

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

June 27, 2019

IN RE:

PETITION OF TENNESSEE-AMERICAN WATER
COMPANY IN SUPPORT OF THE CALCULATION OF
THE 2018 CAPITAL RECOVERY RIDERS
RECONCILIATION

DOCKET NO.
18-00022

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

This matter came before Chair Robin L. Morrison, Vice Chair Kenneth C. Hill, and Commissioner David F. Jones of the Tennessee Public Utility Commission (“TPUC” or “Commission”), the voting panel assigned to this docket, at a regularly scheduled Commission Conference held on April 15, 2019, for consideration of the *Motion to Determine That Calculation Submitted by Tennessee-American Is Not In Compliance With Commission Order* (“*Motion*”) filed by the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) on March 1, 2019. The *Motion* requests that the Commission compel Tennessee-American Water Company (“TAWC” or “Company”) to file revised calculations that are consistent with the Commission’s *Order* in this docket.

BACKGROUND AND MOTION

TAWC filed and gained approval to implement a Qualified Infrastructure Investment Program (“QIIP”) Rider; Economic Development Investment (“EDI”) Rider; Safety and Environmental Compliance (“SEC”) Rider (collectively “Investment Riders” or “Capital Riders”); and a Pass-Through Mechanism for Purchased Power, Chemicals, Purchased Water,

and Wheeling Water in TPUC Docket No. 13-00130.¹ In accordance with its tariff, TAWC is required to submit a reconciliation of the Capital Riders no later than March 1st of every year.

On March 2, 2018, the Company filed its *Petition in Support of the Calculation of the 2018 Capital Recovery Riders Reconciliation* (“*Petition*”). On March 23, 2018, the Consumer Advocate filed a *Petition to Intervene*, which was granted by the Hearing Officer in an Order dated April 11, 2018. Following discovery pursuant to a schedule set out in the *Order Establishing Amended Procedural Schedule* entered on July 2, 2018, the *Petition* was considered during a regularly scheduled Commission Conference on December 17, 2018. The Commission deliberated and announced its order at said Commission Conference, finding that the Company should file revised calculations to include bonus depreciation and repairs deductions, while also recognizing a net operating loss (“NOL”) carryforward as computed by the Company.²

On January 30, 2019, TAWC filed its *Revised Calculations for the 2018 Capital Recovery Rider Reconciliation*. Subsequently, on February 1, 2019, the Company filed a *Replacement Summary of Riders Tariff Page In Relation to the Filing on January 30, 2019*. Prior to the filing of the written order reflecting the decision announced during the December 17, 2018 Commission Conference, the Consumer Advocate filed the present *Motion* on March 1, 2019. The Commission filed its *Order Granting Petition As Amended* (“*Order*”) on March 6, 2019. The Company filed its response to the Consumer Advocate’s *Motion* on March 8, 2019.

POSITIONS OF THE PARTIES

The Consumer Advocate asserts in its *Motion* that the Company only included bonus depreciation and repairs for the 2017 calendar year in its January 30, 2019 filing, instead of

¹ 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).

² Transcript of Commission Conference, pp. 28-29 (December 17, 2018).

appropriately including sums for 2014, 2015, and 2016.³ The *Motion* contends that the Commission did not limit recognition of bonus depreciation and the repairs deduction to 2017, nor was any position taken or evidence presented to support such limitation. The Consumer Advocate points out that it argued against incorporating an NOL during the proceedings. However, the Commission adopted recognition of an NOL, which was an amount that was cumulative for the years 2014–2017. The Consumer Advocate argues that TAWC should reflect the cumulative bonus depreciation and repairs deduction just as it implemented the cumulative NOL, as is required by the Commission’s *Order*.⁴

The Company asserts in its response to the *Motion* that since the Commission referenced specifically the NOL carryforward of \$4,938,170 in its deliberations, the Company made a good faith effort to determine the method of compliance with the directive by tracking the amount in the evidentiary record. TAWC states that it discovered the amount in the Rebuttal Testimony of TAWC Witness John R. Wilde, identifying the figure as the NOL carryforward for 2017.⁵ Further, the Company states that IRS tax normalization rules require TAWC to match 2017 bonus depreciation and the repairs deduction with the 2017 NOL carryforward amount as ordered by the Commission, and to do otherwise would result in a violation of the tax normalization rules. TAWC further states that its submission indicated it was complying with both the Commission’s deliberations and the tax normalization rules and that the Commission’s acknowledgement letter states the revised calculations are consistent with the Commission’s directive. The *Response* indicates that the Consumer Advocate’s *Motion* contains inaccuracies concerning the position the Company took concerning deductions during proceedings, the relevance of the information provided in a response to a data request upon which the Consumer

³ *Motion*, p. 2 (March 1, 2019).

⁴ *Id.*

⁵ *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 (“Response”)*, pp. 3-4 (March 8, 2019).

Advocate relies in its *Motion*, and that the Company did provide explanation of its revised calculations by stating such calculations were in compliance with IRS tax normalization rules. Finally, TAWC argues that the *Motion* is contrary to the Commission's deliberations in that the Company recognized the NOL carryforward by truing-up the estimate of the 2017 NOL to the 2017 actual results.⁶

HEARING ON THE *MOTION*

A Hearing on the *Motion* was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on April 15, 2019, as noticed by the Commission on April 5, 2019. Daniel Whitaker, Vance Broemel, and David Dittmore appeared personally at the Hearing. Mr. Whitaker presented the argument of the Consumer Advocate. Melvin Malone appeared on behalf of the Company and presented the Company's position. Thereafter, attorneys for the parties were subject to questioning before the voting panel concerning the *Motion*.

FINDINGS AND CONCLUSIONS

After the Hearing and upon consideration of the pleadings, Pre-Filed Testimony, and the entire administrative record in this matter, the panel found the following with respect to the *Motion* presented by the Consumer Advocate:

In rebuttal testimony, the company disagreed with the inclusion of bonus depreciation and repairs deductions in surcharge calculations, but stated that should bonus depreciation and repairs deductions be included, the NOL carryforward generated from these deductions should also be included in order to avoid a tax normalization violation.⁷ TAWC witness, Linda Bridwell, also presented testimony concerning depreciation methods utilized in making surcharge calculations, testifying that including bonus depreciation and repairs can generate an NOL and that "NOLs

⁶ *Id.* at pp. 4-6.

⁷ Linda C. Bridwell, Pre-Filed Rebuttal Testimony, pp. 3-4 (August 3, 2018).

complicate the tax calculation and risk normalization violations... .”⁸ Another TAWC witness, John Wilde stated, “all of the NOL deferred income tax asset was caused by the company’s repair deduction and accelerated depreciation.”⁹ Mr. Wilde also provided an attachment to his testimony that demonstrates that the 2014–2017 Capital Rider, inclusive of bonus depreciation and repairs deductions, incrementally produces additional NOL for the 2014–2017 timeframe.¹⁰

The panel found that based upon the entire record, the evidence shows that the cumulative bonus depreciation and repairs deduction for 2014–2017 and the NOL carryforward, accumulated during the same years. Therefore, the intent of the panel’s instruction to TAWC to “file revised calculations to include bonus depreciation and the repairs deduction, while also recognizing the Net Operating Loss carryforward of \$4,938,170”¹¹ in its *Order* is to include all of the accounting components that affect the Capital Rider surcharge calculation. 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.

Therefore, the panel voted unanimously to clarify its previous *Order* by finding that the time period used for the bonus depreciation and repairs deduction included in the Capital Rider calculations should match the time period reflected in the calculation of the NOL carryforward. As a result of this finding, the panel unanimously directed TAWC to file revised calculations with a tariff reflecting symmetrical time periods of the inclusion and computation of the NOL carryforward and related bonus depreciation and repairs deduction.

IT IS THEREFORE ORDERED THAT:

1. The *Motion* filed by the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General on March 1, 2019 is granted.

⁸ *Id.* at 3.

⁹ John R. Wilde, Pre-Filed Rebuttal Testimony, p. 7 (August 3, 2018).

¹⁰ *Id.* at Attachment 1.

¹¹ *Order Granting Petition as Amended*, p. 13 (March 6, 2019).

2. Tennessee-American Water Company is directed to file revised calculations with a tariff reflecting symmetrical time periods of the inclusion and computation of the net operating loss carryforward and related bonus depreciation and repairs deduction.

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

4. Any person who is aggrieved by the Commission'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.

Chair Robin L. Morrison, Vice Chair Kenneth C. Hill, and Commissioner David F. Jones concur.

ATTEST:



Earl R. Taylor, Executive Director