

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

**IN RE:**

**TENNESSEE-AMERICAN WATER  
COMPANY'S 2024 INCREMENTAL  
CAPITAL RECOVERY RIDER TARIFF  
PETITION**

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**DOCKET NO. 24-00011**

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**DIRECT TESTIMONY OF**

**DAVID N. DITTEMORE**

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April 26, 2024

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1 **I. Background**

2 **Q1. PLEASE STATE YOUR NAME AND OCCUPATION FOR THE RECORD.**

3 **A1.** My name is David N. Dittmore. I am a self-employed consultant working in the utility  
4 regulatory sector.

5 **Q2. PLEASE PROVIDE A SUMMARY OF YOUR BACKGROUND AND**  
6 **PROFESSIONAL EXPERIENCE.**

7 **A2.** I received a Bachelor of Science in Business Administration from the University of Central  
8 Missouri in 1982. I am a Certified Public Accountant licensed in Oklahoma (#7562). I was  
9 previously employed by the Kansas Corporation Commission (“KCC”) in various  
10 capacities, including Managing Auditor, Chief Auditor, and Director of the Utilities  
11 Division. I was self-employed as a utility regulatory consultant for approximately four  
12 years, primarily representing the KCC staff in regulatory issues. I also participated in  
13 proceedings in Georgia and Vermont, evaluating issues involving electricity and  
14 telecommunications regulatory matters.

15 Additionally, during this time frame, I performed a consulting engagement for Kansas Gas  
16 Service (“KGS”), my subsequent employer. For eleven years, I served as Manager and  
17 subsequently Director of Regulatory Affairs for KGS, Kansas's largest natural gas utility,  
18 serving approximately 625,000 customers. KGS is a division of One Gas, a natural gas  
19 utility serving about two million customers in Kansas, Oklahoma, and Texas. I joined the  
20 Tennessee Attorney General's Office in September 2017 as a Financial Analyst. In July  
21 2021, I began my consulting practice. I have presented testimony on behalf of clients in  
22 several different states.

1 I was formerly a Board Member of the Financial Research Institute (University of  
2 Missouri), a member of the NARUC Subcommittee on Accounting, the Vice-Chair of the  
3 Accounting Committee of the National Association of State of Utility Consumer Advocates  
4 (“NASUCA”), and an active participant in NASUCAs’ Natural Gas and Water  
5 Committees.

6 Overall, I have thirty years of experience in public utility regulation. I have presented  
7 testimony as an expert witness on many occasions. Attached as Exhibit DND-1 is a detailed  
8 overview of my background.

9 **Q3. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY BEFORE THE**  
10 **TENNESSEE PUBLIC UTILITY COMMISSION (“TPUC” OR THE**  
11 **“COMMISSION”)?**

12 **A3.** Yes. I have submitted testimony in many TPUC dockets.

13 **Q4. ON WHOSE BEHALF ARE YOU APPEARING?**

14 **A4.** I am appearing on behalf of the Consumer Advocate Division of the Tennessee Attorney  
15 General’s Office (“Consumer Advocate”).

16 **II. Testimony Purpose and Company Request**

17 **Q5. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

18 **A5.** The purpose of my testimony is to present the Consumer Advocate’s position regarding.  
19 the Company’s Incremental Capital Recovery Rider (“ICRR”) filing.

20 **Q6. WHAT IS THE COMPANY RECOMMENDING IN THIS PROCEEDING?**

**A6.** On behalf of the Company, Mr. Lane has provided calculations supporting no change to the existing capital riders. In other words, the Company is supporting an ICRR of zero. The Company also supports a continuation of the credit factor associated with the Tax Cuts and Jobs Act (“TCJA”). The Company has a clerical error in one spot of its application regarding the TCJA credit, which I will discuss later in my testimony.

### III. Executive Summary

**Q7. PROVIDE A SUMMARY OF YOUR RECOMMENDATIONS IN THIS PROCEEDING.**

**A7.** My recommendations include the following:

- The Commission should continue to monitor the earnings of TAWC to determine whether it may require a show-cause proceeding in the future. However, I am not recommending a show-cause proceeding at this time, despite the <Petitioner’s Exhibit TAWC 2023 ROE Test Calculation>.
- I recommend the Commission accept the Company’s proposed value of zero for the ICRR within this proceeding.
- The Commission should require a modification to the Company’s tariff to explicitly require a refund of any ICRR over-collections and the collection of ICRR under-collections, irrespective of the results of the ICRR calculation.
- I recommend that the Commission explicitly confirm that the appropriate TCJA credit is (3.82%).
- I recommend the Commission require the Company to submit its Balance Sheet and Income Statement supporting its ICRR and Return on Equity Test (“ROE Test”) calculations in future ICRR filings.

#### IV. TAWC Earnings Test

**Q8. PLEASE SUMMARIZE THE COMPANY’S PRESENTATION OF ITS EARNINGS RESULTS.**

1 **A8.** The Company's exhibit, <Petitioner Exhibit TAWC 2023 ROE Test Calculations>,  
2 indicate the Company earned a return on equity of 10.76%. This amount is 0.76% greater  
3 than the 10% authorized by the Commission in the Company's most recent base rate case.

4 **Q9. HAVE YOU QUANTIFIED THE LEVEL OF EXCESS EARNINGS BASED ON**  
5 **THE COMPANY'S CALCULATION?**

6 **A9.** Yes. The excess return identified by the Company translates to a total excess recovery of  
7 \$1.5 million. Exhibit DND-2 sets out the calculation I used in arriving at the \$1.5 million  
8 excess.

9 **Q10. HAVE YOU CONDUCTED AN EXTENSIVE REVIEW OF THE COMPANY'S**  
10 **OPERATING RESULTS TO ASSESS THE REASONABLENESS OF THE**  
11 **COMPANY'S CALCULATED RETURN ON EQUITY ("ROE")?**

12 **A10.** No.

13 **Q11. WHY DIDN'T YOU CONDUCT A THOROUGH REVIEW OF THE HISTORICAL**  
14 **RESULTS PRESENTED BY THE COMPANY?**

15 **A11.** The purpose of this Docket was to evaluate the ICRR. The fact that the Company had  
16 excess earnings prevents the Company from collecting an ICRR, regardless of the  
17 magnitude of the over-earnings. Thus, the magnitude of over-earnings does not matter for  
18 ICRR purposes. If the ICRR proposal was positive, I would have conducted a more  
19 thorough review of the Company's 2023 earnings.

20 **Q12. IF YOU HAD CONDUCTED A COMPLETE EARNINGS REVIEW, MIGHT**  
21 **YOUR FINDINGS DIFFER FROM THOSE PRESENTED BY THE COMPANY?**

22 **A12.** Yes.

1 **Q13. ARE YOU CONCERNED WITH THE EXCESS EARNINGS SET OUT IN**  
2 **EXHIBIT DND-2?**

3 **A13.** Yes.

4 **Q14. ARE YOU RECOMMENDING THAT THE COMMISSION INITIATE AN**  
5 **DOCKET TO REVIEW THE REASONABLENESS OF THE COMPANY'S**  
6 **RATES?**

7 **A14.** No, not at this time.

8 **Q15. WHAT FACTORS HAVE CAUSED YOU TO DECLINE TO RECOMMEND A**  
9 **COMPREHENSIVE INVESTIGATION AT THIS TIME, GIVEN THE EXCESS**  
10 **RETURNS OF AT LEAST \$1.5 MILLION?**

11 **A15.** The Commission's methodology in establishing just and reasonable rates in a base rate case  
12 differs from the definitions of excess/under earnings within the ICRR. In a base rate case  
13 proceeding, the Commission relies upon a forward-looking test period, which involves a  
14 significant level of estimation of the revenue requirement components. The earnings  
15 established within the ICRR are based upon known,measurable, historical results, adjusted  
16 to comply with certain regulatory determinations made in prior Commission orders.  
17 Therefore, the results of the ICRR earnings determination could differ significantly from  
18 the results of an earnings review using a forward-looking test period in a base rate case.

19 For this reason, considering the 2023 ROE results, I do not believe it is likely that  
20 ratepayers would receive a net rate reduction as a result of a show-cause proceeding.  
21 Therefore, I am not recommending that a show-cause proceeding be initiated at this time.  
22 Instead, I recommend that the Commission continue to monitor the Company's earnings  
23 for reasonableness.

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1           **COMMISSION IN TPUC DOCKET NO. 19-00103, IT SHOULD BE PERMITTED**  
2           **TO RETAIN THE OVER-COLLECTIONS OF ITS PREVIOUSLY ADOPTED**  
3           **CAPITAL RIDER SURCHARGE?**

4   **A19.** I agree that the tariff does not explicitly address this issue. Also, I agree with the Company  
5           that any over/under collections of the legacy capital rider are a component of the ICRR  
6           based upon the configuration of the schedules included in the tariff. The Company's  
7           position is that it should not be required to refund the over-collections identified in its filing  
8           since the ICRR is zero due to its current over-earning situation. I will agree for purposes  
9           of this Docket that the Company retain the over-collection; however, this issue should be  
10          addressed going forward as I will explain further in my testimony.

11   **Q20. DID THE TERMS OF THE SETTLEMENT AGREEMENT IN TPUC DOCKET**  
12          **NO. 19-00103 ADDRESS THE COLLECTION OF PREVIOUSLY APPROVED**  
13          **CAPITAL RIDER SURCHARGE VALUES?**

14   **A20.** The Settlement Agreement addressed this topic in a general manner. Specifically, one of  
15          the characteristics of the new calculation was set forth on page 3 of the Stipulation and  
16          Agreement:

17               *Previously authorized capital rider revenue is not at risk and shall be*  
18               *considered the legacy capital rider surcharge. Specifically, all capital rider*  
19               *revenue prior to January 31, 2023 will be considered 'legacy' capital rider*  
20               *surcharge, which is based upon capital investments through December 31,*  
21               *2022.<sup>1</sup>*

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<sup>1</sup> This is a very favorable provision to the Company, as the revenue requirement associated with its 'legacy' capital investment declines every year through the recognition of a growing balance of Accumulated Depreciation associated with the capital investment. As depreciation expense continues to be recovered from ratepayers, the actual legacy net plant in service declines. Despite this accounting feature, the Stipulation permits the Company to continue to collect the legacy surcharge based upon the static amount of capital rider Net Plant in Service as of December 31, 2022; *See Stipulation and Settlement Agreement, Pre-Filed Direct Testimony Supporting the Settlement Agreement, and TAWC Proposed Incremental Capital Recovery Rider Tariff on Behalf Of The Consumer*

1 My conclusion from this paragraph is that the intent of the Stipulation was for the Company  
2 to recover (and ratepayers to pay) the authorized revenue requirement associated with the  
3 legacy capital rider as of December 31, 2022, nothing more and nothing less.

4 Secondly, page 5, paragraph 10 contains the following statement referencing the  
5 calculation of the ROE Test:

6 *The 2024 operating revenue for purposes of calculating the 2024 ROE test*  
7 *would be reduced for the 2024 ICRRR<sup>2</sup> collections which related to 2023*  
8 *results on a net of tax basis. This would apply to any reconciliation amount*  
9 *for “legacy” capital rider collections as well.*

10 Thus it is clear from the Stipulation and Agreement that the parties recognized the existence  
11 of a reconciliation of the legacy capital rider.

12 **Q21. DO YOU AGREE WITH THE COMPANY’S CONTENTION THAT RETENTION**  
13 **OVER-COLLECTION OF THE LEGACY CAPITAL RIDER SURCHARGE IS**  
14 **REASONABLE?**

15 **A21.** No. Retaining excess recoveries from the legacy capital rider is neither just, nor  
16 reasonable. This issue is exacerbated when the Company is recovering excess revenue  
17 from captive customers and is then permitted to retain excess capital rider collections for a  
18 period in which it has earned excessive returns.

19 **Q22. ARE YOU RECOMMENDING A MODIFICATION TO THE COMPANY’S ICRR**  
20 **TARIFF TO ADDRESS THIS ANOMALY?**

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*Advocate, TN Public Utility Commission Party Staff, City Of Chattanooga, and TAWC (hereinafter referred to collectively as the “Parties”), TPUC Docket No. 19-00103 (October 26,2023).*

<sup>2</sup> “ICRRR” is the legacy acronym contained in the Settlement language of TPUC Docket No. 19-00103; however, the Company has since filed its Petition with acronym “ICRR.” For clarity, both acronyms refer to the same mechanism. To keep references within dockets consistent, the mechanism in this docket, 24-00011, will be referred to as “ICRR.”

1   **A22.** Yes. I recommend the Commission require the Company to modify its tariff to explicitly  
2       state that any over/under collection of previously authorized capital rider surcharges be  
3       either returned to or collected from ratepayers in a subsequent ICRR docket. Positive or  
4       negative collections should be translated to a percentage and would represent a distinct line  
5       item in the tariff and be netted against the cumulative existing capital rider surcharge of  
6       36.3%, treated in a similar manner as the TCJA offset reflected in the Company’s exhibit,  
7       <Petitioner’s Exhibit – Annual Approved Tariffs>. In summary, there would be an annual  
8       reconciliation of the legacy capital rider surcharge regardless of the results of the ICRR  
9       calculation.

10                                   **VI.    TCJA Factor**

11   **Q23. DO YOU WISH TO COMMENT ON THE TCJA CREDIT IDENTIFIED AS**  
12       **(3.72%) IN THE <PETITIONER’S EXHIBIT – ANNUAL APPROVED TARIFFS>?**

13   **A23.** In response to Consumer Advocate DR No. 1-14, the Company acknowledged that the  
14       reference to the TCJA credit should be (3.82%) rather than (3.72%). The Company has  
15       confirmed it is billing the correct (3.82%) rate, which is correctly identified in the  
16       Company’s First Revised Sheet No. 12 attached to Mr. Lane’s testimony.<sup>3</sup>

17                                   **VII.   Balance Sheet and Income Statement**

18   **Q24. NOW, TURN TO YOUR RECOMMENDATION THAT THE COMPANY**  
19       **PROVIDE ITS YEAR-END BALANCE SHEET AND INCOME STATEMENT**  
20       **INFORMATION AS AN ADDITIONAL ICRR FILING REQUIREMENT.**

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<sup>3</sup> Direct Testimony of Robert C. Lane (with Exhibits and Verification), 39, TPUC Docket No. 24-00011 (March 8, 2024).

1   **A24.** The Company should provide its year-end Balance Sheet and Income Statement  
2       Information as an additional ICRR requirement. The addition of the Company's Balance  
3       Sheet and Income Statement would allow the Consumer Advocate to trace the Company's  
4       identified rate base and net operating income components to a source document. This  
5       information is contained in the Company's Form 3.06 submitted annually to the  
6       Commission. The Form 3.06 is not available to the Consumer Advocate at the time of the  
7       Company's ICRR filing. However, the Company must have this information completed at  
8       the time of the filing because the ICRR calculation requires the identification of various  
9       elements of the Balance Sheet and Income Statement. Thus providing the source document  
10      for the additional filing information would already be complete and would not present an  
11      additional burden to the Company to provide at the time of filing.

12   **Q25. DOES THIS CONCLUDE YOUR TESTIMONY?**

13   **A25.** Yes, however I reserve the right to supplement my testimony if new information becomes  
14      available.

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

**IN RE:**

**TENNESSEE-AMERICAN WATER  
COMPANY'S 2024 INCREMENTAL  
CAPITAL RECOVERY RIDER TARIFF  
PETITION**

**DOCKET NO. 24-00011**

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**AFFIDAVIT**

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

David N. Dittmore

**DAVID N. DITTEMORE**

Sworn to and subscribed before me

This 19 day of April, 2024.

Terra Allen

**NOTARY PUBLIC**



My Commission Expires:

January 31, 2027

David Dittamore

Experience

**Areas of Specialization**

Approximately thirty-years experience in evaluating and preparing regulatory analysis, including revenue requirements, mergers and acquisitions, utility accounting and finance issues and public policy aspects of utility regulation. Presented testimony on behalf of my employers and clients in natural gas, electric, telecommunication and transportation matters covering a variety of issues.

Self-Employed; **Consultant July 1 - Current**; Responsible for providing evaluation of utility ratemaking issues on behalf of clients. Prepare analysis and expert witness testimony.

Tennessee Attorney General's Office; **Financial Analyst September, 2017 – June 2021**; Responsible for evaluation of utility proposals on behalf of the Attorney General's office including water, wastewater and natural gas utility filings. Prepare analysis and expert witness testimony documenting findings and recommendations.

Kansas Gas Service; **Director Regulatory Affairs 2014 - 2017; Manager Regulatory Affairs, 2007 - 2014**

Responsible for directing the regulatory activity of Kansas Gas Service (KOS), a division of ONE Gas, serving approximately 625,000 customers throughout central and eastern Kansas. In this capacity I have formulated strategic regulatory objectives for KOS, formulated strategic legislative options for KOS and led a Kansas inter-utility task force to discuss those options, participated in ONE Gas financial planning meetings, hired and trained new employees and provided recommendations on operational procedures designed to reduce regulatory risk. Responsible for the overall management and processing of base rate cases (2012 and 2016). I also played an active role, including leading negotiations on behalf of ONE Gas in its Separation application from its former parent, ONEOK, before the Kansas Corporation Commission. I have monitored regulatory earnings, and continually determine potential ratemaking outcomes in the event of a rate case filing. I ensure that all required regulatory filings, including surcharges are submitted on a timely and accurate basis, I also am responsible for monitoring all electric utility rate filings to evaluate competitive impacts from rate design proposals.

Strategic Regulatory Solutions; 2003 -2007

**Principal**; Serving clients regarding revenue requirement and regulatory policy issues in the natural gas, electric and telecommunication sectors

Williams Energy Marketing and Trading; 2000-2003

**Manager Regulatory Affairs**; Monitored and researched a variety of state and federal electric regulatory issues. Participated in due diligence efforts in targeting investor owned electric utilities for full requirement power contracts. Researched key state and federal rules to identify potential advantages/disadvantages of entering a given market.

MCI WorldCom; 1999 - 2000

**Manager, Wholesale Billing Resolution;** Manage a group of professionals responsible for resolving Wholesale Billing Disputes greater than \$50K. During my tenure, completed disputes increased by over 100%, rising to \$150M per year.

Kansas Corporation Commission; 1984- 1999

**Utilities Division Director** - 1997 - 1999; Responsible for managing employees with the goal of providing timely, quality recommendations to the Commission covering all aspects of natural gas, telecommunications and electric utility regulation; respond to legislative inquiries as requested; sponsor expert witness testimony before the Commission on selected key regulatory issues; provide testimony before the Kansas legislature on behalf of the KCC regarding proposed utility legislation; manage a budget in excess of \$2 Million; recruit professional staff; monitor trends, current issues and new legislation in all three major industries; address personnel issues as necessary to ensure that the goals of the agency are being met; negotiate and reach agreement where possible with utility personnel on major issues pending before the Commission including mergers and acquisitions; consult with attorneys on a daily basis to ensure that Utilities Division objectives are being met.

**Asst. Division Director** - 1996 - 1997; Perform duties as assigned by Division Director.

**Chief of Accounting** 1990 - 1995; Responsible for the direct supervision of 9 employees within the accounting section; areas of responsibility included providing expert witness testimony on a variety of revenue requirement topics; hired and provided hands-on training for new employees; coordinated and managed consulting contracts on major staff projects such as merger requests and rate increase proposals;

**Managing Regulatory Auditor, Senior Auditor, Regulatory Auditor** 1984 - 1990; Performed audits and analysis as directed; provided expert witness testimony on numerous occasions before the KCC; trained and directed less experienced auditors on-site during regulatory reviews.

Amoco Production Company 1982 - 1984

**Accountant** Responsible for revenue reporting and royalty payments for natural gas liquids at several large processing plants.

#### **Education**

- B.S.B.A. (Accounting) Central Missouri State University
- Passed CPA exam; (Oklahoma certificate # 7562) - Not a license to practice

**TAWC Excess Earnings Calculations  
Per TAWC Capital Rider Filing**

**Exhibit DND - 2**

<b>Line No.</b>	<b>Item</b>	<b>Amount</b>	<b>Source</b>
1	Equity Financed Rate Base	\$ 146,301,521	Lane pdf 37/55; line 24
2	* Excess Return	<u>0.7600%</u>	Lane pdf 37/55; line 27
3	Excess (Monopoly) Return	\$ 1,111,891.56	Line 1 * Line 2
4	Gross-Up for Taxes Factor	1.3538	Line 15
5	<div style="border: 1px solid black; padding: 5px; display: inline-block;">Excess Revenue</div>	<div style="border: 1px solid black; padding: 5px; display: inline-block;">\$ 1,505,302</div>	Line 3 * Line 4. Does not include Bad Debt gross-up or other revenue gross-ups, however these would not be significant
6	<b>Gross-Up Tax Calculation</b>		
7	Taxable Revenue	100.00%	
8	Less: State Tax Rate	<u>6.50%</u>	
9	Income Subject to Federal Tax	93.50%	Line 7 - Line 8
10	Multiplied By: Federal Tax Rate	<u>21.00%</u>	
11	Effective Federal Rate	19.64%	Line 9 * Line 10
12	Plus: State Rate	6.50%	
13	Effective Composite Fed/State Rate	26.14%	Line 11 + Line 12
14	Reciprical Rate (1/Composite Rate)	73.87%	1 - Line 13
15	Gross Up Factor (1/Reciprocal Rate)	1.3538	1/Line 14



**TENNESSEE AMERICAN WATER COMPANY  
DOCKET NO. 24-00011  
FIRST DISCOVERY REQUEST OF THE  
CONSUMER ADVOCATE DIVISION**

**Responsible Witness: Bob Lane**

**Question:**

1-9. Explanation. Refer to the *Petition*, File <Petitioner Exhibit TAWC 2024 ICRRR & ROE Test Calculation>, Tab “2024 ICRRR Calc”. Is it the Company’s position that it should be permitted to retain the over collection in this situation where there is not a positive revenue requirement to be collected? If so, provide the reasoning for that position.

**RESPONSE:**

Yes. The tariff adopted in TPUC Docket No. 19-00103 requires the reduction of the ICRRR by the amount of any over collection of revenues during 2023 at line 43 of the Calculation. In 2023, TAWC over-collected Legacy Rider authorized revenue by \$362,155. At line 43, that amount is subtracted from the after-tax revenue requirement \$862,936, leaving the remaining after tax revenue requirement to be \$500,782. Notwithstanding the over collection adjustment, because the ROE Test yielded an Adjusted ROE in excess of authorized, the Company is also not permitted to seek any ICRRR recovery. Conversely, if there had been an under collection of revenues during 2023, the operation of the ICR Tariff adopted in Docket No. 19-00103 would have increased the ICRRR but still, because of the ROE Test outcome referenced above, the Company would not be able to seek recovery of that increased ICRRR either.

In sum, the ICR Tariff governs this result. The ICR Tariff works to reduce the ICRRR by any overcollections, reducing the amount of ICRRR the Company can request. (See Line 42 of

the ICRRR Calculation - TPUC No. 19 Original Sheet No. 12-ICR-8). Conversely, under the Tariff, any under collection has the effect of increasing the ICRRR.

Regardless, because the Company's Adjusted ROE as calculated under the Tariff exceeds the currently authorized ROE of 10%, there is an earnings surplus that makes this issue moot. Under the Tariff, there will be "no ICRRR for that single year." Absent an earning surplus, the Company would have submitted an ICRRR of \$500,782, reduced from \$862,936 by the over collection. However, due to the surplus earning defined by the ROE Test, none of the \$500,782 is eligible for recovery by TAWC. And hence, the ICRRR percentage is zero.

This is the way the Commission-authorized Tariff functions. Further, as the Tariff functions symmetrically to both over and under collections, this outcome is not only accurate but fair and reasonable.