

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

<b>IN RE:</b>	)	
	)	
<b>PETITION OF TENNESSEE AMERICAN</b>	)	
<b>WATER COMPANY REGARDING</b>	)	
<b>CHANGES TO THE QUALIFIED</b>	)	
<b>INFRASTRUCTURE INVESTMENT</b>	)	<b>Docket No. 18-00022</b>
<b>PROGRAM RIDER, THE ECONOMIC</b>	)	
<b>DEVELOPMENT INVESTMENT RIDER,</b>	)	
<b>AND THE SAFETY AND</b>	)	
<b>ENVIRONMENTAL COMPLIANCE RIDER</b>	)	
<b>AND IN SUPPORT OF THE CALCULATION</b>	)	
<b>OF THE 2018 CAPITAL RECOVERY</b>	)	
<b>RIDERS RECONCILIATION</b>	)	

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**MOTION TO DETERMINE THAT CALCULATION SUBMITTED BY TENNESSEE-  
AMERICAN IS NOT IN COMPLIANCE WITH COMMISSION ORDER**

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The Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (Consumer Advocate) respectfully petitions the Tennessee Public Utility Commission (TPUC or Commission) to compel Tennessee-American Water Company (TAWC or Company) to file revised calculations consistent with the Commission's oral decision in this Docket. For cause, the Consumer Advocate would show as follows:

1. On July 6, 2018, the Consumer Advocate filed the direct testimony of David Dittemore, which highlighted the Consumer Advocate's concerns with the Company's calculation of its Capital Riders Reconciliation. Mr. Dittemore testified that the Company failed to reflect bonus depreciation and the repairs deduction in its Capital Riders calculations, which was inconsistent with what it reported to the Internal Revenue Service for tax purposes.
2. TPUC convened a hearing on the merits to consider contested issues in this Docket on Friday, September 21, 2018. The Company argued that these figures should not

be factored into the Capital Riders due to its interpretation of the “streamlined approach” contemplated in Tenn. Code Ann. §§ 65-5-103(d), *et seq.*<sup>1</sup> In the alternative, TAWC argued that a normalization violation would occur if these figures were considered absent the further inclusion of Net Operating Loss (NOL).<sup>2</sup>

3. On December 17, 2018, the Commission issued a ruling orally that announced the outcome of this Docket. Specifically, Chairman Morrison stated<sup>3</sup>:

Based upon the evidentiary record in this proceeding, *I find that Tennessee American should file revised calculations to include bonus depreciation and the repairs deduction*, while also recognizing the net operating loss carryforward of \$4,938,170. (Emphasis added).

4. On January 30, 2019, the Company submitted its *Revised Calculations for the 2018 Capital Recovery Rider Reconciliation* purportedly in compliance with TPUC’s oral decision.

5. Upon reviewing this information, the Consumer Advocate determined the Company’s revised figures considerably increased rates compared to the figures that were debated during the Hearing. Moreover, the figures submitted by the Company were significantly lower than those provided by Tennessee-American during discovery in this Docket. It appears that the Company has only included bonus depreciation and the repairs deduction for the 2017 calendar year, rather than also including the sums from 2014, 2015, and 2016.

6. The Commission’s language in **Exhibit A** does not limit recognition of bonus depreciation and the repairs deduction to 2017. Further, there was no suggestion within the evidence provided in the case that such deductions should be limited to 2017.

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<sup>1</sup> See Rebuttal Testimony of Linda Bridwell, page 3, lines 1-10 (August 3, 2018).

<sup>2</sup> See *e.g.* Rebuttal Testimony of John R. Wilde (August 3, 2018).

<sup>3</sup> See **Exhibit A** (containing the relevant portion of the Commission’s decision from page 28 of the transcript).

The litigated issue was whether these deductions should be considered within the 2014 – 2017 Capital Riders period. The Company never took the position or provided any evidence that such a limitation was necessary or appropriate. In fact, the Company's position now is incorrect both in light of the litigated proceeding and the Commission's Order as well as from an accounting perspective.

7. While the Consumer Advocate argued against incorporating an NOL for purposes of calculating the rider<sup>4</sup>, the Commission's Order did allow the Company to recognize an NOL of \$4,938,170. Evidence presented within the case clearly indicates the NOL is a cumulative amount built up over time and is not limited to 2017 results. Thus, the Company's position that the bonus depreciation and repairs deduction for the 2014 – 2016 time period should be ignored is wholly inconsistent with the time period underlying the Commissions' adopted NOL. The Company attempts to recognize the entirety of an NOL figure to its benefit while ignoring bonus depreciation and the repairs deduction during the same period to the detriment of ratepayers – this approach should be rejected.

8. **Exhibit B** reflects the Company's identification of its book/tax timing differences underlying its proposed ADIT balance, which in turn is a key component of its proposed Capital Riders rates.<sup>5</sup> This document contains the Company's January 30, 2019 filing. The Company has inserted zero deductions for bonus depreciation and the repairs deduction in the years 2014 – 2016.

9. This approach is contradicted by **Exhibit C**, which contains the Company's response to Consumer Advocate Discovery Item No. 1-3.<sup>6</sup> Here, the Company provided

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<sup>4</sup> The Consumer Advocate continues to believe that the inclusion of NOL in the Capital Riders results in double recovery as the Company has an NOL built into its base rates from its last general rate case.

<sup>5</sup> For ease of reference, the key line items of the worksheet, lines 11 and 12 in both sections, are emboldened.

<sup>6</sup> TAWC Discovery Response No. 1-3 (April 27, 2018). Again, the key line items of the worksheet, lines 11 and 12 in both sections, are emboldened.

figures for bonus depreciation and the repairs deduction for 2014, 2015, and 2016. Just as the Company implements the cumulative NOL – which includes 2014 through 2016 – in its calculation, it should reflect the cumulative bonus depreciation and repairs deduction as well. Ignoring these figures is neither appropriate from an accounting perspective nor a reasonable interpretation of the Commission's Order.

10. Notwithstanding the fact that the data provided by the Company in support of new rates is significantly different than data provided during discovery, TAWC has made this substantial, material change without any explanation. The Consumer Advocate and Commission Staff are left in the dark as to the Company's rationale. Meanwhile, absent the Commission's direction to the Company to properly comply with its oral Order, ratepayers would be paying, and the Company would be collecting, unjustifiably higher rates.

WHEREFORE, the Consumer Advocate requests TPUC grant this *Motion*.

RESPECTFULLY SUBMITTED,



**DANIEL P. WHITAKER III** (BPR No. 035410)

Assistant Attorney General

Office of the Tennessee Attorney General

Financial Division, Consumer Advocate Unit

P.O. Box 20207

Nashville, Tennessee 37202-0207

Telephone: (615) 741-1671

Facsimile: (615) 532-2910

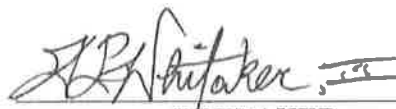
Email: Daniel.Whitaker@ag.tn.gov

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:

Melvin J. Malone  
Butler, Snow, O'Mara, Stevens & Cannada, PLLC  
The Pinnacle at Symphony Place  
150 3rd Avenue South, Suite 1600  
Nashville, TN 37201  
[melvin.malone@butlersnow.com](mailto:melvin.malone@butlersnow.com)

This the 1<sup>st</sup> day of March, 2019.

A handwritten signature in black ink, appearing to read "D. P. Whitaker III", is written over a horizontal line.

DANIEL P. WHITAKER III  
Assistant Attorney General

## EXHIBIT A

1 questions?

2 (No response.)

3 CHAIR MORRISON: I'm ready to  
4 deliberate. I have a motion. I move approval of the  
5 settlement agreement submitted by the Gas Pipeline  
6 Safety Division and Chattanooga Gas Company.

7 COMMISSIONER JONES: Second. Vote aye.

8 COMMISSIONER HILLIARD: Vote aye.

9 MS. DILLON: Next we have Section 11,  
10 Commissioners Hill, Morrison and Jones.  
11 Docket No. 18-00022. Tennessee American Water Company.  
12 Petition of Tennessee American Water Company in support  
13 of the calculation of the 2018 Capital Recovery Riders  
14 reconciliations. Deliberations.

15 CHAIR MORRISON: Based upon the  
16 evidentiary record in this proceeding, I find that  
17 Tennessee American should file revised calculations to  
18 include bonus depreciation and the repairs deduction,  
19 while also recognizing the net operating loss  
20 carryforward of \$4,938,170.

21 Further, consistent with the  
22 methodologies approved in Docket No. 13-00130, I find  
23 that the company has properly accounted for incentive  
24 pay compensation within its earnings test.

25 Prospectively, however, I find that

EXHIBIT B



Book/Tax Timing Differences Underlying TAWC Rates Filed 2/1/19

Line 8a CALCULATION OF TAX DEDUCTIBLE REPAIRS

	2014	2014	2014	2014	2014	2015	2015	2015	2015
	5 Year	25 Year	35 Year	35 Year	35 Year	5 Year	25 Year	35 Year	35 Year
1 UPS ADDITIONS	213,359	6,465,466	138,428	138,428	138,428	283,173	14,547,273	5,535,698	5,535,698
2 CMC BALANCE	-	-	-	-	-	-	-	-	-
3 GRAND TOTAL BALANCE	213,359	6,465,466	138,428	138,428	138,428	283,173	14,547,273	5,535,698	5,535,698
4 REPAIRS	213,359	6,465,466	138,428	138,428	138,428	283,173	14,547,273	5,535,698	5,535,698
5 UPS TAX BASIS BALANCE	213,359	6,465,466	138,428	138,428	138,428	283,173	14,547,273	5,535,698	5,535,698
6 UPS TAX BASIS BALANCE AFTER BONUS DEPR	106,689	2,431,467	138,428	138,428	138,428	138,428	5,984,434	7,865,598	7,865,598
7 Tax Rate Year 1	20.00%	2.00%	1.39%	1.39%	1.39%	20.00%	2.00%	1.39%	1.39%
8 Tax Rate Year 2	33.00%	4.00%	3.69%	3.69%	3.69%	33.00%	4.00%	3.69%	3.69%
9 Tax Rate Year 3	19.20%	4.00%	2.56%	2.56%	2.56%	19.20%	4.00%	2.56%	2.56%
10 Tax Rate Year 4	11.52%	4.00%	2.56%	2.56%	2.56%	11.52%	4.00%	2.56%	2.56%

Book/Tax Adjustment-Repairs Calculation

11 Repairs									
12 Bonus Depreciation (rate x additions)									
13 Regular Y1 tax depreciation	(21,940)	(49,829)	(1,779)	(1,779)	(1,779)	(76,190)	(119,709)	(100,811)	(100,811)
14 Regular Y2 tax depreciation						(35,100)	(99,659)	(3,549)	(3,549)
15 Regular Y3 tax depreciation									
16 Regular Y4 tax depreciation									
17 Book Depreciation		35,779				784,685			
18 Net book/tax difference	(21,940)	(10,050)	(1,779)	(1,779)	(1,779)	(61,362)	74,695	(10,360)	(90,867)

	2016	2016	2016	2016	2016	2016	2016	2016	2016
	5 Year	25 Year	35 Year	35 Year	35 Year	5 Year	25 Year	35 Year	35 Year
1 UPS ADDITIONS	180,161	5,106,305	3,277,097	3,277,097	3,277,097	128,405	377,571	1,718,549	1,718,549
2 CMC BALANCE	-	-	-	-	-	-	-	-	-
3 GRAND TOTAL BALANCE	180,161	5,106,305	3,277,097	3,277,097	3,277,097	128,405	377,571	1,718,549	1,718,549
4 REPAIRS	180,161	5,106,305	3,277,097	3,277,097	3,277,097	128,405	377,571	1,718,549	1,718,549
5 UPS TAX BASIS BALANCE	180,161	5,106,305	3,277,097	3,277,097	3,277,097	128,405	377,571	1,718,549	1,718,549
6 UPS TAX BASIS BALANCE AFTER BONUS DEPR	90,080	1,653,549	5,310,105	5,310,105	5,310,105	100,405	146,285	1,499,064	1,499,064
7 Tax Rate Year 1	20.00%	2.00%	1.39%	1.39%	1.39%	20.00%	2.00%	1.39%	1.39%
8 Tax Rate Year 2	33.00%	4.00%	3.69%	3.69%	3.69%	33.00%	4.00%	3.69%	3.69%
9 Tax Rate Year 3	19.20%	4.00%	2.56%	2.56%	2.56%	19.20%	4.00%	2.56%	2.56%
10 Tax Rate Year 4	11.52%	4.00%	2.56%	2.56%	2.56%	11.52%	4.00%	2.56%	2.56%

Book/Tax Adjustment-Repairs Calculation

11 Repairs									
12 Bonus Depreciation (rate x additions)									
13 Regular Y1 tax depreciation	(18,016)	(32,711)	(68,076)	(68,076)	(68,076)	(33,465)	(87,257)	(69,901)	(69,901)
14 Regular Y2 tax depreciation	(4,504)	(25,417)	(201,023)	(201,023)	(201,023)	(14,434)	(58,422)	(136,151)	(136,151)
15 Regular Y3 tax depreciation	(21,062)	(89,659)	(5,269)	(5,269)	(5,269)	(23,159)	(129,417)	(207,673)	(207,673)
16 Regular Y4 tax depreciation						(13,637)	(89,659)	(1,549)	(1,549)
17 Book Depreciation		849,205				1,298,475			
18 Net book/tax difference	(40,594)	(477,418)	(273,344)	(273,344)	(273,344)	(33,465)	(1,718,313)	(1,718,313)	(1,718,313)

EXHIBIT C

**TENNESSEE AMERICAN WATER COMPANY  
DOCKET NO. 18-0022  
FIRST DISCOVERY REQUEST OF THE  
CONSUMER ADVOCATE AND PROTECTION DIVISION**

**Responsible Witness:**        **Linda C. Bridwell**

**Question:**

3.     Provide the underlying calculation of TAWC book and tax depreciation for each rider that reconcile to the amounts of book and tax depreciation contained within the composite tax filing that American Water Company (or any applicable affiliate) submitted, which contains TAWC data.

**Response:**

Similar to the response to question 1 of the CPAD's first discovery request in this docket, the data is pulled from the Rider and the tax calculations simulate the calculations in the tax returns since the tax return includes all TAWC property and not just the Rider property. See TAW\_R\_CPADDR1\_NUM003\_\_042718\_Attachment for a simulated calculation of our tax returns using the Rider assets. Note that the 2017 return is not filed yet, but the calculation is the same as what will be filed.

	Prior to December		After to December							
	2017	2017	2017	2017	2017	2017	2017	2017	2017	2017
	3 Year	5 Year	25 Year	38 Year	Total	3 Year	5 Year	25 Year	38 Year	Total
1	UPS ADDITIONS	100,405	373,571	11,743,085	(4,368,258)	-	294,535	5,534,138	1,127,247	-
2	CAC BALANCE	-	-	(1,718,549)	-	-	-	(90,857)	-	-
3	GRAND TOTAL BALANCE	100,405	373,571	10,024,536	(4,368,258)	-	294,535	5,443,281	1,127,247	-
4	REPAIRS	-	-	1,585,882	(661,029)	-	-	861,317	179,331	-
5	UPS TAX BASIS BALANCE	100,405	373,571	8,438,654	(3,677,202)	-	294,535	4,582,154	948,917	-
6	UPS TAX BASIS BALANCE AFTER BONUS DEPR	100,405	386,285	4,239,317	(3,677,202)	-	294,535	4,582,154	948,917	-
7	Tax Rate Year 1	33.33%	10.00%	2.00%	1.39%	33.33%	20.00%	3.00%	1.39%	-
8	Tax Rate Year 2	33.33%	32.00%	4.00%	2.58%	33.33%	32.00%	4.00%	2.58%	-
9	Tax Rate Year 3	33.33%	33.20%	4.00%	2.58%	33.33%	33.20%	4.00%	2.58%	-
10	Tax Rate Year 4	33.33%	33.33%	4.00%	2.58%	33.33%	33.33%	4.00%	2.58%	-
11	Repairs	-	-	(1,585,882)	691,059	-	-	(861,127)	(178,231)	-
12	Bonus Depreciation (rate x additions)	(186,286)	(4,219,327)	-	-	-	(58,907)	-	(12,165)	-
13	Regular Yr 1 tax depreciation	(33,485)	(73,237)	(84,337)	47,142	-	-	(91,643)	-	-
14	Regular Yr 2 tax depreciation	-	(28,624)	(85,437)	(136,151)	-	-	-	-	-
15	Regular Yr 3 tax depreciation	-	(25,150)	(289,417)	(201,623)	-	-	-	-	-
16	Regular Yr 4 tax depreciation	-	(24,837)	(89,659)	(13,469)	-	-	-	-	-
17	Book Depreciation	-	-	3,299,499	-	-	-	-	-	-
18	Net book/tax difference	(33,485)	(290,156)	(5,587,259)	396,878	(5,014,363)	(58,907)	(951,770)	(190,496)	(1,702,173)
	Repairs related net b/c diff	-	-	-	-	(894,823)	-	-	-	(1,039,658)
	Depreciation related net b/c diff	-	-	-	-	(4,119,588)	-	-	-	(162,715)