BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

IN RE: **PETITION OF TENNESSEE-AMERICAN WATER TO MODIFY TARRIFF, CHANGE AND INCREASE CHARGES, FEES, AND RATES, AND FOR APPROVAL OF GENERAL RATE INCREASE**	)))))))	**DOCKET NO. 24-00032** **FILED: December 10, 2024**

POST-HEARING BRIEF
UTILITY WORKERS UNION OF AMERICA, AFL-CIO, AND UWUA, LOCAL 121

The Utility Workers Union of America, AFL-CIO ("UWUA"), and UWUA Local 121 (hereinafter collectively "UWUA"), intervenor parties in this action, present this Post-Hearing Brief for the Commission's consideration.

The UWUA represents the majority of Tennessee-American Water Company's workforce.[1] The UWUA intervened in this matter to address its concern that chronic understaffing within Tennessee-American's workforce has resulted in unsafe and stressful working conditions for hourly workers and has thereby undermined the Company's ability to provide safe, adequate, and efficient water service to its customers. To address and prevent the adverse effects of this chronic understaffing, the UWUA seeks the following relief:

(1) The UWUA supports the Company's request for approval of a labor expense based on the cost of employing 117 full-time employees. The UWUA rejects the other Intervenors' argument that the labor expense should fund fewer than 117 full-time employees because

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[1] As used herein, "the Company" and / or "Tennessee-American" refers to the Petitioner, Tennessee-American Water Company.

reducing the number of rate-funded employees will exacerbate, not ameliorate, understaffing.

(2) As a condition of approving any increase in rates, the Commission should require the Company to take all reasonable steps to maintain a workforce of at least 117 full-time employees. Alternately, should the Commission approve a labor expense based on the cost of employing fewer than 117 employees, the Commission should require the Company to take all reasonable steps to maintain a workforce of at least the number of full-time employees on which the approved labor expense is calculated.

(3) As a condition of approving the Company's requested rate increase, the Commission should require the Company to file quarterly reports reflecting the following employment-related information: (1) identification of all vacancies by job title for each month during the quarter, (2) the date when each vacancy occurred, (3) the Company's expected date to fill each vacancy, and (4) explanatory information, including for any position included in the labor expense approved by the Commission in this case that has remained vacant for more than three months an explanation of why the Company has not filled the position.

(4) To further ensure the safe, adequate, and efficient delivery of water services to its customers, the Commission should also require the Company to file quarterly reports disclosing the following maintenance-related information:

    a. **Valve Maintenance:** (1) the target number of valves to be inspected for the quarter, (2) the actual number of valves inspected in the quarter, (3) the number of valves that were labeled as in need of repair or replacement at the start of the quarter, grouped by size (4) the number of valves repaired or replaced during the quarter, grouped by size,

(5) the date of the work order related to the repair or replacement of each valve, (6) the expected date of each valve's repair or replacement, and (7) explanatory information.

b. **Hydrant Maintenance:** (1) the target number of fire hydrants to be inspected for the quarter, (2) the actual number of fire hydrants inspected in the quarter, (3) the number of fire hydrants that were labeled as in need of repair or replacement at the start of the quarter, (4) the number of fire hydrants repaired or replaced during the quarter, (5) the date of the work order related to the repair or replacement of each fire hydrant, (6) the expected date of each fire hydrant's repair or replacement, and (7) explanatory information.

(5) Finally, in light of the Company's history of understaffing its operations compared to the number of full-time positions included in the approved labor expense, the Commission should adopt an enforcement mechanism whereby the Commission will reduce the Company's return on equity percentage when the Company fails for a period of more than six months to employ the number of full-time employees on which the approved labor expense is calculated. For example, this reduction could be commensurate with the windfall in revenues that would otherwise result from any failure by Tennessee-American to maintain the number of employees the Company has insisted in this case to be essential for the delivery of safe, adequate, and efficient services to ratepayers.

The UWUA respectfully requests the relief stated above as necessary and sufficient to remedy the Company's history of chronically understaffing its operations and to ensure the safe, adequate, and efficient provision of water to the Company's customers moving forward.

SUMMARY OF FACTS

The UWUA presented the testimony of two witnesses at the hearing: Shawn Garvey, a Senior National Representative with UWUA, and Danny Seebeck, the President of UWUA, Local 121. The UWUA relies on the testimony of these two witnesses, as well as evidence produced by the Company.

I. The Company's number of employees consistently falls below the number of full-time employees on which the Company's approved labor expense is calculated.

Since at least as far back as 2012, the Company has staffed its operations with fewer employees than the Company told the Tennessee Regulatory Authority ("TRA") it required to provide safe and reliable water service to its customers and with fewer employees than the number of employees used to calculate the labor expense approved by the TRA.

In the Company's 2010 rate case (Docket 10-00189), the Company sought approval from the TRA of a labor expense calculated to employ 110 full-time employees. The Company asserted that 110 employees were "needed and required to meet the expected service levels during the attrition year," noting that "each position had particular responsibilities that played an integral role within the Company." [2] The TRA agreed with the Company that the calculation of the labor expense "appropriately begins with 110 employees," but deducted the portion of the salary of the Government Affairs Specialist "that correlates to time spent performing the job function of political lobbying or legislative/governmental actions advocacy."[3]

In 2012, the Company filed another rate case (Docket 12-00049). Therein, the Company reduced the number of full-time employees underlying its labor expense calculation by three

[2] Docket 10-00189, Final Order, filed April 27, 2012, at p. 53.
[3] *Id.* at p. 61.

employees, seeking approval of a labor expense calculated to employ 107 full-time employees.[4] Unlike the 2010 rate case, this 2012 rate case was resolved when the TRA approved a settlement negotiated by the parties. Neither the parties' Stipulation and Settlement Agreement, nor the TRA's Order Approving Settlement Agreement specify the number of employees used to calculate the agreed labor expense.[5]

Despite the Company's assertion in 2010 that it required 110 employees to provide safe and reliable water service to its customers and despite the Company's assertion in 2012 that it required 107 employees to do so, the Company has regularly failed to fill this many positions. The year-end employment numbers disclosed by Company witness Robert Prendergast illustrate this employment gap for nearly all of the past 12 years.

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

See Docket 24-00032, Rebuttal Testimony of Robert Prendergast, filed October 22, 2024, at pp. 4-5.

4 Docket 12-00049, Testimony of Melissa L. Schwarzell, filed June 6, 2012, at p. 3. *See, also,* Testimony of Kevin N. Rogers, filed June 6, 2012, at pp. 5-7 (addressing organizational changes in the two years following the Company's filing of Docket 10-00189).

5 Docket 12-00049, Stipulation and Settlement Agreement, filed October 1, 2012; Order Approving Settlement Agreement, filed November 20, 2012.

Based on these Company-produced numbers, the Company has ended just two of the past 12 years with the 110 employees it claimed to need in its 2010 rate case filings. Rather than employing the number of employees paid for by Tennessee-American customers to provide essential services – whether 110 or 107 employees – the Company has averaged only 104 year-end employees over the past 12 years, and it has done so despite significant customer growth during the same period of time.[6]

Local 121 President Danny Seebeck testified from personal experience as a 22-year employee of the Company and as the President of UWUA Local 121 that the Company's chronic understaffing has particularly impacted the Company's hourly workforce over the past few years.[7] Mr. Seebeck testified that "there were 73 hourly workers in the Local 121 bargaining unit as recently as 2020, but today [*i.e.*, September 2024] there are only 63."[8] The above-cited data produced by the Company comports with this assessment. Mr. Seebeck testified that this chronic understaffing has led to certain employees working excessive overtime and then not being available for emergency call-outs that happen overnight, like main breaks, which often have to run until a day crew can repair them.[9] Mr. Seebeck testified that the "pressure from the overall workload is enormous," with hourly workers feeling "stressed every day trying to complete day-to-day work tasks and fatigued by the long hours."[10] Mr. Seebeck then noted that "it's unavoidable that workers who are stressed and fatigued from excessive workload and long hours are more likely to experience workplace safety incidents, which

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[6] In 2010, the Company supplied "water service and public and private fire service to 75,300 customers in the City of Chattanooga and surrounding areas," while in 2024 the Company serves "approximately 87,000 water and private fire service customers throughout the states of Tennessee and Georgia." *Compare* Docket 10-00189, Testimony of John S. Watson, filed September 23, 2010, at p. 3, *with* Docket 24-00032, Testimony of Grady Stout, filed May 1, 2024, at p. 4.

[7] Docket 24-00032, Testimony of Danny Seebeck, filed September 17, 2024, at p. 1.

[8] *Id.* at p. 2.

[9] *Id.*

[10] *Id.* at p. 3.

of course can also pose safety risks to other employees."[11] In addition to the above, Mr. Seebeck testified to the related effects of understaffing on the Company's preventative maintenance program, as discussed more fully below.

Given the Company's history of long-term understaffing, Mr. Seebeck and Mr. Garvey both testified that the UWUA supports the Company's request for approval of a labor expense based on the Company's expectation of employing 117 full-time employees. The Company claims to need 117 employees to "to maintain the company's current level of operations while also managing increased organic customer growth,"[12] and the UWUA concurs that approval at this level, particularly when coupled with the reporting and enforcement remedies sought by the UWUA, will promptly lead to the increase in hourly employees[13] needed to ensure the safe, adequate, and efficient delivery of water to the Company's customers and the safety of the Company's employees.

II. The Company's short-staffed maintenance and repair operations are failing to meet industry standards and the Company's own policies, are impeding the Company's ability to provide safe, adequate, and efficient water service, and are endangering the Company's workers.

Through Mr. Garvey and Mr. Seebeck's testimony, and through data and documents produced by the Company, the UWUA demonstrated that the Company's maintenance and repair operations are deficient and would benefit from the hiring of more workers and from oversight by the Commission via submission of quarterly reports addressing the below-described issues.

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[11] *Id.*

[12] Docket 24-00032, Testimony of Grady Stout, filed May 1, 2024, at p. 38.

[13] The Company's forecast of 117 employees includes 88 hourly-paid employees and 29 salaried employees. *See* Docket 24-00032, TAWC Supplemental Response to UWUA Discovery Request 1-21, filed August 14, 2024.

a. Valve Maintenance

The UWUA has raised serious concerns about the Company's valve maintenance program. To address these concerns, the UWUA supports the Company's request for approval of a labor expense calculated to fund 117 full time positions, and also seeks quarterly reporting to the Commission on the Company's valve maintenance program.

Water utilities must maintain a network of properly functioning distribution valves to control the flow of water through the system and to be able to isolate parts of the system for maintenance and emergency repairs. If a utility fails to maintain its distribution valves through proper inspection and maintenance, problems that should have been quickly contained can spiral out of control, causing broader damage and property loss, unnecessarily wasting resources, and inconveniencing more customers through service disruptions than would have been inconvenienced otherwise.[14]

When a water utility fails to inspect and maintain its distribution valves properly, the result can disrupt services to customers and also put the utility's workers in danger. For example, if a water main breaks, and if the closest valves are either inoperable or cannot be located, then the break may continue for longer than necessary, and workers may have to repair the break while water is still flowing under full pressure. Mr. Seebeck provided a first-person account of this type of dangerous repair from 2019, when he and other workers repaired a significant main break to restore service to 35,000 Chattanooga customers while holding their breath under water after multiple failed attempts to locate and operate valves that would otherwise have isolated the break.[15]

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[14] UWUA witness Shawn Garvey filed detailed testimony addressing the importance of valve maintenance and setting forth the cascading set of adverse consequences that can follow when a water utility fails to conduct proper preventative maintenance on the utility's distribution valves. *See* Docket 24-00032, Revised Testimony of Shawn Garvey, filed October 21, 2024, at pp. 8-19.

[15] *See* Docket 24-00032, Testimony of Danny Seebeck, filed September 17, 2024, pp. 11-14.

Unless a water utility regularly inspects and operates its valves, there is no way to know whether valves are functioning properly and whether valves need repair. The Company's parent corporation American Water itself emphasizes this point in its Valve Operation, Inspection and Maintenance Practice policy, noting that "improper or insufficient maintenance may result in valve failure causing extensive damage to infrastructure and/or property loss, extended service interruptions to American Water customers, loss of fire protection, and can lead to costly repairs or replacement activities."[16]

The data the Company produced in discovery supports the UWUA's assertion that the Company's valve maintenance program requires more workers and requires oversight by the Commission, as the Company has fallen behind its own valve inspection targets for years. The Company's supplemental and original responses to UWUA DR 1-1 provide data on total valves in the system, on the Company's target goals for valve inspections from 2020 through 2024, and on inspections completed during those years. According to these discovery responses, the Company currently has 12,455 valves in its system: 312 large valves (16 inches and greater) and 12,143 smaller valves (smaller than sixteen inches).[17] Yet, for the years when the Company produced information on inspection targets and on completed inspections, the Company woefully failed to meet its targets[18]:

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[16] *See* Docket 24-00032, Revised Testimony of Shawn Garvey, filed October 21, 2024, at pp. 13-14 and at Exhibit UWUA-1, American Water Valve Operation Manual, reproduced at pages 30-42 of Garvey Revised Testimony. This quotation from the American Water policy manual appears on page 31 of Garvey's testimony. Mr. Garvey also testified that the leading water utility trade group—American Water Works Association—has published similar standards governing proper valve maintenance in the AWWA Distribution Valve Manual, which is attached as Exhibit UWUA-2. *See* pp. 51-59 of the manual.

[17] *See* Docket 24-00032, Responses to UWUA Discovery Requests, spreadsheet labeled TAW_R_UWUADR1_001_073024, filed July 30, 2024.

[18] *See id.* at "Response B" worksheet to the same spreadsheet.

- For 2020, the Company reports that it had a target goal of inspecting 4,536 valves (for the Chattanooga service area only), and that it completed 2,241 inspections that year. This works out to a completion rate of less than 50%.
- For 2021, the Company reports that it planned to inspect 4,079 valves (for the Chattanooga service area only), and that it completed 1,049 for a completion rate of only 26%.
- For 2022, the Company claims that it had no target number of valve inspections, but that it completed 1,368 inspections that year (for the Chattanooga service area only). Assuming the Company expected to conduct a similar number of valve inspections as in 2021, that works out to a completion rate of only 34%.
- For 2023, the Company reports that it planned to inspect 2,614 valves for the entire TAWC system, and that it completed only 39% – or about 1,019 valve inspections completed.[19]

Relying solely on 2023 data – the most recent full-year data available – it would take more than 12 years for the Company to inspect all valves in its system at its 2023 inspection rate. This is more than twice the time the Company says it hopes to inspect all valves in its system.

For 2024, the Company claimed in discovery that it targeted 2,535 valves for inspection and that it had completed 76% of these as of June 30, 2024.[20] Yet, Mr. Seebeck testified that management substantially degraded its valve inspection standards in early 2024 when it instructed workers that they could "work unlimited overtime to inspect the Company's distribution valves to increase the Company's numbers for valve inspections this year," but that workers would "not be operating valves during these inspections, but merely verifying we could get a key on the valve nut, make sure the valve

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[19] *See, also,* TAWC Supplemental Response to UWUA DR 1-1, filed August 14, 2024.

[20] *See* Docket 24-00032, TAWC Supplemental Response to UWUA DR 1-1, filed August 14, 2024; TAW_R_UWUADR1_001_073024, filed July 30, 2024, sheet labeled "Response B."

wasn't obviously broken, and then move on to the next valve."[21] This instruction contradicts American Water's valve maintenance policy and AWWA standards, which require that valve inspections must include fully operating each inspected valve.[22] Mr. Stout testified that the Company did not issue such instructions.[23] However, Company records produced by Tennessee-American during discovery demonstrate that especially after February 1, 2024, the number of "turns" recorded in the Company's inspection-tracking software decreased significantly below the full number of turns that American Water's valve maintenance policy stipulates as necessary for a proper inspection for many of 2024's recorded valve inspections.[24]

b. Hydrant Maintenance

The UWUA has also raised serious concerns about the Company's hydrant maintenance program. In the Company's response to UWUA DR 1-6 and the attached spreadsheet, the Company reported 200 fire hydrants out of service at some time since the beginning of 2020, including 125 active or otherwise non-retired hydrants and 75 that have since been retired. The Company reported that 31 of these non-retired hydrants were still out of service as of June 30, 2024. Of the 94 remaining non-retired hydrants that were out of service for some period starting in 2020, 20 of these were out of service for more than three months – including two for more than a year. The Company also reports an additional 25 hydrants that are currently listed as retired but were out of service for more than three

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[21] Docket 24-00032, Testimony of Danny Seebeck, filed September 17, 2024, at p. 7.

[22] Docket 24-00032, Revised Testimony of Shawn Garvey, filed October 21, 2024, at pp. 10-11.

[23] Docket 24-00032, Rebuttal Testimony of Grady Stout, filed October 22, 2024, at pp. 25-28.

[24] *See* Docket 24-00032, TAWC Response to UWUA DR 1-2, spreadsheet labeled TAW_R_UWUADR1_002_0703024, filed July 30, 2024. *See, also,* Mr. Garvey's detailed review of the Company's documented decrease in the number of "turns" recorded for supposedly completed valve inspections, Revised Testimony of Shawn Garvey, filed October 21, 2024, at pp. 13-15.

months at some time since January 1, 2020.[25] After reporting this data, the Company later reported through discovery that 11 of the 31 hydrants it had previously reported as out of service were listed as such "due to incomplete finalization of the out of service note," and that these hydrants are now back in service or retired. However, TAWC has provided no updated information for how long these 11 hydrants were out of service.[26] The Company also reports that it has 144 open work orders for hydrant repairs, hydrants leaking, or hydrant investigation. Eighty-six of these work orders have been open since 2023 and earlier, with the oldest dating back to March 27, 2018.[27]

Maintaining a full complement of fully-functioning fire hydrants is essential for public safety. Like with valve maintenance, the UWUA asserts that the Company will be better able to reduce its backlog of hydrant maintenance if the Commission approves the full labor expense proposed by the Company. The UWUA also seeks an order requiring quarterly reporting on hydrant maintenance to ensure accountability on this critical part of the Company's operations.

c. Other Maintenance Concerns

The UWUA also seeks to address backlogs and delays related to the repair of known leaks in the system and related to new customer installations, as detailed on pages 21 to 23 of Mr. Garvey's Revised Testimony. The UWUA supports approval of the Company's full proposed labor expense because increased hiring will relieve chronic understaffing and will provide for the additional workers needed to address these issues.

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[25] For the data reported in this paragraph, *see* Docket 24-00032, TAWC Response to UWUA DR 1-6, TAW_R_UWUADR1_006_073024, worksheet entitled "OOS" (sorted by status, dates out of service, and dates back in service), filed July 30, 2024.

[26] Docket 24-00032, TAWC Response to UWUA DR 2-8, filed August 27, 2024.

[27] Docket 24-00032, TAWC Response to UWUA DR 1-7, with attached spreadsheet (TAW_R_UWUADR1_007_073024), filed July 30, 2024.

ARGUMENT

I. The Commission has legal authority to condition its approval of a proposed rate increase.

As a general matter, "[t]he power to approve implies the power to disapprove and the power to disapprove necessarily includes the lesser power to condition an approval." *Southern Pac. Co. v. Olympian Dredging Co.*, 260 U.S. 205, 208 (1922). The Commission has particularly broad powers over the utilities it regulates and clear legal authority to impose the UWUA-proposed conditions, each of which is tailored to address staffing and maintenance issues that currently compromise the quality of the service provided by the Company to customers.

Tennessee law gives the Commission "practically plenary authority over the utilities within its jurisdiction."[28] In particular, the Commission's "primary grant of authority" states:

> The commission has general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

TENN. CODE ANN. § 65-4-104. In interpreting that provision, the Tennessee Code mandates that:

> This chapter shall not be construed as being in derogation of the common law, but shall be given a liberal construction, and any doubt as to the existence or extent of a power conferred on the commission by this chapter or chapters 1, 3 and 5 of this title shall be resolved in favor of the existence of the power, to the end that the commission may effectively govern and control the public utilities placed under its jurisdiction by this chapter.

TENN. CODE ANN. § 65-4-106.

The Tennessee Code further enumerates the powers of the Commission, which include the power to:

> (1) Investigate, upon its own initiative or upon complaint in writing, any matter concerning any public utility . . . ;

[28] *Consumer Advoc. Div. v. Greer*, 967 S.W.2d 759, 762 (Tenn. 1998) (citing *Tenn. Cable Television Ass'n v. Tenn. Pub. Serv. Comm'n,* 844 S.W.2d 151, 159 (Tenn. Ct. App. 1992)) (internal quotations omitted).

(3) After hearing, by order in writing, fix just and reasonable standards, classifications, regulations, practices or services to be furnished, imposed, observed and followed thereafter by any public utility; [and]

(4) After hearing, by order in writing, ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, voltage, or other condition, pertaining to the supply of the product or service rendered by any public utility, and to prescribe reasonable regulations for examination, test and measurement of such product or service.

TENN. CODE ANN. § 65-4-117. The General Assembly has also empowered the Commission to "adopt rules governing the procedure prescribed or authorized" including "rules implementing, interpreting, or making specific the various laws which it enforces or administers." TENN. CODE ANN. § 65-2-102(1)-(2).

Thus, the Commission has broad jurisdiction to impose requirements on the Company necessary to ensure that safe and adequate service as statutorily mandated is provided. Each of the Union's proposed conditions is designed to remedy staffing and maintenance issues that implicate the safety and adequacy of the service offered by the Company.

II. The Commission should approve the proposed 117-employee labor expense, should require quarterly reporting on employment vacancies, and should adopt an enforcement mechanism to ensure the Company employs 117 full-time employees.

a. The Commission should approve the proposed 117-employee labor expense.

The UWUA supports the Company's request for a labor expense calculated to fund 117 full-time employees. The Company's assertion that it requires more employees to provide safe, adequate, and efficient service to its growing customer base comports with the UWUA's experience that chronic understaffing has led to unsafe working conditions and has adversely affected service to customers. For these reasons, the Commission should approve the Company's proposed labor expense.

The Company's Vice President of Operations, Grady Stout, testified that the Company employed 101 full-time employees as of December 31, 2023, and that staffing its operations with just

101 full-time employees "didn't, and doesn't, support completion of all necessary day-to-day work."[29] To address this untenable employment deficit, Mr. Stout testified that increasing the complement of employees to 117 full-time employees is necessary "to maintain the company's current level of operations while also managing increased organic customer growth" and to support "increasing state and federal regulations [that are] also adding to the company's workload."[30] For this reason, the Company confirmed in response to the UWUA's discovery requests that "the growth of [the Company's] customer base and system growth, new and evolving regulatory requirements, and natural workforce attrition, among other things, have impacted [the Company's] ability to support completion of all necessary day-to-day work at December 31, 2023, staffing levels."[31]

The Company's assertion of an urgent need for more workers comports with the Union's testimony, detailed in the Summary of Facts, that chronic understaffing has prevented the Company from running a preventative maintenance program that meets industry standards, resulting in adverse service impacts for customers and unsafe working conditions for workers. By approving a labor expense calculated to compensate 117 full-time employees, the Commission will empower the Company to expand its maintenance and operations staff and, in turn, to ameliorate or eliminate the adverse impacts of years of chronic understaffing.

Neither the Consumer Advocate nor the City of Chattanooga argue that the Company requires fewer than 117 employees to provide safe, adequate, and efficient service. Rather, without challenging the <u>need</u> for 117 full-time employees, the Consumer Advocate and the City of Chattanooga argue that the Company's proposed labor expense should be reduced because the Company has failed in the past

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[29] Docket 24-00032, Testimony of Grady Stout, at 38: 4-6, filed May 1, 2024 (Mr. Stout further noted that such low employment levels required the Company to "utilize contracted labor and contractors in order to maintain appropriate service levels.").

[30] *Id.* at 38: 11-14 & 39: 3-5.

[31] Docket 24-00032, TAWC Response to UWUA DR 1-19, filed July 30, 2024.

to fill all positions contemplated by its approved labor expense. While the UWUA agrees that the Commission should enact measures to ensure adequate employment, as described below, the UWUA strongly disagrees that the goal of delivering essential services to customers can be achieved by reducing the requested labor expense. Regardless, the Commission should note that no party to this matter contests the Company's forecast that it requires 117 full-time employees to provide safe, adequate, and efficient service to its customers in the years to come.

On cross examination by the City of Chattanooga, Mr. Stout testified without qualification that the Company is currently hiring for multiple positions and the Company's "goal is to fill 117 positions in the attrition year."[32] Thus, the uncontested evidence reflects that the Company requires 117 full-time employees to provide safe, adequate, and efficient water service to its customers in the attrition year, and the Company is committed to hiring all 117 positions.

For these reasons, the Commission should approve the Company's proposed labor expense without reduction, subject to the below-described reporting and enforcement mechanisms. In so doing, the Commission should require the Company to take all reasonable steps to maintain a workforce of at least 117 full-time employees. Alternately, should the Commission approve a labor expense based on the cost of employing fewer than 117 employees, the Commission should require the Company to take all reasonable steps to maintain a workforce of at least the number of full-time employees on which the approved labor expense is calculated.

b. The Company should be required to file quarterly employment reports.

As a condition of approving the Company's requested labor expense, the Commission should require the Company to file quarterly reports reflecting the following employment-related information: (1) identification of all vacancies by job title for each month during the quarter, (2) the date when each

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32 *See* Hearing Transcript, Vol I, 190:24-25.

vacancy occurred, (3) the Company's expected date to fill each vacancy, and (4) explanatory information, including for any position included in the labor expense approved by the Commission in this case that has remained vacant for more than three months an explanation of why the Company has not filled the position.

The benefits of transparency are well-recognized in our statutes and jurisprudence, as evidenced by sunshine laws and freedom of information procedures throughout the 50 states and the federal law. The Tennessee Supreme Court has recognized these benefits, including the accountability benefits inherent to Tennessee's own Public Records Act. *See Schneider v. City of Jackson*, 226 S.W.3d 332, 339 (Tenn. 2007) ("Facilitating access to governmental records promotes public awareness and knowledge of governmental actions and encourages governmental officials and agencies to remain accountable to the citizens of Tennessee."). As a quasi-governmental regulated monopoly providing an essential public service, the Company operates under the plenary authority of the Commission and is accountable both to the Commission and to its customers. Both the Commission and the Company's customers will benefit from regular reporting on the Company's employment vacancies and from the accountability mechanism inherent to such reports.

The Commission would not be breaking new ground in requiring such reporting. Rather, the Commission would be renewing a tool its predecessor agency utilized in the past with this specific water utility. In its final order adjudicating the Company's 2010 rate case, the TRA addressed similar employment-related concerns raised by the UWUA by requiring the Company to submit semi-annual reports detailing "(1) the actual number of full-time equivalent employees for the previous period, by month, (2) an explanation concerning any differences between the authorized and actual full-time equivalent employees, and (3) a date by which Tennessee American Water Company expects to fill any vacant positions."[33] A copy of one of these reports, filed on October 5, 2012, is attached to this brief for ease of reference as Exhibit A.

The Consumer Advocate argues that the reporting regime enacted as part of the 2010 rate case was ineffective as a mechanism for ensuring full employment by the Company. Yet, the Consumer Advocate fails to recognize that this reporting regime remained in place for less than one year. The TRA required semi-annual reporting in its Final Order adjudicating the 2010 rate case on April 27, 2012.[34] The Company subsequently filed two reports—the first on May 24, 2012, and the second on October 5, 2012.[35] Yet, during this same time, the Company filed a new rate case (Docket 12-00049), and the parties resolved that case by agreement. The parties' settlement, which the TRA approved on November 20, 2012, relieved the Company of its short-lived requirement to submit employment-related reports.[36]

All of the Intervenors have raised concerns about the Company's past failures to fully staff its operations. However, the Company's Vice President of Operations testified without qualification that the Company's "goal is to fill 117 positions in the attrition year."[37] By requiring these quarterly reports as requested by the UWUA, the Commission will ensure the accountability that arises from transparency by providing the Commission, the Company's employees, and the Company's customers with a mechanism to monitor whether the Company lives up to its aspiration of adequate staffing.

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[33] Docket 10-00189, Final Order, filed April 27, 2012, at pp. 134-35.

[34] *Id.*

[35] *See* Docket 10-00189, reports filed on May 24, 2012, and on October 5, 2012.

[36] For this reason, the Consumer Advocate's cross examination request for Mr. Garvey to agree that the 2010 rate case's reporting requirement proved ineffective was unpersuasive. Mr. Garvey was unaware of the brevity of this reporting requirement, and its brevity renders unpersuasive any claim that the reporting regime was ineffective. *See* Hearing Transcript, Vol. II(B), 194:3-13.

[37] *See* Hearing Transcript, Vol. I, 190:24-25.

c. The Commission should adopt an enforcement mechanism.

To ensure that the Company undertakes all reasonable efforts to maintain a workforce at or above the number of full-time employees contemplated by the Commission's approved labor expense, the Commission should also adopt an enforcement mechanism whereby the Commission announces its intention to reduce the Company's return on equity percentage if the Company persistently fails to employ the number of full-time employees on which the approved labor expense is calculated for a period of more than six months. If such long-term, persistent vacancies arise, the Commission should temporarily reduce the Company's return on equity percentage on its own accord or at the urging of any interested party. Any such reduction should be temporary and should end upon the filling of the long-vacant position(s). This enforcement mechanism falls well within the Commission's plenary authority to set rates and to ensure the safe, adequate, and efficient delivery of water services by Tennessee-American to its customers, and this enforcement mechanism will ensure that the Company consistently strives to maintain adequate employment within the approved labor expense.

Other jurisdictions have routinely recognized that public utility commissions may consider factors such as deficiencies in customer service or management performance in setting a fair and reasonable return on equity. In *US West Communications, Inc. v. Washington Utils. and Transp. Commission*,[38] for example, the Supreme Court of Washington held that "a utility commission may consider the quality of service or the inefficiency of management in setting a fair and reasonable rate of return. A final rate may be set at the low end of a reasonable range because of poor service so long as it remains within a range that is determined to be reasonable."

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[38] 949 P.2d 1337, 1361 (Wash. 1997) (citations omitted).

Similarly, the Florida Supreme Court in *Gulf Power Co. v. Wilson*[39] reaffirmed its long-standing precedent that the state Public Service Commission – after setting a reasonable range for a utility's return on equity – "can make further adjustments to account for such things as accretion, attrition, inflation and management efficiency." The court, therefore, held the state commission has inherent authority "to reduce the rate of return for mismanagement, as long as the resulting rate of return falls within the reasonable range set by the Commission," noting further that this "concept of adjusting a utility's rate of return on equity based on performance of its management is by no means new to Florida or other jurisdictions."[40]

Since the Commission may set a utility company's rate of return at the lower end of a reasonable range based on deficiencies in customer service or similar factors, it is all the more reasonable to merely require a reduction in the allowed return if the Company demonstrably fails to maintain the number of employees that have been authorized by rates over an extended period of time. This is especially true when the authorized workforce is based on Company testimony that its proposed employment levels are essential to deliver adequate services to customers. Otherwise, the Company would reap an unwarranted windfall – at the expense of customers – by failing to follow through on its representations to the Commission.

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[39] 597 So. 2d 270, 273 (Fla. 1992), citing *United Tel. Co. v. Mann*, 403 So. 2d 962, 966 (Fla. 1981).

[40] *Id.* at 273-74, n. 2 (citing cases in accord from Louisiana, North Carolina, California, and Rhode Island). *See also In re: Massachusetts Electric Co.*, 2016 WL 5816055, DPU 15-155, *211, n. 271 (Mass. Dept. of Public Utilities, Sept. 30, 2016) (holding that it is "accepted regulatory practice to consider qualitative factors such as management performance and customer service in setting a fair and reasonable ROE," citing precedents from Florida, North Carolina, Vermont, Washington, and Wisconsin).

III. The Commission should require quarterly reports on valve and hydrant maintenance.

After years of understaffing and a recent degradation of inspection standards, the Company's valve and hydrant maintenance programs are substandard and, as a result, are exposing the Company's workers to greater physical risks and are jeopardizing the Company's ability to provide safe, adequate, and efficient water service to the Company's customers.[41] Expanding the Company's workforce should allow the Company to address many of these issues, but the UWUA also seeks quarterly reporting on these two programs to ensure that the Commission, the rate payers, and the public can monitor the Company's progress and hold it accountable if it fails to address these shortcomings.

Concerning valve maintenance, the Union seeks an order requiring the Company to submit quarterly reports to the Commission setting forth the following information: (1) the target number of valves to be inspected for the quarter, (2) the actual number of valves inspected in the quarter, (3) the number of valves that were labeled as in need of repair or replacement at the start of the quarter, grouped by size, (4) the number of valves repaired or replaced during the quarter, grouped by size, (5) the date of the work order related to the repair or replacement of each valve, (6) the expected date of each valve's repair or replacement, and (7) explanatory information.

The Commission's predecessor required similar reports when it adjudicated the Company's 2010 rate case. Pursuant to the Final Order in Docket 10-00189, the TRA required semiannual reports setting forth "(1) the current number of employees assigned to the valve program, by month, (2) the number of larger and smaller valves targeted for inspection, operation, and maintenance during the previous period, by month, (3) the number of valves actually inspected, operated, and maintained during the current period, by month, (4) the number of valves discovered or known to be in need of

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[41] The UWUA details the failings of these maintenance programs in the Summary of Facts, and they are further detailed in the filed testimony of UWUA witnesses Shawn Garvey and Danny Seebeck.

repair or replacement, by month, (5) the date of repair or replacement of such valves, and (6) in the event that Tennessee American Water Company did not repair or replace certain valves, the number of valves that were not repaired or replaced and a detailed explanation of the reason(s) that action was not taken."[42] *See* example report attached hereto as Exhibit A.

Concerning hydrant maintenance, the Union seeks an order requiring the Company to submit quarterly reports to the Commission setting forth the following information: (1) the target number of fire hydrants to be inspected for the quarter, (2) the actual number of fire hydrants inspected in the quarter, (3) the number of fire hydrants that were labeled as in need of repair or replacement at the start of the quarter, (4) the number of fire hydrants repaired or replaced during the quarter, (5) the date of the work order related to the repair or replacement of each fire hydrant, (6) the expected date of each fire hydrant's repair or replacement, and (7) explanatory information.

By requiring the Company to file quarterly reports addressing valve and hydrant maintenance, the Commission will ensure greater transparency into these two maintenance programs, with the incumbent effect of enabling the Commission to hold the Company accountable on its own action or if any interested party seeks to address any continuing deficiencies with the Commission.

CONCLUSION

For the reasons set forth herein, the UWUA respectfully requests that the Commission approve the Company's proposed labor expense and require the Company to undertake all reasonable steps to maintain a workforce of at least the number of full-time employees on which the approved labor expense is calculated. The UWUA further requests that the Commission require quarterly reporting related to employee vacancies and related to the Company's valve and hydrant maintenance programs, as detailed above. Finally, the UWUA requests that the Commission require the Company to undertake

[42] Docket 10-00189, Final Order, filed April 27, 2012, at p. 135.

all reasonable measures to maintain its workforce at the full number of employees contemplated by the approved labor expense and announce that it will reduce the Company's return on equity percentage if the Company fails to fill the positions contemplated by the approved labor expense for a period of six months or longer.

Dated: December 10, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Post-Hearing Brief* was served via U.S. Mail, with a courtesy copy sent via electronic mail, upon:

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Exhibit A
UWUA’s Post-Hearing Brief

BUTLER SNOW

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October 5, 2012

VIA HAND DELIVERY

Hon. Kenneth C. Hill, Chairman
c/o Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

RE: Petition Of Tennessee American Water Company To Change And Increase Certain Rates And Charges So Far As To Permit It To Earn A Fair And Adequate Rate Of Return On Its Property Used And Useful In Furnishing Water Service To Its Customers, TRA Docket No. 12-00049

Dear Chairman Hill:

With this letter, I attach a copy of Tennessee American Water Company's Semi-Annual Report concerning its valve maintenance. Please file these reports appropriately, and let me know if you have any questions about this filing.

Very truly yours,

Junaid Odubeko

Junaid A. Odubeko

JAO:sc
Enclosures

cc: Lindsey W. Ingram III, Stoll Keenon Ogden PLLC
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Tennessee-American Water Company
Report on Valve Maintenance
September 30, 2012

	Valve #	2012 April	2012 May	2012 June	2012 July	2012 August	2012 September	Report Period Total	2012 Total
1 Number of employees assigned to valve program		3	3	3	3	3	2		
2 Target # of larger & smaller valves to be inspected during the previous period		409	409	409	409	409	409	2,454	3,177
3 # valves inspected/operated & maintained		588	555	644	650	550	358	3,345	4,263
4 # valves in need of repair/replacement		27	31	29	31	24	23		
5 Date for repair or replacement of such valves	Valve #								
145 Warren Street	7494	Planning	Planning	Planning	Planning	Planning	Planning	12/31/2012	
500 Warren Street	5790	Planning	Planning	Planning	Planning	Planning	Planning	12/31/2012	
921 Shady Fork	11351		5/21/2012						
336 Shady Fork	11353	4/23/2012							
1300 Hamilton Avenue	1489		5/7/2012						
4303 Michigan Avenue	26853	Planning	5/7/2012						
E 12th St and Lewis	10988	Planning	Planning	Planning	Planning	Planning	Planning	12/31/2012	
3 Irving Place	26851		5/16/2012						
Cushman Steet East of Taylor	26854		5/31/2012						
600 Stevenson Avenue	1295		Planning	6/13/2012					
1601 Rossville Avenue	26855			6/14/2012					
3712 Pickering Avenue	6206		5/24/2012						
Hudson and Grove Street	5884		Planning	6/6/2012					
Magnolia and School Street	5341		Planning	6/1/2012					
Roselawn Drive and East Brainerd	19966		Planning	Planning	Planning	Planning	Planning	12/15/2012	
1226 Lula Lake Road	6796			6/19/2012					
248 West Brow	26852		Planning	Planning	Planning	8/9/2012			
108 Stegall Avenue	22038	Planning	Planning	Planning	7/10/2012				
600 West 47th	22201					8/6/2012			
4600 14th Avenue	3352					8/6/2012			
James Avenue aand Dudley	14746			Planning	Planning	8/20/2012			
1500 West 54th Street	4279				Planning	8/21/2012			
3712 Frederick Street	7589						9/10/2012		
3900 Wiley Avenue	18273						9/17/2012		
2328 David Circle	15396				7/17/2012				
3700 Alton Park Blvd	14669				Planning	8/5/2012			
3400 Chandler Avenue	9026				Planning	8/22/2012			
Memorial Drive at Altamont	7366						9/13/2012		
4201 Fagan St	1058						9/27/2012		
619 Hamilton Avenue	23634	4/20/2012							
Hickory St. South of East 28th St.	9294	Planning	Planning	Planning	Planning	8/21/2012			
Woodward Ave. Norht of Main St.		Planning	Planning	Planning	Planning	Planning	Planning	12/15/2012	
Buckley St. South of Union Ave.		Planning	Planning	Planning	Planning	Planning	Planning	12/15/2012	
Anderson Ave. @ Dodds Ave.							Planning	12/15/2012	
Orchard Knob Ave. North of Anderson Ave.	785	Planning	Planning	Planning	Planning	8/13/2012			
East 27th @Cowart St.		Planning	Planning	Planning	Planning	Planning	Planning	12/15/2012	
East 24th @ Cowart St.							Planning	12/15/2012	
White Oak N. from Memorial Dr.		Planning	Planning	Planning	Planning	Planning	Planning	12/15/2012	
Memorial Dr.	10000	Planning	Planning	Planning	Planning	Planning	9/19/2012		
Memorial Dr. E. of Lyndon Dr.	18493	Planning	Planning	Planning	Planning	Planning	9/19/2012		
Central Ave. South from 50th St.		Planning	Planning	Planning	Planning	Planning	Planning	12/15/2012	
Central Ave. South from Hooker Rd		Planning	Planning	Planning	Planning	Planning	Planning	12/15/2012	
East 38th St. East of Central Ave.		Planning	Planning	Planning	Planning	Planning	Planning	12/15/2012	
Lake Ave. West of Mcfarland Ave.	9532	Planning	Planning	Planning	Planning	Planning	9/28/2012		
Lake Ave. East of Mcfarland Ave.	9534	Planning	Planning	Planning	Planning	Planning	9/28/2012		
Vine St. @ Wiehl St.		Planning	Planning	Planning	Planning	Planning	Planning	2/29/2013	
Vine St. @ Wiehl St.		Planning	Planning	Planning	Planning	Planning	Planning	2/29/2013	
Vine St. @ Central Ave.							Planning	2/29/2013	
East 5th St. East of Baldwin St.		Planning	Planning	Planning	Planning	Planning	Planning	3/31/2013	
Central Ave. @ Pierce St.		Planning	Planning	Planning	Planning	Planning	Planning	3/31/2013	
East 5th @ Georgia Ave.		Planning	Planning	Planning	Planning	Planning	Planning	3/31/2013	
East 3rd West of High St.		Planning	Planning	Planning	Planning	Planning	Planning	3/31/2013	
Vine St. @ Houston St.		Planning	Planning	Planning	Planning	Planning	Planning	4/15/2013	
East 5th @ Houston St.		Planning	Planning	Planning	Planning	Planning	Planning	4/15/2013	
Houston St. S. from East 5th		Planning	Planning	Planning	Planning	Planning	Planning	4/15/2013	

Tennessee-American Water Company
Report on Headcount

	[redacted]							
1	**Total Authorized Workforce**		110	110	110	110	110	110
2	**Actual number of full-time employees (FTE's)**		93	94	94	100 (1)	96	96
						(1) includes 4 Temps		
3	**Difference between authorized and actual**		17	16	16	10	14	14
4	**Vacancies by position**							
	Engineering Clerk		1	1	1	1	1	1
	Engineer		1	1	1	1	1	1
	Field Service **Representative**		2	3	3	1	1	1
	GIS **Supervisor**		1					
	Heavy **Equipment Operator**		2	2	2	2	2	2
	Human **Resources Manager** - now in service **company**		1	1	1	1	1	1
	Laborer/Relief Proc Tech **Apprentice**		1	1	1	1	1	1
	Meter **Reader - filled** as Field Service **Representative**		1	1	1			
	Operations Specialist		1	1	1	1	1	1
	Operations Network Supervisor		1	1	1	1	1	1
	Senior Specialist Cross Connections		1	1				
	Specialist External Affairs		1	1	1	1	1	1
	Supervisor - Field Operations		1			1	1	1
	Truck Driver Utility Worker		2	2	3	3	3	3
	Total Vacancies		17	16	16	14	14	14
5	**Estimated date to fill vacant positions:**							
	Engineer - To Be **Filled** as **Engineer** On Call				November 15, 2012			
	Engineering Clerk				Eliminated in new rate case request			
	Heavy Equipment Operator (1) - To Be Filled as Working Foreman				Vacant Pending Job Responsibility Review			
	Heavy Equipment Operator (2)				Eliminated in new rate case request			
	Human Resource Manager				Currently a Service Company position that supports TN/KY; postion resides in Tennessee			
	Laborer/Relief Proc Tech **Apprentice**				Vacant Pending Job Responsibility Review			
	Operations Network **Supervisor** - To Be Filled as **Engineer On Call**				November 15, 2012			
	Operations **Specialist**				Eliminated in Streamlining			
	Specialist External Affairs				October 31, 2012			
	Truck Driver Utility Worker (1)				October 31, 2012			
	Truck Driver Utility Worker (2) - To Be Filled as Working Foreman				October 31, 2012			
	Truck Driver Utility **Worker (3) - To Be Filled** as Working Foreman				October 31, 2012			
	Field **Service Representative**				October 31, 2012			
	Field Operations Supervisor				October 31, 2012			