

# BUTLER | SNOW

October 22, 2024

## VIA ELECTRONIC FILING

Hon. David Jones, Chairman  
c/o Ectory Lawless, Docket Room Manager  
Tennessee Public Utility Commission  
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Electronically Filed in TPUC Docket Room  
on October 22, 2024 at 2:22 p.m.

**RE: *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***

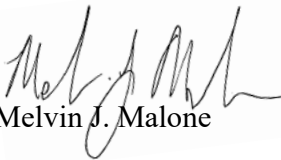
Dear Chairman Jones:

Attached for filing please find *Tennessee-American Water Company's Rebuttal Testimonies for (1) Heath Brooks; (2) Ann Bulkley; (3) Dominic J. DeGrazia; (4) Grant Evitts; (5) Nicholas Furia; (6) Larry Kennedy; (7) Bob Lane; (8) Robert V. Mustich; (9) Robert Prendergast; (10) Charles Rea; (11) Linda Schlessman; (12) Grady Stout; (13) Harold Walker, III; and (14) John Watkins* in the above-captioned matter.

As required, the original plus 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

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**TENNESSEE-AMERICAN WATER COMPANY, INC.**

**DOCKET NO. 24-00032**

**REBUTTAL TESTIMONY**

**OF**

**ROBERT PRENDERGAST**

**ON**

**LABOR VACANCIES, PERFORMANCE COMPENSATION, & HISTORICAL STAFFING  
LEVELS**

**REBUTTAL TESTIMONY  
ROBERT PRENDERGAST  
TENNESSEE AMERICAN WATER COMPANY  
DOCKET NO. 24-00032**

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1   **I.   INTRODUCTION**

2   **Q.   PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3   A.   My name is Robert Prendergast. My business address is 1 Water Street, Camden, NJ 08102.

4   **Q.   DID YOU PREVIOUSLY SUBMIT DIRECT TESTIMONY IN THIS**  
5       **PROCEEDING ON BEHALF OF TENNESSEE-AMERICAN WATER COMPANY,**  
6       **INC. (“TAWC” OR THE “COMPANY”)?**

7   A.   Yes. I filed direct testimony on May 1, 2024.

8   **Q.   WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

9   A.   The purpose of my rebuttal testimony is to address Mr. Dittemore’s and Mr. Garrett’s  
10       recommended adjustments to labor expense and support service performance  
11       compensation, which are based on their unsupported assumptions of vacant positions, filed  
12       on behalf of the Consumer Advocate Division (“CAD”) and the City of Chattanooga,  
13       respectively. In addition, I will provide testimony regarding historical staffing level data  
14       used in the testimony filed by Mr. Garvey on behalf of Utilities Workers Union of America  
15       (“UWUA”).

16   **II.   FORECASTED STAFFING LEVELS FOR ATTRITION YEAR**

17   **Q.   HAVE YOU REVIEWED MR. DITTEMORE’S AND MR. GARRETT’S**  
18       **TESTIMONY REGARDING THEIR PROPOSED VACANCY ADJUSTMENT?**

19   A.   Yes, I have.

20   **Q.   WHAT ARE MR. DITTEMORE AND MR. GARRETT’S PROPOSED VACANCY**  
21       **ADJUSTMENTS?**

1 A. Mr. Dittemore proposes to remove \$1,200,409 of labor and labor related expenses in  
2 Exhibit DND-3, based on the 16 vacancies identified in the Confidential Response to CAD  
3 DR No. 2-5. Mr. Garrett proposes to remove \$1,126,880 of labor and labor related  
4 expenses in Exhibit MG-2.3 based on the 17 vacancies filed in TAWC Exhibit EXP-5-  
5 Labor-RP, Schedule EXP 5.3 – 5.5. Mr. Dittemore argues that the Company consistently  
6 has vacant positions and that it is unrealistic for the Company to be fully staffed.<sup>1</sup> Mr.  
7 Garrett argues that the Company hasn't maintained consistent union employment levels.<sup>2</sup>

8 **Q. WHY DO MR. DITTEMORE'S AND MR. GARRETT'S NUMBER OF**  
9 **VACANCIES DIFFER?**

10 A. To clarify, Mr. Dittemore references the 16 vacancies identified in Confidential Response  
11 to CAD DR No. 2-5, which are the 16 additional Attrition Year positions identified by  
12 TAWC witness Stout. Mr. Garrett is referencing TAWC Exhibit EXP-5-Labor-RP which  
13 included an existing position that was vacant at the time of the filing, as well as the 16 new  
14 attrition year positions identified by witness Stout.<sup>3</sup>

15 **Q. DO YOU AGREE WITH THE PROPOSED ADJUSTMENTS?**

16 A. No, I do not. As Company witness Stout explains,<sup>4</sup> the vacancy adjustment is  
17 inappropriate, for a number of reasons including that the Company is actively attempting  
18 to fill vacancies. Indeed, as of the filing of this testimony the Company has filled 5  
19 vacancies of the 17 positions that were vacant at the time of filing. The Company now has  
20 a total headcount of 106 full time employees which exceeds the 100 and 101 full time

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<sup>1</sup> CAD Direct Testimony of Dittemore at 21:8-21 --23:1-9.

<sup>2</sup> COC Direct Testimony of Garrett at 31-32.

<sup>3</sup> TAWC Direct Testimony of Grady Stout at 38:3-8. (Witness Stout identifies 101 full-time employees of TAWC as of December 31, 2023 and 117 full-time employees for the Attrition Year.)

<sup>4</sup> TAWC Rebuttal Testimony of Grady Stout at 4:1 to 9:8.

1 employees that Mr. Garrett and Mr. Dittmore calculated their vacancy adjustments based  
2 on. The Company is also actively recruiting and screening candidates for four more  
3 positions to be filled by the end of the year and the remaining positions to filled within the  
4 attrition year. With these efforts, the Company has successfully filled essential and critical  
5 positions to support TAWC's continued objective of providing safe and reliable water  
6 service to its customers.

7 Moreover, the vacancy adjustments are particularly inappropriate given that Mr. Dittmore  
8 and Mr. Garrett do not provide any corresponding upwards adjustment to overtime and/or  
9 contract services. For example, the Company is projecting 12,965 overtime hours in this  
10 case (see TAWC Schedule EXP -5.3 and TAWC Schedule EXP-5.4) even though the 3 year  
11 average of overtime hours is 14,043 (see TAWC Schedule EXP-5.6) and the overtime hours  
12 during the base period of 2023 was 16,120 (see CADDR 1-112).

13 Like any business, TAWC is susceptible to attrition, which is part of the ordinary course of  
14 business. The Company continuously fills vacancies with internal movements, retirements,  
15 and other factors. Work must be completed with the resources that are available; if not with  
16 full-time employees, then potentially through overtime, temporary employees, or  
17 contracted employees, all of which come at a cost to TAWC. Accordingly, Tennessee-  
18 American believes, as outlined in Mr. Stout's testimony, that the Commission should  
19 include the full attrition year workforce request of 117 full time employees.

20 **III. HISTORIC STAFFING LEVELS**

21 **Q. HAVE YOU REVIEWED MR. GARVEY'S TESTIMONY RELATED TO**  
22 **STAFFING LEVELS?**

1 A. Yes, I have.

2 **Q. WHAT DID MR. GARVEY CONCLUDE AS TO THE STAFFING LEVELS OF**  
3 **TAWC?**

4 A. Based on the Full Time Employee Staffing Levels from 2012-2023 provided in TAWC  
5 Response to UWUA DR 1-18, docketed on July 30, 2024, Mr. Garvey concluded that the  
6 Company on average maintained only 93 full-time employees a year and did not maintain  
7 the full complement of 110 employees that the Company asserted it needed in the 2010 rate  
8 case.

9 **Q. WHAT IS YOUR RESPONSE TO THESE CONCLUSIONS?**

10 A. It appears that there was an error in the table provided in the response to the discovery  
11 request UWUA DR 1-18 relating to employee counts in the years 2012-2018. Specifically,  
12 the employee counts for the years 2012 through 2018 omitted employees that were no  
13 longer in the employment of the Company. Please see below an updated table with the  
14 correct employee staffing levels covering 2012-2018. The totals column was added to  
15 provide further context regarding Mr. Garvey's conclusions.

<b>Yearend Employment</b>	<b>Union</b>	<b>Non-Union Hourly</b>	<b>Exempt</b>	<b>Total</b>
2012	71	4	20	95
2013	69	11	21	101
2014	68	10	23	101
2015	69	11	23	103
2016	68	12	24	104
2017	69	11	23	103
2018	74	12	27	113
2019	70	14	23	107

Yearend Employment	Union	Non-Union Hourly	Exempt	Total
2020	73	13	25	111
2021	67	14	25	106
2022	64	14	24	102
2023	64	14	23	101

**Q. DOES THIS REVISED TABLE CHANGE THE STATISTICS USED IN MR. GARVEY'S TESTIMONY?**

A. Yes, the revised table shows that the Company has averaged 104 full-time employees a year since the last rate case.

**Q. WHAT CAN YOU CONCLUDE GIVEN THE REVISED STATISTICS?**

A. Based on the revised table and the updated average of 104 yearly full-time employees employed by the Company, it is reasonable to conclude that the Company was closer to its authorized headcount of 110 full-time employees than Mr. Garvey asserts with the incorrect statistics. Further, as I discuss above, and explained by Company witness Stout, the work required by Tennessee-American is performed through a combination of full-time employees, overtime hours, and/or contract services. Therefore, any historical analysis, like that advanced by Mr. Garvey would need to account for each of those items relative to the work Tennessee-American needed to perform in a particular year.

#### **IV. PERFORMANCE COMPENSATION**

**Q. HAVE YOU REVIEWED MR. DITTEMORE'S AND MR. GARRETT'S TESTIMONY REGARDING THEIR PROPOSED ADJUSTMENTS TO PERFORMANCE COMPENSATION?**

1 A. Yes, I have.

2 **Q. WHAT ARE MR. DITTEMORE’S AND MR. GARRETT’S PROPOSED**  
3 **ADJUSTMENTS TO PERFORMANCE COMPENSATION?**

4 A. Mr. Dittmore recommends that the Company reduce its annual performance plan (“APP”)   
5 expense by 55%. Without reasoned analysis, he states that the APP metric focused on   
6 American Water’s earnings per share (weighted 50%) should be excluded since this metric   
7 primarily benefits shareholders.<sup>5</sup> Even more, Mr. Dittmore recommends reducing APP   
8 expense by another 5% to exclude the Company’s APP metrics aimed at increasing the   
9 representation of women and ethnic minorities in the Company’s workforce.<sup>6</sup> Mr.   
10 Dittmore also recommends removing 100% of the Company’s long-term performance   
11 plan (“LTPP”) because he does not believe LTPP compensation should be tied to the   
12 Company’s share price and EPS.<sup>7</sup>

13 Mr. Garrett postures that 50% of the Company’s APP should be disallowed due to a variety   
14 of reasons, but primarily because the financial metrics of the Company’s APP program   
15 benefit shareholders more than ratepayers.<sup>8</sup> Mr. Garrett also believes that shareholders   
16 should bear the cost of incentive compensation associated with financial metrics and, by   
17 disallowing it in rates, the Company is not disadvantaged because other utilities have had   
18 their incentive compensation associated with financial metrics disallowed.<sup>9</sup> Mr. Garrett   
19 further proposes to remove 100% of the Company’s LTPP compensation<sup>10</sup> because,

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<sup>5</sup> CAD Direct Testimony of Dittmore at 25:10-17.

<sup>6</sup> CAD Direct Testimony of Dittmore at 25:10-17.

<sup>7</sup> CAD Direct Testimony of Dittmore at 25:18-21 --26:1-5

<sup>8</sup> COC Direct Testimony of Garrett at 36: 8-15

<sup>9</sup> COC Direct Testimony of Garrett at 24: 5-15

<sup>10</sup> COC Direct Testimony of Garrett at 31: 1-5

1 according to him, LTPPs are designed to align employee interests with those of  
2 shareholders, which to him means that employees are encouraged to put shareholders first,  
3 not ratepayers.<sup>11</sup> Furthermore, Mr. Garrett concludes that disallowing these expenses does  
4 not disadvantage the Company in hiring nor retaining executive employees because other  
5 utilities exist that offer executive incentive plans and do not realize recovery of those plans  
6 through rates.<sup>12</sup>

7 **Q. DO YOU AGREE WITH MR. DITTEMORE'S AND MR. GARRETT'S**  
8 **ADJUSTMENTS TO PERFORMANCE COMPENSATION?**

9 A. No, I do not. First, it is important to understand, as Company witness Stout explains in  
10 more detail (Stout DT p. 42:5-10), that performance compensation is an integral part of the  
11 Company's compensation program and is structured to represent total market-based  
12 compensation. The Company's total compensation plan is designed to align the interests of  
13 all of TAWC's stakeholders – its employees, its customers, and its investors – and to  
14 encourage outstanding employee performance. In this regard, performance is not measured  
15 by simply looking at dollars, but on results that most directly influence customer  
16 satisfaction, health and safety, as well as environmental and operational performance.

17 Without the performance pay component, the compensation offered to employees would  
18 not be competitive with peer utilities or other companies with whom TAWC competes for  
19 a talented and experienced workforce. While Mr. Garrett makes the argument that  
20 disallowing performance compensation does not put the Company at a disadvantage  
21 because other utilities have portions of their performance compensation disallowed, Mr.

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<sup>11</sup> COC Direct Testimony of Garrett at 27: 8-14

<sup>12</sup> COC Direct Testimony of Garrett at 29: 5-15

1 Garrett fails to address the fact that eliminating a portion of the Company's overall total  
2 market-based compensation puts the Company at a disadvantage in competing with *non-*  
3 *utility* companies to hire and retain qualified employees. Providing compensation that is  
4 competitive in the market is critical to attracting and retaining employees that are critical  
5 to the Company's mission to provide safe and reliable service to its customers.

6 **Q. ARE THERE ANY OTHER BENEFITS THAT CUSTOMERS DERIVE FROM**  
7 **PERFORMANCE COMPENSATION?**

8 A. Yes, I believe there is at least one other benefit customers derive from performance  
9 compensation in addition to those explained by Mr. Stout and Mr. Mustich.<sup>13</sup> With respect  
10 to financial metrics, customers benefit greatly when financial metric goals are achieved.  
11 Almost all large utilities, including TAWC, have capital structures which contain both debt  
12 and equity. In the case of TAWC, approximately half of its capital structure is debt. When  
13 financial metrics are not met, a utility's risk profile is directly affected. If the utility is  
14 deemed to be a higher risk due to financial metrics not being met, the cost of debt increases  
15 as no financial institution will be willing to loan money without being compensated for  
16 taking on more risk. If the cost of debt goes up, then so will the utility's weighted average  
17 cost of capital and resulting authorized rate of return in a subsequent rate proceeding. In  
18 the end, the increase in debt costs gets passed along to customers in the form of higher  
19 rates. Thus, it is in the customers' best interest that financial metrics are met by those  
20 employees who are responsible for achieving them.

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<sup>13</sup> Direct Testimony of Grady Stout at 43:3 – 45:8; Rebuttal Testimony of Grady Stout at 14:10 – 17:5; Direct Testimony of Robert Mustich at 11:20 – 12:27; Rebuttal Testimony of Robert Mustich at 5:5–23.

1   **Q.    HOW ARE MR. DITTEMORE’S AND MR. GARRETT’S RECOMMENDATION**  
2       **INCONSISTENT WITH PRUDENT REGULATORY POLICY AND THE**  
3       **PRINCIPLES OF REGULATORY RATEMAKING?**

4    A.    The recommendation to remove costs associated with performance compensation expense  
5       is not consistent with prudent regulatory policy or the principles of regulatory ratemaking.  
6       Mr. Dittmore and Mr. Garrett are recommending the disallowance of TAWC’s  
7       performance compensation expense because it is tied to what they consider long-term goals  
8       of the utility. If accepted by the Commission, the effect of his recommendation would be  
9       to deny the cost recovery of these costs on a going forward basis. A fundamental theory of  
10      sound regulatory policy is to provide recovery of all reasonable and necessary costs  
11      incurred to provide service to customers. A basic principle of ratemaking is to include all  
12      such costs as test year expenses in calculating a regulated utility’s net operating income.  
13      Only if the Commission finds that the expenses in question are unreasonable or  
14      unnecessary should they be disallowed in calculating the Company’s revenue requirement.  
15      Another fundamental theory of prudent regulatory policy is to encourage regulated utilities  
16      to be efficient and provide high quality service to their customers over the long term.  
17      Sacrificing efficiency or quality of service in the long term to achieve temporary rate  
18      reductions is not in the customers’ best interest. All regulatory decisions have  
19      consequences and good regulatory policy results when these consequences are adequately  
20      considered. Mr. Dittmore’s and Mr. Garrett’s recommendations violate both theories of  
21      prudent regulatory policy mentioned above.

1   **Q.   PLEASE EXPLAIN HOW MR. DITTEMORE’S AND MR. GARRETT’S**  
2       **RECOMMENDATIONS VIOLATE THE THEORY OF RECOVERY OF**  
3       **REASONABLE AND NECESSARY COSTS.**

4    A.   Neither Mr. Dittemore nor Mr. Garrett has made any allegation, or presented any evidence,  
5       that the total compensation paid to TAWC’s employees is unnecessary or unreasonable.  
6       This includes performance compensation. Additionally, Mr. Dittemore and Mr. Garrett’s  
7       recommendation makes no analysis of the reasonableness of the net amount of  
8       compensation that remains after reduction of the performance compensation. Also, they  
9       have not presented any analysis of the employment market to determine what  
10      compensation level is reasonable and necessary to attract critical employees (i.e. those  
11      necessary to efficiently and effectively run a water utility). In fact, the only reason provided  
12      by Mr. Dittemore or Mr. Garrett to prop-up their conclusion that the total compensation  
13      paid to TAWC’s employees is unnecessary or unreasonable is based on a false dichotomy.  
14      Specifically, their argument wrongfully assumes that customers will not benefit alongside  
15      shareholders and that an employee’s performance can only benefit shareholders, not  
16      customers. This is illogical. To disallow performance compensation simply because Mr.  
17      Garrett and Mr. Dittemore believe that two things cannot be true at once is arbitrary and  
18      would constitute a substantial departure from the essential requirements of sound  
19      regulatory policy.

20      Mr. Dittemore and Mr. Garrett have not presented any evidence that the salaries for any  
21      employee are excessive. Instead, they recommend a portion of employees’ total  
22      compensation be disallowed based on merely how it is paid. They believe that because it  
23      is performance-based pay, rather than base salary, it is subject to disallowance

1 notwithstanding whether the total amount of compensation may be reasonable. *The focus*  
2 *of any disallowance should be how much is paid, not how it is paid.* To this point, I refer  
3 to the rebuttal testimony of TAWC witness Robert Mustich, which specifically addresses  
4 the issue of whether the Company's overall compensation to employees would remain  
5 competitive without the performance compensation component. Based on Mr. Mustich's  
6 review, removing the performance compensation component would result in the  
7 "compensation that is at the low end of reasonable and below competitive levels of market  
8 median total remuneration, particularly for employees in positions that for which  
9 performance compensation comprises a significant portion of total direct compensation."<sup>14</sup>.

10 **V. SUPPORT SERVICES PERFORMANCE COMPENSATION**

11 **Q. DID MR. DITTEMORE PROPOSE ANY ADJUSTMENTS TO SUPPORT**  
12 **SERVICES PERFORMANCE COMPENSATION?**

13 A. Yes, Mr. Dittemore proposed to disallow 55% of APP and 100% of LTPP for Support  
14 Services.<sup>15</sup>

15 **Q. DO YOU AGREE WITH MR. DITTEMORE'S PROPOSED ADJUSTMENTS TO**  
16 **SUPPORT SERVICES INCENTIVE COMPENSATION?**

17 A. No, I do not. As Company witness Watkins references on page 2 lines 13 through 24 and  
18 page 3 lines 1 through 11, the Company's performance compensation is both reasonable  
19 and consistent with market based total compensation levels on a regional and national level.  
20 Company witness, Mr. Baryenbruch also points out on page 29, lines 14-15 that if the  
21 Company had outsourced the services provided by the Service Company, which include

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<sup>14</sup> Rebuttal Testimony of Robert Mustich at 6:1-7.

<sup>15</sup> CAD Direct Testimony of David Dittemore at 27:17 - 28:14.

1 performance compensation, that “its customers would have incurred approximately \$3.8  
2 million in additional expenses”. Table 16 on page 30 of Mr. Baryenbruch’ s testimony  
3 details out the \$3.8 million.

4 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

5 **A. Yes.**

## 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:

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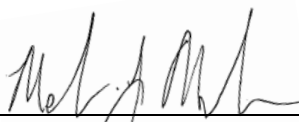
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This the 22<sup>nd</sup> day of October 2024.



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Melvin J. Malone