

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 29, 2016

IN RE:

PETITION OF TENNESSEE-AMERICAN WATER  
COMPANY FOR THE RECONCILIATION OF THE  
2016 CAPITAL RIDERS

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DOCKET NO.  
16-00022

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ORDER GRANTING PETITION

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This matter came before Chairman David F. Jones, Director Herbert H. Hilliard, and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, during a regularly scheduled Authority Conference held on October 10, 2016, to hear and consider the *Petition in Support of the Calculation of the 2016 Capital Riders Reconciliation* (“*Petition*”) filed on March 1, 2016 by Tennessee-American Water Company (“TAWC” or the “Company”).

**BACKGROUND AND PETITION**

TAWC filed and gained approval to implement a Qualified Infrastructure Investment Program (“QIIP”) Rider, Economic Development Investment (“EDI”) Rider, Safety and Environmental Compliance Rider (“SEC”) (collectively “Investment Riders” or “Capital Riders”) and a Pass-Through Mechanism for Purchased Power, Chemicals, Purchased Water, and Wheeling Water in TRA Docket No. 13-00130.<sup>1</sup> The Company then submitted and was

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<sup>1</sup> See *In re: Petition of Tennessee-American Water Company for Approval of a Qualified Infrastructure Investment Program, an Economic Development Investment Rider, a Safety and Environmental Compliance Rider and Pass-Throughs for Purchased Power, Chemicals, Purchased Water, Wheeling Water, Costs, Waste Disposal and TRA Inspection Fee*, Docket No. 13-00130, Order Approving Amended Petition (January 27, 2016).

granted approval of its 2015 Capital Riders in TRA Docket No. 14-00121.<sup>2</sup> In accordance with its tariff, TAWC is required to submit a reconciliation of the Capital Riders no later than March 1<sup>st</sup> of every year.<sup>3</sup>

At a regularly scheduled Authority Conference held on March 14, 2016, the panel voted unanimously to convene a contested case proceeding and appoint the Authority's General Counsel or her designee to act as Hearing Officer to prepare this matter for hearing. On March 21, 2016, the Consumer Protection and Advocate Division of the Office of the Tennessee Attorney General ("CPAD" or "Consumer Advocate") filed a *Petition to Intervene*, which was granted by the Hearing Officer in an Order dated April 7, 2016. On June 17, 2016, the Hearing Officer issued an *Order Establishing a Procedural Schedule*, and the parties engaged in discovery pursuant to that schedule. In its *Petition*, TAWC seeks approval of the 2016 Reconciliation of the Capital Riders to reflect the net under-recovery of capital expenditures for the 2015 period.

### **POSITION OF THE PARTIES**

#### **TAWC**

Mr. Brent E. O'Neill, TAWC director of engineering, stated in his pre-filed testimony that capital investment is divided into two areas: normal recurring construction and investment projects ("IPs").<sup>4</sup> He stated that the cost of normal recurring construction is estimated based on historical and forecasted data.<sup>5</sup> Mr. O'Neill also stated that the cost of IPs is developed within a Comprehensive Planning Study which identifies major projects needed to ensure safe and

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<sup>2</sup> See *In re: Petition of Tennessee-American Water Company Regarding the 2015 Investment and Related Expenses under the Qualified Infrastructure Investment Program Rider, the Economic Development Investment Rider, and the Safety and Environmental Compliance Rider*, Docket No. 14-00121, *Order Granting, In Part, and Denying, In Part, Petition* (February 1, 2016).

<sup>3</sup> TRA Docket No. 14-00121, *Revised Tariff Page*, First Revised No. 12-EDI-9 and 12-QIIP-9 (August 28, 2015).

<sup>4</sup> Brent O'Neill, P.E., Pre-Filed Direct Testimony, p. 3 (March 1, 2016).

<sup>5</sup> *Id.*

reliable service while operating within the regulatory parameters for the production and distribution of drinking water.<sup>6</sup> According to Mr. O'Neill, two oversight committees review the capital expenditures plans and variances in budget versus actual expenditures.<sup>7</sup> Any variance from the budget requires approval from these committees so they can make adjustments to maintain overall capital spending.<sup>8</sup>

TAWC asserts that net capital expenditures were \$20,663,409 compared to an approved budget of \$19,277,628, which represents an overspend of \$1,335,780 or approximately 7.0%.<sup>9</sup> QIIP represents \$881,606 of the overspend (19.6% over budget), while EDI represents \$227,430 (159% over budget), and SEC represents \$338,358 (2.8% over budget).<sup>10</sup> The Company stated that the actual amounts exceeded the budget due to relocation of mains, new water extension projects and the CITICO Wastewater Treatment and Handling improvements.<sup>11</sup>

Ms. Linda Bridwell, manager of rates and regulation for Tennessee and Kentucky at TAWC, explained in her pre-filed testimony that the QIIP allows the Company to timely replace critical infrastructure necessary to provide clean and reliable water service.<sup>12</sup> She explained that the EDI allows the Company to partner with area communities to promote economic development, and the SEC allows for the recovery of investments made to comply with safety and environmental regulations.<sup>13</sup> In summary, Ms. Bridwell testified that these riders mutually benefit the public, the ratepayers, and the Company, and they reduce the need for a general rate case and reduce rate shock from recovering necessary investments.<sup>14</sup>

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<sup>6</sup> *Id.* at 3-4.

<sup>7</sup> *Id.* at 4-6.

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

<sup>9</sup> *Id.* at 8.

<sup>10</sup> *Id.* at 8-11.

<sup>11</sup> *Id.*

<sup>12</sup> Linda C. Bridwell, Pre-Filed Direct Testimony, p. 5 (March 1, 2016).

<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Id.* at 6-7.

According to Ms. Bridwell, the Capital Riders include only those qualified plant additions installed after the last rate case and are calculated based upon a 13-month average of end-of-month balances.<sup>15</sup> Ms. Bridwell further testified that any depreciation and property tax associated with retirements is taken into consideration when calculating the QIIP and the EDI and SEC riders include any appropriate operating expenses.<sup>16</sup> Ms. Bridwell stated that the review period for the reconciliation is January 1, 2015 through December 31, 2015, and includes 1) a comparison of actual 2015 capital expenditures to the amount forecasted; 2) a comparison of revenues actually collected to those authorized in 2015; and 3) the interest on any difference.<sup>17</sup>

Ms. Bridwell further stated that the Company made ten methodological changes since the last filing in TRA Docket No. 15-00029.<sup>18</sup> Ms. Bridwell laid out these changes in her testimony and stated that they are consistent with Tenn. Code Ann. § 65-5-103.<sup>19</sup>

Ms. Bridwell testified that the depreciation methodology adopted in TRA Docket No. 15-00029 was utilized in this proceeding.<sup>20</sup> She asserted that Mr. Novak, witness for the Consumer Advocate, may not have taken into consideration the final version of the calculation filed with the Authority in that docket when forming his opinion.<sup>21</sup> Ms. Bridwell affirmed that the QIIP, EDI and SEC riders and proposed reconciliation remain in the public interest.<sup>22</sup> She stated that these riders continue to reduce general rate cases, lessen consumer rate shock and support the maintenance and improvement of utility infrastructure.<sup>23</sup> Because of the riders, TAWC argues that it has been able to increase utility plant replacement and meet environmental compliance

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<sup>15</sup> *TAWC's Response to First Discovery Request of the TRA*, p. 4 (June 21, 2016).

<sup>16</sup> Linda C. Bridwell, Pre-Filed Direct Testimony, p. 7 (March 1, 2016).

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

<sup>18</sup> *Id.* at 12.

<sup>19</sup> *Id.* at 12-14.

<sup>20</sup> Linda C. Bridwell, Pre-Filed Rebuttal Testimony, p. 3 (July 26, 2016).

<sup>21</sup> *Id.* at 4.

<sup>22</sup> *Id.* at 9-11.

<sup>23</sup> *Id.* at 9.

needs, which it believes to be in the public interest.<sup>24</sup>

In her supplemental rebuttal testimony, Ms. Bridwell agreed with the errors identified by the Consumer Advocate in Items 5, 6 and 7 of its data request.<sup>25</sup> As a result of the recalculation based on correcting these errors, the Company revised the QIIP surcharge to 1.166%, the EDI surcharge to -0.178% and the SEC surcharge to -0.118%; for a total surcharge of .870%.<sup>26</sup>

Further, the Company explained that it responded to the fourth data request in a manner to minimize any unnecessary review by the Consumer Advocate. A summary page was provided explaining each of the three corrections, and the corrections were set forth in one workpaper attached to Item 7 of the Response.<sup>27</sup> Although there were 470 pages, the majority were unchanged from the original submission.<sup>28</sup> Further, the 124 pages in response to Item 9 of the Consumer Advocate's request were identical to that provided by TAWC on a monthly basis to the Authority and Consumer Advocate as part of the Company's monthly filing.<sup>29</sup>

Ms. Bridwell explained that the initial filing of the Capital Riders in TRA Docket No. 13-00130 used a 12-month average for the 2014 period.<sup>30</sup> She pointed out that the reconciliation filing of that forecast in TRA Docket No. 15-00029 was also based on a 12-month average for 2014.<sup>31</sup> To be consistent with the methodology typically used in rate cases, she stated that TAWC used a 13-month rolling average in its second Capital Rider filing in TRA Docket No. 14-00121 for the 2015 period.<sup>32</sup> The third capital rider surcharges for the 2016 period were filed in TRA Docket No. 15-00111. Ms. Bridwell stated that this filing also used a rolling 13-month

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<sup>24</sup> *Id.* at 10-11.

<sup>25</sup> Linda C. Bridwell, Pre-Filed Supplemental Rebuttal Testimony, pp. 3-4 (September 20, 2016).

<sup>26</sup> *Id.* at 4-5.

<sup>27</sup> *Id.* at 2.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 3.

<sup>30</sup> *Id.* at 5-6.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 7-8.

average in forecasting plant in service balances.<sup>33</sup> Finally, she stated that this docket, TRA Docket No. 16-00022, is a reconciliation of the 2015 review period and uses an average 13-month rolling plant balance consistent with the 13-month average used in the forecast for this period, TRA Docket No. 14-00121.<sup>34</sup> Ms. Bridwell also testified that the Consumer Advocate was a party to, and participated in, each of the above-listed dockets.<sup>35</sup>

Ms. Bridwell explained that the use of a 12-month average for the 2014 review period has essentially no impact on this filing.<sup>36</sup> She attested that the only way that it would impact the filing would be to go back and change the rates that were charged in 2014; and the Consumer Advocate has offered no proof to necessitate doing this two and a half years later.<sup>37</sup>

#### **Consumer Advocate**

The Consumer Advocate's expert witness, William H. Novak, asserted that the Company's calculations include 2014 depreciation amounts that do not agree with previous reporting calculations.<sup>38</sup> For this reason, he testified, the 2014 depreciation amount is in error along with any subsequent depreciation calculations.<sup>39</sup> Further, Mr. Novak testified, since accumulated deferred tax calculations are dependent upon the 2014 depreciation expense calculations, it will also be incorrect.<sup>40</sup>

In his supplemental direct testimony, Mr. Novak stated that the Company identified errors in its tax depreciation calculation resulting in the revised surcharge percentages laid out by the Company above.<sup>41</sup> Mr. Novak further stated that the revised surcharges are documented in the 470 page response from the Company which he was unable to review and offer an opinion on

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 5-9.

<sup>36</sup> *Id.* at 9.

<sup>37</sup> *Id.*

<sup>38</sup> William H. Novak, Pre-Filed Direct Testimony, p. 5 (July 19, 2016).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> William H. Novak, Pre-Filed Supplemental Direct Testimony, p. 4 (September 15, 2016).

before the Hearing.<sup>42</sup> For this reason, the Consumer Advocate recommended the *Petition* be suspended until such time as a thorough review can take place.<sup>43</sup>

The Consumer Advocate further elaborated that TAWC used a 12-month average when calculating plant in service in its 2014 effective year filing and then changed to a 13-month average in its 2015 effective year filing without notice of the change in its associated testimony.<sup>44</sup> For this reason, the Consumer Advocate recommended this *Petition* be denied and the Capital Riders be suspended until this matter can be resolved.<sup>45</sup>

### **THE HEARING**

The Hearing on the *Petition* was held before the voting panel assigned to this docket on October 10, 2016, as noticed by the Authority on September 30, 2016. Participating in the Hearing were:

Tennessee-American Water Company – Melvin J. Malone, Esq., Butler Snow LLP, 150 3<sup>rd</sup> Avenue South, Suite 1600, Nashville, Tennessee 37201.

Consumer Protection and Advocate Division – Vance L. Broemel, Esq., Post Office Box 20207, Nashville, Tennessee 37202-4015.

During the Hearing, Mr. O'Neill, Ms. Bridwell, and Mr. Novak ratified, then summarized their pre-filed testimony and were subject to cross-examination and questioning before the panel. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

### **STANDARD FOR AUTHORITY APPROVAL**

Tenn. Code Ann. § 65-5-103(d)(5) states:

(A) A public utility may request and the authority may authorize a mechanism to recover the operational expenses, capital costs or both related to other programs that are in the public interest.

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<sup>42</sup> *Id.* at 5.

<sup>43</sup> *Id.* at 7.

<sup>44</sup> *Id.* at 5.

<sup>45</sup> *Id.* at 4-5.

(B) A utility may request and the authority may authorize a mechanism to allow for and permit a more timely adjustment of rates resulting from changes in essential, nondiscretionary expenses, such as fuel and power and chemical expenses.

(C) Upon a finding that such programs are in the public interest, the authority shall grant recovery and shall authorize a separate recovery mechanism or adjust rates to recover operational expenses, capital costs or both associated with the investment in other programs, including the rate of return approved by the authority at the public utility's most recent general rate case pursuant to § 65-5-101 and subsection (a).

### **FINDINGS AND CONCLUSIONS**

After the hearing and upon consideration of the pleadings, pre-filed testimony, and the entire administrative record, the panel found:

The *Petition* complies with the original methodology approved in Docket No. 13-00130 as modified in Docket No. 14-00121, as well as with Tenn. Code Ann. § 65-5-103(d)(5). Throughout the course of discovery in this proceeding, data requests and testimony have identified certain errors in the surcharges as originally proposed in the *Petition*, and the Company has made adjustments for these errors. Based on the evidentiary record, the panel voted unanimously to adopt the following corrected surcharges:

1. A QIIP Rider surcharge of 1.166%;
2. An EDI Rider surcharge of -.178%; and
3. A SEC Rider surcharge of -.118%.

These amounts represent a total surcharge of .870%.

Furthermore, the Authority approved a change to a 13-month average of plant in service balances, as is typical, in TRA Docket No. 14-00121. The Consumer Advocate's objection to the formula change approved in that docket cannot be timely or appropriately considered in this docket. The instant filing complies with previous filings of the Company and the previous rulings of the Authority.



**IT IS THEREFORE ORDERED THAT:**

1. The *Petition in Support of the Calculation of the 2016 Capital Riders Reconciliation* filed on March 1, 2016, by Tennessee-American Water Company requesting Authority approval of its Calculation of the 2016 Capital Riders Reconciliation is granted subject to the corrections cited above.

2. The corrected Capital Rider surcharges are adopted as follows:

- A Qualified Infrastructure Investment Rider surcharge of 1.166%;
- An Economic Development Investment Rider surcharge of -.178%; and
- A Safety and Environmental Compliance Rider surcharge of -.118%.

These amounts represent a total surcharge of .870%.

3. Any person who is aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

4. Any person who is aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

**Chairman David F. Jones, Director Herbert H. Hilliard, and Director Kenneth C. Hill concur.**

**ATTEST:**



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**Earl R. Taylor, Executive Director**