

**TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

IN RE:)
)
PETITION OF TENNESSEE-AMERICAN)
WATER COMPANY TO MODIFY TARIFF,)
CHANGE AND INCREASE CHARGES, FEES,) **DOCKET NO. 24-00032**
AND RATES, AND FOR APPROVAL OF A)
GENERAL RATE INCREASE)

**CITY OF CHATTANOOGA’S RESPONSE TO TENNESSEE-AMERICAN WATER
COMPANY’S MOTION AND MEMORANDUM IN SUPPORT REGARDING THE
COMMISSION’S JANUARY 8, 2026, DATA REQUESTS**

The City of Chattanooga (the “City”), by and through counsel, responds to Tennessee-American Water Company’s (“TAWC” or the “Company”) January 22, 2026, motion seeking to deny access by the Intervenors, the City and the Consumer Advocate, to attorney fee invoices, totaling an undetermined portion of the more than \$1 Million in legal fees that TAWC seeks to impose upon the City and TAWC’s other ratepayers (the “TAWC Motion”). Production of the attorney fee invoices by TAWC is required by the Commission’s January 8, 2026, data requests, but the Motion seeks to limit their review only to the Commission. The City requests that the Commission deny the TAWC Motion and require production of all of the invoices to all parties.

Alternatively, the City requests that any time entry that TAWC asserts would disclose TAWC’s privileged information or work product protected information should be deducted from the total amount of legal fees potentially eligible for inclusion in allowable rate case expenses. The assertion of such protection constitutes an admission that such time entries could only have been for the benefit of TAWC and could not have benefitted ratepayers. Accordingly, their recovery should be disallowed.

I. Background

The Commission ordered a separate proceeding “to determine the actual amount of regulatory costs, the time period for recovery, and the mechanism for allowing TAWC to recover these costs,” while capping rate case expense at \$1.554 million.¹ The Commission explained that rate case expenses can benefit ratepayers if the rate case permitted the Company to recover “additional revenues to make necessary facility repairs and upgrades so that the system remains safe and reliable, and to cover reasonable operating expenses to help ensure efficiency of operations.”² The Commission noted that “the Company submitted an estimate of \$1.554 million in rate case expense, covering legal, internal costs, and outside consultants for a rate case that ultimately ended with a relatively modest rate increase of only \$1,073,930.”³ The Commission concluded that “[u]nder the facts and circumstances in this docket, a separate proceeding will allow a review and a determination of the reasonableness of known and measurable costs. The panel voted unanimously to exclude the Company’s rate case costs from establishing its base service rates[.]”⁴

On November 7, 2025, TAWC filed its Petition for Recovery of Rate Case Expenses, seeking the maximum allowed amount of \$1.554 million, including \$1,008,072.77 in attorney fees.⁵ On January 8, 2026, the Commission sent a data request to TAWC, requiring it to produce

¹ See *In Re: Petition of Tennessee-Am. Water Co. to Modify Tariff, Change & Increase Charges, Fees, & Rates, & for Approval of A Gen. Rate Increase*, No. 24-00032, 2025 WL 1328707 (Apr. 21, 2025) (“April 21, 2025, Order”).

² *Id.*, 2025 WL 1328707 at *23.

³ *Id.*, 2025 WL 1328707 at *23.

⁴ *Id.*, 2025 WL 1328707 at *23.

⁵ Pre-Filed Testimony of Robert C. Lane in support of TAWC Petition filed November 7, 2025, at p. 8.

“non-redacted invoices supporting the requested total rate case expenses.”⁶ TAWC was to produce this information by 2:00pm on Thursday January 15, 2026. It did not do so.

On January 20, 2026, the Administrative Judge granted the City’s Motion for Leave to File Limited Discovery related to the rate case expenses sought by TAWC, stating in part, “TAWC filed limited information in support of its rate case expenses and additional information is necessary to analyze the reasonableness of the rate case expenses[.]”⁷

A week after the requested documentation was due to be produced, on January 22, 2026, TAWC filed its Motion seeking to prohibit review by the Intervenors or the public of TAWC’s attorney fee invoices and requesting that only the Commission be permitted to review them *in camera* “to protect the sanctity of TAWC’s attorney-client privilege and work-product protections.”⁸ In its Motion, TAWC sought to justify its incomplete response by referencing the redacted invoices it marked confidential and produced under seal in August, 2024 in response to discovery requests submitted by the Consumer Advocate.⁹ Further, TAWC repeatedly objected to disclosure of these invoices to its “adversaries,”¹⁰ the City and the Consumer Advocate. To date, TAWC has not provided even *redacted* legal invoices filed under seal through the conclusion of the underlying rate case.

⁶ Letter from Michelle Mairs to Melvin Malone, dated January 8, 2026.

⁷ Order Granting City of Chattanooga’s Motion for Limited Discovery, January 20, 2026.

⁸ TAWC Motion, at p. 1.

⁹ TAWC Motion, at paragraph 3; Memorandum in Support of TAWC Motion, at p. 2, p. 4, and p. 6.

¹⁰ See Memorandum in Support of TAWC Motion, at p. 2, p. 6, and p. 7.

In general, in “a public utilities rate case, the ‘ultimate objective’ is not adversarial - rather, it is to set rates with or obtain a license or permit from a regulatory body in order to advance the applicant’s business or comply with regulations.” *In Re: Petition of Tennessee Am. Water Co. for A Gen. Rate Increase*, No. 10-00189, 2011 WL 11806858, at *9 (Feb. 25, 2011) (quoting *Pac. Gas & Elec. Co. v. United States*, 69 Fed. Cl. 784, 800 (2006)).

II. Legal Standard

A. Rate Case Expenses

In order to be recoverable from ratepayers, attorney fees incurred by TAWC must be reasonable and prudent.¹¹ As the Commission explained in its April 21, 2025, Order, the attorney fees, along with the other rate case expenses, also must have been incurred for the benefit of both the ratepayers and the Company.

Rate case expense is a necessary expenditure in the provision of utility service and, *if reasonable*, is generally recovered from ratepayers. Ratepayers benefit because the Company receives additional revenues to make necessary facility repairs and upgrades so that the system remains safe and reliable, and to cover reasonable operating expenses to help ensure efficiency of operations. Stockholders also benefit from the increased revenues, which generally result in higher equity returns and, ultimately, increased stock prices.¹²

Rate case expenses should be “closely examined . . . to determine the portion to be recovered from rate payers and the portion to be born by the shareholders.”¹³

B. Attorney-Client Privilege

The Attorney-client privilege belongs to the client, not the attorney.¹⁴ Questions pertaining to the validity of an asserted attorney-client privilege must be resolved on a case-by-case basis.¹⁵ To successfully invoke the attorney-client privilege, a party must establish that the communication

¹¹ *Consumer Advoc. & Prot. Div. of Off. of Atty. Gen. of Tennessee v. Tennessee Regul. Auth.*, No. M2011-00028-COAR12CV, 2012 WL 1964593, at *2 (Tenn. Ct. App. May 30, 2012)

¹² April 21, 2025, Order, at *23 (emphasis added).

¹³ *Tennessee Am. Water Co. v. Tennessee Regul. Auth.*, No. M2009-00553-COAR12CV, 2011 WL 334678, at *27 (Tenn. Ct. App. Jan. 28, 2011).

¹⁴ *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 213 (Tenn. Ct. App. 2002) (internal citations omitted).

¹⁵ *In re: Southern Indus. Banking Corp.*, 35 B.R. 643, 648 (E.D. Tenn. 1983).

was made pursuant to the attorney-client relationship, involved the subject matter of the representation, was intended to be kept confidential, and has not been waived.¹⁶

Moreover, the attorney-client privilege is not absolute and does not encompass all communications between the client and the attorney.¹⁷ Whether or not the attorney-client privilege applies to any particular communication is necessarily question, topic and case specific.¹⁸

In this regard, “TAWC must bear the burden of demonstrating that each communication or document was made pursuant to the attorney-client relationship for the purpose of seeking legal advice, involves the subject matter of the representation, was intended to be kept confidential, and has not been waived.”¹⁹ The Administrative Judge is required to construe narrowly the applicability of privilege narrowly.²⁰

C. Work-Product Doctrine

The work product doctrine embodies the public policy that attorneys doing the sort of work that attorneys do to prepare a case for trial should be allowed a certain degree of privacy and, therefore, the mental impressions, conclusions, opinions, or legal theories of an attorney in the litigation should, **upon a proper showing**, be shielded from discovery.²¹ “Like all privileges, the work product doctrine must be strictly construed.”²² TAWC must set forth objective facts to support its claim of protection; a mere conclusory statement that the work product documents were

¹⁶ *In Re: Petition of Tennessee Am. Water Co. for A Gen. Rate Increase*, No. 10-00189, 2011 WL 11806858, at *5 (Feb. 25, 2011).

¹⁷ *Id.*, 2011 WL 11806858, at *6 (Feb. 25, 2011) (citing *Bryan v. State*, 848 S.W.2d 72, 80 (Tenn. Cr. App. 1992)).

¹⁸ *Id.*

¹⁹ *Id.*, 2011 WL 11806858, at *14.

²⁰ *Id.*, 2011 WL 11806858, at *17.

²¹ *Id.*, 2011 WL 11806858, at *7 (Feb. 25, 2011) (citing Tenn. R. Civ. P. 26.(3); *see also*, *Boyd*, 88 S.W.3d 203) (emphasis added).

²² *Pac. Gas & Elec. Co. v. United States*, 69 Fed. Cl. 784, 790 (2006) (internal citations omitted).

created in anticipation of litigation is not sufficient to support the claim.²³ To claim work product protection, a party must clearly demonstrate that the item was prepared or obtained because of the prospect of litigation, not in the ordinary course of business or pursuant to requirements of a public governmental agency.²⁴ “Adversarialness” is the touchstone of this approach to the ‘litigation’ question[.]”²⁵

III. Argument

A. TAWC’s motion is an improper attempt to avoid the Commission’s Data Request.

The Commission clearly instructed TAWC to submit unredacted invoices disclosing what services were rendered, whether they were reasonable and prudent, and whether they benefited ratepayers as well as the Company. The Data Request and the Administrative Judge’s grant of the requests of the City and the CAD to conduct discovery demonstrates the importance of the information to this proceeding. The Administrative Judge expressly found that “additional information is necessary to analyze the reasonableness of the rate case expenses requested by TAWC in this phase of the docket,” and granted the City leave to propound discovery on whether the expenses are “just and reasonable.”²⁶ Allowing TAWC to avoid the Commission’s Data Request and to withhold the invoices from the Intervenors would nullify the Intervenor’s intervention rights. If only the Commission can see the invoices, the City and the CAD cannot meaningfully conduct the discovery that the Administrative Judge has already authorized. The City intervened to represent its interests as a major ratepayer and the interests of its citizens who also are ratepayers of TAWC. That purpose would be defeated if the ratepayers’ representative is denied access to the documentary support for the expenses for which ratepayers would be required to pay.

²³ 2011 WL 11806858, at *16.

²⁴ 2011 WL 11806858, at *17.

²⁵ *Pac. Gas & Elec. Co.*, 69 Fed. Cl. at 790 (internal citations omitted).

²⁶ Order Granting City of Chattanooga’s Motion for Limited Discovery, Jan. 20, 2026.

B. Even if TAWC could set forth objective facts to support its claims of attorney-client privilege and work-product protection as to specific invoice entries, the proper remedy is disallowance of the fees for which information is not provided for review, not *in camera* review.

Tennessee law favors discovery and disclosure.²⁷ Billing invoices are not automatically privileged. At most, some limited narrative entries may reveal privileged communications or attorney mental impressions. But the burden rests with TAWC to show that is the case, and it has not met that burden.

As held by the Commission in *In Re: Chattanooga Gas Co.*²⁸

Among other expenses, CGC seeks reimbursement for legal expenses from ratepayers. The Hearing Officer finds it is appropriate for the Consumer Advocate and the Commission to review legal expenses to verify their validity and a reasonable method of doing so is by reviewing the legal invoices. The Commission has previously reviewed the legal expenses and legal invoices of certain utilities in dockets before the Commission.

In addition, in *Tennessee-American Water Company v. TRA*, the Commission [formerly TRA] split legal expenses between utility and the ratepayers and the utility appealed. While the Court found in favor of the utility, it was not because it was improper for the Commission to split legal expenses but because the Commission should have included the specific expenses it found were improper or unnecessary.

If the Consumer Advocate wanted to argue that shareholders should share in some of the legal expenses, there would need to be a basis for the percentage the shareholders should pay. If the Consumer Advocate cannot review the legal invoices, it would not be able to validate the expenses, nor would it be able to provide a basis for arguing shareholders should pay a particular portion of the legal expenses.

²⁷ 2011 WL 11806858, at *4; *see also* Tenn. R. Civ. P. 26.02.

²⁸ *In Re: Chattanooga Gas Co. Petition for Approval of Its 2019 Ann. Rate Rev. Filing Pursuant to Tenn. Code Ann. S 65-5-103 (d)(6)*, No. 20-00049, 2020 WL 6346082, at *3 (Oct. 26, 2020).

Here, the Commission ordered a separate proceeding to determine the actual amount of regulatory costs, the recovery period, and the mechanism, with a cap at \$1.554 million, because the claimed expenses were disproportionate to the limited recovery allowed in the rate case.²⁹ TAWC bears the burden of proof in demonstrating that its expenses were reasonable, and the Company cannot meet its burden with evidence shielded from the parties to this proceeding. If the City cannot review the legal invoices, it will be deprived of the opportunity to meaningfully participate in this proceeding. The Commission should not permit TAWC to evade review of the legal fees that comprise two-thirds of the rate case expenses it seeks to impose on ratepayers.

Any fees associated with time entries that TAWC will not disclose in full should be disallowed, not hidden from the Intervenors through *in camera* review.

C. If TAWC chooses not to disclose certain invoices on the basis of its assertion of privilege or work product, the Commission should deem those amounts to be for the sole benefit of the Company and disallow their recovery from ratepayers.

The ratepayers are not the guarantors of the company's success.³⁰ And yet, that is what they become if ratepayers are ordered to pay costs and fees and expenses related to work that was allegedly done on their behalf with no opportunity to assess the work. Because TAWC bears the burden in claiming privilege and in defending the amount of rate case expenses sought, any portion of the request that cannot be reviewed and tested by the Intervenors should be considered by the Commission to be unjust and unreasonable.

Furthermore, any invoices or invoice entries that TAWC refuses to produce because TAWC asserts that they disclose TAWC's privileged information or work product benefiting TAWC should be deemed to constitute an admission by TAWC that the services only benefited the

²⁹ See April 21, 2025, Order.

³⁰ *Commonwealth Elec. Co. v. Dep't of Pub. Utilities*, 397 Mass. 361, 368, 491 N.E.2d 1035, 1040 (1986).

Company and were not provided for the benefit of the ratepayer. TAWC cannot simultaneously (a) demand that ratepayers fund its costs and (b) deny the ratepayers and their representatives access to the information necessary to evaluate whether the costs benefitted ratepayers rather than shareholders. If TAWC contends certain work is privileged or protected as work product, TAWC may withhold information concerning that work but should also be required to remove the cost of that work from the rate case expenses it seeks to recover. Such a contention constitutes a concession that the legal work served only TAWC's interests and provided no ratepayer benefit that would justify recovery.

IV. Conclusion

For the foregoing reasons, the City requests that the Commission deny TAWC's motion for *in camera*-only review, order TAWC to produce the complete and unredacted invoices requested in the January 8, 2026 Data Request to all parties, and order that any amounts not supported by invoices produced to the parties without redaction shall be excluded from recoverable rate case expenses.

CITY OF CHATTANOOGA

By: *Phillip A. Noblett, by FTH 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 2nd day of February 2026.



For Chambliss, Bahner & Stophel, P.C.