

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

IN RE:)	
)	
PETITION OF TENNESSEE-)	
AMERICAN WATER COMPANY)	DOCKET NO. 25-00002
REGARDING THE 2025 PRODUCTION)	
COSTS AND OTHER PASS-)	
THROUGHS RIDER)	

**CONSUMER ADVOCATE’S MOTION FOR SUMMARY JUDGMENT
ON THE ISSUE OF NON-REVENUE WATER**

Comes the Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”), pursuant to Rule 56 of the Tennessee Rules of Civil Procedure, and moves for summary judgment on the issue of Non-Revenue Water in the 2025 Production Costs and Other Pass-Throughs Rider (“PCOP”) on the ground that Tennessee-American Water Company’s (“TAWC”) position is contrary to the Commission’s *Order* on the issue of Non-Revenue Water in a prior TAWC case.¹

Furthermore, the Company’s position on Non-Revenue Water is not only contrary to the Commission’s *Order*, it is willfully and knowingly contrary.

In its *Order* the Commission stated that:

“[t]o be clear, the Commission is not implementing a new standard, but rather is continuing to apply the 15% standard for lost and unaccounted for water first adopted in the 2008 rate case, affirmed by the Tennessee Court of Appeals, and adopted again in the Company’s 2010 rate case.”²

¹ *Order Setting Utility Rates* at 21-22, TPUC Docket No. 24-00032 (April 21, 2025).

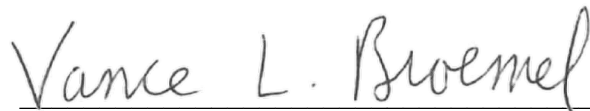
² *Id.* at 21.

The Company, on the other hand, explicitly defies this language of the Commission, stating that:

“TAWC continues to disagree that the Commission established a 15% NRW standard in TPUC Docket No. 08-00039. Hence, I do not support a 15% NRW% limitation as a reasonable or supportable interpretation or application of the Commission’s establishment of a 15% unaccounted-for water standard in TPUC Docket No. 08-00039.”³

Accordingly, the Commission should deny the Company’s claim on Non-Revenue Water that is based on deliberate disagreement and defiance with the Commission *Order*.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script that reads "Vance L. Broemel". The signature is written in dark ink and is positioned above a horizontal line.

VANCE L. BROEMEL (BPR No. 011421)

Managing Attorney

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³ *Rebuttal Testimony of Robert C. Lane* at 4:8-11, TPUC Docket No. 25-00002 (April 22, 2025).

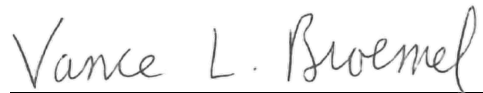
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via electronic mail upon:

Robert C. Lane
Senior Manager, Rates and Regulatory
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This the 28th day of April, 2025.



VANCE L. BROEMEL
Managing Attorney

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**MEMORANDUM IN SUPPORT OF CONSUMER ADVOCATE’S MOTION FOR
SUMMARY JUDGMENT ON THE ISSUE OF NON-REVENUE WATER**

The Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”), pursuant to Rule 56 of the Tennessee Rules of Civil Procedure, has filed a Motion for Summary Judgment.

STANDARD FOR SUMMARY JUDGMENT

When a motion for summary judgment is made, the moving party has the burden of showing that “there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”¹ When the party moving for summary judgment does not bear the burden of proof at trial, “the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party's claim, or (2) by demonstrating that the nonmoving party's evidence at the summary judgment stage is insufficient to establish the nonmoving party's claim or defense.”² Furthermore,

“[w]hen a motion for summary judgment is made [and] ... supported as provided in [Tennessee Rule 56],” to survive summary judgment, the nonmoving party “may not rest upon the mere allegations or denials of [its] pleading,” but must

¹ Tenn. R. Civ. P. 56.04.

² [*Rye v. Women's Care Center of Memphis, M PLLC*, 477 S.W.3d 235, 264 \(Tenn. 2015\)](#).

respond, and by affidavits or one of the other means provided in Tennessee Rule 56, “set forth specific facts” at the summary judgment stage “showing that there is a genuine issue for trial.” Tenn. R. Civ. P. 56.06. The nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co., [Ltd. v. Zenith Radio Corp.]*, 475 U.S. [574,] 586, 106 S. Ct. 1348 [(1986)]. The nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.³

UNDISPUTED FACTS

Rule 56.03 of the Tennessee Rules of Civil Procedure requires the party moving for summary judgment to provide the following:

A separate concise statement of the material facts as to which the moving party contends there is no genuine issue for trial. Each fact shall be set forth in a separate, numbered paragraph. Each fact shall be supported by a specific citation to the record.

Accordingly, the following is a list of material facts to which there is no genuine issue:

(1) In its Order of April 21, 2025, TPUC Docket No. 24-00032 the Commission held as follows:

TAWC argued that the 15% NRW standard proposed by the Consumer Advocate is punitive, and attempted to distinguish the term NRW from the 15% “lost and unaccounted for water” standard set in the Company’s 2008 rate case. However, these terms have been used interchangeably at the Commission by the Consumer Advocate and the Company.⁵⁸ The Company previously has defined “unaccounted for water” as an all-encompassing umbrella term before the Tennessee Court of Appeals without a distinction for NRW.⁵⁹ To be clear, the Commission is not implementing a new standard, but rather is continuing to apply the 15% standard for lost and unaccounted for water first adopted in the 2008 rate case, affirmed by the Tennessee Court of Appeals, and adopted again in the Company’s 2010 rate case. When the Commission first implemented this standard for TAWC, the underlying goal was to encourage the Company to have a more efficient distribution system and to be a good steward of a natural resource.⁶⁰ As nearly one in four gallons of water treated and pumped by the Company is lost and unaccounted for, the panel voted unanimously to continue to apply the 15% standard.

⁵⁸ David Dittmore, Pre-Filed Direct Testimony, pp. 30-3[2], Exhibit DND-7 (September 17, 2024).

⁵⁹ In re: Tennessee American Water Company vs. Tennessee Regulatory Authority, et al, 2011 WL 334678* 27 (Tenn.Ct.App.2011): The term

³ *Id.* at 265.

unaccounted for water was used broadly by the Tennessee Court of Appeals: “The Company takes the position that the TRA has historically taken into consideration all of TAWC's costs for fuel, power, and chemicals in determining TAWC's forecasted expenses. The Company explained that these costs directly relate to the treatment and pumping of all water in the distribution system, whether it is water delivered and billed to customers or UfW.” During the Company’s appeal of the 2008 rate case, TAWC’s initial brief asserted the following definition of lost and unaccounted for water: “In any water system, some water is lost due to leaks or breaks in lines. Also, a portion of water provided to customers is not billed through, for example, leak detection or as a result of fighting fires. This lost and/or unbilled water is known as unaccounted for water (“UfW”).” (internal citations omitted) Brief of Petitioner Tennessee American Water Company, p. 22 (March 21, 2010).

⁶⁰ In re: Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges so 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, Docket No. 08-00039, Order, pp. 14-16 (January 13, 2009); In re: Petition of Tennessee American Water For a General Rate Increase, Docket No. 10-00189, Final Order, pp. 66-69 (April 27, 2012).

(2) The Rebuttal Testimony of Robert C. Lane in TPUC Docket No. 25-00002, April 22, 2025,

stated as follows:

I accept Mr. Novak’s calculation of 25.67% NRW% but not for use in this proceeding. TAWC continues to disagree that the Commission established a 15% NRW standard in TPUC Docket No. 08-00039. Hence, I do not support a 15% NRW% limitation as a reasonable or supportable interpretation or application of the Commission’s establishment of a 15% unaccounted-for water standard in TPUC Docket No. 08-00039.

(3) The Commission Order of April 21, 2025, affirms that the standard for Non-Revenue Water:

“... is not implementing a new standard, but rather is continuing to apply the 15% standard for lost and unaccounted for water adopted in the 2008 rate case, affirmed by the Tennessee Court of Appeals, and adopted again in the Company’s 2010 rate case.”⁴

(4) The Rebuttal Testimony of Robert C. Lane explicitly denies that the Commission established a 15% NRW [Non-Revenue Water] standard in TPUC Docket No. 08-00039.

⁴

Order Setting Utility Rates at 21, TPUC Docket No. 24-00032 (April 21, 2025).

ARGUMENT

Tennessee-American Water Company's ("TAWC") position is contrary to the Commission's *Order* on the issue of Non-Revenue Water in a prior TAWC case.⁵

Furthermore, the Company's position on Non-Revenue Water is not only contrary to the Commission's *Order*, it is willfully and knowingly contrary.

In its *Order* the Commission stated that:

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The Company, on the other hand, explicitly defies this language of the Commission, stating that:

"TAWC continues to disagree that the Commission established a 15% NRW standard in TPUC Docket No. 08-00039. Hence, I do not support a 15% NRW% limitation as a reasonable or supportable interpretation or application of the Commission's establishment of a 15% unaccounted-for water standard in TPUC Docket No. 08-00039."⁷

CONCLUSION

For the foregoing reasons, the Court should grant the Consumer Advocate's Motion for Summary Judgment on the Issue of Non-Revenue Water.

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⁵ *Order Setting Utility Rates* at 21-22, TPUC Docket No. 24-00032 (April 21, 2025).

⁶ *Id.* at 21.

⁷ *Rebuttal Testimony of Robert C. Lane* at 4:8-11, TPUC Docket No. 25-00002 (April 22, 2025).

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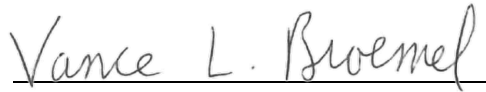
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via electronic mail upon:

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This the 28th day of April, 2025.


VANCE L. BROEMEL
Managing Attorney