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

RE: *Docket to Collect and Consider Information Relating to Commission Practice and Procedure for Rulemaking on Tenn. R. & Regs. 1220-01-01, 1220-01-02, and Other Sections as Determined Relevant, TPUC Docket No. 21-00018*

Dear Chairman Jones:

Attached for filing please find *Comments of Tennessee-American Water Company* in the above-captioned docket.

As required, copies will be mailed to your office. 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

Attachment

cc: Bob Lane, TAWC
Parties of Record

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

**DOCKET TO COLLECT AND)
CONSIDER INFORMATION)
RELATING TO COMMISSION)
PRACTICE AND PROCEDURE)
RULEMAKING ON TENN. R. & REGS.)
1220-01-01, 1220-01-02, AND OTHER)
SECTIONS AS DETERMINED)
RELEVANT)**

DOCKET NO. 21-00018

COMMENTS OF TENNESSEE-AMERICAN WATER COMPANY

Pursuant to the Notice Soliciting Public Comment on Rulemaking in the above-captioned matter issued by the Tennessee Public Utility Commission (the “Commission” or “TPUC”) on March 24, 2025, Tennessee-American Water Company (“Tennessee-American,” “TAWC” or the “Company”) respectfully submits these comments for consideration by the Commission.

I. INTRODUCTION AND BACKGROUND

On February 11, 2021, the Commission issued its Notice of Rule Development Workshop on Commission Practice and Procedure, scheduling an informal workshop in this docket for February 25, 2021, and providing the opportunity for written comments, new provisions, or proposals to be submitted in advance of the informal workshop. Chattanooga Gas Company (“CGC”) and the Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate” or “CAD”) filed written comments and/or proposals. A host of interested parties, including Tennessee-American, participated in the informal workshop. At the conclusion of the informal workshop, the interested parties requested the opportunity to meet informally at a

later time to further discuss proposed modifications to the Rules of Practice and Procedure before the date for the submission of further formal written comments in this docket. The Commission kindly granted this request. The interested parties submitted a status report to the Commission on March 19, 2021. Thereafter, additional written comments were submitted by the CAD, CGC, Piedmont Natural Gas Company, Inc., (“Piedmont”), Kingsport Power Company (“KPC”), and TAWC. TAWC appreciates and values the previous and current opportunities provided by the Commission for such informal, good faith and cooperative discussions among the various interested parties, including Commission Staff, as well as the various opportunities to submit written comments.

The Company realizes and respects that this undertaking by the Commission was not easy, includes several complex issues, and requires a careful balancing by the Commission. With this in mind, TAWC’s comments are intended to serve and support this process and not to hinder it. Tennessee-American respectfully submits the following comments for consideration by the Commission.¹

II. DISCUSSION AND COMMENTS

A. General Filing Procedures / Confidential Information

(Chapter 1220-01-01-01. General Practice and Procedure Before the Commission. Page 4 of the proposed rules, General Filing Procedure 1220-01-01-.03(5)(a))

This subsection of the proposed rules would require that for any document or information that a party seeks to be treated as confidential such party must provide a statement explaining with reasonable specificity the basis, including a citation to the law or rule relied upon for such

¹ For ease of reference, these comments correspond to the red-lined version of the proposed rules.

designation, under which the document is entitled to protection from public disclosure. We realize and appreciate that information submitted to the Commission should be treated as public, absent appropriate circumstances. It must likewise be acknowledged and recognized that in some petitions, filings and contested cases pending before the Commission, parties are requested or required to submit confidential, proprietary, or commercially sensitive information. A protective order is a mechanism that permits interested parties, as well as the Commission, to have access to and review such confidential materials without compromising the sensitive nature of the documents. Through the practices of the parties and the Commission over the years, and with the guidance of the Commission, what sufficiently constitutes confidential information warranting a Commission-issued protective order has appropriately narrowed. The present practice appropriately balances the public nature of the Commission's regulatory responsibilities against regulated utilities' business and commercial interests.

While on its face the proposed added layer of a statement may appear non-burdensome, it will add an administrative burden upon the producing party, make the protective order mechanism more contentious and likely unintentionally increase regulatory expenses.² Under the present, "rebuttable presumption" process, the parties and the Commission work in good faith and cooperatively together with the aim of avoiding the marking of information confidential in circumstances in which a confidential designation can be avoided or is unwarranted. The proposed changes may have the unintended consequences of eliciting more arguments and motions over the designation of materials as confidential, where previously an informal cooperative process resolved most, if not all, such circumstances. The additional proposed new layers are well-intended

² On page 9 of the redlined version of the proposed rules under Contested Cases, Chapter 1220-01-02, 1220-01-02-11(8) Discovery, this subsection also appears to further add at least two additional requirements for a protective order.

yet may be more administratively burdensome, may cause a gravitation to currently rare or only periodic adversarial motions, and may impact regulatory expenses.

B. Contested Cases / Responses to Discovery

(Chapter 1220-01-02 Contested Cases. Page 8 of the proposed rules.
Discovery, 1220-01-02-11(4)(b) and (e))

Subsection 1220-01-02-11(4)(b) of the proposed rules provides as follows: “Each response shall identify the name of the person making the response or responsible for the content[.]” Presently, Tennessee-American provides the name of a sponsoring or responsible person with each discovery response. The new proposed language “making the response” or “responsible for the content” appears to be a heightened requirement. For instance, a sponsoring or responsible person will likely be available to explain or defend such a response, while a person who actually prepared the content may not be a person who would normally submit testimony or be available at a Commission hearing on behalf of the Company. To the extent the Commission is expanding existing practice, the Company submits that the current practice requires the submitting utility to substantively support and own each response, while maintaining for the regulated utility the efficient flexibility of determining who and how many should present testimony and appear at hearings.

Subsection 1220-01-02-11(4)(e) of the proposed rules provides as follows: “All responses to discovery shall be signed under oath.” Presently, TAWC submits an oath or verification with each “set” of discovery responses and with any supplements to discovery. To the extent subsection 1220-01-02-11(4)(e) of the proposed rules would require an oath or verification with “each response” within a set, the Company maintains that TAWC’s current practice is sufficient for the submitting regulated utility to substantively support and own each response. Submitting an oath

or verification with “each response” would not sufficiently enhance the Company’s current practice to outweigh the added administrative burden it would present.

C. Contested Cases / Stipulations and Settlements

(Chapter 1220-01-02 Contested Cases. Page12 of the proposed rules.
Stipulations and Settlements, 1220-01-02-15(3))

This subsection requires that stipulations and/or settlement agreements in contested case proceedings shall be filed no less than 21 days before the date set for a hearing on the merits. Tennessee-American does not oppose such language or requirement being included in Commission-approved procedural schedules. The Company does desire, however, to highlight the reality that while parties may aim in good faith and cooperation to determine whether a contested matter can be resolved, in whole or in part, within such prescribed time frames, circumstances oftentimes simply require more time. In such instances, and under current processes, the Commission maintains the discretion of whether, when and how to act upon any stipulation and/or settlement agreements whenever they are submitted, even if within 21 days before the date set for a hearing on the merits. Since the Commission already has this discretion, and as the Commission already inserts such language within its procedural schedules in contested cases, there appears to be no substantive gain to codify this language in a rule. Moreover, while well-intended, codifying this language within a rule may have the unintended consequence of discouraging meaningful settlements discussions. The Commission already manages its operations as is necessary for the Commission by including this language in procedural schedules.

D. *Contested Cases / Evidence – Testimony and Burden of Proof*

(Chapter 1220-01-02 Contested Cases. Page 12 of the proposed rules.
Evidence, 1220-01-02-.16(5))

This subsection provides in part as follows: “Any party shall have the right to cross-examine witnesses who testify and shall have the right to submit *pre-filed rebuttal testimony*[.]” (emphasis added for ease of reference) TAWC reads this language to mean that any intervening party shall have the right to submit responsive testimony to a petition or filing, including to any pre-filed direct testimony, in a contested case (and of course any petitioning party shall also have the right to submit pre-filed rebuttal testimony). If the Company’s interpretation is accurate, then it may be helpful and avoid confusion to modify the words “pre-filed rebuttal testimony” in the proposed subsection to something like “responsive testimony” or “testimony.” If the Company’s reading of this subsection is not correct, and the Commission intends that this proposed subsection would provide any intervening party with the right to submit both responsive testimony and “rebuttal testimony,” the Commission would also have to include, by right, the opportunity for the petitioning party to reply to any such “rebuttal testimony” by an intervening party. In other words, it is axiomatic in jurisprudence, and in the Commission’s longstanding practice, that the petitioning party shall have the opportunity to respond to any testimony submitted by an intervening party.

E. *Contested Cases / Petition for Rates*

(Chapter 1220-01-02 Contested Case. Page 16 of the proposed rules.
Petition for Rates, 1220-01-02-23(2))

This subsection provides, in part, as follows: “For purposes of opening a docket file, such notice shall be considered an initial petition, and the requisite filing fee shall be required.” It is TAWC’s understanding that this proposed advance notice, if adopted, would require an anticipated date only and that no additional substantive information would accompany such notice. It is also

the Company's understanding that this notice would not commence the start of any statutory period or other Commission-instituted time clock.³

F. Contested Cases / Petition for Rates

(Chapter 1220-01-02 Contested Cases. Page 17 of the proposed rules.
Petition for Rates, 1220-01-02-23(7))

This subsection provides that a discovery response that contains any spreadsheet with hard-coded numbers, suppressed formulas, or linkages to files that have not been produced in discovery shall promptly be updated to include a compliant spreadsheet. Tennessee-American recommends that this language be stricken or modified. While the Company has worked with intervening parties and the Commission to either avoid, sufficiently explain, or, when appropriate, replace hard-coded numbers, suppressed formulas or linkages to files, there may, from time to time, be limited circumstances in which hard-coded numbers or suppressed formulas and linkages to files is appropriate. For instance, there are circumstances when such additional information is not responsive to the request. In other instances, the requested information may be housed along with other information that is beyond the request and the requested information is re-formatted or compiled in a different or modified format for this reason.⁴

Like other regulated utilities, and many other businesses, TAWC's financial records are not maintained by the Company solely in Excel Spreadsheets. TAWC utilizes specially designed computer systems and programs that keep and/or store financial data, transaction data and operational information. Use of these systems promotes efficiency, accuracy, and security. TAWC

³ As proposed by the Commission in proposed rule 1220-01-02-23(1) Petition for Rates (Contested Cases, page 16), proposed rule 1220-01-02-23 would only apply to rate case petitions under Tenn. Code Ann. §65-5-103(a). Tennessee-American opposes the CAD's comments to expand the proposed application.

⁴ The Company's concerns and rationale expressed here also apply to the proposed language in Practice and Procedure Before the Commission, Chapter 1220-01-01-01, page 3 of the proposed rules, General Filing Procedures, 1220-01-01-03 (4)(c), which provides as follows: "All spreadsheets or databases filed with the Commission shall have formulas visible, editable, and *all dependencies to files* provided to the Commission." (Emphasis added for ease of reference.)

generally retrieves data from these systems for use in a regulatory proceeding and presents it in an Excel spreadsheet and often performs further analysis or calculations based on the data retrieved from various sources using these integrated financial, accounting, and operational systems and associated programs. As a result, that Excel spreadsheet will have hard coded numbers that came directly from these various electronic sources and will not have what the rule refers to as “dependent files” that are also Excel Spreadsheets.

For the above-outlined reasons, the Company recommends that the Commission either strike this and any similar or related requirements from the proposed rules altogether or, in the alternative, adopt the modified language proposed by Kingsport Power Company.⁵ The alternative language proposed KPC reflects the current practices of the utility industry and represents a more practical and straightforward approach.

G. Recent Comments Submitted by the Consumer Advocate Division⁶

Consistent with its earlier comments, in its recent comments⁷ the CAD proposes that future customer notices should be approved by the Commission. TAWC addressed this proposal in its previous comments submitted in this matter on April 19, 2021.⁸ The CAD’s proposal here will result in unnecessary inefficiencies. Moreover, the Commission’s proposed rules would require a duly authorized officer of the petitioner or the petitioner’s attorney to submit a sworn statement of compliance with the new notice requirements. This is an efficient and effective approach with a check-and-balance mechanism for timely, proper, and sufficient customer notice.

⁵ See *Comments of Kingsport Power Company d/b/a AEP Appalachian Power*, pp. 2-3, TPUC Docket No. 21-00018 (April 1, 2025).

⁶ To the extent the Company has not further specifically commented on any recent comments submitted by the CAD, this should not be taken as agreement with the same.

⁷ *CAD’s Second Supplemental Comments*, p. 5, TPUC Docket No. 21-00018 (April 1, 2025).

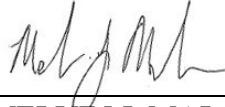
⁸ See *Comments of TAWC*, p. 4, TPUC Docket No. 21-00018 (April 19, 2021).

III. CONCLUSION

Tennessee-American appreciates the opportunity to comment on the Commission's development and consideration of proposed changes to the Commission's Rules on Practice and Procedure.

This the 21st day of April 2025.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

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This the 21st day of April 2025.



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