

IN THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

IN 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

DOCKET NO. 24-00032

CITY OF CHATTANOOGA'S POST-HEARING BRIEF

Respectfully Submitted,

CITY OF CHATTANOOGA

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TABLE OF CONTENTS

INTRODUCTION AND SUMMARY	4
LEGAL STANDARD	6
ARGUMENT	7
A. THE REVENUE REQUIREMENT INCREASE SOUGHT BY TAWC IS EXORBITANT AND IS NEITHER JUST NOR REASONABLE	7
1. TAWC Has Already Received Excessive Rate Increases	7
2. TAWC's Planned Capital Expenditures Do Not Justify Its Requested Rate Increase	8
3. The Record Shows That TAWC Rates Should Be Decreased, Not Increased	9
4. TAWC Has Failed to Meet Its Burden of Proving That Its Requested Rate Increases Are Just and Reasonable	11
(a) TAWC's Return on Equity Should Not Be Increased	11
(b) TAWC's Capital Structure Should Mirror That of Its Parent, American Water	13
(c) TAWC Has Improperly Included Non-Cash Items in Its Cash Working Capital Calculation.....	14
(d) Employee Incentive Pay Based on Financial Performance Should Be Disallowed.....	15
(e) TAWC Should Not Be Permitted to Recover Payroll Expenses for Vacant Positions	16
(f) Property Taxes Should Not Be Based on Speculation Concerning 2025 Rates.....	16
(g) Current Depreciation and Cost of Removal Rates Should be Retained	17
(h) TAWC Should Be Required to Establish Its Reasonable Rate Expenses in a Separate Docket	17
(i) Repair Expense Flow-through Should Be Utilized to Minimize Any Rate Increase	17

B.	TAWC'S PROPOSAL TO INCREASE CHATTANOOGA RATES IN ORDER TO LOWER THOSE OF OUTLYING AREAS IS UNDULY DISCRIMINATORY, UNJUST, AND UNREASONABLE	18
1.	TAWC's Proposal for Rate Design Changes in This Docket Violates the Stipulation and Settlement in Docket No.....	19
2.	TAWC Has Not Carried Its Burden of Showing That Its Proposal to Increase Chattanooga Rates in Order to Lower Rates in Outlying Areas is Just and Reasonable and Is Not Unduly Discriminatory	20
(a)	TAWC Cannot Meet Its Burden Because Its Proposal to Increase Chattanooga Rates in Order to Lower Rates in Outlying Areas Has No Cost Basis.....	20
(b)	TAWC Cannot Carry Its Burden Because Its Proposed Rate Design Changes Will Result in Increased Subsidies by Chattanooga Customers of Customers in Outlying Areas.....	24
(c)	TAWC Cannot Meet Its Burden Because It Seeks to Lower Rates in Outlying Areas to Promote Its Corporate Growth Strategy, Not to Benefit Its Customers.....	27
C.	TAWC'S PROPOSAL TO DRAMATICALLY SHIFT REVENUE RECOVERY FROM FIXED CHARGES TO VARIABLE CHARGES WILL HARM BUSINESS RECRUITMENT AND PRODUCE GREATER REVENUE VOLATILITY	29
	CONCLUSION.....	30

The City of Chattanooga ("Chattanooga") submits this post-hearing brief in TPUC Docket No. 24-00032 pursuant to the Pre-Hearing Order entered by the Hearing Officer on November 15, 2024. As shown by the record in this Docket, and for the reasons set forth in this Brief, TAWC has not met its statutory burden of showing that its requested rate changes and increases are just and reasonable. Accordingly, Chattanooga respectfully requests that the Tennessee Public Utility Commission ("TPUC" or the "Commission") deny the Petition of the Tennessee-American Water Company ("TAWC"), filed May 1, 2024, to modify its tariff; to change and increase charges, fees, and rates; and to approve a general rate increase ("Petition"). Chattanooga respectfully requests that the Commission order a decrease in TAWC's rates to prevent its continued overcollection of revenue from its customers and so that TAWC's rates are just and reasonable. Chattanooga further respectfully requests that the Commission deny TAWC's proposals to increase Chattanooga rates in order to decrease rates in outlying areas served by TAWC.

INTRODUCTION AND SUMMARY

TAWC's current base rates were set by the November 20, 2012, Order of the Commission's predecessor agency, the Tennessee Regulatory Authority ("TRA"), in Docket No. 12-00049 (the "2012 Rate Increase"). Since the 2012 Rate Increase, TAWC has received further rate increases totaling nearly 37% through filings under the alternative regulatory mechanisms approved in Docket No. 13-00130.¹ Those rate increases significantly exceeded the 33.2% rate of inflation experienced since 2014.² Although TAWC admits that it has overearned for the past

¹ See Order Approving Amended Petition, Docket 13-00130; Petition at ¶ 5.

² See Inflation Calculator published by the Federal Reserve Bank of Minneapolis, available 10/26/24 at <https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator>.

two years,³ its Petition seeks a further rate increase of nearly 20%. TAWC also seeks rate design changes that would increase rates of its customers in Chattanooga by even more in order to reduce rates for outlying areas more recently served by TAWC. And, in spite of TAWC's assertion that rates should be designed to minimize revenue variability caused by such factors as changing weather, TAWC has proposed a significant shift in revenue recovery from fixed charges to variable charges, further increasing rates for customers with higher consumption and harming Chattanooga's industrial recruitment efforts.⁴

Instead of a 20% increase, Chattanooga's witness, Mr. Mark Garrett, recommended that TAWC's rates be reduced to avoid continued overearning by TAWC.⁵ Mr. Garrett catalogued the rate elements contributing to TAWC's overearning of revenue, and each is discussed below in the context of the testimony and exhibits in the record. Chattanooga respectfully requests that the Commission reject TAWC's request for a rate increase and instead find that a reduction in TAWC's current rates is necessary to produce just and reasonable rates for its customers.

TAWC admits that it has no cost justification for increasing Chattanooga rates and reducing rates of other rate areas. TAWC admits that it does not track cost data for each of its rate areas and does not know the cost of serving each area.⁶ It admits that it has no cost basis for its proposal to increase Chattanooga residential rates by more than 25%,⁷ while reducing residential

³ Testimony of Bob Lane, Transcript Vol. I, 95:16-24.

⁴ Direct Testimony of Heath Brooks at Ex. Rev-2, p. 4 (May 1, 2024); Direct Testimony of Mark Garrett at 51:5-7 (Sept. 17, 2024).

⁵ Direct Testimony of Mark Garrett at 5:5-14 and Ex. MG-2 (Sept. 17, 2024) (recommending reduction of \$1,503,968).

⁶ *See, e.g.*, TAWC's Responses to City of Chattanooga's Second Discovery Requests Nos. 2, 3, 6 (filed July 30, 2024).

⁷ Direct testimony of Heath Brooks at Ex. Rev-2, p. 2 (May 1, 2024).

rates in Suck Creek by more than 30% and in Jasper Highlands by more than 29%.⁸ It is TAWC's burden to show that its proposed "consolidated" rates are not unduly discriminatory and are just and reasonable. TAWC has not met that burden. Furthermore, this record shows that TAWC is seeking to lower rates in outlying areas to promote its goals for growth, and it unfairly and improperly seeks to force Chattanooga customers to subsidize its acquisition of remote systems throughout the state. Chattanooga respectfully requests that the Commission reject TAWC's proposal for "consolidated" rates.

TAWC has made a perplexing proposal to dramatically shift revenue recovery from fixed charges to much higher consumption charges, even though that change will increase revenue volatility and violate an important principle that TAWC invokes to criticize rate design recommendations of the Consumer Advocate. Chattanooga opposes the TAWC change because it will harm Chattanooga's efforts to attract large commercial and industrial customers that have high water use requirements.⁹ TAWC has not met its burden of showing that the rate design change shifting revenue responsibility from fixed to variable cost charges is cost based or in the interest of either the utility or the consumers, and Chattanooga respectfully requests that it be rejected.

LEGAL STANDARD

The Tennessee General Assembly has specified the standards that apply to utility requests for rate changes and to the Commission's review of those requests. Tenn. Code Ann. § 65-5-103(a) places the burden on TAWC to prove that an "increase, change, or alteration" to rates is just and reasonable. *B&W Pipeline, LLC v. Tennessee Regulatory Authority*, No. M2016-02013-

⁸ *Id.* at p. 13 (Suck Creek) and p. 21 (Jasper Highlands).

⁹ Direct Testimony of Mark Garrett, p. 51 (Sept. 17, 2024).

COA-R12-CV, 2017 WL 5135977 (Tenn. Ct. App. Nov. 6, 2017). TAWC may not impose rates that are unreasonable, unjustly discriminatory, or unduly preferential. Tenn. Code Ann. § 65-5-104(a)(1). Nor may TAWC impose any unjust or unreasonable classification in connection with any rate for its services. Tenn. Code Ann. § 65-5-104(a)(2).

The Commission's statutory duty is to ensure that a utility has "the opportunity to earn a just and reasonable return on its investment; on the other hand, the rate must not be exorbitant, so as to avoid the exploitation of consumers." *Consumer Advocate & Protection Div. of the Office of the Attorney Gen. of Tenn. v. Tenn. Reg. Auth.*, No. M2011-00028-COA-R12-CV, 2012 WL 1964593, at *1 (Tenn. Ct. App. May 30, 2012). The Commission's determinations must be consistent with the applicable legal standards and must be based upon substantial and material evidence. *B&W Pipeline, LLC*, 2017 WL 5135977, at *3.

ARGUMENT

A. THE REVENUE REQUIREMENT INCREASE SOUGHT BY TAWC IS EXORBITANT AND IS NEITHER JUST NOR REASONABLE.

1. TAWC Has Already Received Excessive Rate Increases.

Since TAWC's last general rate case in 2012,¹⁰ TAWC has received approval for rate increases totaling nearly 37% through filings under alternative regulatory methods, or rate riders, approved in 2014 in Docket No. 13-00130. Those TAWC rate increases significantly exceeded the rate of inflation, which totaled only 33.2% since 2014.¹¹ These regular rate increases have

¹⁰ Docket No. 12-00049.

¹¹ According to the Inflation Calculator available from the Federal Reserve Bank of Minneapolis, inflation has totaled 33.2% since 2014. Inflation Calculator available 10/26/24 at <https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator>. Pursuant to Chapter 1220-01-02-.16, the admissibility of evidence before the Commission is governed by T.C.A. §§ 65-2-109 and 4-5-313. § 65-2-109(4) allows the Commission to "take notice of judicially cognizable facts," note such judicial notice, and afford parties an opportunity to contest

resulted in TAWC receiving excess, unjustified revenue during at least the past two years, as acknowledged by TAWC witness Bob Lane:

Q: [T]here's been overearning by the company for two years, correct?

A: In the past, we had earned above authorized.

Q: Right.

A: In 2023, the most recent test we did, we were prohibited from raising rates as a result of that earning above authorized. For 2022 and previously, those resulted in refunds to customers.

Testimony of Bob Lane, Transcript Vol. I, 95:16-24.

Even though its present rates have permitted TAWC to "overearn," or receive more revenue than was authorized by the Commission, TAWC has requested rates that would further increase its revenue by another 20%. As CAD witness David Dittmore observed in summarizing his testimony:

[W]hat is not in dispute is that the company has been in an overearning situation in 2022 and 2023. So I was surprised to see the company filing a proposed 20 percent rate increase . . . utilities don't typically request a rate increase when they're in an overearning situation.

Summary Testimony of David Dittmore, Transcript Vol. II(B), 213:12-18.

2. TAWC's Planned Capital Expenditures Do Not Justify Its Requested Rate Increase.

TAWC claims that a major reason for its requested rate increase is its plan to make future capital expenditures. TAWC's president, Mr. Evitts stated that "[t]his filing, however, is primarily driven by the investment we are making to maintain and improve our infrastructure, which accounts for more than 50 percent of our total requested rate increase." Testimony of

the facts so noticed before any initial or final order is issued. *See also* § 4-5-313 (6). Official notice may be taken of any fact that could be judicially noticed in the courts of this state. § 4-5-313 (6)(A)(i). Inflation statistics of the Federal Reserve Board may be judicially noticed, as a source "whose accuracy cannot be reasonably questioned." Tenn. R. Evid. 201(b).

Grant Evitts, Transcript Vol. I, 45:17-20. TAWC's Mr. Lane concurred, stating that "[t]his year, we are adding incremental [capital] in '24. And projected for '25, we are adding incremental capital. That added incremental capital is what is the major factor driving the increase needed." Testimony of Bob Lane, Transcript Vol. I, 110:5-8.

However, Mr. Lane acknowledged that TAWC's capital rider and PCOP rider will remain in place after the conclusion of this rate case. Testimony of Bob Lane, Transcript Vol. I, 105:15 – 110:22. Those riders would be available to permit TAWC's recovery of "incremental capital" expenses, just as they have done since their approval in 2014. As Mr. Dittmore explained:

While the company's proposed rate base is indeed \$173 million greater than adopted in the last rate case, what is also true is that the company has generated a return on \$149 million of rate-based growth through its capital rider. Further, the \$173 million figure is based on projections through 2024 and 2025. The 149 million in actual rate-based recovery in the capital riders would undoubtedly have grown, absent a rate case filing, when the company submitted its 2024 and 2025 capital rider through their annual filings.

Summary Testimony of David Dittmore, Transcript Vol. II(B), 214:6-16.

TAWC has presented no evidence in this rate case showing that the approved riders that have been in place for a decade are somehow inadequate to permit TAWC to recover further necessary capital expenditures. TAWC's primary justification for its huge, proposed rate increase is not valid, where the record shows that TAWC will be able to recover its future necessary capital expenditures under authorized rate riders.

3. The Record Shows That TAWC Rates Should Be Decreased, Not Increased.

Witnesses for the CAD and Chattanooga have presented detailed analyses demonstrating that TAWC's rates should be decreased, not increased. Chattanooga presented the testimony of Mr. Mark Garrett, who concluded that TAWC's rates should be decreased by more than \$1,500,000, rather than increased by more than \$14,000,000 as requested by TAWC. These changes are summarized in the following table, contained in Mr. Garrett's Exhibit MG-2:

Tennessee-American Water Company
Docket No. 24-00032
City of Chattanooga Summary of Recommendations
Attrition Period Ended December 31, 2025

Exhibit MG-2

Line No.	Descriptions	Equity/ROE	Reference	Rate Base	Pre-Tax Rate of Return	Revenue Increase
1	Requested Amounts	54.52%/10.75%	Sch. FS-1.1	\$305,126,372	10.391230%	\$ 14,131,001
2	<u>Rate Base Adjustments</u>					
3	Cash Working Capital		MG-2.5	\$ (6,893,000)	10.391230%	\$ (716,267)
4	ADIT on Repair Allowance		MG-2.8	3,831,785	10.391230%	398,170
5	Total Rate Base Adjustments			\$ (3,061,215)		\$ (318,098)
6	<u>Cost of Capital Adjustments</u>					
7	Capital Structure	44.57%	MG-2.9	\$302,065,157	-1.058304%	\$ (3,196,768)
8	Return on Equity	10.00%	MG-2.9	\$302,065,157	-0.466729%	(1,409,826)
9	Total Cost of Capital Adjustments					\$ (4,606,594)
10	<u>Operating Income Adjustments</u>					
11	Annual Performance Plan		MG-2.1			\$ (587,373)
12	Long-Term Incentive Plan		MG-2.2			(621,650)
13	Vacant Positions		MG-2.3			(1,126,880)
14	Property Tax		MG-2.4			(1,733,497)
15	Rate Case Expense		MG-2.7			(518,000)
16	Repair Expense Tax Flow-Through		MG-2.8			(3,831,785)
17	Depreciation Rate Adjustment		MG-2.6			(2,291,091)
18	Total Adjustments to Operating Income					\$ (10,710,277)
19	Total City of Chattanooga Adjustments					\$ (15,634,969)
20	Adjusted Increase in Rates					\$ (1,503,968)

Notes:

Line 7 Cap Structure is from 2023 consolidated 10-K. The 2012 case used the parent capital structure with short-term debt. We drafted questions to ask TAWC to update the 2012 settlement capital structure to 2023.

Line 8 ROE ceiling of 10% is from 2012 rate case exhibit. See pdf page 2366 of the attached file. MFG Q0006_Attachment page 36 of 55. This is a conservative ceiling because ROEs have been trending downward since 2012.

Line 17 Depreciation recommendation keeps existing depreciation rates. Rationale is that this is not the time to increase depreciation recoveries - during a costly capital expansion program during a bad economy. There will be opportunities to increase depreciation recoveries once system upgrades are completed.

Mr. Garrett's conclusions are similar to those independently reached by witnesses for the Consumer Advocate, who presented analyses separately supporting the conclusion that TAWC's revenue requirement, and its rates, should be decreased, not increased. *See, e.g., Direct*

Testimony of William Novak at 6; David Dittmore at 3; Alex Bradley at 3; Aaron Rothschild at 102 (each filed September 17, 2024).

4. TAWC Has Failed to Meet Its Burden of Proving That Its Requested Rate Increases Are Just and Reasonable.

TAWC has the burden of establishing by substantial and material evidence that each "increase, change, or alteration" that it has proposed is just and reasonable. *B&W Pipeline*, 2017 WL 5135977, at *3. TAWC also has the burden of establishing that its proposals do not produce rates that are "unreasonable, unjustly discriminatory, or unduly preferential". Tenn. Code Ann. § 65-5-104(a)(1). As discussed below, TAWC has failed to meet its burden as to the key issues that relate to the rate reductions recommended by Mr. Garrett.

(a) TAWC's Return on Equity Should Not Be Increased.

TAWC's currently authorized return on equity is 10%, and TAWC seeks an increase in the return on equity to 10.75%. However, the record shows that no increase is needed to permit TAWC to attract needed capital or to fairly compensate TAWC for its equity investments.

TAWC presented a witness, Ann Bulkley, who completed a detailed analysis of the appropriate return on equity for TAWC. Her report presented a range of returns on equity for proxy companies and asserted that TAWC's return on equity should fall within that range. She acknowledged that TAWC's currently authorized 10% rate of return, identified by Mr. Garrett as the maximum rate that should be authorized, falls within the range of rates of return that she identified:

Q: Mr. Garrett, who's the expert for the City of Chattanooga, he recommended a ceiling of the current return on equity of 10 percent, correct? . . . [which] actually does fall within the range of the proxy companies that you identified, correct?

A: It does, yeah.

Testimony of Ann Bulkley, Transcript Vol. I, 140:13-21.

Indeed, Ms. Bulkley's only argument for a higher return on equity was based on examples of companies that had to obtain capital from market sources, because she incorrectly understood that TAWC had to compete in capital markets. Instead, as Mr. Nick Furia explained, TAWC obtains all of its debt and equity investment from its parent, American Water Works Company, Inc. ("American Water"):

Q: Ms. Bulkley stated in her testimony that Tennessee American accesses the capital market directly for short-term debt. Is that correct?

A: . . . Tennessee American does not access capital markets directly for short-term debt.

Q: And in fact, Tennessee-American gets all of its capital needs, long-term, short-term and equity, through American Water Works Company or a subsidiary of American Water Works Capital Corporation – is that the name?

A: . . . [I]n recent history or most of the history, that the debt that they can get from American Water Capital Corp. is the best cost alternative for them.

Testimony of Nicholas Furia, Transcript Vol. I, 159:23-160:13.

TAWC's president admitted that a higher rate of return on equity was not needed for TAWC to continue to receive investments from its parent:

Q: Is it also your opinion that American Water would not invest in Tennessee-American, should the authorized [ROE] be lower than the 10.75% requested?

A: Absolutely not. They would continue to invest in Tennessee American."

Testimony of Grant Evitts, Transcript Vol. I, 52:7-11.

"Q: [Y]our testimony is American Water Works would not deny funding for things that were necessary to be sure that water service was safe, was reliable and was provided to all of those served by Tennessee-American Water Company, regardless of the return on equity that was approved by this Commission, correct?

A: Correct.

Testimony of Grant Evitts, Transcript Vol. I, 57:8-14.

TAWC also presented the testimony of Nicholas Furia, the Vice President and Treasurer of the subsidiary of American Water that supports TAWC and other American Water operating companies. Mr. Furia confirmed Mr. Evitts' testimony:

Q: Mr. Evitts stated during his testimony that American Water would continue to invest to provide safe and reliable service, continue to invest in TAWC to provide safe and reliable service, even if the Commission awarded a return on equity that is recommended by the Consumer Advocate and the City.

...
Do you disagree with that?

A: I think American Water values its customers and tries to put its customer at the center of all of its decisions. And so therefore, while there would be a cost to doing so, American Water would continue to make the necessary investments, meaning the ones that would otherwise cause harm to our customers, to continue to provide that service. Yes, sir.

Testimony of Nicholas Furia, Transcript Vol. I, 160:20 – 161:10.

Mr. Furia confirmed that American Water had never conditioned its provision of capital on the level of TAWC's approved rate of return on equity:

Q: Are you aware of American Water Works Company ever conditioning an infusion of capital on the condition that a particular rate of return or return on equity was achieved?

A: No.

Testimony of Nicholas Furia, Transcript Vol. I, 164:10-14.

(b) TAWC's Capital Structure Should Mirror That of Its Parent, American Water.

TAWC admits that it obtains all of its capital needs, including long-term debt, short-term debt, and equity through its parent American Water. *See, e.g.* Testimony of Nicholas Furia, Transcript Vol. I, 159:23 – 160:13. Because American Water is the only source of capital for TAWC, Mr. Garrett recommended that TAWC's capital structure mirror that of American Water, with small adjustments to address comments of TAWC witnesses Ann Bulkley and Nicholas Furia. Direct Testimony of Mark Garrett at 39-40, Exhibit MG-2.9 (Sept. 17, 2024). Use of the

American Water capital structure reflects the fact that it is American Water – not TAWC – that is subject to market risk for both debt and equity capital. Thus, Mr. Garrett explained there is no justification for establishing a separate capital structure for TAWC. *Id.* at 38-39.

(c) TAWC Has Improperly Included Non-Cash Items in Its Cash Working Capital Calculation.

A key deficiency in TAWC's cash working capital calculation is its inclusion of non-cash items. Mr. Garrett quoted a leading treatise on the definition of cash working capital, which states: “A cardinal principle of the working capital allowance is that it should exclude non-cash expenses, such as depreciation, deferred income taxes, and return on common equity, among others.” Direct Testimony of Mark Garrett at 8 (Sept. 17, 2024), quoting Leonard Saul Goodman, The Process of Ratemaking, Vol. II, Public Utility Reports (1998), at p. 829.

Mr. Garrett focused on four non-cash items that TAWC sought to include in its cash working capital calculations: 1) Return on equity; 2) Depreciation expense; 3) Deferred tax expense; and 4) advance payment of service company expense. His calculations excluded those four items and adjust the revenue lag days and gross receipts tax lead days. *See* Direct Testimony of Mark Garrett at 7 and Exhibit MG-2.5 (Sept. 17, 2024). Mr. Garrett's calculations reduced the Attrition Year Working Capital requirement by \$6,893,000, resulting in the reduction of TAWC's proposed net positive cash working capital adjustment of \$4,503,000 to a net negative adjustment of \$2,390,000. *Id.* at p. 15.

Mr. Garrett's exclusion of noncash items is consistent with the Amended Order of the Commission dated January 15, 2019, in response to the rate change petition of Chattanooga Gas Company, Docket No. 18-00017.

TAWC's witness, Harold Walker, criticized Mr. Garrett's calculation of the appropriate revenue lag period, arguing that the revenue lag period should not be reduced by 3.5 days as Mr.

Garrett suggests. However, even assuming the validity of that criticism, Mr. Garrett's 3.5-day reduction accounted for less than \$350,000 of Mr. Garrett's \$6,893,000 adjustment. TAWC's direct and rebuttal testimony on the issues does not carry TAWC's burden of establishing that its claimed cash working capital adjustment is just and reasonable or otherwise justified.

(d) Employee Incentive Pay Based on Financial Performance Should Be Disallowed.

Mr. Garrett recommended the removal from payroll expense of 50% of short-term incentive pay and 100% of long-term incentive pay. The removal of 50% of short-term incentive pay would reduce payroll expense by \$587,373, and the removal of 100% of long-term incentive pay would reduce expenses by another \$621,650. Direct Testimony of Mark Garrett at 26, 31 (Sept. 17, 2024). This Commission and its predecessor, the TRA, have consistently removed expenses for incentive compensation based upon financial performance. In the TAWC Docket No. 10-00189, the TRA disallowed 50% of short-term incentive compensation and 100% of long-term incentive compensation requested by TAWC. Docket No. 10-00189, April 27, 2012, Final Order at 61. In the Chattanooga Gas Company Docket No. 18-00017, this Commission reached a similar result, reflecting "the long-standing policy established by the Commission regarding incentive pay." Docket No. 18-00017, January 15, 2019, Amended Order at 22. Indeed, in Docket No. 18-00017, the Commission rejected all of the same arguments TAWC makes in its testimony in this proceeding. TAWC witnesses admitted that they understood the Commission's policy, but nevertheless argued for inclusion of incentive pay amounts the Commission has consistently disallowed.¹²

¹² Grady Stout admitted that he knew of no case in which the Commission has authorized recovery of performance plan costs (Transcript Vol. I, 188:20-25); Robert Mustich admitted that he knew that TAWC's position was rejected by the TRA in TAWC Docket No. 10-00189 and in Chattanooga Gas Docket No. 18-00017 (Transcript Vol. I, 252:19-24 and 253:11-16). Mr.

(e) TAWC Should Not Be Permitted to Recover Payroll Expenses for Vacant Positions.

Mr. Garrett recommended that expenses related to vacant positions be removed from the revenue requirement. He pointed out that TAWC has consistently sought recovery of expenses for positions that it never filled. Direct Testimony of Mark Garrett at 31-32 (Sept. 17, 2024). This change would reduce Attrition Year expenses by \$1,126,880. TAWC's witness Grady Stout acknowledged that TAWC could not provide assurance that it would be able to maintain employment at the level for which recovery was sought. He also acknowledged that during 2024, TAWC had hired 17 employees and had lost 13. Testimony of Grady Stout, Transcript Vol. I, 190:13-191:19.

(f) Property Taxes Should Not Be Based on Speculation Concerning 2025 Rates.

Because 2025 property taxes will be based on the 2024 year-end plant and construction work in progress, Mr. Garrett recommended that Attrition Year property taxes included in the revenue requirement be based only on the 2024 forecasted year-end plant balances. He also recommended that rates be based on the existing reduced equalized assessment rate. These changes would reduce expense by \$1,733,497. Direct Testimony of Mark Garrett at 33-34 (Sept. 17, 2024). TAWC's response is that it should be able to recover property tax expense for 2025 based upon the "expected change in the Hamilton County rate that will be applied in attrition year 2025." Rebuttal Testimony of Dominic DeGrazia at 3 (Oct. 22, 2024). Speculation about tax changes that might take place in a future year is not "substantial and material evidence" upon which the Commission may base its decisions. *See B&W Pipeline, LLC*, 2017 WL 5135977, at *3.

Mustich also acknowledged that TAWC's position was rejected in a 2023 American Water case in Kentucky (Transcript Vol. I, 254:1-255:11).

(g) Current Depreciation and Cost of Removal Rates Should be Retained.

Mr. Garrett recommended that the currently authorized depreciation and cost of removal rates should be retained to minimize any further rate increases for TAWC customers. The retention of current depreciation rates would increase depreciation expense by \$319,882, but would reduce the cost of removal by \$2,610,973, for a net decrease in expense of \$2,291,091. Direct Testimony of Mark Garrett at 35 (Sept. 17, 2024). TAWC acknowledges that Mr. Garrett's position raises a timing issue involving whether depreciation costs should be spread over time as Mr. Garrett recommends or should be collected in increased rates in the current docket. Rebuttal Testimony of Larry Kennedy at 5 (Oct. 22, 2024). The Commission should resolve this issue in favor of the alternative that would limit rate increases at a time when customers have been faced with high inflationary pressures.

(h) TAWC Should Be Required to Establish Its Reasonable Rate Expenses in a Separate Docket.

Mr. Garrett recommended that TAWC's estimate of rate case expenses should be removed from the revenue requirement in the current docket, and that TAWC be required to establish its just and reasonable rate case expenses in a separate docket. Direct Testimony of Mark Garrett at 41-42 (Sept. 17, 2024). This approach will permit the Commission to fully review and evaluate TAWC's claimed expenses and is consistent with the statutory provisions placing the burden upon TAWC to establish that its proposed rate change for this purpose is just and reasonable.

(i) Repair Expense Flow-through Should Be Utilized to Minimize Any Rate Increase.

Mr. Garrett recommended that ratepayers should receive the benefit of accelerated tax benefits available for repair costs to avoid a rate increase in this case. Direct Testimony of Mark Garrett at 35 (Sept. 17, 2024). TAWC's witness Linda Schlessman admitted that the flow-through method better aligns income tax expense recovered in rates with taxes actually owed by

the Company. Rebuttal Testimony of Linda Schlessman at 8-9 (Oct. 22, 2024). The Commission should approve the use of the flow-through method for repair cost tax benefits to the extent necessary to limit rate increases at a time when customers have been faced with inflationary pressures.

B. TAWC'S PROPOSAL TO INCREASE CHATTANOOGA RATES IN ORDER TO LOWER THOSE OF OUTLYING AREAS IS UNDULY DISCRIMINATORY, UNJUST, AND UNREASONABLE.

In his comments offered to the Commission on October 28, 2024, Chattanooga Mayor Tim Kelly reviewed the TAWC rate design proposal and condemned it as outrageous and unfair:

[I]t's frankly outrageous that Tennessee-American is trying to raise the water rates of Chattanooga city residents in order to lower the rates of Tennessee-American's customers in remote areas that they recently began to serve. And frankly, it's outrageous that Tennessee-American wants Chattanooga residents to pay another rate increase of more than 25 percent, after Tennessee-American has received annual rate increases every year for 11 years, totaling nearly 37 percent.

So, think about it this way: Over more than 150 years, the parents, the grandparents, the great-grandparents, the great-great-grandparents, and great-great-great-grandparents of families in St. Elmo and single mothers in Highland Park and retired residents in East Chattanooga have paid for Tennessee-American's infrastructure through their monthly water bills. Without that infrastructure, not a drop of water could be delivered by Tennessee-American to their customers on the top of Lookout Mountain or in Sale Creek. And now Tennessee-American wants to reward Chattanooga residential customers for generations of infrastructure investment by raising their rates by more than 25 percent in order to offer lower rates to Tennessee-American's newest customers. And that ain't right.

While increasing the rates for Chattanooga residents, Tennessee-American would cut water bills for residents in Suck Creek by more than 30 percent and would cut water bills for the residents of multi-million-dollar homes in Jasper Highlands by nearly 29 percent

It makes no sense, and Tennessee-American can't justify it. Our attorneys asked them for records to prove the cost of serving these new remote service areas and justify lowering those folks' rates while increasing the rates of hard-working Chattanoogaans, and Tennessee-American, somewhat ponderously and amazingly, reported that it did not have those kind of records.

So I ask you to please reject this unfair and outrageous proposal.

Comments of Mayor Tim Kelly, October 28, 2024, Transcript 16:20-18:10.

Mayor Kelly is correct.

1. TAWC's Proposal for Rate Design Changes in This Docket Violates the Stipulation and Settlement in Docket No. 19-00103.

TAWC, the Consumer Advocate, and the City of Chattanooga all participated in Docket 19-00103, in which the parties and Commission staff evaluated and discussed various issues. Among the issues raised in that docket was the adoption of a different rate design method for allocating cost responsibility among customers in Chattanooga and in outlying areas where TAWC more recently began service. The parties to Docket No. 19-00103 agreed that rate design issues were complex and should be addressed in a new, separate docket. This agreement was incorporated into the Stipulation and Settlement Agreement filed in Docket No. 19-00103 on October 26, 2023.¹³ The Stipulation and Settlement Agreement was approved by the Commission in its Order dated January 31, 2024.

Instead of initiating a new docket to address rate design changes, TAWC chose to include rate design changes in a new tariff in which the utility seeks a major rate increase. The parties agreed to address rate design in a new docket because of the importance and complicated nature of the issue, which involves major issues of equity, discrimination, and reasonableness. Chattanooga respectfully requests that the Commission deny TAWC's rate design change proposals and order that TAWC address any such issues in a new, separate docket, consistent with the settlement approved in Docket No. 19-00103.

¹³ The agreement read as follows: "The parties agree to support a new docket to evaluate the reasonableness of the rate designed associated with (1) the 'legacy' capital rider surcharge and (2) the ICRRR." Stipulation and Settlement Agreement filed October 26, 2023, Section II.A.5.c.

2. TAWC Has Not Carried Its Burden of Showing That Its Proposal to Increase Chattanooga Rates in Order to Lower Rates in Outlying Areas is Just and Reasonable and Is Not Unduly Discriminatory.

(a) TAWC Cannot Meet Its Burden Because Its Proposal to Increase Chattanooga Rates in Order to Lower Rates in Outlying Areas Has No Cost Basis.

TAWC cannot meet the burden imposed upon it by Tenn. Code Ann. § 65-5-103(a) to prove that its proposal to increase Chattanooga rates in order to lower rates in outlying areas is just and reasonable. *See B&W Pipeline*, 2017 WL 5135977, at *3. TAWC's rate "consolidation" changes would *increase* the revenue charged to Chattanooga customers by 21%, imposing on Chattanooga customers \$13,526,409 of the total \$13,552,211 revenue increase now sought by TAWC from all customers. As illustrated by the following Table A, the "consolidation" would dramatically reduce the rate change responsibility for all of the outlying areas served by TAWC:¹⁴

¹⁴ For purposes of this Brief, the shaded columns were added to TAW_R_COCDR4_002-111324_Attachment 1, produced by TAWC in response to Chattanooga's Supplemental Discovery Request No. 2 (filed 11/13/24). The first two added columns subtract "Current Revenue" from "Proposed Revenue" with TAWC's proposed rate design changes for each of TAWC's rate areas and calculate the percentages of those revenue changes. The second two added columns subtract "Current Revenue" from "Revenue at Equal Increase Percentage", without TAWC's proposed rate design changes and calculate the percentages of those revenue changes.

TABLE A

Tennessee American Water Company TAW_R_COCDR4_002_111324_Attachment 1 (with added Revenue and Percent Change Columns)									
Rate Zone	Current Revenue	Proposed Revenue	Revenue Change	Percent Change	Revenue at Equal Increase Percentage	Revenue Change	Percent Change	Difference Due to Consolidation	Consolidation Impact
Chattanooga	\$ 64,425,409	\$ 77,951,818	\$ 13,526,409	21.00%	\$ 76,808,649	\$ 12,383,240	19.22%	\$ 1,143,169	1.77%
Lakeview	\$ 1,396,564	\$ 1,515,790	\$ 119,226	8.54%	\$ 1,664,998	\$ 268,434	19.22%	(\$ 149,209)	-10.68%
Lookout Mountain	\$ 2,012,744	\$ 2,163,330	\$ 150,586	7.48%	\$ 2,399,615	\$ 386,871	19.22%	(\$ 236,285)	-11.74%
Suck Creek	\$ 195,185	\$ 135,908	-\$ 59,277	-30.37%	\$ 232,702	\$ 37,517	19.22%	(\$ 96,794)	-49.59%
Whitwell (Inside)	\$ 426,030	\$ 477,429	\$ 51,399	12.06%	\$ 507,917	\$ 81,887	19.22%	(\$ 30,488)	-7.16%
Whitwell (Outside)	\$ 1,352,749	\$ 1,318,261	-\$ 34,488	-2.55%	\$ 1,612,761	\$ 260,012	19.22%	(\$ 294,501)	-21.77%
Jasper Highlands	\$ 698,451	\$ 496,808	-\$ 201,643	-28.87%	\$ 832,701	\$ 134,250	19.22%	(\$ 335,893)	-48.09%
Total	\$ 70,507,132	\$ 84,059,343	\$ 13,552,211	19.22%	\$ 84,059,343	\$ 13,552,211	19.22%	\$ 0	
*Based on original revenue requirement which requires a 19.22% increase to retail revenue recovery									
*Excludes other operating revenues									

TAWC's proposed rate design change would *increase* the average residential bill for Chattanooga customers by 18.6%, while *decreasing* the average residential bill in five of the other six TAWC rate areas by from 8.9% to 48%.¹⁵ *Yet, TAWC has admitted that its proposed rate changes are not based upon any information about TAWC's cost of serving customers in Chattanooga and in outlying areas.* Instead, as discussed below, TAWC admits that it is proposing the changes not to better reflect costs of service but to promote its corporate goals and interests.

Chattanooga served discovery requests upon TAWC seeking TAWC's cost of providing water service in Chattanooga and in each of the six outlying areas served by TAWC. In every case, TAWC responded that it did not have the requested information:

¹⁵ Supplemental Direct Testimony of Heath J. Brooks, Revised Exhibit Rev-4 (May 6, 2024). The water bills for some Chattanooga residential customers would be increased by more than 54%, while the bills for some residential customers in the Sale Creek area would be decreased by more than 60%. *Id.*

- Chattanooga asked for TAWC's plant in service for each of the seven areas. *TAWC responded that it does not have that information, because it does not track it by rate area.*¹⁶
- Chattanooga asked for TAWC's rate base for each of the seven areas. *TAWC responded that it does not have that information, because it does not track it by rate area.*¹⁷
- Chattanooga asked for TAWC's operating expense for each of the seven areas. *TAWC responded that it does not have that information, because it does not track it by rate area.*¹⁸
- Chattanooga asked for TAWC's long-term debt for each of the seven areas. *TAWC responded that it does not have that information, because it does not track it by rate area.*¹⁹
- Chattanooga asked for TAWC's property taxes for each of the seven areas. *TAWC responded that it does not have that information, because it does not track it by rate area.*²⁰

¹⁶ TAWC response to Chattanooga Second Discovery Request (filed July 30, 2024), Nos. 2, 3, and 8.

¹⁷ *Id.*, Nos. 2, 3, and 6.

¹⁸ *Id.*

¹⁹ *Id.*, Nos. 2 and 3.

²⁰ *Id.*, Nos. 2, 3, and 6.

- Chattanooga asked for TAWC's income taxes for each of the seven areas. *TAWC responded that it does not have that information, because it does not track it by rate area.*²¹
- Chattanooga asked for TAWC's depreciation expense for each of the seven areas. *TAWC responded that it does not have that information, because it does not track it by rate area.*²²
- Chattanooga asked for the length of pipe installed by TAWC in the last five years by size of pipe in each of the seven areas. *TAWC responded that it does not have that information, because it does not track the length of installed pipe in the system by rate area.*²³

Mr. Brooks testified that TAWC's cost of service study was based on "a consolidated, total Tennessee-American class cost of [service] regardless of rate area" and did not include evaluation of cost of service in each rate area. Testimony of Heath Brooks, Transcript Vol. II(A), 107:1-3. Mr. Brooks admitted that to complete a cost-of-service study for each rate area, TAWC would have to have the cost data by area. *Id.* at 107:18-23. Yet, Mr. Brooks confirmed that TAWC had chosen not to track costs for each rate area and would have to rely on "significant assumptions made to divvy out costs to each rate area." *Id.* at 107:8-10.

TAWC admits that it has no information on which it can determine the cost of serving Chattanooga and each of the other six outlying areas, but it could easily begin tracking such information. Consistent with the approved settlement in Docket No 19-00103, the cost data

²¹ *Id.*, Nos. 2 and 3.

²² *Id.*, No. 6.

²³ *Id.*, No 8.

should be collected and considered in a separate docket, if TAWC wants to pursue rate design changes of the type it has proposed.

(b) TAWC Cannot Carry Its Burden Because Its Proposed Rate Design Changes Will Result in Increased Subsidies by Chattanooga Customers of Customers in Outlying Areas.

Because TAWC does not track costs in its designated rate areas, it is impossible for TAWC to determine its cost of serving each of the areas. However, the limited information available in this docket indicates that Chattanooga customers are subsidizing outlying rate areas.

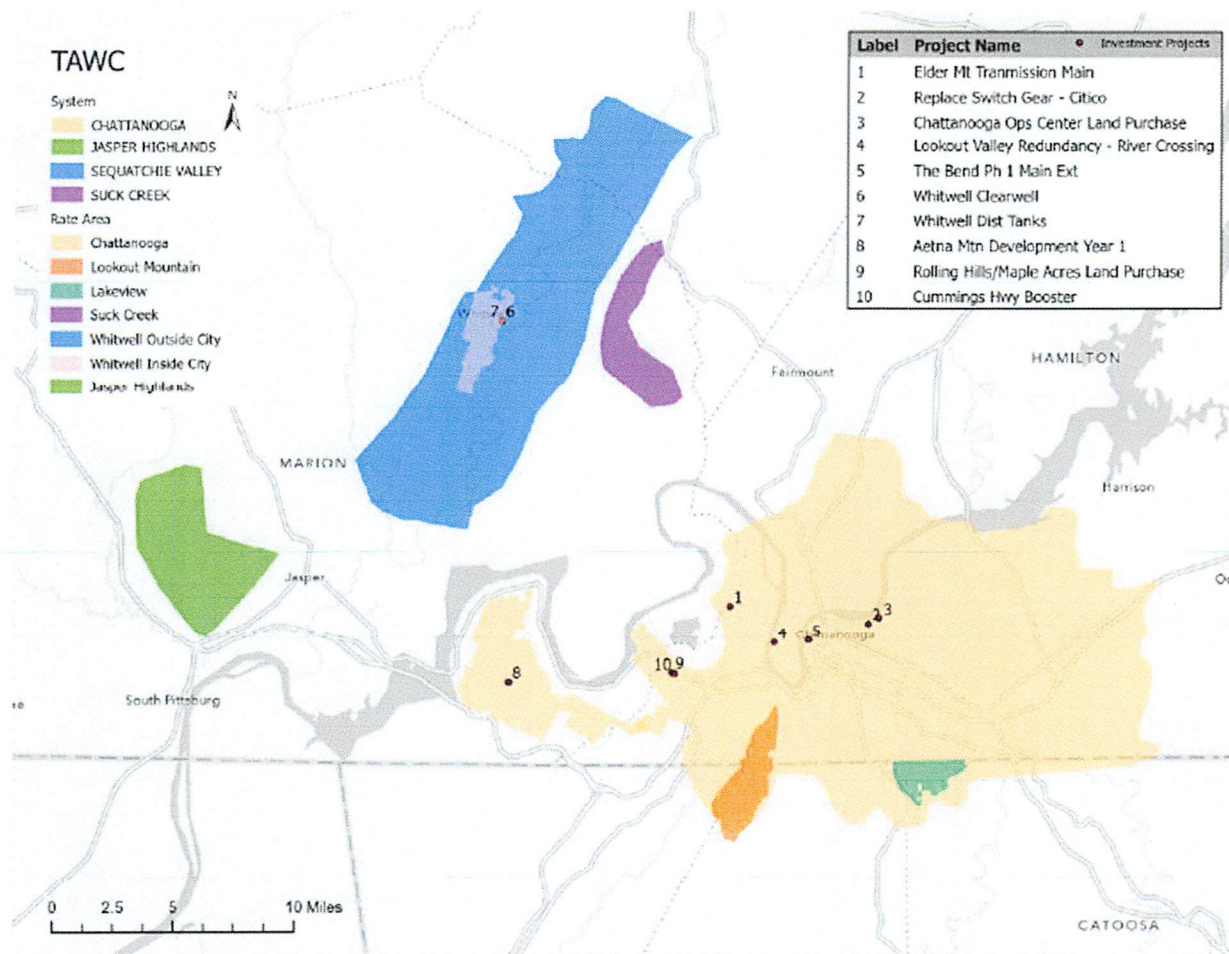
TAWC admits that "[c]ustomer groups located farther away from a water treatment plant will have a higher cost of service and customer groups located closer to a water treatment plant will have a lower cost of service" Rebuttal Testimony of Heath Brooks at 22 (Oct. 22, 2024). Yet, TAWC proposes to *increase* the revenue collected from Chattanooga rate area customers by 22%, even though that is the rate area closest to the TAWC treatment plant, while *decreasing* the revenue collected from Suck Creek customers by 30% and increasing revenue from Lookout Mountain customers by only 7.48%.²⁴

Although TAWC has chosen not to track the location of all costs in each rate area, it does track the location of larger capital expenditures. TAWC does know the location of major capital expenditures. Hearing Exhibit 1²⁵ contains the following map prepared by TAWC showing the

²⁴ See Table A above. For average residential bill effects illustrating similar disparities, see Supplemental Direct Testimony of Heath J. Brooks, Revised Table 6: Average Residential Bill Impact (May 6, 2024).

²⁵ TAWC Response to Chattanooga First Discovery Request No. 8 (June 25, 2024).

location of major capital expenses made in 2024 and 2025:



Hearing Exhibit 2²⁶ contains a listing of TAWC capital projects for the period 2014 through 2025. These exhibits show that large capital expenditures are being made outside the Chattanooga rate area and on the edge of the Chattanooga rate area. Mr. Krushinski stated that TAWC had made capital investments related only to the Whitwell rate areas in excess of \$9,000,000²⁷ for an area that had 2,916 TAWC customers at the end of 2023,²⁸ and from which

²⁶ TAWC Response to Chattanooga First Discovery Request No. 2 (June 25, 2024).

²⁷ Testimony of Kevin Krushinski, Transcript Vol. II(A) 35:7-8.

²⁸ TAWC Response to Chattanooga Second Discovery Request No. 8, Attachment 1 (TAW_R_COCDR2_008_073024_Attachment 1) (July 30, 2024).

its projected total revenue, if TAWC granted its requested rate increase, would be \$1,795,689.²⁹

If TAWC was to be granted the return on equity and capital structure that it requested, the total amount it would recover for capital costs would be \$1,160,211, or nearly 65% of the total revenue it proposes to recover from the Whitwell rate areas.³⁰ This would leave only 35% of the revised revenue to cover all other expenses for serving Whitwell customers without subsidy by other TAWC ratepayers. The amount of the subsidies by other customers can only be determined in a separate proceeding based on rate area cost information gathered by TAWC over a meaningful period of time.

Chattanooga ratepayers would generate nearly 93% of all of TAWC's revenue if TAWC were granted the rate increase and rate redesign it has requested.³¹ Hearing Exhibit 2 lists a number of projects that are intended to serve all of TAWC's customers, including those in rate areas outside Chattanooga. Examples include SCADA and IT expenditures, as well as large expenditures for treatment plant upgrades. Under TAWC's proposed rates, Chattanooga customers would pay for nearly 93% of all of the costs associated with those projects, along with nearly 93% of all of TAWC's other costs.

²⁹ TAWC Response to Chattanooga Supplemental Discovery Request No. 2, Attachment 1 (TAW_R_COCDR4_002_111324_Attachment 1) (Nov. 13, 2024).

³⁰ TAWC would recover more than \$935,000 for the \$9,000,000 investment based on its pre-tax rate of return of 10.391230%. Direct Testimony of Mark Garrett, Exhibit MG-2.9 (Sept. 17, 2024). Assuming a 40-year depreciation/amortization, another \$225,000 per year in depreciation would be recovered, for a total cost to be recovered of \$1,160,211.

³¹ TAWC Response to Chattanooga Supplemental Discovery Request No. 2, Attachment 1 (TAW_R_COCDR4_002_111324_Attachment 1) (calculated based on Chattanooga proposed revenue of \$77,951,818 compared to total TAWC revenue of \$84,059,343) (Nov. 13, 2024).

TAWC contends that growth in its customers benefits existing customers by spreading costs among a larger number of customers.³² However, TAWC's proposal to increase Chattanooga customer rates while decreasing rates for customers in outlying rate areas and setting rates at levels that subsidize outlying customers do just the opposite for Chattanooga customers, which generate 93% of TAWC's revenue, defeating any potential cost-sharing benefits from growth.

Consistent with the approved settlement in Docket No 19-00103, these issues should be considered in a separate docket.

(c) TAWC Cannot Meet Its Burden Because It Seeks to Lower Rates in Outlying Areas to Promote Its Corporate Growth Strategy, Not to Benefit Its Customers.

TAWC admits that it is expected by its parent company to produce annual growth of two percent.³³ It has employed a director of business development, Kevin Krushinski, to develop new customer areas outside its traditional service area to meet those growth goals.³⁴ TAWC's director of business development stated that he was seeking to add additional service areas outside those currently served by TAWC. Indeed, he stated that TAWC's goal was to add new service areas throughout the State of Tennessee.³⁵ If TAWC's achievement of the two percent

³² Testimony of John Watkins, Transcript Vol. I, 219:8-15.

³³ Testimony of John Watkins, Transcript Vol. I, 216:16-19; Testimony of Kevin Krushinski, Transcript Vol. II(B), 17:11 – 18:13.

³⁴ Testimony of Kevin Krushinski, Transcript Vol. II(A), 14:5-16; Testimony of John Watkins, Transcript Vol. I, 207:17 – 208:8.

³⁵ Testimony of Kevin Krushinski, Transcript Vol. II(A), 22:11-20.

annual growth goal contributed to better American Water performance, TAWC executives would be rewarded with higher incentive pay.³⁶

TAWC has also admitted that a primary goal of decreasing rates to outlying areas is to promote greater opportunities for its growth through "water industry consolidation."³⁷ TAWC's offer of lower rates for newly-served areas will make TAWC better able to acquire other water systems in outlying areas, while forcing Chattanooga customers to subsidize the growth.

TAWC's witness Kevin Krushinski, who has been hired to pursue TAWC's goal of serving new customers across the State of Tennessee, was asked, "Is one purpose of the consolidation proposal to encourage the greater consolidation of water systems?"

A. It is not.

What it does -- what it does do is it allows the company to look at water systems that may be in need of assistance, whether it's from an operational perspective or they just don't have the expertise to -- to run a water utility anymore. ***It allows the company to look at those systems that may be distressed and allow our expertise and resources and to invest in those systems within Tennessee without drastically increasing those customers' water rates because that investment will be spread over the larger customer base.***

Testimony of Kevin Krushinski, Transcript Vol. II(A), 129:7-13 (emphasis added).

Although he initially tried to deflect, Mr. Krushinski admitted that lower rates for remote customers would permit TAWC to acquire distant water systems throughout the State, keeping their rates low through subsidies from Chattanooga ratepayers.

The obvious conflict posed by TAWC's goal of forcing its present customers to subsidize its remote growth must be fully explored, and guardrails installed to stop such abuses, before

³⁶ Testimony of Robert Mustich, Transcript Vol. I, 260:23 – 261:13.

³⁷ Direct Testimony of Heath Brooks, 28:13-19 (May 1, 2024).

TAWC's rate "consolidation" proposals are considered. Consistent with the approved settlement in Docket No 19-00103, these issues should be fully considered in a separate docket.

C. TAWC'S PROPOSAL TO DRAMATICALLY SHIFT REVENUE RECOVERY FROM FIXED CHARGES TO VARIABLE CHARGES WILL HARM BUSINESS RECRUITMENT AND PRODUCE GREATER REVENUE VOLATILITY.

TAWC's proposal to significantly shift revenue recovery from fixed charges to variable charges lacks any cost basis, would increase revenue volatility for the utility, and would harm Chattanooga's efforts to attract businesses and industries that require large quantities of water.³⁸ For residential ratepayers, TAWC proposes service charge increases, traditionally covering fixed costs, that are much lower than the overall rate increase that it seeks. TAWC's proposed tariff would also significantly change consumption charges, which should cover variable costs. The proposed residential tariff gives the first 3,000 gallons per month away for free, while increasing the rates for the next three consumption blocks from 126.49% to 382.20%.³⁹ TAWC demonstrates no cost basis for the significant shift in revenue recovery from fixed to variable costs. Nor has TAWC shown that its cost of delivering the first 3,000 gallons of water per month has somehow fallen to zero or that its cost of delivering larger quantities of water has risen by 126% to 382% above TAWC's current residential rates.

³⁸ Direct Testimony of Mark Garrett, p. 51 (Sept. 17, 2024).

³⁹ Direct Testimony of Heath Brooks at Ex. Rev-2-Revenue at Present and Proposed Rates-HB, p. 2 (Chattanooga Residential) (May 1, 2024).

TAWC similarly fails to show any cost basis for its proposed increases in consumption charges for commercial⁴⁰ and industrial customers.⁴¹ Beyond the absence of a demonstrated cost basis, the shift would violate an important rate principle articulated by TAWC that rates should be designed to decrease revenue volatility, rather than increase it, in the face of weather conditions and ongoing trends of declining usage.⁴² The proposed shift of revenue responsibility to consumption charges would increase revenue volatility, not decrease it. TAWC has not met its burden of showing that the rate design change shifting revenue responsibility from fixed to variable cost charges is cost based or in the interest of either the utility or the consumers, and Chattanooga respectfully requests that it be rejected.

CONCLUSION

For these reasons, Chattanooga respectfully requests that the Commission deny TAWC's Petition. Chattanooga respectfully requests that the Commission order a decrease in TAWC's rates to prevent its continued overcollection of revenue from its customers. Chattanooga further respectfully requests that the Commission deny TAWC's proposals to increase Chattanooga rates in order to decrease rates in outlying areas served by TAWC and deny TAWC's proposals to shift significant revenue responsibility from fixed to variable rate elements.

⁴⁰ Volumetric charges for Chattanooga commercial customers would be increased by approximately 90% for the blocks covering most commercial use, compared to fixed charge increases of 38% to 54% for the most common meter sizes. Direct Testimony of Heath Brooks at Ex. Rev-2-Revenue at Present and Proposed Rates-HB, p. 3 (Chattanooga Commercial) (May 1, 2024).

⁴¹ Volumetric charges for Chattanooga industrial customers would be increased by 81.37%, compared to reductions of 26% to 34% for fixed charges. Direct Testimony of Heath Brooks at Ex. Rev-2-Revenue at Present and Proposed Rates-HB, p. 4 (Chattanooga Industrial) (May 1, 2024).

⁴² Rebuttal Testimony of Heath Brooks at 29:20 – 31:7 (Oct. 22, 2024).

Respectfully Submitted,

CITY OF CHATTANOOGA

By: CDorvil for Phil Niblett w/ permission

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the following persons via U.S. Mail, with a courtesy copy by electronic mail:

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This the 10th day of December 2024.



For Chambliss, Bahner & Stophel, PC