18-00039
SECOND DISCOVERY REQUEST OF THE
CONSUMER ADVOCATE DIVISION
PHASE II

Responsible Witness: John R. Wilde

Question:

9. Refer to the excel spreadsheet provided in the Company's response to Request No. 3-5, and specifically to the tab identified as "2018 Vintage 2008-2017":
- (a) Confirm that cell C27 within the row labeled "Current Difference" reflects 2018 impacts on the deferred tax liability balance; and
 - (b) Provide a thorough explanation supporting the justification for the calculation found within cell E22 within the "Intermediate Workpaper" tab.

Response:

- (a). Cell C27 within the row labeled Current Difference is the federal income tax temporary difference for vintages 2008 to 2017. It is used to compute federal ADIT for the applicable vintages using ARAM. That computation results in the amount contained in cell F27.
- (b). As discussed in the response to item 7, the NOL is amortized proportional to ARAM impacts on property in vintage years 2008 to 2017. The formula in cell E22 of the Intermediate workpaper is computing that amount. Specifically, the timing difference is multiplied by 21%. That amount is then compared to the amount that the Powertax system computes using ARAM. The difference between those two amounts is the ARAM impact.

**TENNESSEE AMERICAN WATER COMPANY
DOCKET NO. 18-00039
SECOND DISCOVERY REQUEST OF THE
CONSUMER ADVOCATE DIVISION
PHASE II**

Responsible Witness: John R. Wilde

Question:

10. The Company's 3.06 Report identifies a Deferred Tax balance, as of December 31, 2017, of \$23,704,995 (presumably this balance is net of a deferred tax asset balance). Please see the worksheet below:

- (a) Reconcile the ADIT Liability balance per the Company's 12/31/17 3.06 Report as stated in its Form 3.06 report submitted to TPUC with the corresponding cells found within the attachment provided in TAWC Discovery Response No. 3-5. Provide the appropriate narrative to support the reconciliation; and
- (b) To the extent the reconciling items listed below are inaccurate, provide the corrected data and identify the source of such data in both reports submitted to TPUC, as well as information contained in TAWC Discovery Response No. 3-5.

ADIT Reconciliation Worksheet	Per 2018 Report 259 Tab	Amounts	
	Cell Reference		
Balance at 12/17, Per 3.06 Report		\$ 23,704,995	
ADIT Balance at Statutory Rate - Fed	H17		29,162,679
ADIT at Statutory Rate - TN	H55		7,309,143
Less: Regulatory Asset	I80		(1,023,281)
Calculated Restated ADIT		35,448,542	
Difference		(11,743,547)	

Response:

(a). The \$23,704,995 balance as shown on Form 3.06 as of December 31, 2017 is the Total ADIT the financial statements adjusted as of the date for specific regulated assets and liabilities related to ADIT to be recovered/refunded in future rates. The ADIT amounts taken from PowerTax report 259 only include ADIT related to utility plant in service (UPIS) as of December 31, 2017 and are not adjusted for any regulatory assets and liabilities related to ADIT to be

recovered/refunded in future rates. So the reconciliation requests is somewhat of a apples to oranges comparison. However, the difference would be as a general matter the ADIT related to non-plant, Net Operating Loss Carryover, CWIP, and ADIT accounted for in regulatory assets and liabilities that would need to be adjusted for.

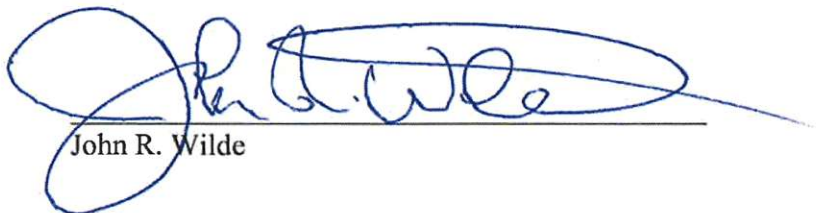
(b). None of the amounts presented are inaccurate, they simply are not comparable. It is difficult to provide a more accurate or detailed breakdown of our ADIT balances without knowing the purpose or use of the requested data, as the difference in the two selected sources have different purposes, in fact the PowerTax report already provides two different presentations of ADIT. UPIS ADIT at statutory rate (FAS 109 or ASC Financial Accounting), UPIS ADIT as recovered in rates (APB 11 or Regulatory Accounting), the difference of two is the Regulated Asset/Liability that will be resolved in future rates. However, neither balance it a total for ADIT as not all ADIT and related regulatory asset and liabilities are tracked in PowerTax, only UPIS is.

Without knowing the purpose or use of the requested data we cannot provide the ADIT balances needed.

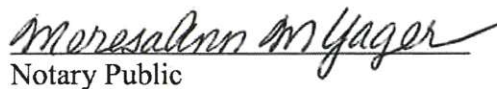
STATE OF New Jersey)
COUNTY OF Camden)

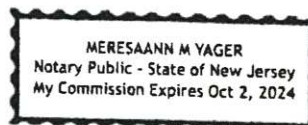
BEFORE ME, the undersigned, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared John R. Wilde, being by me first duly sworn deposed and said that:

He is appearing as a witness on behalf of Tennessee-American Water Company before the Tennessee Public Utility Commission, and duly sworn, verifies that the data requests and discovery responses are accurate to the best of his knowledge.


John R. Wilde

Sworn to and subscribed before me
this 6 day of Nov., 2019.


Notary Public



My Commission expires: Oct 2, 2024

CERTIFICATE OF SERVICE

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

Daniel P. Whitaker III
Karen H. Stachowski
Assistant Attorney General
Office of the Tennessee Attorney General
Consumer Advocate Unit, Financial Division
P.O. Box 20207
Nashville, TN 37202-0207
Daniel.Whitaker@ag.tn.gov
Karen.Stachowski@ag.tn.gov

This the 6th day of November, 2019.



Melvin J. Malone