

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

**IN RE:**

**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

**CONSUMER ADVOCATE’S REPLY TO TENNESSEE-AMERICAN WATER  
COMPANY’S RESPONSE TO MOTION**

The Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (Consumer Advocate), pursuant to TPUC Rule 1220-1-2-.06, respectfully submits its *Reply to Tennessee-American Water Company's Response to Motion*. In its *Response*, Tennessee-American Water Company, Inc. (TAWC or the Company) makes numerous errors concerning the substance of the Consumer Advocate's *Motion* as well as the details of the Hearing itself. Moreover, TAWC fails to provide any justification for using single calendar year figures for bonus depreciation and the repairs deduction while utilizing the multi-year cumulative Net Operating Loss Carryforward (NOLC) balance.

For the reasons below, the Commission should reject TAWC's *Response* and instead issue an Order compelling the Company to file revised figures accurately reflecting the litigated issue in this Docket – that is, if the Company uses a cumulative NOLC of \$4,938,170, as the Company

argued and the Commission considered, it should also use cumulative amounts for bonus depreciation and the repairs deduction for 2014 – 2017.<sup>1</sup>

1. *The Commission has not yet had the benefit of hearing the Consumer Advocate's concerns.*

TAWC attempts to rely on a Commission letter stating that the tariff filing is consistent with the Commission's decision.<sup>2</sup> This letter was sent to the Company on March 1, 2019. Unfortunately, the Commission had to issue this letter prior to having the benefit of the Consumer Advocate's *Motion*, which was filed the same day but likely took time to process. The Consumer Advocate's *Motion* was likewise filed only shortly before the Commission issued the *Order Granting Petition as Amended*. If the Commission had been able to view the Consumer Advocate's *Motion* and visualize the concerns with TAWC's revisions prior to issuing these items, it could have taken the Consumer Advocate's highlighted issues into account.

2. *The Company's threat of an IRS Normalization Violation is not well-taken.*

The Company again seeks to use the threat of a normalization violation to thwart any opposition to its treatment of ADIT. As discussed in more detail in Argument No. 3 below, this argument fails because of the Company's improper characterization of the NOLC balance. If the Company seeks to reflect the entirety of its NOLC balance to offset bonus depreciation and the repairs deduction – as it argued before the Commission – it should reflect bonus depreciation and repairs deduction amounts for a cumulative period as well.

Further, the Company makes this normalization violation assertion without offering a more moderate approach. If TAWC truly believes there may be a normalization violation, it can always

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<sup>1</sup> This period is appropriate as TAWC filed to implement the Capital Riders in Docket No. 13-00130, and the Capital Riders went into effect in 2014.

<sup>2</sup> *Tennessee American Water Company's Response*, Docket No. 18-00022, page 3 (March 8, 2019).

issue a request for a private letter ruling outlining its concern that an inadvertent normalization violation has occurred.

3. *The record clearly establishes that the Commission authorized a cumulative figure for Net Operating Loss Carryforward; however, TAWC's ADIT balance used in developing rates is limited to 2017 amounts for bonus depreciation and the repairs deduction.*

TAWC took the position throughout these proceedings, until it filed its *Response*, that the NOLC figure was a cumulative figure reflecting a period of multiple years. TAWC witness Wilde, in his pre-filed rebuttal testimony, indicated as much in Attachment 1 (attached as **Exhibit A**). The subtotal of NOLC as of December 31, 2017, is listed as being \$4,938,170. Moreover, during Mr. Wilde's cross-examination at the Hearing, the following exchange concerning Attachment 1 occurred:

Q. (By Mr. Whitaker) So Mr. Wilde, if we move into the right column, we see the net operating loss carryforward for two different points in time, right?

A. Yeah. They're just two subtotals. So two periods.

Q. And so the first subtotal, approximately 4.6, that's a negative \$4.6 million, was the subtotal as of the end of 2013.

A. Correct.

Q. *And then the negative \$4.9 million is the subtotal as of the end of 2017.*

A. Correct.

...

Q. And can you show me, using the figures in this attachment, how it's increasing?

A. No.

Q. Why not?

- A. Again, the one column [the left-hand column of Attachment 1] is just a stand-alone optic of what's happening in the tax income line on Tennessee American Water's individual stand-alone return, which was requested.

*And then the far line [the right-hand column of Attachment 1] is the balance of the carryforward from a federal consolidated allocation perspective, which would include things like carryforwards from previous years.*<sup>3</sup> (Emphasis added).

Clearly from Mr. Wilde's own testimony, the NOLC amount – which based on the Company's presentation, the Commission ordered to be included in the calculation of the Capital Riders – is a subtotal that reflects “things like carryforwards from previous years.”<sup>4</sup> This is the testimony presented by the Company at the Hearing on the merits and considered by the Commission in its *Order*. Even more importantly, the \$4,938,170 presented by the Company and included in the Commission's *Order* is the specific amount that addresses a cumulative NOLC.

Yet this directly contradicts the Company's *Response* submitted on March 8, 2019. Now the Company chooses to contend that “the \$4,938,170 figure is the NOL *for 2017*.”<sup>5</sup> This is simply not accurate. The Company would lead the Commission to believe that this figure only refers to the NOLC activity within the 2017 calendar year. The Company asserts as much in order to justify using only the bonus depreciation and repairs deduction amounts for the 2017 calendar year. But by Mr. Wilde's own admission, this number is cumulative and reflects the cumulative taxable income results occurring over multiple years.

The Company argued at the Hearing that if bonus depreciation and the repairs deduction are factored into the Capital Riders, the NOLC must also be used to offset those figures. The Company now proposes to offset bonus depreciation and the repairs deduction in the single

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<sup>3</sup> Transcript of Proceedings, Docket No. 18-00022, page 32, line 15 through page 33, line 20 (September 21, 2018).

<sup>4</sup> *Id.* at page 34, lines 19-20.

<sup>5</sup> *Tennessee American Water Company's Response*, Docket No. 18-00022, page 3 (March 8, 2019) (emphasis added).

calendar year of 2017 with the entirety of the cumulative NOLC reported by the Company. It is worth noting that the Company did not explicitly make this argument. It does so now in a belated attempt to minimize the results of the Commission's *Order* on its revenue requirement.

The Company is mixing and matching the recognition of its bonus depreciation and repairs deduction between the related ADIT liability balance and its NOLC asset balance. As discussed above, the asset balance reflects a cumulative balance developed over time. This balance is reflective of bonus depreciation and the repairs deduction the Company takes on its assets over time, including the Capital Riders assets.<sup>6</sup> The inclusion of bonus depreciation and the repairs deduction within the December 31, 2017 NOLC balance contrasts with the Company's exclusion of bonus depreciation and the repairs deduction for the 2014-2016 period for purposes of computing the ADIT Capital Riders liability.<sup>7</sup> Thus, the Company would have the Commission believe that it is appropriate to reflect an asset balance inclusive of bonus depreciation and repairs deduction, while reflecting a related liability balance in the Capital Riders calculation that excludes these same deductions. The asymmetrical treatment of bonus depreciation and the repairs deduction is illogical and contrary to basic ratemaking principles requiring properly matching assets and corresponding liabilities.

Concerning the implications of this issue going forward, the Company seeks to continue using this approach in its Capital Riders Budget Filing.<sup>8</sup> Therefore, on a continuing basis, the Company attempts to reflect bonus depreciation and repairs deduction amounts for single calendar years while reflecting a cumulative NOLC.

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<sup>6</sup> See TAWC Discovery Response to Consumer Advocate No. 1-3, Docket No. 18-00022.

<sup>7</sup> See *Tennessee American Water Company's Response*, Docket No. 18-00022, page \_ (March 8, 2019)

<sup>8</sup> Supplemental Testimony of Elaine K. Chambers, page 3, line 19 through page 4, line 2, Docket No. 18-00120 (February 19, 2019); *Tennessee American Water Company's Response*, Docket No. 18-00022, page 4 (March 8, 2019).

WHEREFORE, the Consumer Advocate respectfully requests the Commission to enter an *Order* requiring TAWC to file revised figures consistent with the deliberations at the Hearing on the merits and with accounting and regulatory principles.

RESPECTFULLY SUBMITTED,



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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 14<sup>th</sup> day of March, 2019.



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