

in-person oral argument on *TAWC's Motion*. The City of Chattanooga (the "City") (together with the Consumer Advocate "Intervenors") also filed its *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* ("City's Response") on February 2, 2026, asking that *TAWC's Motion* be denied or alternatively, any invoice TAWC does not wish to produce be denied for inclusion in allowable rate case expenses.

As requested by TAWC and the Consumer Advocate, oral arguments on *TAWC's Motion* were held in person on April 1, 2026, as noticed on February 11, 2026. The parties were represented during oral arguments as follows:

Tennessee-American Water Company – John H. Dollarhide, Esq., Butler Snow LLP, 1320 Adams Street, Ste 1400, Nashville, TN 37208.

Consumer Advocate Division of the Office of the Attorney General – Shilina B. Brown, Esq., Office of the Attorney General, P.O. Box 20207, Nashville, TN 37202.

City of Chattanooga – Rick Hitchcock, Esq., Chambliss, Bahner, & Stophel, P.C., 605 Chestnut Street, Suite 1700, Chattanooga, TN 37450.

TAWC's MOTION

In *TAWC's Motion*, TAWC requests the Commission enter an order that the unredacted legal invoices requested by Commission Staff be submitted solely to the Commission or Administrative Judge for *in camera* review to protect the sanctity of TAWC's attorney-client privilege and work product protections while still enabling the Commission to review the appropriateness of TAWC's rate case expenses.² TAWC states the redacted invoices and a privilege log will be provided to the Intervenors as confidential under the Protective Order.³

² *Id.*

³ Transcript of Proceedings, p. 6 (April 1, 2026).

TAWC argues that its detailed attorney billing invoices contain narratives that contain confidential communications with its client, legal advice, attorney mental impressions, and strategy. TAWC maintains that if it must provide the unredacted invoices to the Intervenors, TAWC would risk waiver of the attorney-client privilege and work product protections and would prejudice the Company. According to TAWC, legal invoices provided to clients vary in nature from general to very specific. Legal invoices that only disclose “the amount of time spent, the amount billed, and the type of fee arrangement between attorney and client are fully subject to discovery.”⁴ When legal invoices provide detailed narratives that “reveal litigation strategy and/or the nature of the services performed,” TAWC argues such invoices are protected by attorney-client privilege.⁵ TAWC states that requiring it to produce unredacted invoices to the Intervenors would have a chilling effect on the free flow of information between attorney and client. In addition, TAWC asserts that requiring production of unredacted invoices would discourage attorneys practicing before the Commission from providing detailed bills which would hinder regulated utilities’ ability to evaluate the legal services provided.⁶ TAWC maintains that an *in camera* review is the proper way to determine the reasonableness of the legal expenses, and the Commission has used such a process in previous dockets. According to TAWC, the redacted invoices and privilege log should be sufficient for the Intervenors to evaluate the reasonableness of the legal fees, but it also understands the Commission’s need to examine unredacted invoices.⁷ TAWC states it does not object to providing unredacted invoices to the Commission for *in camera* review.⁸

⁴ TAWC’s Motion, p. 4, quoting *United States v. Keystone Sanitation Co.*, 885 F. Supp. 672, 675 (M.D. Pa. 1994).

⁵ *Id.*

⁶ *Id.* at 7.

⁷ *Id.* at 6-7.

⁸ *Id.* at 7.

CONSUMER ADVOCATE'S RESPONSE

The Consumer Advocate presents several arguments against TAWC's request for *in camera* review of unredacted legal invoices by the Commission or Administrative Judge in its *Memorandum in Support of Its Response*. The Consumer Advocate asserts that an *in camera* review subverts the Consumer Advocate's ability to review and present its case; that existing protections make *in camera* review unnecessary; and that Intervenor's are denied due process under TAWC's proposed *in camera* review procedure.⁹

First, the Consumer Advocate argues that TAWC's *in camera* review proposal inhibits the ability of the Consumer Advocate to meaningfully review and evaluate the reasonableness of expenses that TAWC seeks to recover from consumers. In response to TAWC's claim of attorney-client privileged communications, the Consumer Advocate states that Tennessee law protects confidential communications between attorney and client, but billing records and invoices are fundamentally different from privileged communications.¹⁰ Citing the Rules of Civil Procedure and the Tennessee Court of Appeals in *Saroff v. Cohen*, the Consumer Advocate asserts that attorney billing invoices are the property of that law firm and are created in the general course of business for the purpose of memorializing the client's costs for legal services rendered. Such invoices are generated by the law firm for the benefit of the law firm rather than for the benefit of the client, serving the attorney's business purpose rather than facilitating legal representation or trial preparation.¹¹ Rebutting TAWC's attorney work product assertion, the Consumer Advocate states that legal invoices are not prepared in anticipation of litigation, but rather to bill the client for legal services. Further, even if the invoices are considered work product, the doctrine may be overcome

⁹ *Consumer Advocate's Memorandum in Support of Its Response to Tennessee-American Water Company's Motion Regarding the Commission's January 8, 2026 Data Requests* (February 2, 2026).

¹⁰ *Id.* at 4.

¹¹ *Id.* at 4-5.

upon a showing that the requesting party has a substantial need for the information and is unable to obtain the information by other means. The Consumer Advocate asserts that is unable to assess the reasonableness and prudence of legal fees incurred by TAWC, which will ultimately be paid for by consumers, without reviewing the legal invoices.¹² In addition, the burden of proof is on the party asserting the work product doctrine to establish that writings or documents were prepared in anticipation of litigation and that TAWC failed to show two of the three elements required to establish the doctrine is applicable.¹³ The Consumer Advocate also describes the different standards that Tennessee Courts have applied to fact work product versus opinion work product. Fact work product, which includes documents prepared in anticipation of litigation or preparation for trial that do not contain mental impressions, conclusions, opinions, or legal theories of an attorney, may be disclosed upon a showing of substantial need and inability to obtain materials by other means. Opinion work product, which are documents that contain an attorney's mental impressions, conclusions, opinions, or legal theories, are subject to discovery in only extraordinary circumstances. However, TAWC has not shown that invoices contain attorney strategy.¹⁴ Attorney-client privilege or work product protection cannot be justified by mere conclusory statements or by the fact that an attorney was a recipient or author of a communication. Rather, such communication must be shown to be for the purpose of seeking legal advice or preparation for trial or litigation. The Consumer Advocate also cites Commission precedent where *in camera* review was used to determine the applicability of privilege protection to the contents of documents. According to the Consumer Advocate, it would be unable to perform its statutory duty to represent the utility customers' interests with regard to the

¹² *Id.* at 5-6.

¹³ *Id.* at 6-7.

¹⁴ *Id.* at 8-9.

reasonableness and prudence of the legal expense associated with the rate case if the Consumer Advocate is not permitted an opportunity to conduct a full and meaningful review of legal invoices.¹⁵

The Consumer Advocate also argues that the Commission has tools that provide sufficient protection to TAWC that make the proposed *in camera* review process unnecessary. The Administrative Judge issued a protective order in this case, which permits confidential or proprietary materials to be submitted under protective conditions.¹⁶ The Consumer Advocate distinguishes cases cited by TAWC as an analysis of attorney-client protection and waiver through inadvertent disclosure in *United States v. Keystone Sanitation*, and Mississippi's more broad application of the attorney-client privilege and work product doctrine in *Hewes v. Langston*.¹⁷

Finally, the Consumer Advocate asserts that TAWC's proposed *in camera* review procedure would deny due process to the Intervenors. Ratepayers ultimately bear the cost of legal expenses; therefore, the Consumer Advocate has a duty to conduct a meaningful review of legal invoices to determine the reasonableness and prudence of such expenses. Tennessee Courts routinely employ *in camera* review to independently assess whether privileges or protections are applicable as a procedural mechanism to resolve discovery disputes. The Consumer Advocate states that the *in camera* process proposed by TAWC does not allow the Commission to resolve the applicability of privilege but rather permits the Commission to determine the reasonableness and prudence of legal expense without allowing the Intervenors to review and present evidence or arguments on the issue.¹⁸

Due process concerns arise when privilege determinations prevent access to relevant evidence. Tennessee Courts have applied a balancing test that weighs privilege protections against constitutional rights. Courts must balance the need for information by one party against the injury

¹⁵ *Id.* at 9-10.

¹⁶ *Id.* at 10-11.

¹⁷ *Id.* at 11-13.

¹⁸ *Id.* at 14-15.

that would result if disclosure is required.¹⁹ The Consumer Advocate asserts that the privilege log submitted by TAWC does not contain sufficient detail to prove that information contained in the legal invoices were confidential communications relating to legal advice. Because the privilege log is insufficient, the Consumer Advocate argues that TAWC has not met its burden of proof to show that materials were privileged or protected work product.²⁰

Based upon these arguments, the Consumer Advocate requests that the Commission deny *TAWC's Motion*. Further, the Consumer Advocate requests that the Commission enter an order requiring TAWC to submit unredacted attorney's fees invoices concerning Rate Case Expense to the Commission and all Intervenors.²¹

THE CITY'S RESPONSE

The City filed the *City's Response* on February 2, 2026, asking that the *TAWC's Motion* be denied and that all parties be granted access to TAWC's legal invoices. In the alternative, the City requests that for any time entry TAWC asserts would disclose privileged information or is attorney work product protected information, should be deducted from the total amount of legal expenses eligible to be included in allowable rate case expense.²² The City maintains "[t]he 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."²³ The City explains that rate case expenses must be reasonable and prudent to be recoverable from ratepayers. In addition, such expenses must have been incurred both for the benefit of ratepayers and the Company.²⁴ Without seeing the invoices, the City argues, it cannot meaningfully test whether the fees meet that standard.

¹⁹ *Id.* at 16-17.

²⁰ *Id.* at 15-16.

²¹ *Id.* at 18.

²² *City's Response*, p. 1 of 11 (February 2, 2026).

²³ *Id.*

²⁴ *Id.* at 4 of 11.

The City also emphasizes that privilege is not a blanket shield. Billing invoices are not automatically privileged, and TAWC bears the burden of proving that each entry is subject to privilege. Further, the privilege should be construed narrowly.²⁵ Tennessee law favors discovery and disclosure, and even if some entries are privileged, the City argues, the remedy is any fee TAWC refuses to disclose should be disallowed. According to the City, if TAWC refuses to produce invoices because it asserts they disclose TAWC’s privileged information or work product benefiting TAWC then it “should be deemed to constitute an admission by TAWC that the services only benefited the Company and were not provided for the benefit of the ratepayer.”²⁶ The City asserts TAWC cannot demand the ratepayers fund its costs and deny ratepayers access to information necessary to determine whether the costs benefited ratepayers rather than shareholders.²⁷ The City asks the Commission to reject TAWC’s attempt at *in camera*-only review, require full production of unredacted invoices to all parties, and exclude from recovery any amounts not supported by transparent documentation.²⁸

LEGAL STANDARD

GENERAL PRINCIPLES OF DISCOVERY

Commission Rule 1220-1-2-.11 directs that discovery shall be effectuated in accordance with the Tennessee Rules of Civil Procedure (“TRCP”) when informal discovery is not practicable.²⁹ Tennessee favors broad discovery and TRCP 26.02 permits discovery through various means, including written interrogatories, and allows a party to “obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party...”³⁰

²⁵ *Id.* at 5 of 11.

²⁶ *Id.* at 8-9 of 11.

²⁷ *Id.* at 9 of 11.

²⁸ *Id.*

²⁹ Tenn. Comp. R. & Regs. 1220-4-2-.10.

³⁰ Tenn. R. Civ. P. 26.02(1).

PRIVILEGE AND PROTECTION FROM DISCOVERY

TRCP favors discovery and disclosure. In discovery, the requirement of relevancy is broadly construed to include any matter that bears on, or that reasonably could lead to other matters that could bear on any of the case issues.³¹ Privilege, on the other hand, is construed narrowly, since it conceals relevant information from the trier of fact. Because it is an “obstacle to the investigation of the truth,” privilege must be “strictly confined within the narrowest possible limits consistent with the logic of its principle.”³² Tenn. R. Civ. P. 26.02(5), provides, in pertinent part, as follows:

(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under the rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege protection.³³

The burden of proof in establishing the existence of the privilege rests upon the claimant.³⁴ Further, the privilege must be established on a document-by-document basis; a blanket claim failing to specify what information is protected will not suffice.³⁵ Thus, the party opposing discovery must demonstrate with more than generalizations and conclusory statements that the discovery limitations, privileges, or protections it seeks are necessary and justified.

ATTORNEY-CLIENT PRIVILEGE

The oldest privilege recognized in Tennessee both at common law and by statute is the attorney-client privilege.³⁶ This privilege serves the administration of justice by encouraging full and

³¹ *State ex rel. Flowers v. Tennessee Trucking Ass'n Self Ins. Group Trust*, 209 S.W.3d 602, 615 (Tenn. Ct. App. 2006), citing *Price v. Mercury Supply Co.*, 682 S.W.2d 924, 935 (Tenn. Ct. App. 1984).

³² *In re: Southern Indus. Banking Corp.* 35 B.R. 643, 647 (Bankr. E.D. Tenn. 1983).

³³ Tenn. R. Civ. P. 26.02(5).

³⁴ *In re: Southern Indus. Banking Corp.* 35 B.R. 643, 647 (Bankr. E.D. Tenn. 1983).

³⁵ *In re: General Instrument Corp. Securities Litigation*, 190 F.R.D. 527, 529 (N.D. Ill. 2000), citing *United States v. White*, 970 F.2d 328, 334 (7th Cir. 1992).

³⁶ *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 212 (Tenn. Ct. App. 2002).

frank communication between clients and their attorneys by sheltering these communications from compulsory disclosure.³⁷ Questions pertaining to the validity of an asserted attorney-client privilege must be resolved on a case-by-case basis.³⁸ To successfully invoke the attorney-client privilege, a party must establish that the communication was made pursuant to the attorney-client relationship, involves the subject matter of the representation, was intended to be kept confidential, and has not been waived.³⁹

Moreover, the attorney-client privilege is not absolute and does not encompass all communications between the client and the attorney.⁴⁰ The privilege only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney.⁴¹ In the case of a corporate client, the involvement of an attorney in the commercial endeavors of a corporation does not *per se* vitiate the attorney-client privilege. Nevertheless, the participation of general counsel in the business of a corporation likewise does not automatically cloak the business activity with the protection of the attorney-client privilege.⁴² Merely copying counsel on an e-mail will not render a communication to counsel privileged; rather, a party must demonstrate that the primary purpose of the communication was to seek legal advice.⁴³ An affidavit of an attorney

³⁷ *Id.*

³⁸ *In re: Southern Indus. Banking Corp.*, 35 B.R. 643, 648 (Bankr. E.D. Tenn. 1983); *See Upjohn Co. v. United States*, 449 U.S. 383 (1981).

³⁹ *See State ex rel. Flowers v. Tennessee Trucking Assn Self Ins. Group Trust*, 209 S.W.3d 602, 616 (Tenn. Ct. App. 2006); *see also Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 213 (Tenn. Ct. App. 2002) and *Smith County Educ. Ass'n v. Anderson*, 676 S.W.2d 328, 333 (Tenn. 1984).

⁴⁰ *Id.*, citing *Bryan v. State*, 848 S.W.2d 72, 80 (Tenn. Crim. App. 1992).

⁴¹ *Upjohn Co. v. U.S.*, 449 U.S. 383, 685-686, citing *Philadelphia v. Westinghouse Electric Corp.*, 205 F. Supp. 830, 831; *see also, Diversified Ind. v. Meredith*, 572 F. 2d 596 (8th Cir. 1978)(en banc); *State ex. rel. Dudek v. Circuit Court*, 150 N.W. 2d 387, 399 (Wis. Sup. Ct. 1967).

⁴² *In re: Southern Indus. Banking Corp.* 35 B.R. 643, 648 (Bankr. E.D. Tenn.1983); *See In re: Grand Jury Subpoena*, 599 F.2d 504, 511 (2d Cir.1979); *Valente v. Pepsico, Inc.*, 68 F.R.D. 361, 367 (D. Del.1975).

⁴³ *Royal Surplus Lines Ins. v. Sofarmor Danek group*, 190 F.R.D. 463, 475 (W.D. Tenn. 1999); *Yurick ex. rel. Yurick v. Liberty Mutual Ins. Co.*, 201 F.R.D. 465 (D. Ariz. 2001) (citing *Cont'l Ill. Nat'l Bank and Trust Co. of Chicago v. Indemnity Ins. Co. of N. Am.*, 1989 WL 135203 at *3 (N.D. Ill. Nov. 1, 1989) (a letter that merely assigned a carbon copy to an attorney fell beyond the scope of the attorney-client privilege because it was “not primarily directed to an attorney,” did not seek legal advice, and merely served to keep the attorney informed of the contents of the letter.)

is an appropriate and common way to provide the evidence needed to support a claim of privilege.⁴⁴ In any event, whether or not the attorney-client privilege applies to any particular communication is necessarily question, topic and case specific.⁴⁵

WORK PRODUCT DOCTRINE

Originally established by the U.S. Supreme Court in *Hickman v. Taylor*,⁴⁶ the work product doctrine is now broadly construed to embody 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.⁴⁷ The premise of the doctrine is that lawyers, preparing for litigation, be permitted to assemble information, to separate the relevant facts from the irrelevant, and to use the relevant facts to plan and prepare their strategy without undue and needless interference.⁴⁸

Codified at Tenn. R. Civ. P. 26.02(3), the work product doctrine is not a privilege, and it does not provide absolute protection. Rather, it is a qualified immunity from discovery, equitable in nature, that a party may overcome upon a proper showing.⁴⁹ In pertinent part, Tenn. R. Civ. P. 26.02(3) states as follows:

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer, or agent) *only* upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials

⁴⁴ *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 215 (Tenn. Ct. App. 2002), citing *State v. Bobo*, 724 S.W.2d 760, 765 (Tenn. Crim. App. 1981) (attorney-client privilege); *Arnold v. City of Chattanooga*, 19 S.W.3d 779, 784 (Tenn. Ct. App. 1999) (work product doctrine).

⁴⁵ *Bryan v. State*, 848 S.W.2d 72, 80 (Tenn. Crim. App. 1992).

⁴⁶ *Hickman v. Taylor*, 329 U.S. 495 (1947).

⁴⁷ See Tenn. R. Civ. P. 26.02(3); see also, *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203 (Tenn. Ct. App. 2002).

⁴⁸ *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 219-220 (Tenn. Ct. App. 2002) (internal citations omitted).

⁴⁹ *Arnold v. City of Chattanooga*, 19 S.W.3d 779, 787 (Tenn. Ct. App. 1999).

when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation (*emphasis added*).⁵⁰

Acknowledging that the burden rests on the party opposing production, the Tennessee Court of Appeals in *State ex. rel. Flowers v. Tenn. Trucking Assoc. Self Insurance Group Trust, et al.*, stated in part as follows:

The work product doctrine extends beyond confidential communications between the attorney and client to any document prepared in anticipation of litigation by or for the attorney. Like the attorney-client privilege, the burden of proof is on the party asserting the work product doctrine to establish that the writings or documents were prepared in anticipation of litigation. The standards and procedures for addressing this type of a discovery dispute are found in Tenn. R. Civ. P. 26.02(3). To resolve issues pertaining to the discovery of an adversary's claim of work product or privilege, the trial court and the parties are to follow sequential steps, which entail shifting burdens of proof.⁵¹

In moving to compel production of discovery, a party seeking discovery must first show that the material being sought is (1) relevant to the subject matter involved in the pending action, (2) not otherwise privileged, and (3) consists of documents or other tangible things.⁵² Once the party seeking discovery has established a prima facie showing that the materials it seeks are discoverable, the burden shifts to the party opposing discovery to show that the materials were either privileged or work product protected by Tenn. R. Civ. P. 26.02(3).⁵³

In order to successfully invoke the qualified protection afforded by the work product doctrine, the party opposing discovery must establish (1) that the materials sought are documents or tangible things, (2) that were prepared in anticipation of litigation or for trial, and (3) prepared by or for it or by or for its representative.⁵⁴ In addition, the party asserting the doctrine must also demonstrate that it has not waived protection with regard to the documents being sought.⁵⁵

⁵⁰ Tenn. R. Civ. P. 26.02(3).

⁵¹ *State ex. rel. Flowers v. Tenn. Trucking Assoc. Self Insurance Group Trust, et al.*, 209 S.W.3d 602, 615 (Tenn. Ct. App. 2006).

⁵² *Id.* at 617, citing *Boyd* at 220 (additional internal citations omitted).

⁵³ *Id.*, citing *Boyd* at 220-221 (additional citation omitted).

⁵⁴ *Flowers* at 617, citing Tenn. R. Civ. P. 26.02(3); see also, *Boyd* at 221.

⁵⁵ *Boyd* at 221, citing *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 190 F.R.D. 287, 289 (D. Mass. 2000).

To be protected under work product, a party must prove that the item was “prepared or obtained *because of* the prospect of litigation.”⁵⁶ Whether a document has been prepared “in anticipation of litigation,” and thus, is protected work product, the Sixth Circuit Court of Appeals has instructed courts to consider two questions: (1) whether the document was prepared “because of” a party’s subjective anticipation of litigation, as contrasted with ordinary business purpose; and (2) whether that subjective anticipation was objectively reasonable.⁵⁷ Items prepared in the ordinary course of business, or pursuant to public requirements unrelated to litigation, or for non-litigation purposes, are not protected work product.⁵⁸ Hence, if the item would have been prepared in substantially the same manner, regardless of the anticipated litigation, the doctrine would not apply.⁵⁹ Still, “[i]f a document is prepared in anticipation of litigation, the fact that it also serves an ordinary business purpose does not deprive it of protection, but the burden is on the party claiming protection to show that anticipated litigation was the “driving force behind the preparation of each requested document.”⁶⁰

FINDINGS AND CONCLUSIONS

On November 7, 2025, TAWC filed a *Petition for Recovery of Rate Case Expenses* seeking recovery of rate case expenses from ratepayers which were capped by the Commission at \$1,554,000 over a three-year period. TAWC also requested recovery of unanticipated rate case expenses incurred as a result of this proceeding; the amount to be determined later. As supporting documentation, TAWC filed pre-filed testimony by Robert Lane. Relevant to *TAWC’s Motion* being considered, Mr.

⁵⁶ *Cooley v. Strickland*, 269 F.R.D. 643, 647 (S.D. Ohio 2010), *citing U.S. v. Roxworthy*, 457 F.3d 590, 593-594 (6th Cir. 2006).

⁵⁷ *Leazure v. Apria Healthcare, Inc.*, 2010 WL 3895727, at *3 (E.D. Tenn.), *citing In re Professionals Direct Ins. Co.*, 578 F.3d 432 (6th Cir. 2009) (*quoting U.S. v. Roxworthy*, 457 F.3d 590, 594 (6th Cir. 2006)).

⁵⁸ *Cooley v. Strickland*, 269 F.R.D. 643, 647 (S.D. Ohio 2010), *citing U.S. v. Roxworthy*, 457 F.3d 590, 593-594 (6th Cir. 2006).

⁵⁹*Id.*

⁶⁰ *Leazure v. Apria Healthcare, Inc.*, 2010 WL 3895727, at *3 (E.D. Tenn.), *citing In re Professionals Direct Ins. Co.*, 578 F.3d 432 (6th Cir. 2009) (*quoting Roxworthy*, 457 F.3d 590, 595, 598-99, and *Nat’l Union Fire Ins. Co. of Pittsburgh v. Murray Sheet Metal Co.*, 967 F.2d 980, 984 (4th Cir. 1992)).

Lane testified that TAWC retained Butler Snow and total billings for Butler Snow's professional services were \$1,008,072.77.⁶¹ Mr. Lane provided a couple of spreadsheets that set forth all of the rate case expenses in total and the proposed method for recovery. On January 8, 2026, Commission Staff sent a Data Request asking that TAWC provide unredacted legal invoices. The Consumer Advocate and the City also filed motions seeking limited discovery which the Administrative Judge granted.⁶² TAWC filed *TAWC's Motion* requesting an *in camera* review of the invoices by the Commission or the Administrative Judge to determine the reasonableness of the expenses in order to protect the sanctity of the attorney-client privilege and work product doctrine. TAWC stated it had provided redacted invoices to the Intervenors along with a privilege log. The Administrative Judge is persuaded by the arguments of the Consumer Advocate and the City and finds that TAWC has failed to meet the burden of proof necessary when asserting attorney-client privilege and work product protection regarding the legal invoices. Therefore, *TAWC's Motion* is denied.

In the *Order Setting Utility Rates* issued in this docket on April 21, 2025, the Commission explained the rationale for ratepayers being asked to pay reasonable rate case expense. The Order states:

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. Yet, regulators must be circumspect and consider whether too little review or a complete lack of consequences for management and stockholders could embolden a public utility to take unreasonable positions in furtherance of driving up the revenue requirement sought in a rate case.⁶³

⁶¹ Robert C. Lane, Pre-Filed Direct Testimony, pp. 8-9 (November 7, 2025).

⁶² *Order Granting Consumer Advocate's Motion for Limited Discovery* (January 14, 2026); *Order Granting the City of Chattanooga's Motion for Limited Discovery* (January 20, 2026).

⁶³ See *Order Setting Utility Rates*, p. 34 (April 21, 2025).

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 \$1,073,930.”⁶⁴ The Commission ordered that a separate proceeding should be established “to determine the actual amount of regulatory costs, the time period for recovery, and the mechanism for allowing TAWC to recover these costs” and capped the amount of rate case expense at \$1.554 million.⁶⁵

As Intervenors in this proceeding, the Consumer Advocate and the City have a right to examine the legal invoices that ratepayers are asked to pay. As the Commission noted, a closer examination of the rate case expenses is warranted in this docket due to the amount of legal fees incurred in contrast to the modest rate increase. The Commission is now aware that TAWC ultimately planned to seek approval of an Annual Rate Review Mechanism (“ARRM”), which requires that the Company have had a rate case within five years.⁶⁶ 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.⁶⁷ If the Intervenors sought 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 and the City cannot review the legal invoices, they will not be able to validate the expenses, nor will they be able to provide a basis for arguing shareholders should pay a particular portion of the legal expenses.

⁶⁴ *Id.*

⁶⁵ *Id.* at 35.

⁶⁶ See *In Re: Petition of Tennessee-American Water Company to Adopt Annual Review Mechanism and ARM Tariff Pursuant to Tenn. Code Ann. § 65-5-103(d)(6)*, Docket No. 25-00089, *Petition of Tennessee-American Water Company to Adopt Annual Review Mechanism and ARM Tariff Pursuant to Tenn. Code Ann. § 65-5-103(d)(6)* (November 18, 2025).

⁶⁷ See *Tennessee-American Water Company v. TRA*, 2011 WL 334678 (Tenn. Ct. App. January 28, 2011).

TAWC has the burden of proving that the privilege or protection it asserts exists. The Administrative Judge finds that the almost completely redacted invoices and TAWC's privilege log containing vague, general entries do not offer sufficient insight into the protections asserted for the specific work performed on the invoices.

For a privilege log to successfully meet the burden imposed upon the nonproducing party, “[t]he information provided [in a privilege log] must be sufficient to enable the court to determine whether *each element* of the asserted privilege or protection is satisfied.”⁶⁸ Furthermore, a party's failure to provide sufficient details demonstrating that the withheld items fulfill all elements necessary for the application of the privilege may constitute a waiver of the privilege.⁶⁹ Therefore, to ensure satisfaction of the TRCP, it is of the utmost importance that a party:

[D]escribes the document's subject matter, purpose for its production, and a specific explanation of why the document is privileged or immune from discovery. These categories, especially this last category, must be sufficiently detailed to allow the court to determine whether the discovery opponent has discharged its burden of establishing the requirements expounded upon in the foregoing discussion. Accordingly, descriptions such as “letter re claim,” “analysis of claim,” or “report in anticipation of litigation” - with which we have grown all too familiar - will be insufficient. This may be burdensome, but it will provide a more accurate evaluation of a discovery opponent's claims and takes into consideration the fact that there are no presumptions operating in the discovery opponent's favor.⁷⁰

For every entry on TAWC's privilege log, TAWC asserts both the attorney-client privilege and work product protections. However, the privilege log consists entirely of vague, generic descriptions of the work performed, and there are several vague categories of work descriptions that are used. There are numerous entries titled “Analyze rate case issues and related drafting work on rate

⁶⁸ *Cooey v. Strickland*, 269 F.R.D. 643, 649 (S.D. Ohio 2010), citing *In re: Universal Service Fund Tel. Billing Practices Litig.*, 232 F.R.D. 669, 673 (D. Kan. 2005).

⁶⁹ See *Bowling v. Scott County, Tenn.*, 2006 WL 2336333, *3 (E.D. Tenn. 2006); See also *Cooey v. Strickland*, 269 F.R.D. 643, 649 (S.D. Ohio 2010) citing *United States v. Constr. Prods. Research, Inc.*, 73 F.3d 464, 473 (2d Cir. 1996) (“if the party invoking the privilege does not provide sufficient detail to demonstrate fulfillment of the legal requirements for application of the privilege, his claim will be rejected”) (quoting *Bowne of New York City, Inc. v. AmBase Corp.*, 150 F.R.D. 465, 471 (S.D. N.Y. 1993)).

⁷⁰ *Allendale Mut. Ins. Co. v. Bull Data Systems*, 145 F.R.D. 84, 88 (N.D. Ill. 1992).

case filings,” another often used general category is “communications with client and analysis of issues,” there are approximately 64 entries titled “Prepare post-hearing brief,” and many entries labeled “Prepare for GRC hearing.” According to TAWC, the redacted invoices and privilege log submitted in this docket contain the information the Administrative Judge ordered the redacted invoices must contain in Docket No. 20-00049.⁷¹ The legal invoices filed by TAWC do not align with the requirements for the legal invoices set forth in Docket No. 20-00049. Moreover, the heavily redacted invoices and privilege log filed by TAWC fail to meet the legal standards for establishing the attorney-client privilege and work product protection and are insufficient to allow for any meaningful review of the information by the Consumer Advocate and the City.

For each entry on the privilege log, TAWC lists work product protection. The work product doctrine protects materials prepared by an attorney in anticipation of litigation, including mental impressions and legal strategy, from an adversary. This protection can be overcome by a showing that the requesting party has a substantial need for the materials to prepare its case and cannot obtain the information for another source without undue hardship. The Administrative Judge finds that TAWC has failed to establish or even attempt to establish the elements necessary for work product doctrine protection. TAWC has not shown that its legal billing invoices were documents prepared in anticipation of litigation. Even if TAWC were able to establish elements necessary to invoke work product protection, the Administrative Judge finds this protection could be overcome by the need of the Intervenors to access the information. The purpose of this part of the docket is to determine the reasonableness of rate case expenses, and the only way to do so is to critically evaluate the expenses ratepayers are being asked to pay. The only method that the Intervenors can evaluate the expenses is through the invoices submitted to TAWC.

⁷¹ Transcript of Proceedings, p. 43 (April 1, 2026).

TAWC should not be allowed to poison the well then complain about the water. From the outset of a rate case, TAWC is aware that it will seek reimbursement from ratepayers of its rate case expenses. TAWC is also aware that it will be required to prove the reasonableness of its rate case expenses, and Commission Staff generally requests unredacted invoices to evaluate the expenses. Despite this fact, TAWC requested very detailed billing on the legal invoices from its attorneys. Such level of detail is not required. According to TAWC's attorney, the law firm complies with a request of a client for detailed billing. The law firm bills other clients with less detail because that particular client did not request the amount of information on its billing invoices as TAWC. After TAWC has elected to request very detailed billing invoices, TAWC's attorneys then argue that the invoices are subject to attorney-client privilege and protected by the work product doctrine due to the nature of the information contained in its invoices to TAWC i.e. the detailed billing narrative requested by TAWC. It is not requirement that TAWC's bills contain such level of detail and upon questioning by the Administrative Judge the attorneys admitted the firm doesn't provide this level of detailed billing for all clients. Attorney and client cannot conspire to prevent the disclosure of relevant information to the Intervenors.

Since TAWC failed to carry its burden for the protections asserted, the Administrative Judge could certainly find that TAWC neglected to prove its case regarding these claims. However, based on Commission precedent for allowing some redactions on the legal invoices and in an abundance of caution to protect the attorney-client privilege, the Administrative Judge will give TAWC an opportunity to make minimal redactions to the invoices; redacting only the necessary information required to protect attorney-client privilege. At a minimum, the legal invoices and similar documents for which TAWC is seeking payment should be provided in a way that identifies the following:

- a. The corresponding docket(s) the invoice relates to;
- b. The professional performing the work;

c. The general nature of work provided on the docket (if some information is determined to be privileged, it may be redacted, as long as a general description of the work performed is included); and

d. The billed amount/cost of the work performed in total and on an hourly basis.

For example, invoices provided by another law firm in this docket contain billing descriptions similar to the following:

1) review documents sent by John Doe re: the Happy Hills real estate transfer; email John Doe re: same.

2) Review and reply to emails regarding closing matters.

3) Review updated surveys; review and reply to Jane Doe re: title and survey matters.

That particular law firm redacted the quantity and rate but included the attorney who worked on the matter and the total amount for each entry. Billing entries containing descriptions of the work performed similar to the examples above should provide sufficient information regarding the work performed and should not violate attorney-client privilege or the work product doctrine.

The Consumer Advocate has been open to work with utilities to protect certain information contained in the legal invoices and has not contested reasonable redactions on the legal invoices. An issue regarding legal invoices recently arose in Docket No. 26-00009, and the Consumer Advocate entered into a Settlement Agreement with Atmos Energy Corporation (“Atmos”) that among other things allowed for minimal redactions to the legal invoices, and the Commission approved the Settlement Agreement.⁷² However, in this docket, the level of redaction in the invoices submitted by TAWC does not provide enough information for the Intervenors to conduct an adequate review regarding the reasonableness of the expenses. For the foregoing reasons, the Administrative Judge

⁷² See *In Re: Petition of Atmos Energy Corporation for Approval of Its 2026 Annual Rate Review Filing Pursuant to Tenn. Code Ann. § 65-5-103 (d)(6)*, Docket No. 26-00009, *Stipulation and Settlement Agreement* (May 12, 2026).

concludes *TAWC's Motion* should be denied. For rate case expenses that TAWC seeks recovery, TAWC is required to provide minimally redacted invoices to the Intervenors, in accordance with the provisions above regarding the information that should be contained on the invoices. In addition, TAWC shall provide Commission Staff with legal invoices that do not contain any redactions.

IT IS THEREFORE ORDERED THAT:

1. *Tennessee-American Water Company's Motion Regarding the Commission's January 8, 2026 Data Requests* is denied.
2. Tennessee-American Water Company shall file minimally redacted invoices that at a minimum contain the following:
 - a. The corresponding docket(s) the invoice relates to;
 - b. The professional performing the work;
 - c. The general nature of work provided on the docket (if some information is determined to be privileged, it may be redacted, as long as a general description of the work performed is included); and
 - d. The billed amount/cost of the work performed in total and on an hourly basis.
3. Tennessee-American Water Company shall provide billing invoices to Commission Staff without any redactions.
4. Tennessee-American Water Company may file the legal invoices as confidential pursuant to the Protective Order.


Monica Smith-Ashford, Administrative Judge