

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

Electronically Filed in TPUC Docket
Room on October 9, 2025 at 10:06 a.m.

IN RE:)
)
PETITION OF INTEGRATED RESOURCE)
MANAGEMENT, INC. TO ADOPT AN)
ALTERNATIVE REGULATORY)
MECHANISM PURSUANT TO TENN.)
CODE ANN. § 65-5-103(d)(7))

DOCKET NO. 25-00072

**CONSUMER ADVOCATE’S RESPONSE TO INTEGRATED RESOURCE
MANAGEMENT, INC.’S RESPONSE IN OPPOSITION TO THE CONSUMER
ADVOCATE’S PETITION TO INTERVENE**

Counsel for Integrated Resource Management, Inc. (“IRM” or the “Company”) opposes the Consumer Advocate’s intervention in this Docket on three grounds:

1. IRM’s proposed Alternative Regulatory Mechanism (“ARM”) allegedly “mirrors” the previously approved ARM of Superior Wastewater Systems, LLC (“Superior Wastewater”) and should therefore be rubber-stamped as approved.¹
2. The doctrine of collateral estoppel bars participation by the Consumer Advocate because the Consumer Advocate was a party to the above-mentioned Superior Wastewater docket.²
3. If intervention is granted it should be on a severely limited basis, including limitations on the Consumer Advocate’s right of cross-examination.³

As will be shown below, none of these three grounds is supported in fact or law.

¹ *Integrated Resource Management, Inc.’s Response in Opposition to the Consumer Advocate Division’s Petition to Intervene* at 3-5.

² *Id.* at 5-6.

³ *Id.* at 6.

I. THE CONSUMER ADVOCATE IS FULLY ENTITLED TO PROPOSE MODIFICATIONS OR CHANGES TO PREVIOUSLY APPROVED ARMS AND TO ANY ARMS BASED ON SUCH PREVIOUSLY APPROVED ARMS

IRM apparently contends that once approved, ARMs are set in stone and cannot be altered. Thus, IRM argues that since its proposed ARM is based on the ARM of Superior Wastewater which was approved in TPUC Docket No. 23-00069 (Sept. 11, 2023), the Consumer Advocate is barred from proposing any changes or modifications to IRM's filing.

This argument, however, ignores the significant history of prior TPUC dockets where alternative ratemaking mechanisms were changed or modified even though they had been previously approved.

Thus, in TPUC Docket No. 18-00112, TPUC approved a major change to an Atmos Energy ARM as proposed by the Consumer Advocate. The original ARM was based on two annual filings: (1) first, an initial filing in which Atmos projected its revenues and expenses for the upcoming year; and (2) a year-end filing in which the actual expenses and revenues were trued-up. After several years of implementation, it became apparent that this two-step process was not necessary and could be simplified to the benefit of all parties.

Similarly, after years of investigation and negotiation, TPUC approved a modification of the Capital Riders rate mechanism of Tennessee-American Water Company in TPUC Docket No. 19-00103 (the final order in this case was issued on Jan. 31, 2024). In this docket, the Consumer Advocate found that the previously approved Capital Rider mechanism led to problems of over-earning. Accordingly, after extensive work the Capital Riders mechanism was modified.

In light of the fact that ARMs and other alternative mechanisms can and have been changed or modified, IRM's argument that the Consumer Advocate's intervention would "impair" the "interests of justice and the orderly and prompt conduct of the proceedings" is without merit.⁴

Moreover, the Consumer Advocate has already submitted a Procedural Schedule that allows for the prompt and orderly disposition of this case. It is the Consumer Advocate who has pushed ahead in this case, filing a Procedural Schedule as well as discovery even though IRM has not responded to the Proposed Procedural Schedule other than to request a change in the hearing date.

In the present case, the Consumer Advocate may make similar arguments to those in the Superior Wastewater ARM case as well as new arguments after having had the benefit of additional time to review the Superior Wastewater case. As IRM notes in its Response in Opposition,⁵ the Consumer Advocate suggested a number of conditions regarding the approval of the proposed Superior ARM.⁶ The Consumer Advocate acknowledges that the Commission did not adopt those conditions but that in no way bars the Consumer Advocate from continuing its further consideration of items in the Superior ARM docket. At any rate, at this point no testimony has been filed so it is surely premature to say precisely what the Consumer Advocate will argue.

Some of the concerns that the Consumer Advocate may have with the proposed IRM ARM can be seen in the discovery filed in this Docket. In particular, the discovery requests indicate that there may be more accurate and fair ways of determining the annual growth in expenses for a utility. Such an attempt to establish just and reasonable rates should not be barred before the case even begins.

⁴ *Integrated Resource Management, Inc.'s Response in Opposition to the Consumer Advocate Division's Petition to Intervene* at 3-4.

⁵ *Id.* at 4.

⁶ *Id.* at 5.

II. THE DOCTRINE OF COLLATERAL ESTOPPEL IS NOT APPROPRIATE FOR MOST RATEMAKING ISSUES

As discussed above in Section I, TPUC has explicitly allowed revisions to ARMs and other alternative ratemaking mechanisms. In these cases, there was identity of parties and identity of issues in that the term or time or method of calculation in the original ARM was identical to the term or time or method of calculation in the case challenging that original ARM.

In the Atmos case, the issue of the number of annual filings that should be made was fully litigated in the case establishing the initial Atmos ARM, and the Consumer Advocate and Atmos were both parties. But the Consumer Advocate was fully entitled to propose a change to that decision allowing two annual filings, arguing instead for one annual filing.

Furthermore, even under the terms of the doctrine of collateral estoppel as cited by IRM, there is a real difference in possible issues in this case. IRM asserts that there is an identity of issues in the present case and the Superior Wastewater case.⁷ However, what might be appropriate in an ARM for a utility of the size, capital resources, management, and plant-in-service such as Superior Wastewater might not work for a company which is different in all these categories. At the very least, intervention is necessary to determine what adjustments need to be made in the IRM ARM from the IRM customers' point of view, whether IRM or ultimately, the Commission itself agrees with that perspective.

Indeed, if the doctrine of collateral estoppel was applied to ratemaking in general, it would be a watershed decision affecting every Commission regulated utility's consumers. Such a decision would make it virtually impossible for Tennessee consumers to participate fully and accurately in rate proceedings since many of the issues from the consumers' perspective in rate cases are incredibly similar. For example, if one rate case used a three-year average to determine customer

⁷ *Id.*

growth, would a party be estopped from proposing a five-year average instead in a subsequent case? Additionally, it would effectively eliminate the statutory obligation of the Consumer Advocate to advance similarly considered arguments across different consumer bases from one utility to another utility.

It should also be noted that the case cited by counsel for IRM, *Bowen v. Arnold*, 502 S.W.3d 102 (Tenn. 2016), involved a civil lawsuit between plaintiff and defendant, not an intervention by a third party in an administrative case. In a civil lawsuit it may make sense to preclude certain already fully litigated issues. But at the level of intervention, it would be improper to bar before it is even known precisely what the issues are.

Additionally, it should be noted that while strict identity of the parties is not necessary under *Bowen*, it is still a practical consideration. Here, IRM advances the argument that the Consumer Advocate had the chance to fully litigate the issues because it was a party in the Superior Wastewater docket. This is a true statement. However, IRM stretches this truth too far in suggesting that Consumer Advocate has had its proverbial “bite at the apple” to propose modifications to any ARM petition similar to Superior Wastewater’s. IRM overlooks the practical truth that the Consumer Advocate represented a different set of consumers in that docket. By asking for a denial of intervention based on estoppel in this Docket, IRM is essentially eliminating any chance for its consumers to meaningfully participate in ratemaking processes. In its opposition filing, IRM even points out that its consumers protested the last rate proceeding.⁸ We then must naturally ask the question “Why, despite demonstrated interest and desire to be heard, is IRM trying to prevent customer involvement through the Consumer Advocate?”

⁸ FN 8 on page 2 citing 24-00074.

In the present ARM case, at this time the Consumer Advocate is simply looking to gather information and determine whether it would be better to modify certain calculations regarding growth in expenses as discussed above in Section I. The Consumer Advocate maintains that if any changes would result in a more just and reasonable rate because it is a more accurate method of calculation that would be better for all parties. IRM may disagree, but the Consumer Advocate should at least be allowed to make the argument on behalf of IRM's consumers and let the Commission fulfil its duty to weigh the interests of all parties on the record.

III. THE CONSUMER ADVOCATE SHOULD NOT BE LIMITED IN ITS ABILITY TO PRESENT ITS CASE

IRM has demanded that the Consumer Advocate's "participation should be limited to those issues not considered and resolved in the Superior Docket."⁹ As discussed above, however, ARMs have long been subject to modification and change. It also merits attention that such a limitation would practically have no impact on IRM's prosecution of its own case. Because of the unique form of practice in front of this Commission, much of the testimonial and discovery obligations are confined to prefiling on the record. There are no added obligations to sit for depositions or provide oral testimony in person at hearing apart from those that already exist in this proceeding even without participation by the Consumer Advocate. Likewise, IRM cannot both argue that the issues in this case are exactly the same so as to bar them from review and, in the same motion, state that responding to those same issues would add unnecessary legal and administrative expenses. If IRM already knows its responses based on Superior Wastewater's to the Consumer Advocate's testimony and

⁹ *Integrated Resource Management, Inc.'s Response in Opposition to the Consumer Advocate Division's Petition to Intervene* at 7

discovery, then surely there's no burdensome or unnecessary research, writing, testimonial, or filing expenses to incur. If IRM does not want to read and meaningfully respond to the Consumer Advocate's testimony and discovery, it can object at that time or decline to file rebuttal and rest on its original assertions in its petition. Limiting the discovery, testimony, and cross-examination of the Consumer Advocate in such a proceeding prior to intervention would only work a hardship on the opportunity of IRM's customers to be fairly represented and would have no consequential impact on IRM's legal and administrative burden. Accordingly, the proposed limitation on the Consumer Advocate's participation is without merit.

WHEREFORE, the Consumer Advocate respectfully requests that the Commission grant the Consumer Advocate's Petition to Intervene.

RESPECTFULLY SUBMITTED,



VANCE L. BROEMEL (BPR No. 011421)
Senior Assistant Attorney General
VICTORIA B. GLOVER (BPR No. 037954)
Assistant Attorney General
Office of the Tennessee Attorney General
Consumer Advocate Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
Phone: (615) 741-8733
Email: Vance.Broemel@ag.tn.gov
Email: Victoria.Glover@ag.tn.gov

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CA Petition to Intervene

CERTIFICATE OF SERVICE

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

Charles B. Welch, Jr.
Phelps Dunbar LLP
414 Union Street, Suite 1105
Nashville, TN 37219
Phone: 615-726-1200
Email: chuck.welch@phelps.com

Mr. Jeffrey Cox, Jr., President
Integrated Resource Management, Inc.
3444 Saint Andrews Drive
White Pine, TN 37890
Phone: 865-674-0828
Email: irmutility@gmail.net

This the 9th day of October, 2025.


VANCE L. BROEMEL
Senior Assistant Attorney General