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Hon. David Jones, Chairman
c/o Ectory Lawless, Docket Manager
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243
TPUC.DocketRoom@tn.gov

RE: *Joint Petition of Tennessee-American Water Company, American Water Works Company, Inc., Nexus Regulated Utilities, LLC, and Tennessee Water Service, Inc. for Authorization of Change of Control, Approval of the Agreement and Plan of Merger and for the Issuance of a Certificate of Convenience and Necessity, Docket No. 25-00040*

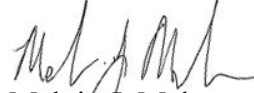
Dear Chairman Jones:

Attached for filing please find *Tennessee-American Water Company's Rebuttal Testimonies of Robert C. Lane, Grady Stout, and Linda Schlessman* in the above-captioned matter.

As required, copies will be mailed to your office. Should you have any questions concerning this filing or require additional information, please do not hesitate to contact me.

Very truly yours,

BUTLER SNOW LLP



Melvin J. Malone

clw

Attachments

cc: Bob Lane, TAWC
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TENNESSEE-AMERICAN WATER COMPANY, INC.

DOCKET NO. 25-00040

REBUTTAL TESTIMONY

OF

LINDA SCHLESSMAN

ON

**JOINT PETITION OF TENNESSEE-AMERICAN WATER COMPANY, AMERICAN
WATER WORKS COMPANY, INC., NEXUS REGULATED UTILITIES, LLC, AND
TENNESSEE WATER SERVICE, INC. FOR AUTHORIZATION OF CHANGE OF
CONTROL, APPROVAL OF AGREEMENT AND PLAN OF MERGER AND FOR
ISSUANCE OF A CERTIFICATE OF CONVENIENCE AND NECESSITY**

SPONSORING PETITIONERS' EXHIBITS:

TAWC Schlessman Rebuttal Exhibit 1

TAWC Schlessman Rebuttal Exhibit 2

TAWC Schlessman Rebuttal Exhibit 3

TAWC Schlessman Rebuttal Exhibit 4

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Linda Schlessman. My business address is 1 Water Street, Camden, NJ 08106.

3 **Q. BY WHOM ARE YOU EMPLOYED, AND IN WHAT CAPACITY?**

4 A. I am employed by American Water Works Service Company, Inc. (the “Service
5 Company”) as the Director - Tax Regulatory. I am responsible for the oversight of
6 calculating tax expense and accumulated deferred income taxes in rate cases and rate filings
7 for American Water Works Company, Inc.’s (“AWWC”) subsidiaries, including
8 Tennessee American Water Company (“TAWC” or the “Company”).

9 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND PROFESSIONAL**
10 **BACKGROUND.**

11 A. I received a Bachelor of Business Administration Degree in Accounting from Miami
12 University in 2006 and am a Certified Public Accountant in the State of Ohio. I have
13 nineteen years of tax experience and seven years of utility tax experience. Prior to joining
14 the Service Company in September of 2024, I was a Tax Accounting and Regulatory
15 Support Manager at American Electric Power, Inc. Prior to that, I held positions in both
16 public accounting and the private sector. My previous employers include GBQ Partners,
17 LLC, HBD Industries, Inc. and L Brands, Inc., now Bath and Body Works, Inc.

18 **Q. DID YOU PREVIOUSLY SUBMIT DIRECT TESTIMONY IN THIS**
19 **PROCEEDING ON BEHALF OF TAWC ?**

20 A. No, I did not.

21 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN ANY REGULATORY**
22 **PROCEEDINGS?**

1 A. Yes. Since joining Service Company in September 2024, I have filed testimony in rate
2 proceedings before the Public Service Commission of Kentucky in Case No. 2025-00122,
3 the Missouri Public Service Commission in Case No. WR-2024-0320, the Tennessee
4 Public Utility Commission in Docket No. 24-00032, and the Iowa Utilities Commission in
5 Docket No. RPU-2024-0002. While employed at American Electric Power, I filed
6 testimony in rate proceedings before the Oklahoma Corporation Commission in Case No.
7 PUD 2022-000093, before the Arkansas Public Service Commission in Case No. 23-012-
8 FR, before the Public Service Commission of Kentucky in Case No. 2023-00159, and
9 before the Public Utility Commission of Texas in Docket No. 56165.

10 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

11 A. The purpose of my rebuttal testimony is to respond to the Consumer Advocate Division of
12 the Tennessee Attorney General’s Office (the “Consumer Advocate”) witness David N.
13 Dittemore’s testimony and assertions regarding Accumulated Deferred Income Taxes
14 (“ADIT”) in this proceeding. Specifically, I will address witness Dittemore’s assertions
15 regarding (1) the implication that the taxable nature of the transaction results in negative
16 consequences for customers and (2) Mr. Dittemore’s recommendation to establish a
17 regulatory liability to replicate the balance of ADIT which will be eliminated as a result of
18 the transaction.¹ The fact that I may not have responded to any particular argument or
19 statement made by Mr. Dittemore on behalf of the CAD should not be interpreted as my
20 agreement with the argument or statement.

¹ *Pre-filed Testimony of CAD Witness David N. Dittemore*, pp. 3-9, TPUC Docket No. 25-000040 (Sept. 19, 2025) (hereinafter “*Dittemore*”).

1 **Q. ARE YOU SPONSORING ANY EXHIBITS WITH YOUR TESTIMONY?**

2 A. Yes. I am sponsoring the following Exhibits:

3 1. TAWC Schlessman Rebuttal Exhibit 1

4 2. TAWC Schlessman Rebuttal Exhibit 2

5 3. TAWC Schlessman Rebuttal Exhibit 3

6 4. TAWC Schlessman Rebuttal Exhibit 4

7 **Q. IN HIS PRE-FILED TESTIMONY, CAD WITNESS MR. DITTEMORE**
8 **PROVIDES A SUMMARY, GENERAL OVERVIEW OF ADIT. CAN YOU**
9 **ELABORATE ON THIS?²**

10 A. Yes. Accounting Standards Codification (ASC) 740 covers how companies should both
11 account for and report taxes based on income. The two basic objectives of ASC 740 are to
12 recognize both the amount of taxes that are either payable or refundable for the current tax
13 year, as well as to recognize the deferred tax assets and liability for the future tax
14 consequences that have been recognized in the company's financial statements. The
15 accounting for income taxes called for by ASC 740 is known as normalized income tax
16 accounting. Normalization accounting for income taxes calculates income tax expense on
17 the pre-tax items of income and expense recorded for financial statement purposes or
18 included in the cost of service for ratemaking purposes. The income tax expense is then
19 adjusted for permanent differences between income recorded for financial reporting (book)
20 purposes and income determined for tax reporting (tax) purposes. Tax expense is then
21 divided between the amount currently payable to the IRS and the amount that must be paid
22 in the future. This division between current and deferred tax expense is calculated based

² *Dittemore*, 4:1-17.

on certain temporary differences between book and taxable income, for example the difference between the method and life used for book and tax depreciation. The tax expense incurred in the current year for which the payment is deferred due to temporary book/tax differences is recorded on the balance sheet as an ADIT liability or asset, whichever may be the case.

Q. WHAT IS THE OVERALL UNDERLYING OBJECTIVE OF NORMALIZATION ACCOUNTING?

A. The overall objective of normalized income tax accounting is to align the financial statements with costs as they have become legally obligated to owe and the balance sheet with future liabilities that will need to be paid.

Q. PLEASE EXPLAIN WHAT NORMALIZATION TAX ACCOUNTING MEANS IN THE CONTEXT OF A PUBLIC UTILITY COMPANY.

A. For a public utility company, normalization is a method of accounting in which the tax benefits of accelerated depreciation on public utility assets are shared with customers ratably over the regulatory useful life of the asset in the form of reduced rates.

Q. HOW ARE THE TAX BENEFITS OF ACCELERATED DEPRECIATION ON PUBLIC UTILITY ASSETS SHARED WITH CUSTOMERS?

A. Until the ADIT balance is paid back to the Internal Revenue Service, it is used as a dollar-for-dollar reduction to rate base.

Q. DO YOU AGREE WITH WITNESS DITTEMORE'S DESCRIPTION OF ADIT?

A. While I agree that ADIT is the cumulative amount of income taxes that have been charged to expense on the books of the Company, I do not agree with Mr. Dittimore's categorization

1 that the ADIT is uncertain.³ Companies like TAWC and Tennessee Water Service (“TWS”)
2 are required to follow the Generally Accepted Accounting Principles (“GAAP”) for
3 financial statement purposes. ASC 740-10-05-5 (Income Taxes) provides:

4 There are two basic principles related to accounting for income taxes, each of
5 which considers uncertainty through the application of recognition and measurement
6 criteria:

- 7 a. To recognize the estimated taxes payable or refundable on tax returns for the
8 current year as a tax liability or asset
9 b. To recognize a deferred tax liability or asset for the estimated future tax
10 effects attributable to temporary differences and carryforwards.

11 Therefore, companies required to follow GAAP must follow the recognition and
12 measurement criteria to ensure that the deferred tax liabilities recorded in the financial
13 statements are certain and record only the liabilities that will result in a taxable amount in
14 future years. Despite Mr. Dittmore’s contention that ADIT is *uncertain*, he in fact actually
15 demonstrates an example of the *certain*ty in the deferred tax liabilities by describing that
16 the proposed transaction will result in the deferred taxes of TWS becoming due and
17 payable.⁴

18 **Q. MR. DITTEMORE STATES THAT THE TRANSACTION IS TAXABLE. PLEASE**
19 **DISCUSS.**

20 A. The transaction by and between Nexus Regulated Utilities, LLC (“Nexus”) and AWWC
21 currently before the Commission (the “Stock Transaction”) is a stock sale that AWWC has
22 elected alternative treatment under the tax code, and the Stock Transaction constitutes a

³ Dittmore, 4: 3-4.

⁴ Id. at line 15.

1 taxable event. By virtue of elective tax treatment under IRS § 338(h) (10) (“338 election”),
2 a stock purchase is treated, for federal income tax purposes, as an asset sale.

3 **Q. WHAT ARE THE IMPLICATIONS OF THE 338 ELECTION?**

4 A. As mentioned previously because of the 338 election, the Stock Transaction, for tax
5 purposes, will be treated as an asset sale. As such, deferred tax consequences for the TWS,
6 and certain tax treatment for TAWC result; (1) TWS’s ADIT balance will be settled at close
7 and is therefore not transferable to TAWC and; (2) TAWC will receive a larger tax basis in
8 the assets that it otherwise would not have received (i.e., as a stock purchase without a 338
9 election).⁵

10 **Q. DO YOU AGREE WITH WITNESS DITTEMORE THAT THE EXISTING ADIT**
11 **BALANCE OF TWS WILL NOT BE TRANSFERRED TO THE BOOKS OF**
12 **TAWC?**⁶

13 A. Yes, as mentioned above, the ADIT balance is settled at close by the TWS as a result of the
14 338 election; however, what Witness Dittemore fails to recognize is that TAWC’s acquired
15 tax basis in the assets, also as a result of the 338 election, will be larger than the tax basis
16 that TWS presently recognizes. That is, TAWC will receive what is called a “step-up” in
17 its federal income tax basis, that it would not have otherwise received, if not for the elective
18 treatment.

19 **Q. PLEASE DEMONSTRATE WHY THE ADIT BALANCE DOES NOT TRANSFER**
20 **TO A BUYER AS A RESULT OF THE STEP UP IN TAX BASIS.**

21 A. The increase in tax basis is due to the alignment of the purchase price with the tax basis
22 and results in a larger tax basis. To demonstrate this concept, I have provided an example

⁵ *TWS’s Response to CAD DR I-1*, TPUC Docket No. 25-00040 (Aug. 8, 2025).

⁶ *Dittemore*, 5:1-2.

below as Figure LS-1. In this hypothetical example, an asset with an original cost basis of \$10,000,000 and a net book value of \$6,000,000 and a net tax value of \$4,800,000 in its second year of operation is sold for \$6,000,000. At the time of sale, the seller's ADIT on the asset was \$252,000. The buyer will record a tax basis for ADIT calculation purposes of \$6,000,000 as opposed to \$4,800,000. Because the buyer starts with a new, higher tax basis, it does not inherit or record the seller's ADIT of \$252,000. Additionally, over the entire life of the asset, tax depreciation of \$11,200,000 will be recorded on original cost basis of \$10,000,000, as a result of the seller's transfer to buyer. The result is the \$252,000 ADIT that is tied to the seller's lower tax basis and extinguished at sale is replaced with the buyer's new stepped up basis and ADIT is built over the life of the asset.

1

Figure: LS-1

Asset Cost: 10,000,000
 Tax Rate: 21%
 Assumption: Sale in Year 2

	Depreciation Rate	
	Tax	Book
Year 1	20.00%	20%
Year 2	32.00%	20%
Year 3	19.20%	20%
Year 4	11.52%	20%
Year 5	11.52%	20%
Year 6	5.76%	0%
	100%	100%

Purchase Price: 6,000,000

	Tax	Book	ADIT
Cost	10,000,000	10,000,000	
Accumulated Depreciation	(5,200,000)	(4,000,000)	
Total Net Tax/Book Value	4,800,000	6,000,000	252,000
Step-Up in Basis	1,200,000		
Total Basis	6,000,000	6,000,000	

Tax Depreciation

	Without Transaction		With Transaction	
	Without Transaction	With Transaction	Difference	ADIT Inc/(Dec)
Year 1	2,000,000	2,000,000	-	-
Year 2	3,200,000	3,200,000	-	-
Year 3	1,920,000	1,200,000	(720,000)	(151,200)
Year 4	1,152,000	1,920,000	768,000	161,280
Year 5	1,152,000	1,152,000	-	-
Year 6	576,000	691,200	115,200	24,192
Year 7		691,200	691,200	145,152
Year 8		345,600	345,600	72,576
	10,000,000	11,200,000	1,200,000	252,000

2

3 **Q. HOW DOES THE STEP-UP IN TAX BASIS AFFECT CUSTOMERS?**

4 A. The step up in tax basis benefits customers because it creates new ADIT balances that will
 5 reduce rate base in future rate proceedings. Although TWS's ADIT does not transfer to
 6 TAWC, TAWC's new, higher tax basis generates additional tax depreciation. This new

ADIT balance build up will then be credited against TAWC's rate base resulting in customers receiving a larger rate base offset that is built on the higher tax basis.

Q. WHY IS MR. DITTEMORE'S PROPOSAL TO INCLUDE A REGULATORY LIABILITY FOR THE ADIT THAT DOES NOT TRANSFER TO TAWC INAPPROPRIATE?⁷

A. Because the ADIT is settled at closing, creating a regulatory liability to replace that balance would create a fictional or "phantom" ADIT. This fictional or "phantom" ADIT would not actually exist, would not be related to any accumulated tax balances actually carried by TAWC, and would constitute a departure from IRS Normalization Rules.

Q. WHAT ARE THE IRS NORMALIZATION RULES AND HOW DO THEY APPLY TO REGULATED UTILITIES?

A. The Internal Revenue Code ("Code") and accompanying treasury regulations provide normalization requirements, specifically in three areas: 1) Accelerated depreciation and the associated deferred tax liability that results from its use; 2) NOL Carryforwards ("NOLC") as a result of accelerated depreciation; and 3) Investment Tax Credits ("ITC"). The Code dictates that a regulated public utility must use the normalization method of accounting to calculate tax expense on temporary differences associated with accelerated depreciation when determining rates using a cost of service/rate of return methodology.⁸ 26 U.S. Code §168(i)(9)(A) states that, in order for a public utility to be considered to be using a normalized method of accounting:

⁷ *Dittemore*, pp. 7-8.

⁸ *Pre-filed Direct Testimony of CAD Witness William H. Novak*, 15:5-6, TPUC Docket No. 17-00091 (Dec. 4, 2017) ("Atmos must comply with normalization provisions of the Internal Revenue Code in order to take advantage of accelerated depreciation for tax purposes.") (hereinafter "*Novak*").

1 (i) the taxpayer must, in computing its tax expense for purposes of establishing its
2 cost of service for ratemaking purposes and reflecting operating results in its
3 regulated books of account, use a method of depreciation with respect to such
4 property that is the same as, and a depreciation period 1 for such property that is no
5 shorter than, the method and period used to compute its depreciation expense for
6 such purposes, and

7 (ii) if the amount allowable as a deduction under this section with respect to such
8 property (respecting all elections made by the taxpayer under this section) differs
9 from the amount that would be allowable as a deduction under section 167 using
10 the method (including the period, first and last year convention, and salvage value)
11 used to compute regulated tax expense under clause (i), the taxpayer must make
12 adjustments to a reserve to reflect the deferral of taxes resulting from such
13 difference.⁹

14 **Q. YOU STATED ABOVE THAT MR. DITTEMORE'S PROPOSAL WOULD**
15 **RESULT IN A DEPARTURE FROM IRS NORMALIZATION RULES. CAN YOU**
16 **ELABORATE ON WHAT RULE YOU ARE REFERRING TO AND HOW MR.**
17 **DITTEMORE'S PROPOSAL REGARDING THE TREATMENT OF ADIT IN THIS**
18 **PROCEEDING WOULD RESULT IN A DEPARTURE FROM IRS**
19 **NORMALIZATION RULES?**

20 **A. Yes. IRS Normalization Rule § 168(i)(9)(A)(i), also attached as TAWC Schlessman**
21 **Rebuttal Exhibit 1, requires the taxpayer,¹⁰ in computing its tax expense for establishing**
22 **its cost of service for ratemaking purposes and reflecting operating results in its regulated**

⁹ 26 U.S.C. § 168(i)(9)(A).

¹⁰ For clarity, the taxpayer in this circumstance would be the purchasing utility.

books of account, to use a method of depreciation with respect to public utility property that is the same as, and a depreciation period for such property, that is not shorter than, the method and period used to compute its depreciation expense for such purposes.¹¹ Additionally, § 1.46-6(b)(4), also attached as **TAWC Schlessman Rebuttal Exhibit 2**, states that cost of service or rate base is also considered to have been reduced by reason of all or a portion of a credit if such reduction is made in an indirect manner. Because the rule prevents the creation of a mismatch or “phantom” ADIT balance, normalization (i.e., the alignment of book depreciation, tax expense, and deferred tax reserves) ensures that only real timing differences are captured.¹²

Q. WHAT WOULD BE THE RESULT OF CREATING A REGULATORY LIABILITY TO AMORTIZE “PHANTOM” ADIT AS WITNESS DITTEMORE PROPOSES?

A. Creating a regulatory liability to amortize the “phantom” ADIT to customers violates IRS Normalization rules because it causes a misalignment between the depreciation used to reflect operating results and the depreciation used for calculating tax expense. In other words, the amortization of regulatory liability would result in higher depreciation for tax expense calculation purposes than for book expense purposes, which is prohibited under normalization rules and could expose TAWC to IRS penalties.¹³ As described previously, normalized accounting requires that the book depreciation used to calculate depreciation on plant, property, and equipment be the same book depreciation used to calculate tax expense and accumulated deferred income taxes. To demonstrate the alignment concept for

¹¹ *Novak* 15:6-9 (“This normalization provision requires Atmos to use the same method of depreciation to compute both its tax expense and its depreciation expense for purposes of establishing its costs of service for rate making purposes.”).

¹² *Novak* 15:9-12 (“As a result, the tax normalization provisions require Atmos to align its accumulated deferred income taxes that are a reduction to rate base with the deferred taxes included in tax expense in the cost of service.”).

¹³ *See, e.g. Novak* 15:12-14 (“A violation of this normalization provision could result [in] a loss of the ability to claim accelerated tax depreciation of future tax returns.”).

1 normalization, I have expanded on the example in Figure LS-1. In this example, TAWC
2 Schlessman Rebuttal Exhibit 3, the same fact pattern applies as LS-1, and I am using year
3 4 to demonstrate the normalized method of accounting. In Year 4, the book depreciation on
4 the asset is \$1,200,000 and the tax depreciation is \$1,920,000 which leads to the growth of
5 ADIT of \$151,200. The book depreciation is used to calculate the benefit in tax expense.
6 The difference between the book depreciation used to calculate tax expense and the tax
7 depreciation used to calculate the benefit on the tax return is the same as the ADIT
8 generated of \$151,200. Note that there is no variance between the ADIT in rate base and
9 the difference the book and tax depreciation used in the financials and tax return,
10 respectively. This is demonstrating the requirements of the normalized method of
11 accounting. Now, let's add how a regulatory liability for the foregone ADIT would effect
12 the normalized method of accounting. In this example we will assume a regulatory liability
13 is booked for the foregone ADIT of \$252,000 and will be amortized through expense over
14 6 years for an annual amount of \$23,000 per year. The book depreciation and tax
15 depreciation stay the same to calculate the ADIT. However, the regulatory liability acts as
16 an addition to ADIT for a total rate base impact of \$319,000. The book depreciation used
17 to calculate tax expense is also impacted by an additional expense for the regulatory
18 amortization. When compared to the tax benefit on the tax return which does not change,
19 there is a variance of \$176,820. This is how the regulatory liability would misalign the
20 components required to be aligned for ratemaking based on IRS Normalization Rule
21 § 168(i)(9)(A)(i).

1 **Q. WHAT IS THE PENALTY FOR VIOLATIONS OF THE NORMALIZATION**
2 **RULES?**

3 A. When a regulated utility departs from the normalization rules, it is required by the IRS to
4 report such violations per Revenue Procedure 2017-47. The penalty for violating IRS
5 normalization requirements is the loss of ability to claim accelerated tax depreciation.¹⁴
6 This would directly harm customers because the cash benefits the Company receives on
7 the tax return would no longer continue; that is the ADIT that offsets rate base would no
8 longer exist and customers would no longer receive its benefit.

9 **Q. HOW WOULD A NORMALIZATION VIOLATION AFFECT TAWC**
10 **CUSTOMERS?**

11 A. In effect, a normalization violation would likely exacerbate the very concern Mr. Dittemore
12 claims he is trying to solve. As proposed by Mr. Dittemore, the creation a regulatory
13 liability would temporarily address the reset of ADIT, however, any resulting normalization
14 violation could permanently eliminate the ADIT benefit for TAWC customers, unless the
15 violation is corrected.

16 **Q. TO THE BEST OF YOUR KNOWLEDGE, ARE THERE ANY IRS LETTER**
17 **RULINGS ADDRESSING MR. DITTEMORE’S SPECIFIC PROPOSAL?**

18 A. Not that I am aware of. The IRS normalization rules are quite extensive and cover a broad
19 amount of accounting treatment and related territory. Thus, there are hosts of unique and
20 specific scenarios – some simple, some complex - for which the IRS has not issued a
21 Private Letter Ruling (“PLR”). Moreover, where the normalization rules are clear and
22 unambiguous, a PLR is not warranted, as compliance is rather straightforward.

¹⁴ See *supra* note 13.

1 However, I am aware of PLR 202350001 (**TAWC Schlessman Rebuttal**
2 **Exhibit 4**), which is illustrative of how ADIT normalization issues are viewed by the IRS.
3 In that ruling, the IRS concluded that when the property of a public utility is condemned,
4 and therefore removed from rate base, the associated ADIT must be eliminated because the
5 underlying timing difference no longer exists. The IRS emphasized that § 168(i)(9) requires
6 that book depreciation, tax expense, and deferred tax reserves *must align*, whether utility
7 property is disposed of by condemnation or by sale, and that the corresponding ADIT must
8 be settled; concluding that “[t]he failure to eliminate the deferred taxes, including ADIT
9 and the deferred tax reserves on the regulated books of [the utilities]... would violate the
10 normalization provisions of § 168(i)(9).”

11 While PLR 202350001 did not address the exact fact pattern of this Transaction,
12 the underlying premises should be considered and applied.

13 When property is sold, and the seller’s ADIT is extinguished, it cannot be replaced
14 with a regulatory liability. This attempted circumvention would violate normalization rules
15 because creating a the “phantom” ADIT, as suggested by Mr. Dittmore, breaks the
16 required match between book depreciation, tax expense, and deferred tax reserves.

17 My testimony is based on the plain and express language of the normalization rules
18 and as reinforced by PLR 202350001. The IRS normalization rules must be analyzed and
19 adhered to whether there is a fact specific PLR applying the rules to the circumstances
20 presented or not; in the same way that TAWC is bound to follow the rules of the Tennessee
21 Public Utility Commission whether or not there is a Commission order applying the rule
22 to the then-presented TAWC circumstances.

1 **Q. COULD TAWC SEEK AN IRS PLR TO CONFIRM ITS NORMALIZATION**
2 **TREATMENT FOR THE PHANTOM ADIT AS PROPOSED BY MR.**
3 **DITTEMORE, AND IF SO, WHY IS THAT NOT APPROPRIATE?**

4 A. While TAWC could request a PLR from the IRS to confirm whether establishing a
5 regulatory liability in lieu of the natural accumulation of ADIT in accordance with TAWC's
6 books would constitute a normalization violation, doing so would not be practical. First,
7 and as I noted earlier, a PLR is generally sought when the IRS's position is unclear or when
8 there exists insufficient guidance for the taxpayer. The plain language of the IRS's
9 normalization rules, as reinforced in PLR 202350001, clearly supports that breaking the
10 required matching link between utility book and tax depreciation, in this circumstance by
11 establishing a phantom ADIT, violates normalization principles. Additionally, obtaining a
12 PLR is both costly and time-consuming and requires the need for fees incurred by outside
13 accounting and legal consultants along with the required IRS filing fees.

14 **Q. ARE THERE OTHER REASONS THAT WITNESS DITTEMORE'S PROPOSAL**
15 **TO INCLUDE A REGULATORY LIABILITY FOR "PHANTOM" ADIT**
16 **INAPPROPRIATE?**

17 A. Yes. As described above, the step-up on the tax basis will create a new ADIT balance and
18 replace the ADIT which did not transfer from TWS. Therefore, customers will continue to
19 benefit from the new ADIT as a reduction to rate base in the future, although TWS's ADIT
20 balance does not transfer. In other words, the benefit to customers from the regulatory
21 liability that Witness Dittemore is proposing will naturally occur – absent a normalization
22 violation - through the building of the ADIT on a stepped-up tax basis. Refer again to
23 Figure LS-1. The removal of the \$252,000 of ADIT at time of the transaction is replaced

1 over time by \$252,000 in ADIT on the stepped-up basis. Additionally, amortizing the ADIT
2 as a benefit through expense would overstate the benefit that customers would have
3 received if the transaction had not occurred. In rate base customers receive a benefit in the
4 revenue requirement on the return of the ADIT, not the entire ADIT itself.

5 **Q. PLEASE CLARIFY IF THERE IS A CONNECTION BETWEEN GOODWILL**
6 **RECORDED FOR FINANCIAL STATEMENT PURPOSES AND THE STEP-UP IN**
7 **TAX BASIS THAT YOU DESCRIBED?**¹⁵

8 A. Certainly. In his pre-filed testimony, Mr. Dittmore states as follows:

9 “[F]or their ADIT claim to play out as TAWC has suggested, it would
10 require the regulatory recognition of ADIT associated with goodwill to be
11 included as a rate base offset.”¹⁶
12

13 Based upon this statement by Mr. Dittmore, it is clear that he misunderstands TAWC’s
14 responses to Consumer Advocate DR 2-2 discovery. The discovery responses states:

15 “TAWC is not seeking a change in Rate Base related to this transaction in this
16 proceeding.
17

18 In the next rate proceeding after this transaction, rates will be established based on
19 the rate base (or projected rate base depending on the nature of the rate proceeding)
20 for the relevant time period.
21

22 This level of plant in service and the relevant additions and deduction to rate base,
23 including ADIT, will be determined by the Commission at that time for the relevant
24 time period.
25

26 Until that next rate proceeding, the water rates to TWS’s customers, which are
27 based on TWS’s current levels of rate base and expenses, will remain in effect until
28 the Commission approves new rates as a result of TAWC’s next rate proceeding,”
29

30 The discovery response states that until the next proceeding current rates will remain in
31 effect. There is no connection between recording goodwill on the financial statements and

¹⁵ Dittmore, pp. 6-7, lines 10-22 and 1-14, respectively.

¹⁶ Dittmore at pp. 6-7.

1 the step-up in basis as I have described. The step-up occurs on assets that are included in
2 rate base. Goodwill is excluded from rate base and therefore any ADIT on it would also be
3 excluded. The response which Witness Dittmore is referring to is describing the tax
4 treatment on goodwill; however, that is not the tax basis that will be subject to the step-up
5 for calculating ADIT in rate base.

6 **Q. IN HIS PRE-FILED TESTIMONY, MR. DITTEMORE CONTENDS THAT**
7 **TAWC’S REPRESENTATION THAT IT WILL ADOPT THE RATE BASE OF TWS**
8 **IS NOT TRUE. CAN YOU ADDRESS THIS ASSERTION BY MR. DITTEMORE?**¹⁷

9 A. Mr. Dittmore has mischaracterized the response to Consumer Advocate DR No. 2-2.
10 Please see the Pre-filed Rebuttal Testimony of TAWC Witness Robert Lane for further
11 elaboration on this issue.

12 **Q. WHAT DO YOU RECOMMEND IN ORDER TO ADDRESS MR. DITTEMORE’S**
13 **CONCERNS REGARDING THE IMPACT TO CUSTOMERS BY THE ADIT NOT**
14 **TRANSFERING TO TAWC UPON ACQUISTION?**

15 A. I recommend that the issue be deferred and addressed in TAWC’s next rate proceeding in
16 a manner that will not create a normalization violation.¹⁸

17 **Q. WHAT IS A SUMMARY OF YOUR RESPONSE TO WITNESS DITTEMORE’S**
18 **ASSERTIONS?**

19 A. In summary, the proposed regulatory liability is not appropriate because it constitutes a
20 normalization violation which would harm customers. Customers will receive an increase

¹⁷ *Id.* at 12:5-17.

¹⁸ *See Cf., Order Denying Atmos Energy Corporation’s Motion to Resubmit Reconciliation and Change Dates*, p. 14, TPUC Docket No. 17-00091 (April 5, 2018) (Commission noting that *if* a normalization issue has been raised in the docket and *if* “[n]o rates will change at the conclusion of the docket[,]” the normalization issue could be deferred to the next rate proceeding.”).

1 in ADIT over the life of the property due to the stepped-up basis which will reduce rate
2 base in the future. The creation of a regulatory liability would duplicate the benefit of the
3 ADIT as a result of the increased tax basis and is not an appropriate recommendation for
4 the transaction. I recommend that concerns of the impact of the ADIT not transferring to
5 TAWC be addressed in the next rate proceeding following the transaction close.

6 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

7 A. Yes, it does. However, I reserve the right to update or amend this testimony upon receipt
8 of additional data or other information that may become available.

TAWC Schlessman Rebuttal Exhibit 1

(i) which is made by the lessor of leased property for the lessee of such property,
and

(ii) which is irrevocably disposed of or abandoned by the lessor at the termination
of the lease by such lessee,

shall be treated for purposes of determining gain or loss under this title as disposed
of by the lessor when so disposed of or abandoned.

(C) Cross reference. For treatment of qualified long-term real property constructed or
improved in connection with cash or rent reduction from lessor to lessee, see [section
110\(b\)](#).

(9) Normalization rules.

(A) In general. In order to use a normalization method of accounting with respect to
any public utility property for purposes of subsection (f)(2) --

(i) the taxpayer must, in computing its tax expense for purposes of establishing its
cost of service for ratemaking purposes and reflecting operating results in its
regulated books of account, use a method of depreciation with respect to such
property that is the same as, and a depreciation period for such property that is no
shorter than, the method and period used to compute its depreciation expense for
such purposes; and

(ii) if the amount allowable as a deduction under this section with respect to such
property (respecting all elections made by the taxpayer under this section) differs
from the amount that would be allowable as a deduction under [section 167](#) using
the method (including the period, first and last year convention, and salvage value)
used to compute regulated tax expense under clause (i), the taxpayer must make
adjustments to a reserve to reflect the deferral of taxes resulting from such
difference.

(B) Use of inconsistent estimates and projections, etc.

(i) In general. One way in which the requirements of subparagraph (A) are not met is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with the requirements of subparagraph (A).

(ii) Use of inconsistent estimates and projections. The procedures and adjustments which are to be treated as inconsistent for purposes of clause (i) shall include any procedure or adjustment for ratemaking purposes which uses an estimate or projection of the taxpayer's tax expense, depreciation expense, or reserve for deferred taxes under subparagraph (A)(ii) unless such estimate or projection is also used, for ratemaking purposes, with respect to the other 2 such items and with respect to the rate base.

(iii) Regulatory authority. The Secretary may by regulations prescribe procedures and adjustments (in addition to those specified in clause (ii)) which are to be treated as inconsistent for purposes of clause (i).

(C) Public utility property which does not meet normalization rules. In the case of any public utility property to which this section does not apply by reason of subsection (f) (2), the allowance for depreciation under [section 167\(a\)](#) shall be an amount computed using the method and period referred to in subparagraph (A)(i).

(10) Public utility property. The term "public utility property" means property used predominantly in the trade or business of the furnishing or sale of --

(A) electrical energy, water, or sewage disposal services,

(B) gas or steam through a local distribution system,

(C) telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 (47 U.S.C. 701), or

(D) transportation of gas or steam by pipeline,

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of

TAWC Schlessman Rebuttal Exhibit 2

Sec. 1.46-6 Limitation in case of certain regulated companies.

(a) In general.

(1) Scope of section. This section does not reflect amendments made to section 46 after enactment of the Revenue Act of 1971, other than the redesignation of section 46(e) as section 46(f) by the Tax Reduction Act of 1975.

(2) Disallowance of credit. Under section 46(f), a credit otherwise allowable under section 38 ("credit") will be disallowed in certain cases with respect to "section 46(f) property" as defined in paragraph (b)(1) of this section. Paragraph (f) of this section describes circumstances under which a determination put into effect by a regulatory body will result in the disallowance of the credit. Such a determination will result in a disallowance only if section 46(f)(1) or (2) applies to such property and such determination affects the taxpayer's cost of service or rate base in a manner inconsistent with section 46(f)(1) or (2) (whichever is applicable).

(3) General rules. The provisions of section 46(f)(1) and (2) are limitations on the treatment of the credit for ratemaking purposes and for purposes of the taxpayer's regulated books of account only. Under the provisions of section 46(f)(1), the credit may not be flowed through to income (i.e., used to reduce taxpayer's cost of service) but in certain circumstances may be used to reduce rate base (provided that such reduction is restored not less rapidly than ratably). If an election is made under section 46(f)(2), the credit may be flowed through to income (but not more rapidly than ratably) and there may not be any reduction in rate base. If an election is made under section 46(f)(3), none of the limitations of section 46(f)(1) or (2) apply to certain section 46(f) property of the taxpayer. Thus, under the provisions of section 46(f)(3), no credit is disallowed if the credit is treated in any manner for ratemaking purposes, including any manner of treatment permitted under the limitations of section 46(f)(1) or (2).

(4) Elections. For rules relating to the manner of making, on or before March 9, 1972, the three elections listed in section 46(f)(1), (2), and (3), see 26 CFR 12.3. For rules relating to the application of such elections, see paragraph (h) of this section.

(5) Cross references. For rules with respect to the treatment of corporate reorganizations, asset acquisitions, and taxpayers subject to the jurisdiction of more than one regulatory body, etc., see paragraph (j) of this section.

(6) Nonapplication of prior law. Under section 105(e) of the Revenue Act of 1971, section 203(e) of the Revenue Act of 1964, 78 Stat. 35, does not apply to section 46(f) property.

(b) Definitions. For purposes of this section, the following definitions apply:

(1) Section 46(f) property. "Section 46(f) property" is property described in section 50 that is --

(i) Public utility property within the meaning of section 46(c)(3)(B) (other than nonregulated communication property described in section 1.46-3(g)(2)(iv)) or

(ii) Property used predominantly in the trade or business of the furnishing or sale of steam through a local distribution system or of the transportation of gas or steam by pipeline, if the rates for the trade or business are regulated within the meaning of section 1.46-3(g)(2)(iii).

For purposes of determining whether property is used predominantly in the trade or business of transportation of gas by pipeline (or of transportation of gas by pipeline and of furnishing or sale of gas through a local distribution system), the rules prescribed in section 1.46-3(g)(4) apply except that accounts 365 through 371 inclusive (Transmission Plant) are added to the accounts listed in section 1.46-3(g)(4) (i).

(2) Cost of service.

(i)

(A) For purposes of this section, "cost of service" is the amount required by a taxpayer to provide regulated goods or services. Cost of service includes operating expenses (including salaries, cost of materials, etc.) maintenance expenses, depreciation expenses, tax expenses, and interest expenses. For

purposes of this section, any effect on a taxpayer's permitted return on investment that results from a reduction in the taxpayer's rate base does not constitute a reduction in cost of service, even though, as a technical ratemaking term, "cost of service" ordinarily includes a permitted return on investment. In addition, taking into account a deduction for the additional interest that the taxpayer would pay or accrue if the credit were unavailable in determining Federal income tax expense ("synchronization of interest") does not constitute a reduction in cost of service for purposes of section 46(f)(2). This adjustment to Federal income tax expense may be taken into account in determining cost of service for the regulated accounting period or periods that include the taxable year to which the adjustment relates or for any subsequent regulated accounting period.

(B) See paragraph (b)(3)(ii)(B) of this section for rules relating to the amount of additional interest that the taxpayer would pay or accrue if the credit were unavailable.

(ii) In determining whether, or to what extent, a credit has been used to reduce cost of service, reference shall be made to any accounting treatment that affects cost of service. Examples of such treatment include reducing by all or a portion of the credit the amount of Federal income tax expense taken into account for ratemaking purposes and reducing the depreciable bases of property by all or a portion of the credit for ratemaking purposes.

(3) Rate base.

(i) For purposes of this section, "rate base" is the monetary amount that is multiplied by a rate of return to determine the permitted return on investment.

(ii)

(A) In determining whether, or to what extent, a credit has been used to reduce rate base, reference shall be made to any accounting treatment that affects rate base. In addition, in those cases in which the rate of return is based on the taxpayer's cost of capital, reference shall be made to any accounting treatment that reduces the permitted return on investment by treating the credit less favorably than the capital that would have been provided if the credit were unavailable. Thus, the credit may not be assigned a "cost of capital" rate that is less than the overall cost of capital rate, determined on the basis of a weighted

average, for the capital that would have been provided if the credit were unavailable.

(B) For purposes of determining the cost of capital rate assigned to the credit and the amount of additional interest that the taxpayer would pay or accrue, the composition of the capital that would have been provided if the credit were unavailable may be determined --

(1) On the basis of all the relevant facts and circumstances; or

(2) By assuming for both such purposes that such capital would be provided solely by common shareholders, preferred shareholders, and long-term creditors in the same proportions and at the same rates of return as the capital actually provided to the taxpayer by such shareholders and creditors.

For purposes of this section, capital provided by long-term creditors does not include deferred taxes as described in section [167\(e\)\(3\)\(G\)](#) or [168\(e\)\(3\)\(B\)\(ii\)](#).

(C) If a taxpayer's overall rate of return is based on a deemed or hypothetical capital structure, paragraph (b)(3)(ii)(B) of this section shall be applied by treating the deemed or hypothetical capital as if it were the capital actually provided to the taxpayer and determining the composition of the capital that would have been provided if the credit were unavailable in a manner consistent with such treatment.

(iii) Whether, or to what extent, a credit has been used to reduce rate base for any period to which pre-June 23, 1986 rates apply will be determined under 26 CFR [1.46-6\(b\)\(3\)](#) and (4) (revised as of April 1, 1985) if such a determination avoids disallowance of a credit that would be disallowed under paragraph (b)(3)(ii) or (4)(ii) of this section. For this purpose, a period of which pre-June 23, 1986 rates apply is any period for which the effect of the credit on rate base for ratemaking purposes is established under a determination put into effect (within the meaning of paragraph (f) of this section) before June 23, 1986.

(4) Indirect reductions to cost of service or rate base.

(i) Cost of service or rate base is also considered to have been reduced by reason of

all or a portion of a credit if such reduction is made in an indirect manner.

(ii) One type of such indirect reduction is any ratemaking decision in which the credit is treated as operating income (subject to ratemaking regulation) or is treated less favorably than the capital that would have been provided if the credit were unavailable. For example, if the credit is accounted for as nonoperating income on a company's regulated books of account but a ratemaking decision has the effect of treating the credit as operating income in determining rate of return to common shareholders, then cost of service has been indirectly reduced by reason of the credit.

(iii) A second type of indirect reduction is any ratemaking decision intended to achieve an effect similar to a direct reduction to cost of service or rate base. In determining whether a ratemaking decision is intended to achieve this effect, consideration is given to all the relevant facts and circumstances of each case, including, but not limited to --

(A) The record of the proceeding,

(B) The regulatory body's orders or opinions (including any dissenting views), and

(C) The anticipated effect of the ratemaking decision on the company's revenues in comparison to a direct reduction to cost of service or rate base by reason of the investment tax credits available to the regulated company.

(iv) This paragraph (b)(4)(iv) describes a situation that is not an indirect reduction to cost of service or rate base by reason of all or a portion of a credit. The ratemaking treatment of credits may affect the financial condition of a company, including the company's ability to attract new capital, the cost of that capital, the company's future financial requirements, the market price of the company's securities, and the degree of risk attributable to investment in those securities. The financial condition may be reflected in certain customary financial indicators such as the comparative capital structure of the company, coverage ratios, price/earnings ratios, and price/book ratios. Under the facts and circumstances test of paragraph (b)(4)(iii) of this section, the consideration of a company's financial condition by a regulatory body is not an indirect reduction to cost of service or rate base, even though such condition, as affected by the ratemaking treatment of the company's

TAWC Schlessman Rebuttal Exhibit 3

Figure LS-1

Asset Cost:	10,000,000			
Tax Rate:	21%			
Assumption:	Sale in Year 2			
	Depreciation Rate	Tax	Book	
	Tax	Book	Cumulative	Cumulative
Year 1	20.00%	20%	20.00%	20.00%
Year 2	32.00%	20%	52.00%	40.00%
Year 3	19.20%	20%	71.20%	60.00%
Year 4	11.52%	20%	82.72%	80.00%
Year 5	11.52%	20%	94.24%	100.00%
Year 6	5.76%	0%	100.00%	100.00%
	100%	100%		
Purchase Price:	6,000,000			
	Tax	Book	ADIT	
Cost	10,000,000	10,000,000		
Accumulated Depreciation	(5,200,000)	(4,000,000)		
Total Net Tax/Book Value	4,800,000	6,000,000	252,000	
Step-Up in Basis	1,200,000			
Total Basis	6,000,000	6,000,000		
Tax Depreciation				
With Transaction				
	Without Transaction	With Transaction	Difference	ADIT Inc/(Dec)
Year 1	2,000,000	2,000,000	-	-
Year 2	3,200,000	3,200,000	-	-
Year 3	1,920,000	1,200,000	(720,000)	(151,200)
Year 4	1,152,000	1,920,000	768,000	161,280
Year 5	1,152,000	1,152,000	-	-
Year 6	576,000	691,200	115,200	24,192
Year 7		691,200	691,200	145,152
Year 8		345,600	345,600	72,576
	10,000,000	11,200,000	1,200,000	252,000

Demonstration of Normalization

	Book Cost	Book Depr	Book Accum	NBV	Tax Cost	Tax Depr	Tax Accum	NTV	ADIT	Reg Liability	Total ADIT in Rate Base
Year 1	10,000,000	2,000,000	2,000,000	8,000,000	10,000,000	2,000,000	2,000,000	8,000,000	-	-	-
Year 2	10,000,000	2,000,000	4,000,000	6,000,000	10,000,000	3,200,000	5,200,000	4,800,000	252,000	-	252,000
Beginning Year 3				6,000,000				6,000,000		252,000	252,000
Year 3	6,000,000	1,200,000	1,200,000	4,800,000	6,000,000	1,200,000	1,200,000	4,800,000	-	210,000	210,000
Year 4	6,000,000	1,200,000 A	2,400,000	3,600,000	6,000,000	1,920,000 B	3,120,000	2,880,000	151,200 D	168,000 E	319,200
Year 5	6,000,000	1,200,000	3,600,000	2,400,000	6,000,000	1,152,000	4,272,000	1,728,000	141,120	126,000	267,120
Year 6	6,000,000	1,200,000	4,800,000	1,200,000	6,000,000	691,200	4,963,200	1,036,800	34,272	84,000	118,272
Year 7	6,000,000	1,200,000	6,000,000	-	6,000,000	691,200	5,654,400	345,600	(72,576)	42,000	(30,576)
Year 8	6,000,000		6,000,000	-	6,000,000	345,600	6,000,000	-	-	-	-
		10,000,000				11,200,000					

Year 4 - Without Regulatory Liability (Normalization)

Book Depreciation	1,200,000	A
Tax Depreciation	(1,920,000)	B
Timing Difference	(720,000)	A + B = C
ADIT in Rate Base	(151,200)	C x 21% Tax Rate = D
Tax Benefit in Net Income	(252,000)	A x 21% = E
Tax Benefit on the Tax Return	(403,200)	B x 21% = F
Tax Benefit on Return over Net Income	(151,200)	F - E = G
Variance to ADIT	-	G - C

Year 4 - With Regulatory Liability (Not Normalization)

Book Depreciation	1,200,000	A
Tax Depreciation	(1,920,000)	B
Total Timing Difference	(720,000)	A + B = C
ADIT in Rate Base	(151,200)	C x 21% Tax Rate = D
Regulatory Liability	(168,000)	E
Total Rate Base Impact	(319,200)	D + E = F
Tax Benefit of Depreciation	(252,000)	A x 21% = G
Tax Benefit of Amortization	(8,820)	Regulatory Liability Amortization x 21% = H
Total Tax Benefit in Net Income	(260,820)	G + H = I
Tax Benefit on the Tax Return	(403,200)	B x 21% = J
Tax Benefit on Return over Net Income	(142,380)	J - I = K
Variance to ADIT	176,820	K - F

TAWC Schlessman Rebuttal Exhibit 4

PLR 202350001 (IRS PLR), 2023 WL 8866722

Internal Revenue Service (I.R.S.)

IRS PLR
Private Letter Ruling

Issue: December 15, 2023
September 19, 2023

[Section 1033](#) -- Involuntary Conversion

1033.00-00 Involuntary Conversion

1033.01-00 General Rule

[Section 168](#) -- (Repealed-1976 Act) Amortization of Emergency Facilities

168.00-00 Modified Accelerated Cost Recovery System

168.24-00 Public Utility Property

168.24-01 Normalization Rules

CC:PSI:B6

PLR-101888-23

In Re: Request for rulings under [section 168\(l\)\(9\)](#) regarding the proper treatment of accumulated deferred income taxes (“ADIT”) under the depreciation normalization provisions of the Internal Revenue Code

LEGEND:

Taxpayer =

Subsidiary A =

Subsidiary B =

Subsidiary C =

Subsidiary D =

Regulated Utility A =

Regulated Utility B =

Regulated Utility C =

Regulated Utility D =

Regulated Utility E =

Regulated Utility F =

Regulated Utility G =

Regulated Utility H =

Regulated Utility I =

Regulated Utility J =

Regulated Utility K =

City =

State =

Year 1 =

Resource A =

Resource B =

Resource C =

Resource D =

Management =

Commission A =

Organization =

Decision =

System =

Association =

Court =

a =

b =

c =

d =

e =

f =

Dear ***:

This letter responds to a request for a private letter ruling dated November 23, 2022, submitted on behalf of Taxpayer, Subsidiary A, Subsidiary B, Subsidiary C, and Subsidiary D, regarding the proper treatment of accumulated deferred income taxes (“ADIT”) under [§ 168\(i\)\(9\)](#) of the Code following the condemnation of Subsidiary C's and Subsidiary D's utility assets by City in Year 1 (the “Condemnation”).

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a Resource A management company that owns, operates, and manages Resource A, Resource B, and Resource C facilities through its a utility operating subsidiaries, serving approximately b active service connections in State. Subsidiary A is a wholly-owned utility holding company subsidiary of Taxpayer. Subsidiary B is a wholly-owned utility holding company subsidiary of Subsidiary A. Subsidiary C is a wholly-owned subsidiary of Subsidiary B. Prior to the Condemnation, Subsidiary C was a regulated Resource A and Resource B public utility serving residents of City. Following the Condemnation, and currently, Subsidiary C is a non-operating entity. Subsidiary D also is a wholly-owned subsidiary of Subsidiary B. Subsidiary D was a regulated Resource A utility serving residents of the greater City area. Prior to the Condemnation, its assets were transferred to Subsidiary C; it was included in the Condemnation at the request of the City. Following the Condemnation, Subsidiary D remains a non-operating entity.

As members of the Taxpayer affiliated group, Subsidiaries C and D join in the filing of a consolidated return with other Taxpayer operating companies. Prior to, and at the time of the Condemnation, Subsidiary C was subject to the ratemaking jurisdiction of Commission A, as was Subsidiary D prior to the transfer of its assets to Subsidiary C. Following the Condemnation, however, neither Subsidiary C nor Subsidiary D had any remaining public utility property subject to cost of service/rate of return ratemaking. Taxpayer owns and operates other Resource A and Resource B public utilities that are subject to the jurisdiction of Commission A (“State Regulated Utilities”).

The most recent rate case before Commission A involved the following Regulated Utilities: Regulated Utility A, Regulated Utility B, Regulated Utility C, Regulated Utility D, Regulated Utility E, Regulated Utility F, Regulated Utility G, Regulated Utility H, Regulated Utility I, Regulated Utility J, and Regulated Utility K. All of these State Regulated Utilities are wholly-owned by Taxpayer or a subsidiary holding company of Taxpayer. All of the State Regulated Utilities participate in the consolidated federal income tax return of Taxpayer. For purposes of maintaining their accounting records and for State ratemaking purposes, the State Regulated Utilities are treated as separate entities. For ratemaking purposes, income taxes are calculated on a stand-alone basis.

Taxpayer and each of its subsidiaries are accrual basis taxpayers. Taxpayer is the common parent of an affiliated group of corporations filing a consolidated return on a calendar-year basis. Taxpayer, as the common parent of the affiliated group, serves as the agent of Subsidiary C and Subsidiary D and of the State Regulated Utilities for purposes of this private letter ruling request pursuant to [§ 1.1502-77\(a\) of the Income Tax Regulations](#).

“Staff” refers to the employees of Commission A who participated in the rate proceeding culminating in the rate order at issue in this private letter ruling request. “Organization” refers to the organization established by the State Legislature to represent the interests of residential utility ratepayers in rate-related proceedings involving public service corporations before Commission A. “Decision” refers to Commission A decision addressing the issue presented herein and directing Taxpayer to seek this private letter ruling request. System is the System prescribed by the Association for Resource A and Resource D.

Taxpayer invested condemnation proceeds from the Subsidiary D condemnation into the utility plant assets of the State Regulated Utilities and recorded ADIT on the books of the State Regulated Utilities. The State Regulated Utilities are required to follow the System prescribed by Association. All amounts of ADIT recorded on the books of the State Regulated Utilities were recorded pursuant to their obligation to apply the accounting set forth in the Association System.

Other than Regulated Utility I, Regulated Utility F, and Regulated Utility C, the balance of companies are utilities where the revenue requirement in the rate cases listed above is determined by using a cost of service/rate of return basis. An income tax allowance is provided for the utilities using standard ratemaking methods employed by the Commission A and ADIT is subtracted (or added) to rate base. The State Regulated Utilities and specifically Regulated Utility J and Regulated Utility A record an ADIT Liability for method and life differences between the amounts of accelerated federal income tax depreciation that they would claim on a stand-alone basis and book depreciation. The ADIT liability for those method/life depreciation differences is recorded in accounts e/f. Their recording of those ADIT liability amounts on their books is in accordance with the System prescribed by Association, which they are required to follow. The System does not provide guidance on the treatment of ADIT upon the condemnation of assets previously included in rate base.

Thus, the issue of the amount of ADIT that is reflected in rate base primarily affects two utilities, Regulated Utility J and Regulated Utility A. The other utilities in the above-noted rate cases have their revenue requirement determined by a different method, such as their operating margin, where the rate base does not have an impact on each of those utility's revenue requirement.

Background of the Condemnation of Subsidiary C and Subsidiary D Assets

In Year 1, City condemned public utility property of Subsidiary C and Subsidiary D and, pursuant to an order of the Court, the City paid Taxpayer approximately c as “just compensation” for the condemned assets. Taxpayer used the condemnation proceeds to, inter alia, acquire additional new Resource A and Resource B uses, and to construct or improve other Resource A and Resource B-related facilities. Taxpayer realized an approximately \$d pre-tax gain upon receipt of the condemnation proceeds, and it properly elected to defer the recognition of the gain attributable to public utility property under [§ 1033\(a\)\(2\)](#). Following the Condemnation, neither Subsidiary D, Subsidiary C, nor any other Taxpayer Resource A subsidiary, had any continuing relationship with the former Subsidiary C customers who become customers of City. Similarly, none of the former customers of Subsidiary D or Subsidiary C became customers of any other Taxpayer Resource A subsidiary absent their relocation to the service territory of another Taxpayer operating subsidiary. Finally, neither the condemned assets nor the cost to operate such assets, including depreciation, were included in the rate case filings of any Taxpayer Resource A subsidiary following the Condemnation. In summary, all the assets and the customer relationships were transferred from Subsidiary D and Subsidiary C to City upon the Condemnation.

Taxpayer ***. In addition, Taxpayer reduced the basis of the replacement assets by the amount of deferred gain in accordance with [§ 1033\(b\)](#). Following the Condemnation, Subsidiary D and Subsidiary C became non-operating utilities, owned no operational assets or any public utility property, served no customers within those utilities, and were no longer rate regulated by Commission A.

Staff and Taxpayer agreed that Taxpayer, as the common parent of the affiliated group, was entitled to the proceeds of the Condemnation. Taxpayer represents that Taxpayer, not Taxpayer group's operating Resource A companies or their customers, would bear the cost of any tax ultimately triggered upon a disposition of the replacement assets. Thus, Taxpayer received the tax benefit of the deferral. [Section 1.1502-6](#) provides that members of a consolidated group have joint and several liability for the federal income taxes. Taxpayer represents, however, that as the common parent of the consolidated group, Taxpayer will be responsible for the tax liability, and will bear the entire liability for the tax on the deferred gain when it is recognized.

Amongst the issues presented in Taxpayer's most recent general rate case for its Resource A and Resource B subsidiaries was whether the ADIT on the regulatory books of Subsidiary C and Subsidiary D at the time of the Condemnation must be retired, along with the deemed retirement of the condemned assets or whether the ADIT can carry over to the replacement assets acquired with the condemnation proceeds. Among the other issues presented in Taxpayer's most recent general rate case for its State Regulated Utilities is whether the ADIT that was recorded on the books of each of the State Regulated Utilities pursuant to instructions in the Association System can be deducted from utility rate base. This issue specifically focuses on the ADIT

liability amounts that the State Regulated Utilities recorded on their books in accounts e/f related to the State Regulated Utilities claiming accelerated federal income tax depreciation on the amounts of utility plant in service that is included in their respective rate base, and recording the differences between their book and tax depreciation as liability amounts of ADIT under the System.

The method and life differences between book and tax depreciation are recorded in accounts e/f as ADIT liabilities, recognizing the amounts of income taxes that are being deferred due to the tax deductions for depreciation being based on an accelerated method (known as “method” differences) and using shorter depreciable lives (known as “life” differences) versus book depreciation.

It is not disputed that a tax deferral has occurred and is continuing. Also, it is not disputed that for accounting purposes, the State Regulated Utilities recorded the impact of the deferral on the utility's books in the ADIT liability account.

In its Decision, Commission A ordered Taxpayer to seek a private letter ruling to resolve the specific question whether the failure to eliminate the deferred taxes attributable to assets condemned in a transaction governed by § 1033 would violate the normalization provisions of § 168(i)(9).

In this rate case, Taxpayer maintained that, for federal income tax purposes, the Condemnation was a “retirement” of the Subsidiary C and Subsidiary D assets and that, as such, the ADIT attributable to those assets must be eliminated under § 1.167(I)-1(h)(2) and cannot be used by any other regulated public utility in the Taxpayer network as a reduction to rate base or as a form of zero-cost capital. Moreover, Taxpayer maintained that under various portions of the regulations under §§ 1.168(i)-8 and 1.167(a)-8, condemnations are simply another form of retirement, representing the permanent withdrawal of depreciable public utility property from Subsidiary C's and Subsidiary D's regulated trade or business. Taxpayer notes that following the Condemnation, Subsidiary C and Subsidiary D became non-operating entities, no longer rate regulated by Commission A.

The State Regulated Utilities have recorded ADIT on their books pursuant to the instructions in the Association System, which state that ADIT generally can be deducted from utility rate base. This issue specifically focuses on the ADIT liability amounts that the State Regulated Utilities recorded on their books in accounts e/f related to the State Regulated Utilities claiming accelerated federal income tax depreciation on the amounts of utility plant in service that is included in their respective rate base as of the time of the Condemnation, and recording the differences between their book and tax depreciation as liability amounts of ADIT under the System. The method and life differences between book and tax depreciation are recorded in accounts e/f as ADIT liabilities, recognizing the amounts of income taxes that are being deferred due to the tax deductions for depreciation being based on an accelerated method (known as “method” differences) and using shorter depreciable lives (known as “life” differences) versus book depreciation.

It is normal in utility rate proceedings for the regulatory commission to be able to rely upon the utilities that it regulates following the Association System. These State Regulated Utilities are required to follow the Association System for their accounting. Pursuant to their following the Association System accounting for ADIT on their books, the State Regulated Utilities have recorded ADIT liability amounts related to the method/life differences between their book and tax depreciation. The ADIT liability amounts that have been recorded by the State Regulated Utilities would be reflected as deductions from utility rate base under normal circumstances. In Commission A Staff's view, the pertinent question is whether the source of funds for the investment by Taxpayer in the utility plant of the State Regulated Utilities would prohibit Commission A for ratemaking purposes from relying upon the recorded ADIT liability amounts that the State Regulated Utilities have recorded on their books pursuant to the requirements of the Association System. Taxpayer represents that a tax deferral has occurred and is continuing, for accounting purposes, the State Regulated Utilities recorded the impact of the deferral on the utility's books in the ADIT liability account, and the federal Income tax normalization rules do not prohibit adjustments related to book/tax basis differences.

RULING REQUESTED

The failure to eliminate the deferred taxes, including ADIT and the deferred tax reserves on the regulated books of Subsidiary C and Subsidiary D as of the date of the Condemnation, attributable to public utility property condemned in a transaction governed by § 1033 would violate the normalization provisions of § 168(i)(9).

LAW AND ANALYSIS

Section 168(f)(2) provides that the depreciation deduction determined under § 168 shall not apply to any public utility property (within the meaning of § 168(i)(10)) if the taxpayer does not use a normalization method of accounting.

Section 168(i)(10) defines, in part, public utility property as property used predominantly in the trade or business of the furnishing or sale of electrical energy, water, or sewage disposal services, if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof.

Prior to the Revenue Reconciliation Act of 1990, the definition of public utility property was contained in § 167(l)(3)(A) and § 168(i)(10), which defined public utility property by means of a cross reference to § 167(l)(3)(A). The definition of public utility property is unchanged. Section 1.167(l)-1(b) provides that under § 167(l)(3)(A), property is public utility property during any period in which it is used predominantly in a § 167(l) public utility activity. The term “section 167(l) public utility activity” means, in part, the trade or business of the furnishing or sale of electrical energy, water, or sewage disposal services, if the rates for such furnishing or sale, as the case may be, are regulated, i.e., have been established or approved by a regulatory body described in § 167(l)(3)(A). The term “regulatory body described in § 167(l)(3)(A)” means a State (including the District of Columbia) or political subdivision thereof, any agency or instrumentality of the United States or a public service or public utility commission or other body of any State or political subdivision thereof similar to such a commission. The term “established or approved” includes the filing of a schedule of rates with a regulatory body which has the power to approve such rates, though such body has taken no action on the filed schedule or generally leaves undisturbed rates filed by the taxpayer.

The definitions of public utility property contained in § 168(i)(10) and former § 46(f)(5) are essentially identical. Section 1.167(l)-1(b) restates the statutory definition providing that property will be considered public utility property if it is used predominantly in a public utility activity and the rates are regulated. Section 1.167(l)-1(b)(1) provides that rates are regulated for such purposes if they are established or approved by a regulatory body. The terms established or approved are further defined to include the filing of a schedule of rates with the regulatory body that has the power to approve such rates, even if the regulatory body has taken no action on the filed schedule or generally leaves undisturbed rates filed.

The regulations under former § 46, specifically § 1.46-3(g)(2), expand the definition of regulated rates. The expanded definition embodies the notion of rates established or approved on a rate of return basis. This notion is not specifically provided for in the regulations under former § 167. Nevertheless, there is an expressed reference to rate of return in § 1.167(l)-1(h)(6)(i). The operative rules for normalizing timing differences relating to use of different methods and periods of depreciation are only logical in the context of rate of return regulation. The normalization method, which must be used for public utility property to be eligible for the depreciation allowance available under § 168, is defined in terms of the method the taxpayer uses in computing its tax expense for purposes of establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account. Thus, for purposes of applying the normalization rules, the definition of public utility property is the same for purposes of the investment tax credit and depreciation.

In order to use a normalization method of accounting, § 168(i)(9)(A)(i) requires a taxpayer, in computing its tax expense for establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, to use a method of depreciation for property that is the same as, and a depreciation period for such property that is not shorter than, the method and period used to compute its depreciation expense for such purposes. Under § 168(i)(9)(A)(ii), if the amount allowable as a deduction under § 168 differs from the amount that would be allowable as a deduction under § 167 using the method, period, first and last year convention, and salvage value used to compute regulated tax expense under § 168(i)(9)(A)(i), then the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from such difference.

Section 168(i)(9)(B)(i) provides that one way the requirements of § 168(i)(9)(A) will not be satisfied is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with such requirements. Under § 168(i)(9)(B)(ii), such inconsistent procedures and adjustments include the use of an estimate or projection of the taxpayer's tax expense, depreciation expense, or reserve for deferred taxes under § 168(i)(9)(A)(ii), unless such estimate or projection is also used, for ratemaking purposes, with respect to all three of these items and with respect to the rate base (hereinafter referred to as the "Consistency Rule").

Former § 167(l) generally provided that public utilities were entitled to use accelerated methods for depreciation if they used a "normalization method of accounting." A normalization method of accounting was defined in former § 167(l)(3)(G) in a manner consistent with the definition in § 168(i)(9)(A). Section 1.167(l)-1(a)(1) provides that the normalization requirements for public utility property pertain only to the deferral of federal income tax liability resulting from the use of an accelerated method of depreciation for computing the allowance for depreciation under § 167 and the use of straight-line depreciation for computing tax expense and depreciation expense for purposes of establishing cost of services and for reflecting operating results in regulated books of account. These regulations do not pertain to other book-tax timing differences with respect to state income taxes, F.I.C.A. taxes, construction costs, or any other taxes and items.

Section 1.167(l)-1(h)(1)(i) provides that the reserve established for public utility property should reflect the total amount of the deferral of federal income tax liability resulting from the taxpayer's use of different depreciation methods for tax and ratemaking purposes.

Section 1.167(l)-1(h)(1)(iii) provides that the amount of federal income tax liability deferred as a result of the use of different depreciation methods for tax and ratemaking purposes is the excess (computed without regard to credits) of the amount the tax liability would have been had the depreciation method for ratemaking purposes been used over the amount of the actual tax liability. This amount shall be taken into account for the taxable year in which the different methods of depreciation are used.

Section 1.167(l)-1(h)(2)(i) provides that the taxpayer must credit this amount of deferred taxes to a reserve for deferred taxes, a depreciation reserve, or other reserve account. This regulation further provides that the aggregate amount allocable to deferred taxes may be reduced to reflect the amount for any taxable year by which federal income taxes are greater by reason of the prior use of different methods of depreciation under section 1.167(l)-1(h)(1)(i) or to reflect asset retirements or the expiration of the period for depreciation used for determining the allowance for depreciation under section 167(a).

Section 1.167(l)-1(h)(6)(i) provides that, notwithstanding the provisions of subparagraph (1) of that paragraph, a taxpayer does not use a normalization method of regulated accounting if, for ratemaking purposes, the amount of the reserve for deferred taxes under § 167(l) which is excluded from the base to which the taxpayer's rate of return is applied, or which is treated as no-cost capital in those rate cases in which the rate of return is based upon the cost of capital, exceeds the amount of such reserve for deferred taxes for the period used in determining the taxpayer's expense in computing cost of service in such ratemaking.

Section 1.167(l)-1(h)(6)(ii) provides that for the purpose of determining the maximum amount of the reserve to be excluded from the rate base (or to be included as no-cost capital) under § 1.167(l)-1(h)(6)(i), if solely an historical test period is used to determine depreciation for federal income tax expense for ratemaking purposes, then the amount of the reserve account for the period is the amount of the reserve (determined under § 1.167(l)-1(h)(2)) at the end of the historical period. Section 1.167(l)-1(h)(6)(ii) provides that if solely a future period is used for such determination, the amount of the reserve account for the period is the amount of the reserve at the beginning of the period and a pro rata portion of the amount of any projected increase to be credited or decrease to be charged to the account during such period.

Section 1.167(l)-1(h)(6)(ii) provides if, in determining depreciation for ratemaking tax expense, the test period used is part historical and part future, then the amount of the reserve account for this period is the amount of the reserve at the end of the historical portion of the period and a pro rata amount of any projected increase to be credited to the account during the future

portion of the period. The pro rata amount of any increase during the future portion of the period is determined by multiplying the increase by a fraction, the numerator of which is the number of days remaining in the period at the time the increase is to accrue, and the denominator of which is the total number of days in the future portion of the period.

Section 1.168-6(a) provides, in part, that the section includes the rules for determining the depreciation allowance for MACRS property acquired in a like-kind exchange or an involuntary conversion, including a like-kind exchange or an involuntary conversion of MACRS property that is exchanged or replaced with other MACRS property in a transaction between members of the same affiliated group. Section 1.168(i)-6(a) generally provides identical rules for determining the depreciation allowance for MACRS property acquired in a like-kind exchange or an involuntary conversion.

Section 1.168(i)-8(b)(2) provides that, for purposes of § 1.168(i)-8, a disposition occurs when ownership of the asset is transferred or when the asset is permanently withdrawn from use either in the taxpayer's trade or business or in the production of income. A disposition includes the sale, exchange, retirement, physical abandonment, or destruction of an asset.

Section 1.168(i)-8(c)(1) provides that the manner of disposition (for example, normal retirement, abnormal retirement, ordinary retirement, or extraordinary retirement) is not taken into account in determining whether a disposition occurs or gain or loss is recognized.

Section 1.168(i)-8(h)(1) provides that depreciation ends for an asset at the time of the asset's disposition, as determined under the applicable convention for the asset.

Section 1033 provides the rules for involuntary conversions. Section 1033(a)(1) provides that if property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, no gain shall be recognized. Section 1033(a)(2)(A) provides that if property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted into money or into property not similar or related in service or use to the converted property, the gain (if any) shall be recognized except to the extent provided in § 1033(a)(2)(A). Thus, § 1033 allows for deferral of gain where property is compulsorily or involuntarily converted into property similar or related in service or use to the converted property.

The key factors in determining whether property is public utility property are that 1) the property must be used predominantly in the trade or business of the furnishing or sale of, inter alia, Resource A and Resource B; 2) the rates for such furnishing or sale must be established or approved by a State or political subdivision thereof, any agency or instrumentality of the United States, or by a public service or public utility commission or similar body of any State or political subdivision thereof; and 3) the rates so established or approved must be determined on a rate-of-return basis. Based on the facts and representations submitted by Taxpayer, following the Condemnation, Subsidiary C and Subsidiary D became non-operating entities, and were no longer rate-regulated by Commission A. Therefore, other assets of Subsidiary C and Subsidiary were no longer public utility property.

Additionally, the removal of public utility property from the rate base necessitated the removal of the associated ADIT under the Consistency Rule of § 168(i)(9)(B). That rule requires that any estimate or projection used to determine a taxpayer's tax expense, depreciation expense, rate base or the reserve for deferred taxes under § 168(i)(9)(A)(ii) must also be used for the other normalization elements for ratemaking purposes.

Under § 168(i)(7), various "carryover basis" transactions allow for the transfer of ADIT and the associated deferred tax reserve accompanying the transferred property to carry over in the hands of the transferee. However, transactions such as those governed by § 1033 involving substituted basis are not included in this provision. Similarly, the regulations under § 46 provide that in the case of regulated public utility property which becomes deregulated, the property is removed from the rate base and the ADIT attributable to an unamortized investment tax credit related to the deregulated property must be removed.

The ADIT at issue was created by the deferral of federal taxes attributable to Taxpayer's claiming accelerated depreciation with respect to the condemned property as required by [§ 1.167\(I\)-1\(h\)\(2\)](#). The disposition of the condemned property in the Condemnation is the functional equivalent of a retirement of such property in the hands of Subsidiary C and Subsidiary D. Following the Condemnation, both Subsidiary C and Subsidiary D became non-operating entities, ceased to hold any "public utility property," and were no longer subject to the cost of service/rate of return ratemaking jurisdiction of Commission A. [Sections 1.167\(a\)-8\(a\), 1.168\(i\)-8\(b\)\(2\)](#) and [1.167\(I\)-1\(h\)\(2\)](#) provide that the accumulated ADIT balance must be adjusted to reflect dispositions such as the Condemnation. Accordingly, since all of Subsidiary C's assets and Subsidiary D's assets were disposed of in the Condemnation, the entire ADIT balance attributable thereto must be removed as well and may not be transferred to the new owners of the condemned property. Therefore, Subsidiary C and Subsidiary D correctly removed from its regulated books of account the entire ADFIT reserve balance associated with the Subsidiary C and Subsidiary D Assets that were Condemned. State Regulated Utilities may not record on their regulated books of account any of the ADFIT associated with the pre-Condemnation properties.

RULING

The failure to eliminate the deferred taxes, including ADIT and the deferred tax reserves on the regulated books of Subsidiary C and Subsidiary D as of the date of the Condemnation, attributable to public utility property condemned in a transaction governed by [§ 1033](#) would violate the normalization provisions of [§ 168\(i\)\(9\)](#).

Except as specifically set forth above, no opinion is expressed or implied concerning the federal income tax consequences of the above-described facts under any other provision of the Code or regulations.

This ruling is directed only to the taxpayer requesting it. [Section 6110\(k\)\(3\)](#) of the Code provides that it may not be used or cited as precedent.

This ruling is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

This letter is being issued electronically in accordance with [Rev. Proc. 2020-29, 2020-21 I.R.B. 859](#). A paper copy will not be mailed to Taxpayer.

Sincerely,

David A. Selig
Senior Counsel, Branch 6
Office of the Associate Chief Counsel (Passthroughs and Special Industries)

Enclosure: Copy for [§ 6110](#) purposes

cc:

[Section 6110\(k\)\(3\) of the Internal Revenue Code](#) This document may not be used or cited as precedent. .

PLR 202350001 (IRS PLR), 2023 WL 8866722

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

**JOINT PETITION OF TENNESSEE-)
AMERICAN WATER COMPANY,)
AMERICAN WATER WORKS)
COMPANY, INC. NEXUS REGULATED)
UTILITIES, LLC AND TENNESSEE)
WATER SERVICE, INC. FOR) DOCKET NO. 25-00040
AUTHORIZATION OF CHANGE OF
CONTROL, APPROVAL OF THE
AGREEMENT AND PLAN OF
MERGER AND FOR THE ISSUANCE
OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY**

VERIFICATION

STATE OF Tennessee)
COUNTY OF Hamilton)

I, LINDA SCHLESSMAN, being duly sworn, state that I am authorized to testify on behalf of Tennessee-American Water Company in the above-referenced docket, that if present before the Commission and duly sworn, my testimony would be as set forth in my pre-filed testimony in this matter, and that my testimony herein is true and correct to the best of my knowledge, information, and belief.

Linda Schlessman
LINDA SCHLESSMAN

Sworn to and subscribed before me
this 10th day of October, 2025.

[Signature]
Notary Public
My Commission Expires: 2-28-28



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

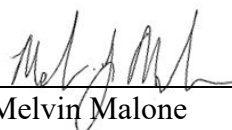
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This the 10th day of October 2025.



Melvin Malone