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**IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE**

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

CONSUMER ADVOCATE DIVISON'S PRE-HEARING BRIEF

The Consumer Advocate Division of the Office of the Tennessee Attorney General respectfully submits its Pre-Hearing Brief, pursuant to the November 2, 2026 Amended Procedural Schedule related to Tennessee-American Water Company's Petition for Rate Case Expenses, which was filed on November 7, 2025.

PRE-HEARING BRIEF

I. INTRODUCTION

This proceeding presents a fundamental question of regulatory accountability: Can a regulated utility transfer millions of dollars in regulatory expenses to captive customers simply because the utility elected to pursue a rate case, or must the utility demonstrate that those expenses were reasonably necessary, prudently incurred, and appropriate for recovery from ratepayers?

The answer is clear. Recovery of regulatory expenses is not automatic. Tennessee law recognizes that the Commission may disallow expenses that are unnecessary, imprudent or improper. The Commission must exercise its regulatory judgment to protect customers from unreasonable utility expenditures.

The evidence presented by Consumer Advocate witness David N. Dittemore demonstrates that TAWC's request is unreasonable and should be denied. TAWC initiated its underlying rate

case despite financial results demonstrating that the Company was earning returns above its authorized return on equity. The Company's own regulatory filings reported returns of 10.76% in 2023 and 10.56% in 2024, compared with an authorized return of 10.00%. TAWC's existing capital recovery mechanisms also provided recovery of a substantial portion of its capital expenditures.

Despite those financial circumstances, TAWC pursued a $14.1 million base rate increase, ultimately obtaining Commission authorization of approximately $1,007,930. The Company now seeks to require customers to pay approximately $1.544 million in regulatory expenses associated with that proceeding, plus additional legal expenses associated with this recovery docket.

The Company's request is particularly troubling given Mr. Dittemore's testimony that TAWC relied excessively on outside counsel for technical, administrative, and regulatory work that could have been performed by its own experienced internal staff at substantially lower cost.

The Company's approach effectively asks customers to subsidize the costs of a regulatory strategy selected by management, regardless of whether that strategy was financially necessary or whether the expenses were efficiently incurred.

The Consumer Advocate respectfully submits that the Commission should reject that result.

II. TAWC DOES NOT HAVE THE AUTOMATIC RIGHT TO RECOVER RATE CASE EXPENSES

A. The Commission's Authority to Establish Just and Reasonable Rates Includes the Authority to Reject Unreasonable Expenses.

The Commission's responsibility under Tenn. Code Ann. §§ 65-5-101 and 65-5-103 is to establish just and reasonable utility rates. A utility seeking a rate change bears the burden of establishing that its requested rates are just and reasonable. Tenn. Code Ann. § 65-5-103(a).

The Commission's obligation to establish just and reasonable rates does not require it to accept every expense a utility elects to incur. To the contrary, the Commission must exercise its

regulatory judgment to determine whether expenses included in rates are reasonable and appropriately attributable to utility service.

The Tennessee Court of Appeals has recognized that a utility's ability to recover expenses is neither absolute nor immutable.[1] In that case, the Court recognized that the Commission may disallow expenses it determines to be unnecessary, imprudent or improper. The Court further emphasized that the Commission should closely examine rate case expenses to determine which costs should be borne by ratepayers and which should be borne by shareholders.

This authority is essential to the Commission's regulatory function. Without meaningful scrutiny, a utility could shift the consequences of inefficient management, unnecessary litigation, or excessive legal staffing directly to customers. The Commission should not permit that outcome here.

B. Actual Expenditures Does Not Automatically Establish Prudence or Recoverability.

The fact that TAWC incurred an expense does not establish that customers should be required to pay it. The relevant question is not whether the Company paid its attorneys, consultants, and employees. The issue is whether the expenses were reasonably necessary and prudently incurred under the circumstances. In *Tennessee-American Water Co.*, the Court recognized that the Commission should examine the costs associated with regulatory proceedings and determine which expenses are appropriate for recovery from customers. The Commission should therefore reject any suggestion that the Company's invoices, standing alone, establish the recoverability of the amounts requested.

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[1] *Tennessee-American Water Co. v. Tennessee Regulatory Authority*, No. M2009-00553-COA-R12-CV, 2011 WL 334678 (Tenn. Ct. App. Jan. 28, 2011).

TAWC must demonstrate that the expenses were reasonably incurred. The Commission should not substitute the Company's unilateral determination of what it spent for the Commission's independent determination of what customers should pay.

C. The Commission Must Examine the Underlying Decision in This Docket to Incur the Expenses

The prudence inquiry cannot be limited to reviewing invoices after the expenses have been incurred. The Commission should also evaluate the reasonableness of the decisions that gave rise to those expenses. A utility's decision to initiate a major rate proceeding has significant financial consequences for customers, the Commission, and the Intervenors. The decision should be evaluated in light of the Company's financial condition, regulatory mechanisms, anticipated benefits, and reasonably foreseeable costs. The Commission should consider whether TAWC reasonably evaluated the need for the underlying rate case and whether the Company's decision to incur substantial regulatory expenses was justified by its circumstances. This inquiry is particularly important where, as here, the Company's financial results demonstrate that it was earning above its authorized return.

The Intervenors do not contend that a utility must be financially distressed before it may seek rate relief. Rather, the Company's financial circumstances are relevant to whether its decision to incur substantial regulatory expenses was reasonable and prudent. A utility cannot simply characterize its regulatory strategy as a business decision and thereby insulate the resulting expenses from Commission review.

III. THE COMPANY'S FINANCIAL CONDITION DEMONSTRATES THAT THE UNDERLYING RATE CASE WAS NOT FINANCIALLY NECESSARY

A. TAWC Was Earning Above Its Authorized Return on Equity.

Mr. Dittemore reviewed TAWC's own financial calculations submitted in TPUC Docket Nos. 24-00011 and 25-00016. Those calculations demonstrated:

Year	TAWC Reported ROE	Authorized ROE
2023	10.76%	10.00%
2024	10.56%	10.00%

In both years, TAWC's calculated return exceeded its authorized return. These were not calculations developed by the Consumer Advocate. They were calculations supplied by the Company in its own regulatory filings. In both proceedings, TAWC calculated its Incremental

These facts are directly relevant to the prudence of the Company's decision to initiate the underlying rate case. TAWC cannot credibly argue that its financial condition compelled it to incur substantial regulatory expenses when its own filings demonstrated earnings above its authorized return. The Commission should give substantial weight to the Company's contemporaneous financial evidence.

B. Existing Capital Recovery Mechanisms Substantially Reduced the Need for Additional Base Rate Relief

Mr. Dittemore testified that approximately 84.5% of forecasted 2025 capital expenditure was expected to be recovered through the Company's capital rider. Therefore, TAWC had an established mechanism to recover a substantial portion of its capital expenditures without initiating a new base rate proceeding. Moreover, Mr. Dittemore explained that capital expenditures not recovered through the rider do not automatically produce incremental revenue requirements because depreciation expense collected through base rates reduces rate base.

The Company's existing regulatory framework was functioning effectively from a financial perspective. TAWC nevertheless chose to initiate a substantial base rate proceeding. The Commission should not allow the Company to transform that discretionary regulatory strategy into an automatic obligation for customers to reimburse all associated costs.

C. The Company's Pursuit of an ARM Does Not Establish That the Rate Case Expenses Were Prudent.

TAWC may argue that filing the underlying base rate case was necessary to obtain approval of an Annual Rate Mechanism ("ARM"). That argument confuses regulatory eligibility with expense prudence. The Company had the legal right to seek approval of an ARM. The Commission ultimately approved the mechanism. But approval of a regulatory mechanism does not establish that every expense associated with obtaining it was reasonable or prudent.

The ARM provided the Company with an opportunity to obtain more frequent rate adjustments and reduce regulatory lag. Those benefits are primarily associated with the Company's regulatory and financial flexibility. The existence of those benefits does not establish that customers should bear all costs incurred to obtain them. The Commission must independently determine whether the Company's expenditures were reasonable and whether the resulting costs should be allocated to shareholders or customers.

D. The Substantial Difference Between the Requested and Authorized Rate Increase Reinforces the Need for Scrutiny.

TAWC requested a rate increase of approximately $14.1 million. The Commission authorized approximately $1,007,930. The Company's requested increase was therefore substantially greater than the relief ultimately authorized.

CAD recognizes that a utility may prudently pursue a rate case even when the Commission ultimately approves a smaller increase than requested. The amount approved is not, standing alone, dispositive. However, the Commission should consider the disparity in conjunction with the Company's earnings above its authorized return, its existing capital recovery mechanisms, and the absence of a compelling financial need to initiate the proceeding. Taken together, these facts support Mr. Dittemore's conclusion that the filing was not financially necessary. The Commission

should reject any attempt to treat the underlying proceeding as presumptively prudent simply because some rate relief was ultimately authorized.

The issue is not whether an invoice from a law firm with a general or vague description of services is reasonable or whether an expensive consultant proposed a methodology that has never been approved in Tennessee or any other state; the issue is what, if any, value the Company and the ratepayers derived from these services.

The results speak for themselves; costs of $1.5 million were incurred in the pursuit of a $14 million dollar rate increase. In a regulatory arena in which most dockets settle, the Company litigated and invested $1.5 million on a case that collapsed under regulatory scrutiny. One has to consider how a Tennessee family or business benefits when a public utility invests in long shot gambits in pursuit of higher returns. Yet the incentive for a public utility to swing for the fences is ever present if each long shot gambit is underwritten without risk by customers. Awarding a public utility regulatory costs on a dollar-for-dollar basis will not discourage a utility from swinging for the fences in every rate case; rather it will encourage it.

IV. TAWC'S EXCESSIVE RELIANCE ON OUTSIDE COUNSEL WARRANTS DISALLOWANCE OF UNREASONABLE LEGAL EXPENSES

A. The Company's Legal Invoices Reveal an Unreasonable Allocation of Work.

Mr. Dittemore reviewed the legal invoices provided by TAWC and identified numerous instances in which outside counsel performed work that could have been completed by the Company's internal regulatory and technical staff. These tasks included:

- Reviewing prior Consumer Advocate testimony on technical issues;
- Researching Commission rulings;
- Drafting discovery responses;
- Conducting technical regulatory research; and
- Performing other work not uniquely associated with the practice of law.

TAWC maintains experienced internal regulatory personnel. The Company's internal experts should have primary responsibility for technical accounting, economic, financial, and regulatory analysis. The Company's decision to assign such work to outside counsel at substantially higher hourly rates raises serious concerns regarding cost management. The Commission should not permit the Company to charge customers premium legal rates for work that does not require the specialized expertise of an attorney.

B. The Company Has an Obligation to Manage Regulatory Costs Responsibly.

The Commission's responsibility to establish just and reasonable rates necessarily includes evaluating whether utility management has reasonably controlled expenses. Rate case expenses are not immune from this obligation merely because they arise in a regulatory proceeding. TAWC's reliance on outside counsel for technical and administrative tasks demonstrates an opportunity for substantial cost savings. Customers should not be required to subsidize inefficient staffing arrangements or unnecessarily expensive work assignments. The Commission should scrutinize the Company's billing records and disallow expenses associated with work that could reasonably have been performed internally.

C. The Absence of Task-Specific Quantification Does Not Eliminate the Commission's Obligation to Examine Invoices

Mr. Dittemore candidly acknowledged that he did not quantify the specific legal expenses associated with each task he considered excessive. However, he identified the categories of work that raise concerns and explained why those activities could reasonably have been performed by internal personnel.

This testimony provides a basis for further examination of the Company's invoices. The Commission should not disregard the testimony merely because the Company has not provided a task-by-task allocation of the disputed amounts. The Company possesses the billing records and

has the ability to identify the work performed, the personnel involved, the time expended, and the purpose of the charges. The Commission should require TAWC to demonstrate that the legal expenses it seeks to recover were reasonably necessary and appropriately performed by outside counsel.

V. THE COMPARATIVE EVIDENCE DEMONSTRATES THAT TAWC'S REGULATORY EXPENSES WERE EXCESSIVE

Mr. Dittemore compared TAWC's regulatory expenses with those incurred by three Kansas gas utilities:

- Atmos Energy;
- Black Hills Gas; and
- Kansas Gas Service.

The average rate case expense incurred by those utilities was $362,502. The comparison is significant because the Kansas utilities were substantially larger than TAWC and faced more opposing witnesses.

TAWC's legal expenses alone were approximately $1 million, while the external legal costs incurred by the Kansas gas utilities ranged from approximately $57,200 to $101,533. TAWC's depreciation study also cost approximately $60,000 more than the depreciation study prepared for Kansas Gas Service. The comparative evidence strongly suggests that TAWC's regulatory expenses were excessive relative to the scope and complexity of its proceeding.

The Consumer Advocate acknowledges that differences in regulatory practices and case circumstances may affect comparability. However, those differences do not render the evidence irrelevant. The comparison provides an objective benchmark demonstrating that TAWC's expenses were unusually high and warrants scrutiny of the Company's staffing and cost-management decisions. The Commission should reject any argument that the Company's expenses are reasonable merely because TAWC incurred them.

VI. THE COMMISSION SHOULD DISTINGUISH BETWEEN NECESSARY LEGAL EXPENSES AND COSTS ATTRIBUTABLE TO THE COMPANY'S REGULATORY STRATEGY

The Company's request includes expenses associated with pursuing a regulatory framework that provided it additional rate recovery opportunities.

The Commission should distinguish between:

1. Expenses reasonably necessary to comply with Commission requirements;
2. Expenses reasonably necessary to present legitimate regulatory issues;
3. Expenses attributable to the Company's discretionary regulatory strategy;
4. Expenses arising from inefficient staffing or unnecessary outside legal involvement; and
5. Expenses that were excessive, duplicative, or otherwise unreasonable.

This distinction is essential to ensuring that ratepayers do not become the automatic financial backstop for every regulatory decision made by utility management. The Commission should evaluate whether the Company's requested expenses reflect prudent regulatory management or instead represent costs that should properly be borne by shareholders.

VII. THE TENNESSEE-AMERICAN WATER DECISION DOES NOT REQUIRE AUTOMATIC RECOVERY

TAWC may rely on *Tennessee-American Water Co. v. Tennessee Regulatory Authority*[2], to argue that rate case expenses should be fully recoverable. That argument would mischaracterize the decision. The Court did not hold that all rate case expenses must be recovered automatically. Rather, the Court reversed the Commission's decision to allow only one-half of TAWC's rate case expenses because the Commission failed to identify the specific expenses deemed unnecessary or improper and failed to explain the basis for its allocation. The Court expressly recognized that the Commission should closely examine rate case expenses to determine the portions recoverable from customers and the portions properly borne by shareholders.

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[2] No. M2009-00553-COA-R12-CV, 2011 WL 334678 (Tenn. Ct. App. Jan. 28, 2011)

The Court's decision therefore reinforces the need for a thorough evidentiary review. CAD does not ask the Commission to impose an arbitrary percentage reduction. Instead, CAD asks the Commission to examine the evidence, identify the unreasonable expenses, and disallow those costs with specific findings. That approach is entirely consistent with *Tennessee-American Water Co.* case. The Commission should not interpret the decision as requiring ratepayers to reimburse a utility for unnecessary or imprudent regulatory expenditures.

VIII. THE COMPANY'S ADDITIONAL LEGAL EXPENSES SHOULD NOT BE AUTOMATICALLY RECOVERABLE

TAWC also seeks recovery of legal expenses associated with this separate proceeding. Those expenses should be subject to independent scrutiny. The Company should not be permitted to automatically recover the costs of litigating its entitlement to recover previously incurred expenses. The Commission should require TAWC to demonstrate that the additional legal expenses were reasonably necessary, prudently incurred, and appropriately attributable to utility service. The Commission should also examine whether the Company continued to assign technical, administrative, or regulatory work to outside counsel that could reasonably have been performed internally. The Commission's prior order capped the underlying rate case expenses at $1,554,000. The Company's request for additional expenses should not be treated as an automatic extension of that cap.

IX. THE INTERVENORS' PRIMARY AND ALTERNATIVE RECOMMENDATIONS

A. Primary recommendation: Deny recovery in its entirety.

The Intervenors recommend that the Commission deny recovery of the underlying rate case expenses.

The evidence demonstrates that:

- TAWC was earning returns above its authorized return on equity;

- TAWC's own filings demonstrated that its Incremental Capital Recovery Rider was zero;
- Existing capital recovery mechanisms provided recovery of a substantial portion of capital expenditures;
- The Company did not demonstrate a compelling financial need to initiate the underlying rate case;
- The Company relied excessively on outside counsel for work that could have been performed internally;
- The Company incurred regulatory expenses substantially exceeding those of comparable utilities; and
- The Company seeks to transfer the costs of its discretionary regulatory strategy to customers.

The Commission should not permit customers to bear expenses arising from an unnecessary and inefficient regulatory proceeding. Therefore, the Intervenors request that the Commission deny recovery of the $1,544,000 requested by TAWC and disallow any additional expenses associated with this recovery proceeding that are not demonstrated to be reasonable and prudent.

B. Alternatively, the Intervenors Recommend Limiting Recovery to $362,502.

If the Commission determines that some rate case expense recovery is warranted, the Intervenors recommend limiting recovery to $362,502. This amount represents the average rate case expenses incurred by the three Kansas gas utilities identified in Mr. Dittemore's testimony. The comparative evidence demonstrates that significantly larger utilities facing more extensive regulatory review incurred substantially lower expenses. The Commission should not require customers to bear the substantial difference between TAWC's expenses and the comparative benchmark without a compelling evidentiary demonstration that those additional expenses were necessary and prudent. The $362,502 recommendation is not an arbitrary percentage reduction. It is a benchmark supported by the comparative evidence presented by Mr. Dittemore. The Commission should require TAWC to justify any recovery exceeding that amount.

X. CONCLUSION

This proceeding is not about whether TAWC had the legal right to file a rate case. It is about whether customers should be required to pay the substantial costs associated with the Company's decision to pursue that proceeding.

Tennessee law does not require automatic recovery of regulatory expenses. The Commission retains the authority—and the responsibility—to disallow expenses that are unnecessary or improper.

The Company's own financial filings demonstrate that it was earning above its authorized return. Its existing capital recovery mechanisms provide substantial recovery of capital expenditures. The Company did not demonstrate a compelling financial need to initiate the underlying rate case. The evidence further demonstrates excessive reliance on outside counsel and regulatory expenses substantially exceeding those incurred by comparable utilities. The Commission should reject the Company's attempt to shift the financial consequences of its regulatory strategy and inefficient cost management to its customers.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

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This 13th day of November, 2026.



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