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Hon. David Jones, Chairman  
c/o Ectory Lawless, Docket Manager  
Tennessee Public Utility Commission  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243  
[TPUC.DocketRoom@tn.gov](mailto:TPUC.DocketRoom@tn.gov)

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

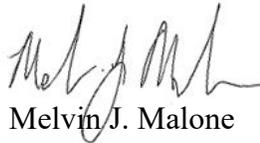
Dear Chairman Jones:

Attached for filing please find *Tennessee-American Water Company's Rebuttal Testimonies of Robert C. Lane, Jared Deason, and Philip J. Drennan* 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. 25-00089**

**REBUTTAL TESTIMONY**

**OF**

**Robert C. Lane**

**ON**

**Annual Review of Rates Mechanism**

**REBUTTAL TESTIMONY**

**ROBERT C. LANE**

**TENNESSEE AMERICAN WATER COMPANY**

**DOCKET NO. 25-00089**

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1 **I. INTRODUCTION AND QUALIFICATIONS**

2 **Q. PLEASE STATE YOUR NAME AND POSITION.**

3 **A.** My name is Robert C. Lane. I am Principal, Rates & Regulatory, for Tennessee-American  
4 Water Company ("TAWC").

5 **Q. HAVE YOU PREVIOUSLY SUBMITTED PRE-FILED DIRECT TESTIMONY IN**  
6 **THIS CASE?**

7 **A.** Yes.

8 **II. PURPOSE AND SUMMARY OF CONCLUSIONS**

9 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL?**

10 **A.** I am responding to the Pre-filed Testimony of Consumer Advocate Division Witness Mr.  
11 Clark D. Kaml and City of Chattanooga Witness Mr. Mark E. Garrett filed in this docket  
12 regarding TAWC's proposed Annual Review Mechanism (ARM). I am addressing the  
13 following issues raised by Mr. Kaml: removal of expenses consistent with the last rate case,  
14 the impact of an ARM on the frequency of rate cases, use of a surcharge/sur-credit to adjust  
15 rates, Mr. Kaml recommendation for a "generic proceeding to address ROE issues raised  
16 by ARM and Performance Based Ratemaking . I am also addressing the following issues  
17 raised by Mr. Garrett: claim regarding retroactive ratemaking, impacts on rate design and  
18 potential subsidies of the ARM, percentage caps being placed on ARM annual increases  
19 and the proposed sunset provision.

20 **Q. PLEASE SUMMARIZE YOUR CONCLUSIONS.**

21 **A.** In summary my conclusions are:

- 1       • The ARM proposed by TAWC is prospective, not retroactive. The ARM uses only  
2       historical actuals to compute a formulaic result that is applied prospectively to rates for  
3       services rendered only after the Tennessee Public Utility Commission (“Commission” or  
4       “TPUC”) issues a decision in this case consistent with Tenn. Code Ann. § 65-5-103(d)  
5       and the filed-rate doctrine.<sup>1</sup>
- 6       • TAWC’s proposed ARM is consistent with Tennessee law, precedent, and Commission  
7       practice.
- 8       • Mr. Kaml’s testimony criticizing what he refers to as “ALT REG”<sup>2</sup> is a Consumer  
9       Advocate position that is contrary to Commission policy and practice and is counter to  
10      Tennessee law, which explicitly allows the Commission to use such mechanisms as  
11      regulatory tools to exercise its regulation of public utilities under its jurisdiction. Further,  
12      this criticism is a condemnation of the current use of such mechanisms by the  
13      Commission and a direct denunciation of the articulated policy of the Tennessee  
14      legislature. This exposes a fundamental contradiction within Mr. Kaml’s testimony, and  
15      the Consumer Advocate’s position, because Mr. Kaml objects to the use of TAWC’s  
16      proposed “ALT-REG” mechanism, yet proposes to retain both the Incremental Capital  
17      Recovery Rider (“ICR”) and the Production Cost and Other Pass-Throughs (“PCOP”)  
18      Rider, both of which are included in Mr. Kaml’s definition of “ALT-REGS”.<sup>3</sup>
- 19      • The recommendations of Mr. Garrett are inconsistent with Tennessee precedent and/or  
20      Commission practice. Recommending that the ARM sunset<sup>4</sup> is not provided for under  
21      Tennessee law nor is it a standard practice of TPUC, as to the best of my knowledge no

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<sup>1</sup> See *Consumer Advoc. Div. v. Tenn. Regul. Auth.*, No. 01A01-9708-BC-00391, 1998 WL 684536 (Tenn. Ct. App. July 1, 1998)(attached).

<sup>2</sup> Pre-filed Testimony of Consumer Advocate Witness Clark D. Kaml, pp. 7-10, TPUC Docket No. 25-00089 (Feb. 3, 2026) (hereinafter *Kaml*”).

<sup>3</sup> Kaml, pp. 14-17.

<sup>4</sup> Pre-filed Testimony of City of Chattanooga Witness Mark E. Garrett, 35:24, TPUC Docket No. 25-00089 (Feb. 3, 2026) (hereinafter *Garrett*”).

1 other Commission-approved utility’s ARM has such a provision. Recommending  
2 periodic rate cases if the ARM is approved<sup>5</sup> is contrary to the alternative regulatory  
3 methods statute and is not consistent with Commission practice, as no other utilities  
4 operating under an ARM are required to have a periodic rate case. In fact, the filing of a  
5 rate case terminates an ARM.<sup>6</sup>

- 6 • The use of a surcharge or surcredit to effectuate a rate change is reasonable.
- 7 • Mr. Garrett’s recommendation that a percentage cap on the annual increases should be  
8 required<sup>7</sup> is not consistent with Tennessee law and is not consistent with other ARMs  
9 approved by the Commission for other investor-owned utilities.
- 10 • Mr. Kaml’s proposal to cap the cost of processing the ARM filing<sup>8</sup> should be rejected and  
11 instead the costs should be subject to review when recovery is sought in the subsequent  
12 year’s ARM filing like other costs incurred by the Company.
- 13 • Mr. Kaml’s proposal to cap the cost of processing the ARM filing<sup>9</sup> should be rejected and  
14 instead the costs should be subject to review when recovery is sought in the subsequent  
15 year’s ARM filing like other costs incurred by the Company.
- 16 • Mr. Kaml’s call for a “generic Proceeding to consider adjustments to ROE and  
17 development of a performance-based mechanism is not consistent with Tenn. Code Ann.  
18 § 65-5-103 and is based on the predicate that there should be an adjustment to ROE,  
19 which TAWC’s witness Mr. Jared Deason counters in his rebuttal testimony<sup>10</sup>.

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<sup>5</sup> *Garrett*, 35:23.

<sup>6</sup> Tenn. Code Ann. § 65-5-103(d) (2024)

<sup>7</sup> *Garrett*, 35:21 and 37:1-6.

<sup>8</sup> *Kaml*, 6:6-7.

<sup>9</sup> *Kaml*, 6:6-7.

<sup>10</sup> Pre-filed Rebuttal Testimony of Tennessee American Water Witness Jared Deason Kaml, pp. 6-13, TPUC Docket No. 25-00089 (Feb. 3, 2026) (hereinafter *Deason*”).

- The ARM is in the public interest because it provides gradualism in rates, enhances transparency for all parties, and leads to lower costs (i.e., consultants, litigation, administrative costs from Staff, etc.) as opposed to filing traditional rate cases.

### **III. LEGAL AUTHORITY AND COMMISSION PRACTICE**

#### **Q. WHAT IS THE STANDARD FOR THE ESTABLISHMENT OF, AND REVIEW UNDER, AN ARM?**

- A.** Tenn. Code Ann. § 65-5-103(d) expressly authorizes the Commission to implement “alternative regulatory methods to allow for public utility rate reviews and cost recovery in lieu of a general rate case” and to order adjustments to tariff rates following such reviews. The ARM proposed by TAWC, as well as the ARMs authorized by the Commission for other utilities, fits squarely within this grant of authority.

#### **Q. HOW DOES THE COMMISSION TYPICALLY PERMIT TAWC TO IMPLEMENT ITS COMMISSION-APPROVED ANNUAL RIDER RESULTS ON BILLS?**

- A.** In recent practice, the Commission has implemented PCOP and Capital Riders as a single percentage surcharge/sur-credit that is “applicable to customers’ bills” for the authorized 12-month period.<sup>11</sup> Commission compliant Riders tariff pages present a percentage surcharge or sur-credit reflecting an equal-percentage application across rate areas and classes. TAWC’s proposed ARM preserves that familiar option. Essentially, this is the rate change methodology supported by both the City of Chattanooga and the Consumer Advocate in the Commission’s 2025 Rate Case and is also the method used for the Capital

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<sup>11</sup> *Order Approving the 2024 Production Costs and Other Pass-Through Rider*, p. 2, TPUC Docket No. 25-00002 (Aug. 8, 2025).

1 Riders and the PCOP Rider. <sup>12</sup>Yet despite this clearly prospective application of rates on  
2 future service, Mr. Garrett raises the canard that the ARM is retroactive ratemaking when  
3 the Commission utilizes this same approach in TAWC's current alternative regulatory  
4 mechanisms. <sup>13</sup>

5 **Q. ARE MR. GARRETT'S CONCLUSIONS IN HIS TESTIMONY SUPPORTED BY**  
6 **TENNESSEE LAW, PRECEDENT, AND COMMISSION PRACTICE?**

7 **A.** No. Mr. Garrett's testimony, his analysis, and his conclusions ignore Tennessee law and  
8 precedent. Further Mr. Garrett fails to acknowledge historic and current ratemaking  
9 approaches of the Commission that allow prospective rates to be adjusted based on  
10 historical results. Mr. Garrett raises retroactive ratemaking concerns, rate design issues,  
11 calls for a sunset provision, recommends periodic rate cases and a rate case cap. None of  
12 these positions are consistent with Tennessee law or Commission precedent. I discuss each  
13 of these below in greater detail.

14 **IV. PROSPECTIVE APPLICATION / RETROACTIVE RATEMAKING**

15 **Q. DOES THE COMPANY'S PROPOSED ANNUAL REVIEW MECHANISM**  
16 **RESULT IN RETROACTIVE RATEMAKING AS ASSERTED BY MR.**  
17 **GARRETT?<sup>14</sup>**

18 **A.** No. When a tariffed annual review/true-up mechanism reconciles prior-period results but  
19 applies a uniform percentage factor to future bills, as proposed by the Company, this does  
20 not constitute unlawful retroactive ratemaking under Tennessee law.

21 Tennessee law, precedent, and Commission practice support that tariffed true-ups applied

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<sup>12</sup> *Pre-filed Testimony of City of Chattanooga Witness Mark E. Garrett*, 50:21 - 51:2, TPUC Docket No. 24-00032 (Sept. 17, 2024), and *Pre-filed Testimony of Consumer Advocate Witness William H. Novak*, 22:21 - 23, TPUC Docket No. 2400032 (Sept. 17, 2024).

<sup>13</sup> *Garrett*. pp. 13-19

<sup>14</sup> *Garrett*. pp. 13-19.

1 prospectively are not retroactive ratemaking. The ARM proposed by TAWC under § 65-5-  
2 103(d)(6) is a tariffed annual formula where historical actuals inform the earnings test, and  
3 a single equal percentage factor is applied prospectively. This mirrors approaches that the  
4 Tennessee courts and the TPUC treat as not unlawful retroactive ratemaking.

5 Mr. Garrett errs when he contends that “[t]he problem with this request is that it constitutes  
6 impermissible retroactive[.]”<sup>15</sup> His position does not comport with the law here in  
7 Tennessee or the precedent and practices of the TPUC.

8 **Q. DOES THE ARM ADJUST RATES PROSPECTIVELY?**

9 **A.** Yes. As proposed, the ARM does not re-price previously rendered service. It uses  
10 historical actuals solely to compute a single formulaic balance applied prospectively to  
11 service on and after the effective date. This is wholly consistent with § 65-5-103(d).

12 **Q. HOW DOES TENNESSEE LAW SUPPORT THE USE OF HISTORICAL DATA**  
13 **TO SET FUTURE PROSPECTIVE RATES?**

14 **A.** Tenn. Code Ann. § 65-5-103 authorizes the Commission to implement alternative  
15 regulatory methods for rate reviews and cost recovery in lieu of a general rate case,  
16 underpinning riders and formula mechanisms so long as the resulting rates are just,  
17 reasonable, and applied prospectively.

18 **Q. HOW DOES TENNESSEE PRECEDENT SUPPORT THAT TARIFFED TRUE-**  
19 **UPS APPLIED PROSPECTIVELY ARE NOT UNLAWFUL RETROACTIVE**  
20 **RATEMAKING?**

21 **A.** By way of example, in *Consumer Advocate Division v. Tennessee Regulatory Authority*,  
22 the CAD maintained that the Tennessee Regulatory Authority’s (“TRA”), the predecessor

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<sup>15</sup> *Garrett*, 13:18.

1 agency to the Commission, engaged in retroactive ratemaking by approving BellSouth's  
2 price regulation plan effective October 1, 1995. Price regulation plans were previously  
3 permitted under Tenn. Code Ann. Section 65-5-209.<sup>16</sup> Rejecting the CAD's contention,  
4 the Court of Appeals held as follows:

5 The Regulatory Authority's order did not attempt to change rates  
6 retroactively. . . . The only rate changes under the Authority's December  
7 1998 order will be prospective. By making the order prospective only, the  
8 Authority avoided the charge that future ratepayers would 'pay for past use,'  
9 which is the essence of retroactive ratemaking.<sup>17</sup>

10 Similarly, TAWC's proposed ARM would not result in retroactive ratemaking because  
11 any rate changes under a Commission-approved TAWC ARM would be prospective only  
12 and thus not result in future ratepayers paying for services previously rendered.

13 Additionally, in an earlier case before the Tennessee Court of Appeals, the Consumer  
14 Advocate argued that Nashville Gas Company engaged in retroactive ratemaking by  
15 putting its increased rates into effect subsequent to the Authority's oral deliberations  
16 approving said rates but before the agency issued a written order memorializing the oral  
17 decision.<sup>18</sup> Rejecting the CAD's retroactive ratemaking argument in this case, the court,  
18 among other things, resolved that the Authority's February 19, 1997, written order,  
19 adopting the Authority's December 17, 1996, oral deliberations, expressly provided that  
20 "[t]he order allowed the increased rates 'for services rendered on and after January 1,  
21 1997.'"<sup>19</sup> Again, since any rate changes under TAWC's proposed ARM would be  
22 prospective only and not result in future ratepayers paying for services previously

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<sup>16</sup> *Consumer Advoc. Div. ex rel. Tenn. Consumers v. Tenn. Regul. Auth.*, No. M199902151COAR12CV, 2000 WL 13794 (Tenn. Ct. App. Jan. 10, 2000) (attached)

<sup>17</sup> *Id.* at 8.

<sup>18</sup> *Consumer Advoc. Div. v. Tenn. Regul. Auth.*, p. 6, No. 01A01-9708-BC-00391, 1998 WL 684536 (Tenn. Ct. App. July 1, 1998).

<sup>19</sup> *Id.* at 2. The court held that the agency's oral deliberations were sufficiently detailed to meet the statutory requirement of written findings of fact and conclusions of law. *Id.* at 7. Since the legally sufficient order was made on December 17, 1996, and as the increased rates were only allowed for service rendered on or after January 1, 1997, the CAD's claim of retroactive ratemaking was misplaced.

1 rendered, the Company’s proposal would not result in retroactive ratemaking. Contrary to  
2 the CAD’s allegations, both of these cases plainly illustrate longstanding Tennessee  
3 precedent that Commission-approved prospective only rate changes do not amount to re-  
4 pricing of past service to be paid by future ratepayers, which is the essence of retroactive  
5 ratemaking.<sup>20</sup>

6 **Q. ARE THERE EXAMPLES OF THE COMMISSION USING ALTERNATIVE**  
7 **REGULATORY MECHANISMS TO ADJUST RATES PROSPECTIVELY THAT**  
8 **USE HISTORICAL DATA?**

9 **A.** Yes. The existing PCOP rider adjusts rates prospectively based on historical costs. These  
10 rates are only applied proactively in the same fashion as proposed by the Company with  
11 its ARM in this Docket.<sup>21</sup>

12 Another example is the Company’s Commission-approved (TPUC Docket No. 19-00103)  
13 ICR , which is a mechanism that adjusts rates prospectively based only on explicitly  
14 historical costs.<sup>22</sup>

15 Prior to the 2023 adoption of the ICR, the Capital Cost Riders (“CCR”) included a  
16 Reconciliation proceeding that adjusted rates prospectively after reconciling to historical  
17 capital costs and level of investments, including a true up of revenues. Additionally, the  
18 CCR reconciliation included a symmetrical adjustment to increase revenues to adjust for  
19 earnings above or below the level authorized in TPUC Docket No. 12-00049, the  
20 Company’s previous rate case.

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<sup>20</sup> *Am. Ass'n of Retired Persons v. Tenn. Pub. Serv. Comm'n*, 896 S.W.2d 127, 134-35 (Tenn. Ct. App. 1994)(“The regulatory reform plan, however, does not require refunds to customers nor does it provide for rates to be adjusted retroactively. Neither does the quoted portion of the order. Both speak in prospective terms. . . . We think neither the rule nor the order results in retroactive rate making.”).

<sup>21</sup> TPUC Docket No. 25-00002 and TPUC Docket No. 24-00001 are recent examples of this Commission practice.

<sup>22</sup> TPUC Docket No. 19-00103.

1 In Docket No. 24-00024, TPUC approved a settlement agreement involving Chattanooga  
2 Natural Gas Company (CGC) and various intervenors, outlining CGC's Annual Rate  
3 Mechanism (ARM) which includes two key components: the annual reconciliation  
4 balance for recovering or refunding historic base period revenue deficiencies or  
5 surpluses, and the *rate reset mechanism for prospective rate setting*. The *rate reset* uses  
6 the historic base period cost of service, adjusted to account for the annual reconciliation  
7 balance and *normalization adjustments*, enabling CGC to annually adjust rates to recover  
8 prior year balances and earn its authorized return (inclusive of carrying charges) on a  
9 going forward basis as defined in the 2019 (Docket No. 19-00047) and 2020 (Docket No.  
10 20-00049) ARM Stipulations.

11 **Q. IS TAWC'S ARM PROPOSAL TO SET RATES ON A PROSPECTIVE BASIS.**

12 **A.** Yes. As I clearly state in my Pre-filed Direct Testimony, the proposal is for a March  
13 filing of the ARM, based on historic costs, with rates going into effect for service offered  
14 after August 1 for service rendered after August 1st.<sup>23</sup> Rates would be set on a  
15 prospective basis.

16 **Q. WHAT DO YOU RECOMMEND THE COMMISSION FIND WITH REGARD TO**  
17 **THE RETROACTIVE RATEMAKING ARGUMENT ADVANCED BY MR.**  
18 **GARRETT?**

19 **A.** I recommend that the Commission should find that the proposed ARM is a tariffed,  
20 formulaic true-up that reconciles historical results but applies adjustments prospectively  
21 through a uniform percentage factor for service rendered on and after the effective date;  
22 therefore, it does not constitute retroactive ratemaking under Tennessee law.

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<sup>23</sup> Lane; p.11:6-9 "the Company proposes filing its ARM petition by March 31st of each year, which after one hundred twenty (120) days would make the ARM rate effective on or around August 1st of each year.

1 **Q. HOW DOES THE FILED-RATE DOCTRINE APPLY?**

2 **A.** The filed rate doctrine bars retroactive changes to past service (e.g., awards that function  
3 as retroactive rate adjustments).<sup>24</sup> TAWC’s proposed ARM, by contrast, is a filed  
4 formula that sets future charges akin to FERC’s formula-rate approach (formula is the  
5 rate; annual updates with protocols and stakeholder review rights).<sup>25</sup>

6 **Q. IS THERE ANY RECENT AUTHORITY CONFIRMING LAWFUL ANNUAL**  
7 **IMPLEMENTATION OF A FILED FORMULA?**

8 **A.** Yes. The D.C. Circuit (Jan. 12, 2024) upheld FERC’s application of a utility’s (AEP)  
9 annual formula-rate update, reinforcing the principle that implementing a filed formula  
10 via annual updates is lawful and not retroactive re-pricing.<sup>26</sup> Additionally, my review of  
11 Tenn. Code Ann. Section 65-5-103(d)(6), along with the Commission’s firm  
12 commitment and ultimate approval of ARM mechanisms for Atmos Energy (Docket No.  
13 18-00112), Chattanooga Natural Gas (Docket No. 19-00047), Piedmont Natural Gas  
14 Company (Docket No. 21-00135), and Tennessee Water Service (Docket No. 23-00046),  
15 all further substantiates that TAWC’s proposal is appropriate, reasonable, and aligns with  
16 state law.

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<sup>24</sup> See *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571 (1981).

<sup>25</sup> Fed. Energy Regulatory Comm'n, *Formula Rates in Electric Transmission Proceedings: Key Concepts and How to Participate*, <https://www.ferc.gov/formula-rates-electric-transmission-proceedings-key-concepts-and-how-participate>

<sup>26</sup> *East Tex. Elec. Coop., Inc. v. FERC*, No. 22-1166 (D.C. Cir. Jan. 12, 2024), <https://media.cadc.uscourts.gov/opinions/docs/2024/01/22-1166-2035486.pdf>

1 **V. RATEMAKING METHODOLOGY**

2 **Q. IS MR. KAML CORRECT IN HIS “CLARIFICATIONS” REGARDING THE**  
3 **COMPANY’S PROPOSALS ON THE REMOVAL OF SHORT-TERM AND**  
4 **LONG-TERM INCENTIVE EXPENSES?”<sup>27</sup>**

5 **A.** No. Mr. Kaml is not correct. To clarify, in its decision in the Company’s 2025 Rate Case,  
6 the Commission ordered “removal of 100% and 55%, respectively, of the allocated long-  
7 and short-term incentive plan expenses”.<sup>28</sup> The confusion is related to the short-term  
8 performance pay (Annual Performance Plan, or “APP”). Mr. Kaml and I agree that 55%  
9 of the APP was excluded for ratemaking purposes in calculating labor expenses. There are  
10 two components of this 55% exclusion of direct and allocated short term APP that were  
11 ordered by the Commission in TPUC Docket No. 24-00032. The first component is the  
12 removal of the 50% of the direct and allocated short-term APP related to the financial  
13 Company’s market-based employee compensation that of American Water. The other 5%  
14 is the removal of the entire portion of the direct and allocated short-term Company’s  
15 market-based employee compensation that APP that is part of the Company’s market-based  
16 employee compensation related to Inclusion, Diversity and Equity (“ID&E”) metrics. This  
17 metric covered 5% of the APP. These two results in 55% of the total being removed. Thus,  
18 the Company’s proposal is fully supported and does not conflict with the Commission’s  
19 order in TPUC 24-00032.

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<sup>27</sup> Kaml p 34:17-24

<sup>28</sup> *Order Setting Rates*, pp. 30-31 TPUC Docket No. 24-00032 ( April 21, 2025) (hereinafter ”2025 *Order Setting Rates*”).

1 **Q. FOR CLARITY, PLEASE RESTATE THE RATEMAKING METHODOLOGIES**  
2 **DETERMINED IN THE COMPANY’S LAST RATE CASE (24-00032) THAT ARE**  
3 **APPLIED WITHIN TAWC’S PROPOSED ARM.**

4 **A.** As stated in my Direct Testimony:<sup>29</sup>

- 5 • The calculation of the ROE will be based on the Capital Structure approved in  
6 TPUC Docket No. 24-00032, the Commission’s *2025 Order Setting Rates*, of  
7 44.19% Equity, 55% Long-Term Debt, and 0.81% Short Term Debt with an  
8 adjustment of Debt Expense to reflect the interest rate expense being synchronized  
9 to reflect the higher amount of debt assumed in the General Rate Case Order  
10 compared to the actual level of debt that is reflected in the interest expense.
- 11 • Removal of the 50% of the direct and allocated short-term Annual Performance  
12 Plan (“APP”) that is part of the Company’s market-based employee compensation  
13 that is related to the financial operations of American Water.
- 14 • Removal of 5% of the direct and allocated short-term APP that is part of the  
15 Company’s market-based employee compensation that is related to Inclusion,  
16 Diversity and Equity (“ID&E”) metrics.
- 17 • Removal of 100% of the direct and allocated Long Term Performance Plan  
18 (“LTPP”).
- 19 • Removal of 100% of the expenses associated with ID&E, Business Development,  
20 Lobbying, and Charitable Donations.
- 21 • An adjustment to fuel & power expense and chemicals expense for excess water

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<sup>29</sup>Lane pp,12:8 – p13:3

1 loss as determined by the Commission establishing a reasonable water loss standard  
2 in a separate proceeding.

3 **VI. RATE DESIGN / COST ALLOCATION (RURAL VS URBAN)**

4 **Q. IS MR. GARRETT SEEKING TO LITIGATE COST ALLOCATION AND RATE**  
5 **DESIGN POLICY IN THIS FILING ESTABLISHING THE ARM**  
6 **FRAMEWORK?**

7 **A.** Yes, he is. Mr. Garrett is questioning a fundamental methodology that was established in  
8 the Company's last rate case, the rate design adopted by the Commission. Rate design  
9 was a litigated issue in the Company's last rate case and a rate design was adopted. Mr.  
10 Garrett appears to be directly arguing against the current rate design adopted by the  
11 Commission. The Company is seeking to continue the Commission's long-held policy of  
12 adjusting rates by an equal percentage across all rate classes and across all customers and  
13 is basing the adjustments under the ARM on the current rate design adopted in TPUC  
14 Docket No. 24-00032.<sup>30</sup>

15 **Q. IS MR. GARRETT'S ASSERTION THAT EQUAL PERCENTAGE SURCHARGE**  
16 **WILL INCREASE SUBSIDIZATION OF RURAL AREAS BY URBAN**  
17 **CUSTOMERS ACCURATE?**<sup>31</sup>

18 **A.** No, Mr. Garrett offers no evidence that this is true. In fact, while Mr. Garrett states  
19 "[B]ecause of the immense disparity in the cost to service rural verses urban customers,  
20 an ARM that allocates costs evenly to all customers is on its face unfair from a rate-  
21 setting perspective,"<sup>32</sup> he ignores the fact that there is a significant disparity in the

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<sup>30</sup> 2025 Order Setting Rates, pp. 75-80.

<sup>31</sup> Garrett at 6:14-17 and 31:3-6.

<sup>32</sup> Id. at p36.

1 existing rates across the several rate areas that the Company has. An equal percentage  
2 rate increase across all our rate areas results in the smallest dollar impact on those  
3 customers in the Chattanooga rate area, which has the lowest rates of all of TAWC Rate  
4 areas. Conversely, the customers in Jasper Highlands, which is the area with the highest  
5 rates, would have the largest dollar impact on their bill from applying an equal  
6 percentage increase.

7 **Q. DID MR. GARRETT PROPOSE A RATE ADJUSTMENT APPROACH FOR**  
8 **TAWC IN THE COMPANY'S 2025 RATE CASE THAT IS SIMILAR TO THE**  
9 **RATE ADJUSTMENT APPROACH BEING PROPOSED BY THE COMPANY**  
10 **OF AN EQUAL PERCENTAGE ADJUSTMENT FOR ALL RATE AREAS AND**  
11 **CUSTOMER CLASSES?**

12 **A.** Yes, the Company's proposal for the ARM adjustment mirrors Mr. Garrett's  
13 recommended approach for how to adjust rates in TAWC's 2025 rate case, where he  
14 stated, "I recommend any increase in rates be applied on an equal percentage basis to all  
15 customers to the existing rates for each of the seven service areas."<sup>33</sup>

16 **Q. WHAT DID THE CONSUMER ADVOCATE RECOMMEND AS THE MEANS**  
17 **TO ADJUST RATES IN TAWC'S 2025 RATE CASE?**

18 **A.** The Consumer Advocate's witness Mr. Novak proposed in his testimony in the Company's  
19 2025 Rate Case that the rate change be "allocated evenly across-the-board to all customers  
20 classes based upon the ratio of each customers class attrition period revenue to total  
21 attrition period revenue."<sup>34</sup> This is the same approach being proposed by the Company for

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<sup>33</sup> *Pre-filed Testimony of City of Chattanooga Witness Mark E. Garrett, 50:21 - 51:2, TPUC Docket No. 24-00032 (Sept. 17, 2024),*

<sup>34</sup> *Pre-filed Testimony of Consumer Advocate Witness William H. Novak, 22:21 - 23, TPUC Docket No. 2400032 (Sept. 17, 2024).*

1 the ARM, an equal percentage change across the board for all customers classes across all  
2 Rate Areas.

3 **VII. IMPACT ON RATE CASE FREQUENCY**

4 **Q. MR. KAML STATES THAT TAWC “HAS NOT DEMONSTRATED HOW ITS**  
5 **PROPOSAL WILL LESSEN THE FREQUENCY OF RATE CASE**  
6 **PROCEEDINGS.”<sup>35</sup> HOW DO YOU RESPOND TO THIS STATEMENT.**

7 **A.** While it is true that the Company’s last rate case before its 2025 Rate Case was in 2012,  
8 it is important to recognize the Commission’s approval of the Company’s alternative  
9 regulatory mechanisms – Capital and PCOP Riders – shortly after TAWC’s 2012 Rate  
10 Case, as well as the significant regulatory change with the approval of the ICR on  
11 December 11, 2023.<sup>36</sup> In TPUC Docket No. 19-00103, the Commission adopted a  
12 settlement that fundamentally changed the regulatory framework governing the  
13 Company’s infrastructure capital investment recovery. The deferral of rate cases from  
14 2012 until the filing of the Company filed its 2025 Rate Case on May 1, 2024 occurred  
15 under the previous framework. The Company filed its most recent rate case on May 1,  
16 2024, less than 6 months after the approval of the ICR. It is clear that after the adoption  
17 of the ICR, this mechanism failed to defer the filing of the Company’s 2025 rate case.

18 While one of the goals of the Company's Commission-approved alternative  
19 regulatory mechanisms was to lessen the frequency of rate cases, the aim was not to  
20 eliminate rate cases altogether. This goal, less frequent rate cases, was met.

21 Noting the impact of ARMs in recent proceedings, the Commission has opined  
22 “that Piedmont’s ARRM permits timely recovery of reasonable and prudent expenditures

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<sup>35</sup> Kaml at 15:23-24

<sup>36</sup> TPUC Docket No. 19-00103

1 by the Company for the provision of safe and reliable natural gas services, while also  
2 reducing the need for more costly rate cases[.]”<sup>37</sup> and “ that CGC’s ARRM allows for  
3 timely recovery of reasonable and prudent expenses while limiting more costly rate cases,  
4 which the Company might otherwise have to pursue to recover such expenditures.”<sup>38</sup>

5 **VIII. PERCENTAGE CAPS, SUNSET, AND RATE-CASE REQUIREMENTS**

6 **Q. MR. GARRETT PROPOSES REQUIRING A “PERCENTAGE CAP” ON**  
7 **ANNUAL RATE INCREASES.<sup>39</sup> IS THIS CONSISTENT WITH THE ARMS**  
8 **AUTHORIZED FOR OTHER MAJOR UTILITIES REGULATED BY THE**  
9 **TPUC?**

10 **A.** No. The Commission does not require a percentage cap in any of the ARMs it has  
11 authorized.

- 12 • Piedmont Natural Gas has an ARM that does not include a cap on rate or revenue  
13 increase.
- 14 • Atmos Energy has an ARM that does not include a cap on rate or revenue increase.
- 15 • Chattanooga Gas had a voluntary cap in place only for 2021 through 2024. It was the  
16 only Tennessee utility to have a cap and even then it was voluntarily agreed to by the  
17 Company and, as of 2025, is no longer in place.<sup>40</sup>

18 **Q. DOES § 65-5-103(D)(6) REQUIRE THE IMPOSITION OF A PERCENTAGE CAP**  
19 **ON ANNUAL RATE INCREASES AS ADVOCATED BY MR. GARRETT?**

20 **A.** No. While § 65-5-103(d)(6) does enumerate several requirements (e.g. must have had a  
21 rate case within 5 years, must use the methodologies consistent with the most recent rate

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<sup>37</sup> *Order Approving Settlement Agreement and Setting ARRM Rates*, p. 11, TPUC Docket No. 25-00036 (Nov. 25, 2025)

<sup>38</sup> *Order Approving Settlement Agreement Revising Chattanooga Gas Company’s 2024 Annual Rate Review Filing Under Tenn. Code Ann. § 65-5-103(d)(6)*, p. 9. TPUC Docket No. 25-00028 (Sept. 29, 2025)

<sup>39</sup> *Garrett* at 35:21 and 37:1-6.

<sup>40</sup> For clarity, the voluntary cap on Chattanooga Gas, which is no longer in place, was not a Percentage Cap like that proposed by Mr. Garrett, but rather a dollar amount cap.

1 case), it does not require a percentage cap on annual rate increase nor specifically  
2 authorize the Commission to impose such a restriction.

3 **Q. MR. GARRETT PROPOSES A SUNSET PROVISION ON THE ARM. DOES § 65-**  
4 **5-103(D)(6) REQUIRE OR CONTEMPLATE A SUNSET PROVISION FOR THE**  
5 **ARM?**

6 **A.** No. Tenn. Code Ann. § 65-5-103(d)(6) does not mention or reference a sunset provision.  
7 This section does allow the Commission to terminate an approved annual review plan  
8 upon and after citing the public utility to appear and show cause why the Commission  
9 should not take such action pursuant to the procedures in § 65-2-106. Mr. Garrett's  
10 proposed sunset provision is counter to the statute's explicit guidance on how the  
11 Commission may terminate an annual review. Based on the foregoing language that the  
12 Tennessee General Assembly chose to employ, it is axiomatic that the Tennessee  
13 legislature could have added a sunset requirement if it desired to do so. It expressly did  
14 not.

## 15 **IX. CUSTOMER BILLS PRESENTATION**

16 **Q. HOW WILL THE ANNUAL ARM ADJUSTMENT BE IMPLEMENTED ON**  
17 **CUSTOMER BILLS?**

18 **A.** The ARM proposal calls for a single percentage surcharge/sur-credit. This approach  
19 mirrors current TPUC rider adjustment administration: PCOP and Capital Riders are  
20 implemented as percentage adjustments applicable to customers' bills applied as an equal  
21 percentage across rate areas and classes.

22 Customers will see one line with a single dollar amount based on a single  
23 percentage applied equally across all rate areas and classes. The Current PCOP and

1 Capital Riders are also each a single dollar amount based on a percentage applied equally  
2 across all rate areas and customer classes.<sup>41</sup>

3 Mr. Kaml's opposes the use of a surcharge or surcredit and seeks to have the  
4 Company adjust each individual rate element annually rather than apply a simple  
5 surcharge. This is unnecessarily burdensome and contrary to past practice of the  
6 Commission for implementing the PCOP and Capital Riders. Mr. Kaml's  
7 recommendation would require the re-stating of rates in seven rate areas, for each  
8 customer class, for each usage tier (where applicable) and for each different meter size.  
9 This would result in hundreds of adjustments that would need to be made to the stated  
10 tariff rates annually.<sup>42</sup>

## 11 **X. BENEFITS TO CUSTOMERS AND THE COMMISSION**

### 12 **Q. WHAT ARE THE MAIN CUSTOMER BENEFITS OF TAWC'S PROPOSED** 13 **ARM?**

14 **A.** Symmetry and timeliness (credits as well as charges; applied prospectively only);  
15 simplicity and consistency due to single-percentage option matching TPUC rider practice  
16 and the equal-percentage across areas/classes); transparency as the bill change resulting  
17 from the increase is explicit stated on the bill, and avoidance of the costs associated with  
18 frequent rate cases or the costs of the multiple riders currently in place plus periodic rate  
19 cases. Customers gain the benefits associated with the Tennessee General Assembly's  
20 aim of permitting streamlined regulation and its accompanying efficiencies, including the  
21 lessening or mitigation of rate shock connected to frequent general rate cases. The  
22 transition to an ARM will allow the Company to react to the ever-changing needs of our  
23 new and existing customers, along with the significant investments in necessary

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<sup>41</sup> TPUC Tariff Sheet NO. 20 Revised Sheet No. 12-ICR -11

<sup>42</sup> *Kaml* pp 20--25

1 infrastructure made in between traditional general rate cases. This proposal will allow the  
2 general public, the Commission, and the Consumer Advocate to see how the investments  
3 and its expenses are changing on annual basis and provide all parties the opportunity to  
4 ask questions and analyze the changes in more detail during the annual review period.

5 The primary benefit is that the ARM provides a symmetrical reconciliation of actual  
6 results against authorized, allowing for a prospective adjustment to rates (either increase  
7 or decrease) based on these results, in lieu of a costly base rate proceeding. Unlike  
8 traditional base rate cases, the ARM provides gradual and timely adjustments to rates.

9 The ARM also provides a means for the Company to continue to invest as necessary in its  
10 system to continue to provide safe, clean, reliable, and affordable service without  
11 incurring negative financial impacts that would only be resolved through traditional base  
12 rate cases. Contrasting this with existing mechanisms, which are not symmetrical and  
13 isolated just to specific items (e.g., PCOP), the ARM provides a full, transparent, and  
14 comprehensive review of the Company's operating financials.

## 15 **XI. BENEFITS TO CUSTOMERS AND COMMISSION**

### 16 **Q. HOW DOES TAWC'S PROPOSED ARM BENEFIT THE COMMISSION'S** 17 **OVERSIGHT AND ADMINISTRATIVE BURDEN?**

18 **A.** There are several ways the Commission benefits:

- 19 • The proposed ARM allows the Commission to effectively and efficiently  
20 carry out its duties consistent with the policy intent expressed by the  
21 Tennessee legislature in § 65-5-103(d);
- 22 • Streamlined review of utility costs due to the use of predetermined  
23 schedules;

- 1                   • Increased certainty from the use of historical information and reliance on  
2                   past Commission determinations on ratemaking methodology, removing  
3                   the need to forecast costs and revenues;
- 4                   • Annual cadence will engender familiarity with the process for the  
5                   Commission, its staff, intervenors and the Company leading to smoother  
6                   adjudication of the issues.
- 7                   • Reduction of administrative burden and resource constraints from  
8                   Commission Staff in potential overlap of other matters pending before the  
9                   Commission.

10 **XII. INCONSISTENCIES IN KAML’S PRE-FILED TESTIMONY**

11 **Q. ARE THERE KEY INCONSISTENCIES IN MR. KAML’S TESTIMONY AND IF**  
12 **SO, WHAT ARE THEY?**

13 **A.** Yes, there is a fundamental inconsistency within Mr. Kaml’s and the Consumer  
14 Advocate’s position. Mr. Kaml attacks the use of “ALT-REG” mechanisms yet proposes  
15 to retain both the ICR and the PCOP Rider, both of which are included in Mr. Kaml’s  
16 definition of “ALT-REGS”.<sup>43</sup> Mr. Kaml and the Consumer Advocate position appears to  
17 be inconsistent with the Tennessee General Assembly’s intent in adopting a statute  
18 authorizing the Commission to approve alternative regulatory methods or mechanisms,  
19 such as Riders and ARMs, that streamline the regulatory process and are in the public  
20 interest.

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<sup>43</sup> *Kaml* at 6:25-28 and 14:3-15.

1 **XIII. OTHER RECOMMENDATIONS MADE BY MR. KAML AND GARRETT IN**  
2 **THEIR RESPECTIVE TESTIMONY**

3 **Q. WHAT IS YOUR RESPONSE TO MR. KAML’S CALL TO THE COMMISSION**  
4 **FOR A “GENERIC PROCEEDING TO INVESTIGATE ALL ASPECTS OF**  
5 **GUARANTEEING AN AUTHORIZED RETURN INCLUDING ANY**  
6 **NECESSARY MODIFICATIONS TO THE COST OF EQUITY ASSOCIATED**  
7 **WITH ALT-REG MECHANISMS AND EXPLORE DEVELOPING**  
8 **PERFORMANCE BASED MECHANISMS TO PROMOTE EFFICIENCY”?** <sup>44</sup>

9 **A.** The Company's ARM proposal is consistent with the intent of the Tennessee General  
10 Assembly and Commission precedent. Namely, as discussed on pages 10-11 of Mr.  
11 Drennan’s rebuttal testimony, the Commission has never previously considered the  
12 adoption of an ARM as a basis to reduce a utility’s ROE. If the Consumer Advocate  
13 desires to request that the Commission open such a generic docket, it may do so apart  
14 from this proceeding. It is not appropriate to seek this request within this proceeding.  
15 Furthermore, Mr. Deason’s rebuttal testimony directly addresses Mr. Kaml’s flawed  
16 predicate that the ARM as proposed by TAWC guarantees an authorized return.<sup>45</sup>

17 **Q. MR. KAML SUGGESTS CAPPING PROCESSING COSTS OF THE ANNUAL**  
18 **FILING AT THE PROCESSING EXPENSES FOR THE ALT-REG FILINGS**  
19 **PRIOR TO 2025.**<sup>46</sup> **IS THIS REASONABLE?**

20 **A.** No, capping the processing costs for the ARM at the level costs incurred for “the ALT-  
21 REG” filings prior to 2025 is not reasonable. The costs incurred to process an ARM filing  
22 in one year would be subject to review and would be included in the subsequent year’s  
23 ARM request. These costs would be reviewed at that time and parties may raise issue

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<sup>44</sup> Kaml 6:19-21

<sup>45</sup> Deason pp 6-13

<sup>46</sup> Kaml at 6:6-9.

1 with the reasonableness of those costs at that time. Just as the Commission has regulatory  
2 oversight to review the reasonableness and prudence of processing costs in the  
3 Company's PCOP and ICR Riders, it will have regulatory oversight over the processing  
4 costs in the Company's Commission-approved ARM as well.

5 This should be reserved for the Commission's oversight to review the reasonableness and  
6 prudence of the actual costs that are incurred.

#### 7 **XIV. PUBLIC-INTEREST DETERMINATION**

##### 8 **Q. IS THE ARM IN THE PUBLIC INTEREST?**

9 **A.** Yes. More specifically, I outlined why TAWC's proposed ARM is in the public interest  
10 in my Pre-filed Direct Testimony. Further, in formulating this ARM the Company  
11 carefully reviewed the alternative regulatory methods or mechanisms statute, as well as  
12 other cases in which the Commission has approved ARMs, and this proposal reflects an  
13 ARM that is consistent with the statute and previous decisions of the Commission.

14 The ARM advances streamlined regulation envisioned by § 65-5-103(d); ensures  
15 symmetry; preserves transparent, auditable annual filings; and offers simple to administer  
16 equal percentage implementation that matches recent TPUC practice. The ARM is in the  
17 public interest because it 1) provides transparency and accountability by standardizing  
18 annual review on a rate case consistent foundation as called for by Section 65-5-103(d)6  
19 and by filing native format work papers 2)treats customers fairly through symmetry and a  
20 prospective Commission approved equal percentage rate adjustment subject to  
21 commission review and approval, 3)improves administrative efficiency by consolidating  
22 multiple riders into a single annual forum, 4) deferral of frequent rates cases, and 5) fits  
23 the statutory framework created by the Legislature and embodied by Section 65-5-

- 1 103(d)6 as a prospective annual mechanism tied to the most recent general rate case.
- 2 I recommend that the Commission approve the ARM proposed by the Company.

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION  
NASHVILLE, TENNESSEE

PETITION OF TENNESSEE-AMERICAN )  
WATER COMPANY TO ADOPT ANNUAL )  
REVIEW MECHANISM AND ARM )  
TARIFF PURSUANT TO TENN. CODE )  
ANN. § 65-5-103(d)(6) )

DOCKET NO. 25-00089

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VERIFICATION

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STATE OF Tennessee )  
 )  
COUNTY OF Hamilton )

I, ROBERT C. LANE, 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.

ROBERT C. LANE

Sworn to and subscribed before me  
this 18<sup>th</sup> day of February, 2026.

\_\_\_\_\_  
Notary Public

My Commission Expires: 2-28-28



CERTIFICATE OF SERVICE

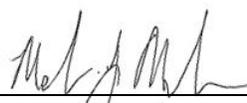
I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

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This the 19<sup>th</sup> day of February 2026.

  
\_\_\_\_\_  
Melvin Malone