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March 8, 2019

VIA ELECTRONIC FILING

Hon. David Jones, Chairman
c/o Tory Lawless
Tennessee Public Utilities Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243

RE: *Petition of Tennessee-American Water Company in Support of the Calculation of the 2018 Capital Recovery Riders Reconciliation, Docket No. 18-00022*

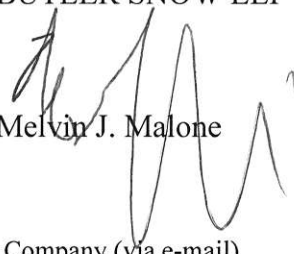
Dear Chairman Jones:

Attached for filing please find *Tennessee-American Water Company's Response in Opposition to Consumer Advocate's Motion to Determine that Calculation Submitted by TAWC is Not in Compliance with Commission Order* in the above-captioned matter.

As required, an original of this filing, along with four (4) hard copies, will follow. 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

Attachment

cc: Melissa Schwarzell, Tennessee-American Water Company (via e-mail)
Daniel Whitaker III, Assistant Attorney General, Financial Division, Consumer Advocate Unit (via email)

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

**PETITION OF TENNESSEE-
AMERICAN WATER COMPANY
REGARDING CHANGES TO THE
QUALIFIED INFRASTRUCTURE
INVESTMENT PROGRAM RIDER,
THE ECONOMIC DEVELOPMENT
INVESTMENT RIDER, AND THE
SAFETY AND ENVIRONMENTAL
COMPLIANCE RIDER AND IN
SUPPORT OF THE CALCULATION
OF THE 2018 CAPITAL RECOVERY
RIDERS RECONCILIATION**

DOCKET NO. 18-00022

**TENNESSEE-AMERICAN WATER COMPANY’S RESPONSE IN OPPOSITION TO
CONSUMER ADVOCATE’S MOTION TO DETERMINE THAT CALCULATION
SUBMITTED BY TAWC IS NOT IN COMPLIANCE WITH COMMISSION ORDER**

On March 1, 2019, the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) submitted a *Motion to Determine that Calculation Submitted by Tennessee-American Is Not in Compliance with Commission Order* (the “*Motion*”) in the above-captioned matter. Tennessee-American Water Company (“Tennessee American,” “TAWC” or the “Company”) hereby respectfully submits this *Response in Opposition to the Motion* to the Tennessee Public Utility Commission (“TPUC” or the “Commission”).

I.

BACKGROUND

Subsequent to a September 21, 2018, hearing on the merits of this case, the Commission announced its decision during a regularly scheduled Conference Agenda on December 17, 2018. As directed by the Commission, Tennessee-American submitted its revised calculations in

compliance with the Commission's December 17th deliberations on January 30, 2019. On March 1, 2019, the Consumer Advocate filed its *Motion*. In its *Motion*, the Consumer Advocate asserts, in sum, that Tennessee-American's January 30th revised calculations are not in compliance with the Commission's December 17th deliberations. On March 1, 2019, the agency issued an acknowledgement of receipt of TAWC's January 30th revised calculations and declared such revised calculations in compliance with the Commission's December 17th deliberations (copy attached). On March 6, 2019, the agency issued its *Order Granting Petition As Amended* (the "*Order*") in this case.

II.

DISCUSSION AND ARGUMENTS

Tennessee-American opposes the Consumer Advocate's motion on several grounds. More specifically, TAWC opposes the *Motion* on the following three (3) grounds: (1) TAWC's January 30th revised calculations are compliant with the Commission's December 17th deliberations; (2) the assertions underlying the *Motion* are inaccurate; and (3) the *Motion* is inconsistent with and contrary to the Commission's December 17th Deliberations.

a. TAWC's January 30th Revised Calculations are Compliant with the Commission's Deliberations

In its December 17, 2018, deliberations in this matter, the Commission found and directed as follows:

"Based upon the evidentiary record in this proceeding, [] 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."¹

¹ *Transcript of Commission Conference*, TPUC Docket No. 18-00022, p. 28 (Dec. 17, 2018).

Tennessee-American reasonably concluded from the Commission's deliberations that the Commission found that an NOL had occurred. Moreover, Tennessee-American reasonably determined from the Commission's deliberations that the Commission directed TAWC to include bonus depreciation and the repairs deduction, while recognizing the NOL carryforward of \$4,938,170.²

As the Commission specifically referenced the NOL carryforward of \$4,938,170 in its deliberations, Tennessee-American in good faith sought to determine how to comply with this directive by tracking the \$4,938,170 amount in the evidentiary record. The \$4,938,170 figure is found in the Rebuttal Testimony of TAWC Witness John R. Wilde.³ Attachment I to Mr. Wilde's Rebuttal Testimony reveals that the \$4,938,170 figure is the NOL carryforward for 2017.

After pairing the NOL carryforward amount in the deliberations with the corresponding NOL carryforward year of 2017, the IRS's tax normalization rules required Tennessee-American to properly match **2017** bonus depreciation and the repairs deduction with the **2017** NOL carryforward amount of \$4,938,170 in complying with the Commission's deliberations. Doing otherwise would have constituted a violation of the tax normalization rules. Adopting the Consumer Advocate's position here would result in a violation of the tax normalization rules by Tennessee-American and mandate, pursuant to said rules, that TAWC immediately notify the IRS that the Company has been ordered by the Tennessee Public Utility Commission to take action that the Company has reasonably concluded would result in a violation of the tax

² Indeed, the Commission's *Order* reflects that Tennessee-American correctly interpreted, and appropriately responded to, the agency's December 17th deliberations. See *Order Granting Petition As Amended*, TPUC Docket No. 18-00022, p. 13 (Mar. 6, 2019) (hereinafter the "*Order*").

³ *Rebuttal Testimony of Tennessee-American Witness John R. Wilde*, TPUC Docket No. 18-00022, Attachment I (Aug. 3, 2018).

normalization rules.⁴ Needless to say, Tennessee-American did not interpret the Commission's deliberations in the same manner as the Consumer Advocate.

In its cover letter submitting its revised calculations in this case, Tennessee-American explained its submission as follows:

“In compliance with the Tennessee Public Utility Commission's deliberations on December 17, 2018, Tennessee-American is hereby filing revised calculations for the 2018 Capital Recovery Rider reconciliation. To use the 2017 estimated net operating loss carryforward of \$4,938,170 as directed by TPUC, while complying with IRS normalization rules, the revised calculations reflect accumulation of bonus depreciation and repairs deductions during 2017, which is the year being reconciled in the calculation.”⁵

Hence, at the time it submitted its January 30th revised calculations, Tennessee-American expressly and credibly noted that the Company interpreted the agency's December 17th deliberations to recognize the applicability of the IRS's tax normalization rules. To do otherwise would be inconsistent with the deliberations and the record in the case.⁶ As recognized by the Commission in the attached March 1, 2019 acknowledgement letter, the revised calculations are very much compliant with the Commission's December 17, 2018 deliberations.

⁴ 26 C.F.R. § 1.167(l)-1, Treas. Reg. § 1.167(l)(1) (“**Change in method of regulated accounting.** The taxpayer shall notify the district director of a change in its method of regulated accounting, an order by a regulatory body or court that such method be changed, or an interim or final determination by a regulatory body which determination is inconsistent with the method of regulated accounting used by the taxpayer immediately prior to the effective date of such rate determination. Such notification shall be made within 90 days of the date that the change in method, the order, or the determination is effective.”) (2018).

⁵ *Tennessee-American Water Company Revised Tariff Calculations for the 2018 Capital Recovery Rider Reconciliation*, TPUC Docket No. 18-0022 (Jan. 30, 2019).

⁶ See, e.g., *Comments of Tennessee-American Water Company on Two Private Letter Rulings in Support of the Calculation of the 2018 Capital Recovery Riders Reconciliation*, TPUC Docket No. 18-00022 (Oct. 1, 2018). See also *Order* at 10 (Citing Mr. Wilde's testimony that “should the Company be found in violation of the tax normalization rules it would be prohibited from using accelerated depreciation in the future.”).

b. Various Assertions Underlying the Motion are Inaccurate

Though apparently well-intended, the *Motion* unfortunately contains several inaccuracies.⁷ For instance, the Consumer Advocate asserts that “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.”⁸ This assertion is misleading, as Tennessee-American contended at the hearing in Docket No. 18-00022 that the IRS’s tax normalization rules must be appropriately considered and properly applied.⁹ Also, the Consumer Advocate cites TAWC’s discovery responses in support of its positions¹⁰ without acknowledging that the Company, in submitting discovery, was merely providing information requested by the CPAD, as opposed to asserting the Company’s own positions.¹¹ Finally, and by further way of example, the Consumer Advocate claims that “TAWC has made this... change without any explanation. The Consumer Advocate and Commission Staff are left in the dark as to the Company’s rationale.”¹² This too is inaccurate. As highlighted in subsection (a) above, the Company explained its methodology in complying with the Commission’s December 17th deliberations in its January 30, 2019, cover letter.¹³

⁷ For ease of administrative burden upon the Commission, and given the limited amount of time to timely respond to the *Motion*, TAWC does not here attempt to reconcile every assertion made by the Consumer Advocate to the evidentiary record in Docket No. 18-00022. Nonetheless, the Company does not concede any area in which the Consumer Advocate’s claims are inconsistent with or unsupported by the evidentiary record. Likewise, the Company does not here make an attempt to re-assert its positions in Docket No. 18-0002, as such positions are set forth in the evidentiary record in Docket No. 18-00022. Rather, TAWC relies upon its previous positions set forth in the evidentiary record.

⁸ *Id* at 3.

⁹ *See, e.g. supra* note 6.

¹⁰ *Motion* at 3-4.

¹¹ The Consumer Advocate also notes “that the data provided by the Company in support of new rates is significantly different than data provided during discovery” in Docket No. 18-00022. *Motion* at 4. The information provided in support of new rates has updated values for 2017 bonus and repair deductions relative to the information that was available during discovery.

¹² *Id.* at 4.

¹³ Moreover, the Company clearly noted in Docket No. 18-00120 its compliance with the Commission’s deliberations in Docket No. 18-00022. *See Tennessee-American Water Company’s Supplemental Testimony of Elaine K. Chambers*, TPUC Docket No. 18-00120, pp. 4-6 (Feb. 19, 2019).

c. The Motion is Contrary to the Commission's Deliberations

As noted at the outset, the Commission issued the *Order* on March 6, 2019. Among other things, the *Order* provides as follows:

“First, based upon the evidentiary record in this proceeding the hearing panel concluded 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. . . . Furthermore, as the Net Operating Loss carryforward presented by the Company is based, in part, on an estimate of 2017 losses, the hearing panel concluded it must be trued-up to actual 2017 results.”¹⁴

From the foregoing language of the *Order*, which memorializes the December 17th deliberations, the Commission directed Tennessee-American to include bonus and depreciation and the repairs deduction while recognizing the Net Operating Loss carryforward amount of \$4,938,170 and to true-up the estimated 2017 losses to actual 2017 results. As outlined in subsection (a) above, Tennessee-American recognized the net operating loss carryforward in its January 30th revised calculations and Tennessee-American has trued-up the estimate of 2017 losses to the 2017 actual results in Docket Nos. 18-00120 and 19-00031.¹⁵ Hence, as evidenced by the Commission's afore-referenced March 1 acknowledgement letter, it is the *Motion*, not TAWC's revised calculations, that is inconsistent with and contrary to the Commission's December 17th deliberations.

¹⁴ *Order Granting Petition As Amended*, TPUC Docket No. 18-00022, p. 13 (Mar. 6, 2019).

¹⁵ See *Tennessee-American Water Company's Supplemental Testimony of Elaine K. Chambers*, TPUC Docket No. 18-00120, p. 4, LL 12-14 (Feb. 19, 2019) (“The \$4,938,170 NOLC amount for the calendar year 2017, directed for use in Docket No. 18-00022, which was an estimate, has now been updated to the actual value for 2017 of \$5,725,709.”) and *Pre-filed Direct Testimony of TAWC Witness Elaine K. Chambers*, Petition of Tennessee-American Water Company in Support of the Calculation of the 2019 Capital Recovery Riders Reconciliation, TPUC Docket No. 19-00031, pp. 11 - 12 (Mar. 1, 2019).

III.

CONCLUSION

Based upon the foregoing, including the Commission's March 1, 2019 acknowledgement letter, and consistent with the Commission's December 17, 2018, deliberations, Tennessee-American respectfully requests that the Commission summarily reject the Consumer Advocate's *Motion* in the entirety.¹⁶

This the 8th day of March, 2019.

RESPECTFULLY SUBMITTED,



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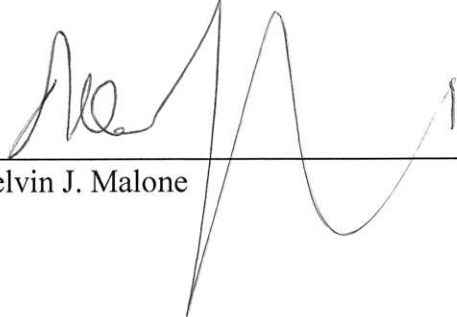
¹⁶ In responding to and opposing the *Motion*, TAWC does not waive its right, pursuant to state law and the agency's rules, to appeal or seek a reconsideration of the Commission's *Order*.

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:

Daniel Whitaker III, Esq.
Assistant Attorney General
Office of the Tennessee Attorney General
Financial Division, Consumer Advocate Unit
P.O. Box 20207
Nashville, TN 37202-0207
Daniel.Whitaker@ag.tn.gov

This the 8th day of March, 2019.



Melvin J. Malone

TENNESSEE PUBLIC UTILITY COMMISSION



502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243

March 1, 2019

Melvin J. Malone, Esq.
Butler Snow
150 3rd Avenue South, Suite 1600
Nashville, TN 37201

Re: Docket No. 18-00022 – *Petition of Tennessee-American Water Company for the Reconciliation of the 2018 Capital Riders*

Tariff Filing No. 2019-0005

Dear Mr. Malone:

This is to acknowledge receipt of Tennessee-American Water Company's tariff filing 2019-0005 enclosing tariff pages establishing the Annual Reconciliation Percentage for the Company's QIIP, EDI and SEC Riders. The filing was received on January 30, 2019, with a proposed effective date of December 18, 2018. It appears that the tariff filing is consistent with the Authority's decision in this matter at the Authority Conference held on December 17, 2018. Therefore, the tariff went into effect as requested. Please refer to the above referenced tariff number in any correspondence regarding this particular filing.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Shirley", is written over a printed name.

Joe Shirley
Director of Utility Audit and Compliance

MM 19-02