

STATE OF TENNESSEE

Office of the Attorney General



JONATHAN SKRMETTI
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202
TELEPHONE (615) 741-3491
FACSIMILE (615) 741-2009

May 24, 2024

Electronically Filed in TPUC Docket
Room on May 24, 2024 at 10:39 a.m.

Kelly Cashman-Grams
c/o Ms. Tory Lawless, Docket Manager
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, Tennessee 37242-0001

Re: Tennessee Public Utility Commission, Docket No. 24-00011, *Petition of Tennessee-American Water Company's 2024 Incremental Capital Recovery Rider Tariff*

Dear Ms. Cashman-Grams:

On May 21, 2024, the Consumer Advocate filed Supplemental Testimony of David N. Dittmore. Page 8, line 14 contains an incomplete sentence. Please file the attached corrected version of Supplemental Testimony of David N. Dittmore that contains the complete sentence on Page 8, line 14. This is the only change that has been made to the supplemental testimony.

The Consumer Advocate requests that this letter and Supplemental Testimony of David N. Dittmore be filed in this Docket.

Respectfully,

A handwritten signature in black ink, appearing to read "Victoria B. Glover".

Victoria B. Glover
Assistant Attorney General

cc: Melvin Malone
Katherine Barnes

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

IN RE:)	
)	
TENNESSEE-AMERICAN WATER)	
COMPANY’S 2024 INCREMENTAL)	DOCKET NO. 24-00011
CAPITAL RECOVERY RIDER TARIFF)	
PETITION)	
)	

SUPPLEMENTAL TESTIMONY OF

DAVID N. DITTEMORE

May 24, 2024

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I. BACKGROUND

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

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

13 **Q2. DID YOU HAVE OCCASION TO SUBMIT PRE-FILED TESTIMONY IN THIS**
14 **DOCKET?**

15 **A2.** Yes. I submitted direct written testimony in this proceeding on April 26, 2024, on behalf of
16 the Consumer Advocate Division of the Attorney General's Office.

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II. PURPOSE OF SUPPLEMENTAL TESTIMONY

19 **Q3. WHY ARE YOU SUBMITTING SUPPLEMENTAL TESTIMONY IN THIS**
20 **DOCKET?**

21 **A3.** On May 1, 2024, Tennessee American Water Company ("TAWC" or the "Company")
22 submitted a comprehensive general rate case.¹ Included in that filing were proposals
23 related to the Company's Incremental Capital Recovery Rider ("ICRRR"). The proposal
24 included new tariff pages sponsored by Mr. Robert Lane² and a proposal to expand the
25 scope of ICRR-qualifying investments sponsored by Mr. Grady Stout.³ Further, Mr. Lane
26 has filed comments in his rebuttal testimony in this Docket concerning the implications of
27 the newly submitted rate filing on their ICRR tariff that must be addressed. Mr. Lane also

¹ *Petition of Tennessee American Water Company to Modify Tariff, Change and Increase Charges, Fees, and Rates and For Approval of a General Rate Increase*, TPUC Docket No. 24-00032, (May 1, 2024).

² *Direct Testimony of Robert Lane*, at 31:18, TPUC Docket No. 24-00032 (May 1, 2024).

³ *Direct Testimony of Grady Stout*, at 18:11, TPUC Docket No. 24-00032 (May 1, 2024).

1 uses the existence of the Company's rate filing to suggest it's not worth the Commission's
2 time to modify the existing ICRR tariff.⁴

3 **Q4. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?**

4 **A4.** I recommend the Commission address all ICRR issues in a separate stand-alone docket.
5 This would remove the ICRR issues from the Company's base rate case, TPUC Docket No.
6 24-00032. I will also explain why the Commission should reject the argument supported
7 by the Company that its pending rate filing negates the need to true-up future ICRR
8 collections.

9 **Q5. WHY ARE YOU SUPPORTING A SEPARATE STAND-ALONE DOCKET TO**
10 **ADDRESS ICRR ISSUES?**

11 **A5.** Several reasons support a separate analysis of the Company's ICRR proposal. These points
12 include:

- 13 • The Company has failed to address key components of a well-functioning
14 ICRR, and the tariff proposed in the Company's new general rate case filing
15 is not viable for the 2025 ICRR filing and beyond.
- 16 • The ICRR issues, as outlined in TPUC Docket No. 19-00103, are complex.
17 Resolution of the docket took over four years from the announcement of the
18 docket until the parties resolved them through a Stipulation and Settlement
19 Agreement.
- 20 • The Company's new rate case filings contain major policy changes in
21 addition to the complexity of a rate filing, which is also the first rate case
22 made by the Company in the past twelve years.
- 23 • The lack of detail in the Company's new ICRR proposal will undoubtedly
24 result in additional legal fees. These costs should be attached to an ICRR-
25 specific docket and not be deferred as a "rate case cost" to be recovered
26 from ratepayers. Ratepayers should not incur legal costs associated with
27 this issue that the Company has not sufficiently addressed in testimony.

⁴ *Direct Testimony of Robert Lane*, at 6:4-13, TPUC Docket No. 24-00011 (May 10, 2024).

1 **III. ICRR PROPOSAL TARIFF IS INACCURATE, OR AT BEST INCOMPLETE**

2 **Q6. DO YOU AGREE WITH MR. LANE’S STATEMENT THAT THE LEGACY ICRR**
3 **RATES WILL CEASE TO EXIST AFTER THE ADOPTION OF NEW BASE**
4 **RATES ARISING FROM TPUC DOCKET NO. 24-00032?⁵**

5 **A6.** Yes. There is no dispute that legacy ICR should be reset to zero.⁶ Unfortunately, other
6 aspects of the ICRR tariff must be addressed besides that simple issue. Mr. Lane does not
7 address these issues in this Docket or the recently submitted rate case docket. His
8 testimony seems to conclude that merely resetting the legacy ICRR rates to zero is all that
9 is necessary to address the ongoing ICRR issue.

10 **Q7. WHAT IS THE BASIS FOR YOUR CONCLUSION THAT THE PROPOSED ICRR**
11 **TARIFF IS INCOMPLETE?**

12 **A7.** Mr. Lane does not differentiate the nature of the upcoming 2025 filings from the 2026 and
13 2027 filings, either in his rebuttal testimony in this Docket or his testimony in TPUC
14 Docket No. 24-00032.

15 **Q8. DISCUSS HOW THE 2025 ICRR FILING IS UNIQUE.**

16 **A8.** Assuming the Company intends to make a filing in March 2025,⁷ it would be limited to
17 investments made in 2024 and the related costs incurred by the Company in 2025.
18 However, there is one very important distinction that makes the 2025 ICRR filing unique.

⁵ *Direct Testimony of Robert Lane* at 6:10-13, TPUC Docket No. 24-00011 (May 10, 2024).

⁶ The legacy rider relates to costs associated with investments made prior to January 1, 2024. The ICRR discussed in this testimony relates to qualifying investment made subsequent to January 1, 2024, forward.

⁷ While Mr. Lane makes reference to a March 2025 filing, he also states that “The Company will continue to make significant capital investment in needed infrastructure in 2024 without any incremental revenues associated with that investment under the ICRRRR.” Thus, the content of the Company’s 2025 ICRR filing is uncertain. *See Direct Testimony of Robert Lane*, at 5:12-18, TPUC Docket No. 24-00011 (May 10, 2024).

1 If the Company's proposal to roll all forecasted capital expenditures incurred in 2024 and
2 2025 into base rates is adopted, the Company's ICRR costs would not extend beyond 2024
3 and should be terminated after one year.

4 I will use an example to illustrate this point. The Company will be recovering costs
5 associated with incremental 2024 investment in base rates beginning in early 2025. In
6 normal ICRR filings, costs associated with investments in, say, 2020 are incurred annually.
7 In other words, investments made in 2020 resulted in depreciation expense and a required
8 rate of return in 2020, 2021, 2022, etc. In the normal course of collecting the ICRR, these
9 annual costs are layered on top of each other, and the summation of costs associated with
10 the annual capital expenditures is recovered from ratepayers.⁸ However, that will not be
11 the case with 2024 qualifying investments. This is because costs associated with
12 investments in 2024 will be recovered beginning in 2025. Thus, assuming cost recovery
13 applicable to 2024 capital expenditures is appropriate (based upon the calculation included
14 in their current tariff), such recoveries should only last one year. This is because the "cost
15 window" for these capital expenditures is limited to 2024, and the ongoing nature of the
16 costs will be collected in base rates beginning in early 2025. If the amounts in the ICRR
17 adopted in 2025 associated with the 2024 capital expenditures were collected beyond one
18 year, it would represent a double collection of the Company's costs. The proposed tariff
19 fails to address or account for this issue within the proposed language.

20 **Q9. IS THERE AN ALTERNATIVE TO THE COMPANY'S PROPOSAL TO ROLL ALL**
21 **2024 AND 2025 FORECASTED CAPITAL EXPENDITURES INTO BASE RATES?**

⁸ Subject to provisions contained in TPUC Docket No. 19-00103 which limit recoveries to those necessary to recover ICRR related revenue deficiencies, subject to a rate base limitation.

1 **A9.** Yes. An alternative that would allow the new ICRR to operate consistently with the legacy
2 capital rider would require the elimination of ICRR qualifying investment from rate base
3 in Docket No. 24-00032. This option would make for a more seamless ICRR mechanism
4 going forward.

5 **Q10. IN YOUR REVIEW OF THE COMPANY’S ICRR PROPOSAL IN TPUC DOCKET**
6 **NO. 24-00032, HAVE YOU NOTICED PROBLEMATIC SECTIONS OF THE**
7 **TARIFF?**

8 **A10.** Yes, although I have not had an opportunity to complete my review, I did note two
9 problematic areas in the proposed tariff. First, the Company has inserted references in its
10 tariff to the Commission’s order in TPUC Docket No. 24-00032 within the calculation of
11 the forward-looking ICRR tariff.⁹ These references would be appropriate for the
12 Company’s 2027 ICRR filing; but not for its 2025 filing. The 2025 filing, if made,
13 represents a look back at what occurred in 2024, based upon the levels of authorized rate
14 base in effect in 2024. The effective rate base adopted by the Commission in TPUC Docket
15 No. 24-00032 based upon 2025 values should not be applied in the review of 2024’s ICRR
16 activity.

17 Secondly, the draft tariff contained in Mr. Lane’s testimony in TPUC Docket No. 24-00032
18 deletes the following important phrasing:

19 *“Starting with the 2024 filing for investments made through December 31,*
20 *2023, the annual Incremental Capital Rider Revenue Requirement (ICRRRR)*
21 *will be calculated using the Eligible Rate Base less the amount recovered in the*
22 *Legacy Capital Rider rates.”¹⁰*

⁹ *Direct Testimony of Robert Lane*, Exhibit BL-2, TPUC No. 20, Original Sheet No. 12-ICR-9, TPUC Docket No. 24-00032 (May 1, 2024).

¹⁰ *Direct Testimony of Robert Lane*, Exhibit BL-2, TPUC No. 20, Original Sheet No. 12-ICR-2, TPUC Docket No. 24-00032 (May 1, 2024).

1 The proposed elimination of this language raises the question of how the Company intends
2 to calculate the ICRR in its March 2025 filing. Mr. Lane does not refer to this important
3 tariff change in his testimony in this Docket or the rate case docket. What the Company
4 intends to include in its 2025 ICRR filing and how the Company's proposed tariff changes
5 affect its ICRR calculation is left completely unanswered.

6 Based on the current timeline of the rate case,¹¹ the proposed tariff would become effective
7 prior to the March 2025 ICRR filing. That is, the rate case order adopting the new tariff
8 will be issued prior to the filing of the Company's 2025 ICRR. As proposed by the
9 Company, the 2025 filing using the 2024 ICRR rate base will be limited to an incremental
10 rate base above that determined in TPUC Docket No. 24-00032. This mismatch of time
11 periods must be addressed.

12 Mr. Lane allows for the possibility of modifying the terms of TPUC Docket No. 19-00103;
13 however, that seems, in his view, to be limited to the treatment of the over-under recovery
14 of ICRR amounts.¹²

15 **Q11. DISCUSS HOW THE 2026 ICRR FILING IS UNIQUE.**

16 **A11.** The Company's proposed ICRR tariff calls for an annual ICRR filing; therefore, there
17 would be a 2026 ICRR filing under the provisions of the ICRR tariff proposed by the
18 Company. This raises the question of what would be in the 2026 filing. Base rates would
19 have been approved to encompass the entirety of the estimated 2025 capital expenditures.
20 Therefore, it's unclear what the Company envisions the 2026 ICRR would contain in the

¹¹ Note at the time of the filing of this testimony, that there has been no ordered or agreed upon procedural schedule for the 24-00032 general rate case docket.

¹² *Rebuttal Testimony of Robert Lane*, at 5:12-15, TPUC Docket No. 24-00011 (May 10, 2024).

1 way of capital expenditures. The Company does not address the contents that would be
2 contained in the Company's 2026 filing in any testimony submitted in support of its petition
3 in TPUC Docket No. 24-00032, despite requesting the adoption of tariff language that
4 requires an annual ICRR filing after the approval of that docket.

5 **Q12. IF THE ICRR CONTINUES IN THE FUTURE, HOW WOULD THE COMPANY'S**
6 **2027 FILING DIFFER FROM ITS 2016 FILING?**

7 **A12.** The 2027 filing would incorporate 2026 qualifying ICRR capital expenditure-related
8 costs. Since the Company's base rates will include the 2025 plant in service levels, 2026
9 will represent the first year's capital expenditures not covered through base rates. In other
10 words, ICRR rates should be zero in 2026 through mid-2027.¹³

11 **IV. THE RATE CASE IS NOT WELL-SUITED TO ACCOMMODATE ICRR ISSUES**

12 **Q13. THE COMPANY HAS INCLUDED A REVISED ICRR TARIFF IN ITS RATE**
13 **CASE, TPUC DOCKET NO. 24-00032. DO YOU BELIEVE THIS IS THE**
14 **APPROPRIATE PLACE TO REQUEST MODIFICATIONS TO THE ICRR?**

15 **A13.** No. The ICRR issues in TPUC Docket No. 19-00103 took nearly four years to resolve.¹⁴
16 I was an active expert participant during the entire duration of that docket. There were
17 negotiations between the parties and significant details to work through before a final
18 agreement was reached. The framework adopted in TPUC Docket No. 19-00103 could not
19 have been achieved through a traditional ratemaking proceeding, whereby each party

¹³ Excluding any true-up of prior over/under collected ICRR balances.

¹⁴ The docket was officially opened on March 31, 2020, and a Commission order was issued on January 31, 2024. The Commission initially ordered the investigation into the Company's capital rider in TPUC Docket No. 18-00120, issued November 8, 2019.

1 submits its proposals and responds formally in writing, with contested issues decided by
2 the Commission.

3 The Company's rate case filing contains several proposals that go beyond a traditional rate
4 case filing, including its lead line service request to replace customer-owned lines, a low-
5 income rate discount proposal, removal of credit card fees, and a proposal to consolidate
6 differing rates charged among nearly all of its various systems. The Consumer Advocate
7 and the Commission itself must spend considerable time considering these proposals.

8 The legacy capital rider charges currently represent 36% of customers' bills. This
9 mechanism's significance demands that time be taken to ensure the timing and contents of
10 the filings are accurate and appropriate, and would be best accomplished in a process
11 separate from the pending rate case docket.

12 Another issue that must be considered within the ICRR is whether the rate design proposed
13 by the Company in its new base rate request is appropriate for the distribution of the ICRR
14 revenue requirement going forward.¹⁵ I do not believe the Company has addressed this
15 issue.

16 **Q14. DO YOU BELIEVE THE ICRR FRAMEWORK DEVELOPED IN TPUC DOCKET**
17 **NO. 19-00103 CAN CONTINUE TO BE USED IN THE FUTURE?**

18 **A14.** Yes. I believe the ICRR framework developed in TPUC Docket No. 19-00103 strikes a
19 reasonable balance between ratepayer and shareholder interests, albeit with modifications

¹⁵ The legacy capital rider charges currently represent 36% of customers' bills. *See Direct Testimony of Robert C. Lane (With Exhibits and Verification)*, Petitioners Exhibit First Revised Sheet No. 12-Riders-1, at 39, TPUC Docket No. 24-00011 (March 8, 2024).

1 to require the refence or collection of any over/under recoveries. I do not believe a
2 complete overhaul of the mechanism is necessary, but issues of timing and effective dates
3 of tariff provisions must be resolved. The tariff is complex because the Company is
4 recovering most of its incremental capital expenditure costs through the rider. Therefore,
5 care must be taken to ensure over-recoveries do not occur by failing to count rate base
6 components that decline over time.

7 **V. LEGAL FEES ASSOCIATED WITH THE ICRR PROPOSAL SHOULD NOT BE**
8 **CONSIDERED A RATE CASE EXPENSE**

9 **Q15. DO YOU BELIEVE THE LEGAL FEES ASSOCIATED WITH THE RESOLUTION**
10 **OF THE ICRR ISSUE SHOULD BE COUNTED AS A RATE CASE COST?**

11 **A15.** No. The Commission has historically permitted costs associated with rate cases to be
12 recovered from ratepayers. These rate case costs can be quite significant, both in nominal
13 amounts and in terms of cost per customer. The ICRR proposal submitted by the Company
14 is incomplete, should not be considered a rate case component, and should be set aside in
15 a separate docket. The legal costs of resolving the ICRR issue should be considered a
16 period cost and not captured as a regulatory asset recovered from ratepayers.

17 **VI. THE RATE CASE DOES NOT ELIMINATE THE NEED TO TRUE-UP ICRR**
18 **OVER/UNDER COLLECTIONS**

19 **Q16. DO YOU AGREE WITH MR. LANE'S IMPLICATION ON PAGES 5 AND 6 OF**
20 **HIS TESTIMONY IN THIS DOCKET¹⁶ THAT THE COMMISSION NEED NOT**
21 **WORRY ABOUT THE OVER/UNDER COLLECTION LEVELS DUE TO THEIR**
22 **RECENTLY FILED BASE RATE INCREASE REQUEST?**

¹⁶ *Direct Testimony of Robert Lane at 5-6, Docket 24-00011 (May 10, 2024).*

1 **A16.** No. The over/under collection issue is ongoing regarding the ICRR collections occurring
2 in 2024.

3 **Q17. DO YOU BELIEVE THE TREATMENT OF OVER/UNDER RECOVERIES**
4 **COULD BE ADDRESSED IN THE SEPARATE DOCKET YOU RECOMMENDED**
5 **ABOVE?**

6 **A17.** Yes. However, I want to be clear. The over/under recovery issue pending before the
7 Commission in this Docket is distinct from the other ICRR issues identified above.

8 **Q18. DOES THE FACT THAT THE COMPANY HAS PROPOSED MODIFICATIONS**
9 **TO ITS ICRR IN TPUC DOCKET NO. 24-00032 CAUSE YOU TO RECONSIDER**
10 **YOUR PROPOSAL SUBMITTED IN YOUR DIRECT TESTIMONY?**

11 **A18.** Yes. I continue to believe that going forward over/under recoveries should be reconciled.
12 However, this may be accomplished outside the ICRR mechanism. I recommend the
13 Commission require the Company to defer over/under collections in a regulatory
14 liability/asset account for future disposition by the Commission. This proposed tracking
15 would continue until the ICRR is reset to zero with the implementation of new base rates.
16 The necessary modification to address the ongoing aspects of over/under recovery within
17 the ICRR should be addressed, along with the other ICRR related issues identified above,
18 in a docket outside of TPUC Docket No. 24-00032.

19 **VII. CONCLUSION**

20 **Q19. DO YOU HAVE ANY FURTHER THOUGHTS AT THIS TIME?**

21 **A19.** Yes. I recommend the Commission require the Company to provide justification for its
22 letter of April 1, 2024, submitted in TPUC Docket No. 19-00103, wherein it notified the

1 Commission of its intent to utilize deferred accounting in light of (i) its ICRR tariff
2 proposal in TPUC Docket No. 24-00032, and (ii) its over-earning situation.

3 I recommend the Commission require the parties to collaborate in TPUC Docket No. 19-
4 00103 or a separate docket to determine whether a resolution can be reached regarding an
5 ICRR tariff that would be in effect as of the date new base rates are determined.

6 **Q20. DOES THIS CONCLUDE YOUR TESTIMONY?**

7 **A20.** Yes.

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

AFFIDAVIT

I, David N. Dittmore, on behalf of the Consumer Advocate Division of the Attorney General's Office hereby certify that the attached Supplemental 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 16 day of May, 2024.

Terra Allen

NOTARY PUBLIC



My Commission Expires: 1/31/2027.