

IN RE:)
)
)
 APPLICATION OF TENNESSEE)
 WATER SERVICE, INC. FOR) **DOCKET NO. 19-00028**
 ADJUSTMENT OF RATES AND)
 CHARGES, APPROVAL OF A)
 QUALIFIED INFRASTRUCTURE)
 INVESTMENT PROGRAM, AND)
 MODIFICATION TO CERTAIN TERMS)
 AND CONDITIONS FOR THE)
 PROVISION OF WATER SERVICE)
)

Tennessee Water Service, Inc. ("TWS" or the "Company"), a Tennessee corporation authorized to conduct a public utility business in the State of Tennessee, pursuant to Tenn. Code Ann. § 65-5-103, petitions the Tennessee Public Utility Commission ("TPUC" or the "Commission") for approval of a Qualified Infrastructure Investment Program ("QIIP") and for an increase to TWS's rates and charges for the purpose of recovering TWS's costs of providing water services to its customers and for authority to place such rates and charges into effect through a revised tariff.

1. TWS is a public utility as defined by Tenn. Code Ann. §65-4-101 and its public utility operations are subject to the jurisdiction of TPUC. In January 1984, TWS was granted its original Certificate of Convenience and Necessity in Docket No. U-83-7240 to provide water service to customers located in the Chalet Village Subdivision in Sevier County, Tennessee. TWS currently provides water service to 218 customers located in its service territory. The name and principal address of TWS are:

Tennessee Water Service, Inc.
Catherine Heigel, President
4944 Parkway Plaza Boulevard
Suite 375
Charlotte, NC 28217

2. The currently-tariffed rates and charges of TWS were approved by TPUC on February 21, 2018, in Docket No. 17-00108 (a copy of this order is attached to the Petition as **Appendix A**). Because of the wildfires in East Tennessee during November 2016, TWS petitioned TPUC in 2017 for the authority to recover certain costs associated with damages from the wildfires and to temporarily increase rates due to revenue shortages resulting from a dramatic loss of customers whose homes were destroyed by the wildfires. The Commission approved portions of TWS's petition in Docket No. 17-00108, allowing for recovery of certain expenses and a return on replacement capital investment through the creation of two regulatory asset accounts and ordering a \$7 increase to TWS's monthly minimum service charge. The Commission also ordered that TWS file a rate case petition no later than July 1, 2019. This Petition complies with the Commission's deadline.

3. Current revenues and revenue projections under the tariff rates and charges approved in Docket No. 17-00108 are not sufficient to allow TWS a fair opportunity to recover its reasonable operating costs and to provide a fair and reasonable net operating income. In order for TWS to maintain its water system and provide safe and reliable service to its customers in accordance with TPUC's requirements, the QIIP and an increase to TWS's rates and charges should be granted.

Request for and Description of a Qualified Infrastructure Investment Program

4. As will be demonstrated by the supporting testimony accompanying this Petition, TWS's proposed QIIP clearly falls within the alternative regulatory methods permitted pursuant

to Tenn. Code Ann. § 65-5-103. TWS has an obligation to provide safe, adequate, and reliable service, and the quality of the service it provides is dependent, in part, upon the ongoing improvement and replacement of the Company's infrastructure. Despite the significant capital investments made to the water system in the wake of the 2016 wildfires, the cost to continue to maintain and replace infrastructure is ongoing and substantial. In light of a continuing need to assess and resolve infrastructure challenges, if TWS continues to advance the cost of the investment and bear the burden of the associated carrying costs until the conclusion of the next base rate case filing to recover these necessary costs, it will not have a reasonable opportunity to achieve the rate of return set by TPUC.

5. Consistent with Tenn. Code Ann. § 65-5-103, TWS is proposing the QIIP to mitigate the above-outlined problem, which will aid the Company's goal of maintaining an appropriate timeframe for making essential infrastructure upgrades and replacements. As proposed, the QIIP will help ensure a safe and reliable water system for ratepayers. Additionally, the QIIP has many other customer benefits and protections that will be addressed in the supporting testimony, including the lessening of the occurrence of rate shock associate with base rate increases.

Request for and Description of Base Rate Increase

6. The currently-tariffed rate and charges of TWS approved by TPUC on February 21, 2018, in Docket No. 17-00108 contain a fixed minimum monthly charge of \$25.70, which includes an allowance for 2,000 gallons of metered water consumption. Customers are then subject to a volumetric charge of \$13.30 per 1,000 additional gallons of usage beyond the allowance. The average customers uses approximately 3,479 gallons of water per month and thus has an average bill of \$49.79 (which includes a state tax of 9.75%).

7. As demonstrated in the Pre-filed Direct Testimony of Dante DeStefano filed in support of this Petition, the effects of the 2016 wildfires are still being felt today. Prior to the wildfires, TWS had approximately 564 connections. Following the destruction, only 25 connections remained. In the ensuing two years, substantial reconstruction efforts have been made in Chalet Village and customers are steadily returning and reconnecting to the water system. However, at this time TWS has only approximately 209 connections. Despite this lower customer count, operational costs and capital investment needs remain. As a result, TWS faces a significant revenue shortfall if it is unable to increase its rates.

8. As detailed in the Pre-filed Direct Testimony of Dante DeStefano, TWS proposes to eliminate this revenue deficiency by increasing certain rates and charges for water service as follows:

- a. Initiate a three-year rate plan phase-in which would increase the monthly Base Facility Charge to \$50.00 effective January 1, 2020, then increase to \$74.00 effective January 1, 2021, and finally increase to \$95.00 effective January 1, 2022. As well, initiate a three-year rate plan phase-in which would increase the monthly volumetric charge to \$16.50 per 1,000 gallons effective January 1, 2020, then increase to \$19.00 per 1,000 gallons effective January 1, 2021, and finally to \$20.65 per 1,000 gallons effective January 1, 2022.
- b. Create a separate monthly charge for Private Fire Service, applied on the basis of whether the service is part of a multi-use connection or fire-only connection, with a three-year rate phase-in. Multi-use connections would be subject to a standby charge per month of \$11.33 effective January 1, 2020, \$24.00 effective January 1, 2021, and \$35.80 effective January 1, 2022. Fire-

only connections would be subject to a standby charge per month of \$22.67 effective January 1, 2020, \$48.00 effective January 1, 2021, and \$71.60 effective January 1, 2022. Furthermore, all usage would be billed volumetrically at \$16.50 per 1,000 gallons effective January 1, 2020, \$19.00 effective January 1, 2021, and \$20.65 effective January 1, 2022.

9. TWS also proposes other changes to its tariff, as detailed in the Pre-filed Direct Testimony of Dante DeStefano, related to metered service and fire service to more accurately reflect the required building codes and nature of service TWS provides to the Chalet Village System. In addition, TWS proposes changes to the name and the language related to Base Period and Base Period OCPTM Costs in the cost pass-through mechanism approved by the Commission in in Docket No. 17-00108. All of TWS's proposed changes are reflected in its Proposed Tariff, attached as Exhibit 7 to the Pre-filed Direct Testimony of Dante DeStefano.

10. In accordance with TPUC's Rule 1220-4-1-.05, TWS will notify its customers of the proposed changes in its rates and charges by publication in newspaper and by inclusion of an insert in the March billing statements sent by direct mail to the customers' billing addresses on file with TWS. A copy of the mailed notice will be filed in this docket following the filing of this Petition and the determination of the docket number for this proceeding. A copy of the notice will also be posted at the Company's principal business office and at the clubhouse in Chalet Village and will remain displayed until the rate hearing on this matter has been conducted.

11. In order to ensure the timely submission of relevant information in this matter, TWS hereby request the entry of a protective order similar to that approved in TPUC Docket No. 17-00108. Such a proposed protective order is attached hereto as **Appendix B**.

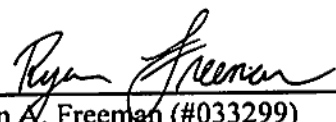
12. In further support of this Petition, TWS has filed simultaneously with this Petition the following:

- a. Pre-filed Direct Testimony of Catherine Heigel, President of TWS, regarding the reasons for the rate request and current corporate structure implications for TWS.
- b. Pre-filed Direct Testimony, Exhibits, and Workpapers of Dante DeStefano, Financial Planning & Analysis Manager for TWS, regarding a general overview of the condition of TWS's customers and the ratemaking principles, methodologies, and calculations used to project TWS's revenue deficiency and to support the proposed rates and charges changes/additions.
- c. Pre-filed Direct Testimony, and Exhibits of Bryce Mendenhall, Vice President of Operations for TWS, regarding the capital investments made since the 2016 wildfires and the general condition of the water system and the Chalet Village community.
- d. Pre-filed Direct Testimony, Exhibits, and Workpapers of Anthony Gray, Senior Financial Analyst for TWS, regarding the explanation of pro-forma adjustments included in the revenue requirement calculations of TWS.
- e. Pre-filed Direct Testimony and Exhibits of Jared Deason, Regulatory Manager for Utilities, Inc., regarding the recommended return on equity for TWS.
- f. Proposed revised tariffs reflecting the QIIP and providing the adjustments to rates and charges calculated by TWS as well as other tariff language revisions.

WHEREFORE, TWS respectfully requests:

1. That the Commission approve this Petition and issue and order pursuant to Tenn. Code Ann. § 65-5-103, *et seq.*;
2. That the Commission approve the proposed Qualified Infrastructure Investment Program as submitted herein;
3. That the Commission find that the rates and charges proposed by TWS are just and reasonable and in the public interest;
4. That the Commission approve TWS's revised tariffs, as submitted herein, implementing the QIIP and rate increase as soon as is practicable, as permitted in TPUC Rule 1220-4-1-.04, but in any event within one hundred and twenty (120) days of the date of the filing of this Petition; and
5. That this Commission grant such other and further relief as circumstances may warrant.

Respectfully submitted,

By: 
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Attorney for Tennessee Water Service, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2019, a true and correct copy of the foregoing Petition was served by electronic mail upon the following:

Karen Stachowski
Assistant Attorney General
Financial Division, Consumer Advocate Unit
War Memorial Building, 2nd Floor
301 6th Avenue North
Nashville, Tennessee 37243
Karen.Stachowski@ag.tn.gov

A handwritten signature in black ink, appearing to read "Ryan Freeman", is written over a horizontal line.

Ryan Freeman

Appendix A

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

February 21, 2018

IN RE:

PETITION OF TENNESSEE WATER SERVICE,
INC. FOR APPROVAL OF AN INTERIM
EMERGENCY WILDFIRE RESTORATION
SURCHARGE, INTERIM EMERGENCY
WATER SERVICE AVAILABILITY
SURCHARGE, INTERIM EMERGENCY MAKE-
WHOLE SURCHARGE, AND AN INTERIM
EMERGENCY OPERATION COST PASS-
THROUGH MECHANISM

DOCKET NO.
17-00108

FINAL ORDER

This matter came before Chairman David F. Jones, Vice Chairman Robin L. Morrison and Commissioner Keith Jordan of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, at a regularly scheduled Commission Conference held on January 16, 2018, for consideration of the *Petition for Emergency Interim Relief* (“*Petition*”) filed by Tennessee Water Service, Inc. (“TWS” or the “Company”) on September 25, 2017.

BACKGROUND AND TRAVEL OF THE CASE

TWS is a public utility subject to the Commission’s jurisdiction, providing water service to customers located in the Chalet Village Subdivision (“Chalet Village”) in Sevier County, Tennessee.¹ Chalet Village suffered extensive damage in the wildfires that swept through the Great Smoky Mountains in late November 2016 (“the Wildfire”). Prior to the Wildfire, TWS served about

¹ *Petition for Emergency Interim Relief*, pp. 1-2 (September 25, 2017).

580 customers. After the Wildfire, approximately 90% of the customer base was lost with only 57 connections remaining active and the water system serving Chalet Village suffered damage.²

On September 25, 2017, TWS filed a *Petition* seeking emergency relief in the form of three monthly surcharges, an operational cost pass-through mechanism, and a deferral of costs and uncollectible revenues for potential future recovery. The *Petition* also proposed to file a petition for a general rate case no more than eighteen months after approval of the emergency relief requested by TPUC.³ In support of its *Petition*, the Company filed the testimony of Richard Linneman,⁴ Finance, Planning and Analysis Manager of TWS, and Bryce Mendenhall,⁵ Vice President of Operations of TWS.

On September 28, 2017, the Consumer Protection and Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) filed a *Petition to Intervene*.⁶ The intervention of the Consumer Advocate was subsequently granted by the Hearing Officer.⁷ Following the submission of discovery and pre-filed testimony pursuant to a procedural schedule, the parties prepared for a hearing. In addition, written comments were received from individual Chalet Village property owners as well as persons signing an online petition.

POSITION OF THE PARTIES

POSITION OF TWS

TWS presented two alternate requests for relief, styled “Option A” and “Option B,” each of which was an amended version of the relief requested in its *Petition*.⁸ As presented, Option A consisted of the following components:

1. An Operation Cost Pass-Through mechanism allowing TWS to pass-

² *Id.* at 2-3.

³ *Id.* at 5-9.

⁴ Richard Linneman, Pre-Filed Direct Testimony (September 25, 2017).

⁵ Bryce Mendenhall, Pre-Filed Direct Testimony (September 25, 2017).

⁶ *Petition to Intervene* (September 28, 2017).

⁷ *Order Granting the Petition to Intervene Filed by the Consumer Advocate* (October 6, 2017).

⁸ Transcript of the Hearing, pp. 52-57 (December 12, 2017).

through to customers nondiscretionary increases or decreases in costs incurred for purchases of treated water and/or purchased electricity;⁹

2. A Wildlife Restoration Surcharge of \$2.52 per month for eighteen months applicable to both active and inactive customers to provide a return on the capital needed to repair fire damage and restore the water system to operational capacity;¹⁰

3. A Water Service Availability Surcharge of \$4.51 per month for eighteen months applicable to both active and inactive customers to provide a return on capital assets that are already in place to serve customers;¹¹

4. A Make-Whole Surcharge of \$11.09 per month for eighteen months applicable only to inactive customers to recover anticipated 2018 operational losses due to erosion of the customer base since the Wildfire;¹²

5. A Deferral of Prior Operating Losses for 2017 allowing TWS to accumulate and defer its operating losses incurred during 2017 into a regulator asset account for potential future recovery from customers over a proposed five-year amortization period; and,¹³

6. A Deferral of Case Expenses, deferring up to \$30,000 of case expenses amortized over a three-year period.¹⁴

TWS next presented Option B which consisted of the following components:

1. An Operation Cost Pass-Through mechanism allowing TWS to pass-through to customers nondiscretionary increases or decreases in costs incurred for

⁹ *Id.* at 55.

¹⁰ *Id.* at 55-56.

¹¹ *Id.* at 56.

¹² *Id.*

¹³ *Id.* at 56-57.

¹⁴ *Id.* at 57.

purchases of treated water and/or purchased electricity;¹⁵

2. A Deferral of Prior Operating Losses for 2017 allowing TWS to accumulate and defer its operating losses incurred during 2017 into a regulatory asset account for potential future recovery from customers over a proposed five-year amortization period;¹⁶

3. A Deferral of Prospective Operating Losses that authorizes TWS to accumulate and defer its operating losses incurred beginning January 1, 2018 for up to eighteen months into a regulatory asset account for potential future recovery from customers over a proposed five-year amortization period;¹⁷

4. A Deferral of Returns on Certain Capital Projects that authorizes TWS to calculate and accrue its currently-authorized rate of return on capital assets placed into service to repair and restore the water system from fire damage into a regulatory asset account for potential future recovery from customers over a proposed five-year amortization period; and,¹⁸

5. A Case Expenses Surcharge for recovery of case expenses of up to \$30,000 over a three year period through a surcharge of \$1.44 per month to both active and inactive customers with annual true-ups.¹⁹

TWS witness, Bryce Mendenhall, testified with regard to capital projects necessary to repair fire damage and restore the water system stating that TWS has already expended \$178,961 for Emergency System Activation, Gatlinburg Water Interconnect Repair, Meter Replacements, Valve Replacements, Service Line Replacements and Fire Hydrant Replacements.²⁰ Emergency System Activation and Gatlinburg Water Interconnect Repair projects have been completed, but repair and

¹⁵ *Id.*

¹⁶ *Id.* at 56-58.

¹⁷ *Id.* at 58.

¹⁸ *Id.*

¹⁹ *Id.* at 58-59.

²⁰ *Id.* at 45-46 & Exh. 2.

replacement of meters, valves, service lines and hydrants are ongoing.²¹ Mr. Mendenhall also provided testimony identifying proposed capital projects that have not been started, but will need to be completed in order to fully restore the water system: 1) Replacement of Well No. 1 Booster Station forecasted at \$125,000; 2) Replacement of Upper Booster Station forecasted at \$30,000; and, 3) Reconditioning of Upper Storage Reservoir forecasted at \$45,000.²² These capital projects were facilitated by the fire according to Mr. Mendenhall.²³ TWS witness Richard Linneman testified that these capital projects are the projects for which TWS seeks deferral of returns under Option B as presented.²⁴

POSITION OF THE CONSUMER ADVOCATE

The Consumer Advocate presented testimony opposing the Wildfire Restoration, Service Availability and Make-Whole Surcharges requested under Option A, questioning whether the wildfire event represented a true financial emergency justifying the surcharges, raising concerns about the uncertainty of customer counts and forecasting techniques TWS used to compute surcharge amounts, and claiming that the proposed surcharges fail to share the risks between both investors and ratepayers.²⁵ However, Consumer Advocate witness David Dittmore agreed with TWS's proposed Operational Cost Pass-Through Mechanism, provided certain modifications were incorporated.²⁶ TWS agreed with the modifications proposed by the Consumer Advocate.²⁷

In addition, the Consumer Advocate proposed that deferred accounting methods be used to authorize TWS to defer losses sustained from the Wildfire and recover deferred losses over a specified period of time.²⁸ The Consumer Advocate and TWS differ on the starting date for accrual

²¹ *Id.*

²² *Id.*

²³ *Id.* at 49.

²⁴ *Id.* at 58.

²⁵ *Id.* at 96-103, 127-129.

²⁶ *Id.* at 97.

²⁷ Transcript of the Hearing, pp. 28, 55 (December 12, 2017).

²⁸ *Id.* at 96.

of accounting losses and the amortization period over which deferred losses should be recovered.²⁹ Finally, the Consumer Advocate requested that TWS be directed to: 1) conduct a business analysis of whether insurances should be obtained on a going forward basis to protect the Company and ratepayers in the event of such disaster in the future; 2) convert its books to the NARUC Uniform System of Accounting before its next rate case; 3) provide clear guidance to customers regarding their service options; and 4) to make monthly submittals of the Company's active customer accounts in this docket.³⁰

THE HEARING

A Hearing on this matter was held on December 12, 2017, as noticed by the Commission on December 1, 2017. Participating in the Hearing were the following parties:

Tennessee Water Service, Inc. – Joe Conner, Esq. and Ryan Freeman, Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, 1900 Republic Centre, 633 Chestnut Street, Chattanooga, TN 37450.

Consumer Protection and Advocate Division – Vance Broemel, Esq. and Karen Stachowski, Esq., Office of the Attorney General and Reporter, P.O. Box 20207, Nashville TN 37202-0207.

At the Hearing, the panel heard testimony from witnesses Bryce Mendenhall and Richard Linneman on behalf of the Company. Alex Bradley and David Dittmore testified before the panel on behalf of the Consumer Advocate.³¹

In addition, members of the public were given the opportunity to present comments to the panel. Mr. Jimmy Vance, a retired attorney and Chalet Village property owner who was accompanied by his former law partner, Nick Perenich, presented comments concerning the *Petition*. No other members of the public sought recognition to comment.³²

²⁹ *Id.* at 115-116, 121-123, 129.

³⁰ *Id.* at 129-130.

³¹ Transcript of Hearing (December 12, 2017).

³² *Id.* at 6-22.

FINDINGS AND CONCLUSIONS

The Commission has jurisdiction to set the rates of public utilities operating in the State of Tennessee.³³ TWS is a public utility which was granted a Certificate of Public Convenience and Necessity (“CCN”) by the Commission in Docket No. U-83-7240.³⁴ TWS’s most recent rate case was completed in 2009.³⁵ It is appropriate, under ratemaking principles, to allow for recovery of non-recurring costs when a public utility incurred such costs as a result of extraordinary circumstances outside of the control of the public utility, such as a force majeure.

TWS has presented accounting and operational information and forecasts showing the Company has sustained and will continue to sustain material financial losses resulting from the Great Smoky Mountain wildfires that swept throughout its service territory in November 2016. Although the parties disagreed as to the starting point of the deferrals, both TWS and the Consumer Advocate stated that an accounting order authorizing deferred accounting treatment of reasonable costs and losses resulting from the wildfires would be appropriate in this case. Indeed, both TWS and the Consumer Advocate recognized the benefits of deferring accounting losses in this docket to future periods.³⁶ This accounting convention, which is described in Account 186 of the Uniform System of Accounts, permits the Company to create regulatory assets for accrual of reasonable accounting costs and losses sustained as a result of the wildfires and defer probable recovery of such costs and losses to future periods.

Specifically, the procedure for deferred accounting is recognized in Account 186.A(7) of the Uniform System of Accounts (“USOA”) adopted by the Commission:

Regulatory created assets, not included in other accounts, resulting from the ratemaking actions of regulatory agencies. (See Definition 27). The amounts

³³ Tenn. Code Ann. §§ 65-4-101(6); 65-4-104; 65-5-101, *et seq.*

³⁴ *In Re: Petition of Tennessee Water Service, Inc. for a Certificate of Convenience and Necessity to Serve an Unincorporated Area of Sevier County Known as Chalet Village North and to Approve Tariffs as to Customer Rates, Rules and Regulations for Service*, Docket No. U-83-7240, *Order* (January 24, 1984).

³⁵ *In Re: Petition of Tennessee Water Service, Inc., to Change and Increase Certain Rates and Charges*, Docket No. 09-00017, *Order Approving Settlement Agreement* (September 15, 2009).

³⁶ Transcript of Hearing, pp. 57, 96 (December 12, 2017).

included in this account are to be established by those charges which would have been included in net income determination in the current period under the general requirements of the Uniform System of Accounts but for it being probable that such items will be included in a different period(s) for purposes of developing the rates that the utility is authorized to charge for its utility services. When specific identification of the particular source of a regulatory asset cannot be made, such as in plant phase-ins, Account 407.5 – Amortization of Regulatory Liabilities shall be credited. The amounts recorded in this account are generally to be charged, concurrently with the recording of the amount in rates, to the same account that would have been charged if included in income when incurred, except all regulatory assets established through the use of Account 407.5 shall be charged to Account 407.4 – Amortization of Regulatory Assets, concurrent with the recovery of the amounts in rates.

If rate recovery of all or part of an amount included in this account is disallowed, the disallowed amount shall be charged to Account 426 – Miscellaneous Nonutility Expenses, or Account 434 – Extraordinary Deductions, in the year of the disallowance.

Additionally, Definition 27 of the USOA provides:

“Regulatory Assets and Liabilities” are assets and liabilities that result from rate actions of regulatory agencies. Regulatory assets and liabilities arise from specific revenues, expenses, gains or losses that would have been included in determination of net income in one period under the general requirements of the Uniform System of Accounts but for it being probable that; 1) such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services; or 2) in the case of regulatory liabilities, that refunds to customers, not provided for in other accounts, will be required.

The Commission has used this procedure to defer costs related to extraordinary and unforeseen circumstances. For instance, in Docket No. 13-00121 the Commission authorized Kingsport Power Company d/b/a AEP Appalachian Power (“Kingsport Power Company”) to defer incremental storm damage costs as a regulatory asset, stating “[t]his method will allow the Company appropriate ratemaking treatment for extraordinary storm costs in a future rate proceeding.”³⁷

The panel found that deferred accounting of TWS’s Wildfire losses, as outlined in Option B, is the best approach in this case because the losses are significant in relation to TWS’s eroded

³⁷ *In re: Petition of Kingsport Power Company D/B/A AEP Appalachian Power for Approval of Deferred Accounting, Order Granting Deferred Accounting*, Docket No. 13-00121 (Nov. 13, 2013).

customer base and recovery from the Wildfire will be protracted for TWS and the customers. The deferred accounting approach will permit TWS to accumulate reasonable and necessary costs to repair and restore the water system and to track the amount of losses stemming from revenue shortfalls attributable to customer service interruptions. Giving TWS and customers additional time to recover and rebuild from the wildfires will provide a more complete picture of the financial impact of the Wildfire and will provide better financial and operational information on a going forward basis, which will be valuable in determining appropriate rates and recovery periods.

Based on the evidentiary record, the panel found that although the parties agree that deferred accounting should be used to account for the losses in this docket, they disagree about the starting point. The Consumer Advocate recommends that only prospective accounting losses beginning January 1, 2018 be allowed whereas TWS requests deferral of operating losses beginning January 1, 2017 and deferral of returns on capital assets placed in service to repair and restore the water system. Consumer Advocate witness David Dittmore testified that he did not take issue with any of the operational decisions subsequent to the Wildfire.³⁸ However, Mr. Dittmore proposed limiting the deferral of costs to the period beginning January 1, 2018 in order to share the losses between TWS and its customers.³⁹ The panel found that this Commission has addressed the issue of sharing losses resulting from storm damages previously. In dockets addressing deferral of storm damage costs, the Commission did not require shareholders of Kingsport Power Company to bear any of these costs.⁴⁰

Additionally, the relief requested by TWS does not provide full recovery itself. The panel found that while Option B would provide for deferral of actual operating losses since January 1, 2017, as well as returns on capital investments required to restore the system, TWS is not seeking to

³⁸ Transcript of Hearing, p. 121 (December 12, 2017).

³⁹ *Id.* at 115-117.

⁴⁰ *In re: Petition of Kingsport Power Company D/B/A AEP Appalachian Power for Approval of Deferred Accounting, Order Granting Deferred Accounting*, Docket No. 13-00121 (Nov. 13, 2013).

recover any operating losses for November and December 2016, nor is it seeking to earn a profit on its existing rate base investment.

Therefore, the panel voted unanimously that TWS should be authorized to create regulatory asset accounts to defer the following:

1. Actual operating losses resulting from reasonable and necessary operating expenses exceeding operating revenues, excluding any provision for return on rate base investment, incurred on operations beginning on January 1, 2017 and continuing until TWS's next rate case petition unless otherwise ordered by the Commission; and

2. Returns on capital projects necessary to repair fire damage and restore the water system to operational status, which were identified in Mr. Mendenhall's testimony, with such returns to be accrued on the actual amount of the capital assets placed into service at TWS' currently-authorized rate of return of 6.89%, and with such accruals beginning on the date the capital asset is placed into service and continuing until TWS's next rate case petition unless otherwise ordered by the Commission.

In addition, the panel voted unanimously to authorize TWS to accrue and defer up to \$30,000 of reasonable and necessary case expenses. The panel directed TWS to file quarterly reports detailing the accounting transactions and account balances for its deferred operating losses, returns on capital assets, and case expenses, with such reports being due at the same time the Company submits its routine quarterly surveillance reports to the Commission.

With regard to amortization of these regulatory assets, the panel found that due to current uncertainties surrounding rebuilding activities and future customer counts, a decision with respect to appropriate amortization periods should be postponed until the rate proceeding when recovery is considered. The panel cautioned TWS, consistent with prior Commission orders authorizing deferred accounting, that full recovery of deferred costs and losses is not guaranteed, and that TWS

should keep sufficient and appropriate financial records and documentation supporting the reasonableness and prudence of the costs and losses deferred pursuant to this docket.

Further, the panel found evidence showing that the deferred costs and losses in this docket are material, especially in relation to the Company's small customer base. Therefore, the panel voted unanimously to approve a \$7.00 per month increase to the minimum service charge for all current and future active customers effective immediately. The panel found that this rate increase will begin to address the Company's financial losses resulting from the Wildfire and will be used to offset the future amortization of the deferred regulatory assets authorized in this docket in an effort to minimize rate shock and shorten recovery periods. Accordingly, the panel voted unanimously that the Company shall report each quarter the amount of quarterly revenues and the amount of aggregate revenues collected from active customers as a result of this \$7.00 per month service rate increase. The quarterly reports shall be due at the same time the Company submits its routine quarterly surveillance reports to the Commission. For the sake of clarity, the Company shall not charge inactive customers or lot owners the minimum service charge.

TWS proposed an Operational Cost Pass-Through Mechanism to which the Consumer Advocate proposed modifications, but otherwise agreed. The voting panel found that the Operational Cost Pass-Through Mechanism, as modified by the Consumer Advocate in Mr. Dittmore's testimony at Exhibit DND-5, would adjust customer rates to reflect any increase or decrease in costs incurred for purchased water and power. Therefore, the panel voted unanimously to approve the mechanism as modified by the Consumer Advocate.

Finally, the panel voted unanimously to direct TWS to file a general rate case petition as soon as practicable in light of its recovery from the 2016 Wildfire, but in no event shall the Company file a rate case petition later than July 1, 2019, without first obtaining a Commission order extending this deadline for good cause.

The panel also voted unanimously to direct TWS to work with Commission staff to file a tariff consistent with this decision within thirty days and denied all other relief requested by the Company and the Consumer Advocate.

IT IS THEREFORE ORDERED THAT:

1. The *Petition for Emergency Interim Relief* filed on September 25, 2017 is granted as modified.
2. Tennessee Water Service, Inc. is authorized to create two regulatory asset accounts to defer: a) actual operating losses beginning January 1, 2017 until its next rate case or otherwise ordered; and, b) returns on identified capital projects necessary to repair fire damage and restore the water system to operational status, such returns to be accrued on the actual amount of the capital assets placed into service at Tennessee Water Service, Inc.'s currently-authorized rate of return of 6.89% and beginning on the date the capital asset is placed into service and continuing until its next rate case unless ordered otherwise.
3. Tennessee Water Service, Inc. is authorized to accrue and defer reasonable and necessary case expenses.
4. Tennessee Water Service, Inc. shall increase the minimum service charge for all current and future customers by \$7. Tennessee Water Service, Inc. is not authorized to charge inactive customers or lot owners the minimum service charge.
5. The Operational Cost Pass-Through Mechanism, as modified by the Consumer Protection and Advocate Division of the Office of the Tennessee Attorney General, is approved.
6. Tennessee Water Service, Inc. shall file quarterly reports detailing the accounting transactions and account balances for its deferred operating losses, returns on capital assets, rate case expenses, and the amount of quarterly revenues and the amount of aggregate revenues collected from active customers as a result of the minimum service charge increase.
7. Tennessee Water Service, Inc. shall file a rate case petition no later than July 1,

2019, unless an order from the Tennessee Public Utility Commission extending this deadline for good cause is obtained.

8. Tennessee Water Service, Inc. shall work with Tennessee Public Utility Commission staff to file a tariff consistent with this order within thirty days.

9. All other relief requested by Tennessee Water Service, Inc. and the Consumer Protection and Advocate Division of the Office of the Tennessee Attorney General is denied.

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

11. Any person who is aggrieved by the Tennessee Public Utility 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.

Chairman David F. Jones, Vice Chairman Robin L. Morrison and Commissioner Keith Jordan concur.

ATTEST:



Earl R. Taylor, Executive Director

Appendix B

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

IN RE:

**APPLICATION OF TENNESSEE
WATER SERVICE, INC. FOR
ADJUSTMENT OF RATES AND
CHARGES, APPROVAL OF A
QUALIFIED INFRASTRUCTURE
INVESTMENT PROGRAM, AND
MODIFICATION TO CERTAIN TERMS
AND CONDITIONS FOR THE
PROVISION OF WATER SERVICE**

DOCKET NO. 19-

PROPOSED PROTECTIVE ORDER

To expedite the flow of filings, exhibits and other materials, and to facilitate the prompt resolution of disputes as to the confidentiality of material, adequately protect material entitled to be kept confidential and to ensure that protection is afforded only to material so entitled, the Tennessee Public Utility Commission (TPUC) hereby orders that:

1. For the purpose of this Protective Order (Order):
 - (A) Proprietary or Confidential Information, hereinafter collectively referred to as “Confidential Information”, shall mean documents, testimony, or information in whatever form which the Producing Party, in good faith, and based on reasonable inquiry, deems to contain trade secrets, confidential research, development or other sensitive information protected by state or federal law, regulation or rule, and which has been specifically designated by the Producing Party.
 - (B) “Producing Party” shall mean the Party creating the Confidential Information as well as the Party having actual physical possession of information produced pursuant to this Order.

2. All summaries, notes, extracts, compilations or other direct or indirect reproduction from, or of any protected materials, shall be entitled to protection under this Order.

3. Documents containing Confidential Information shall be conspicuously and specifically labeled as "CONFIDENTIAL." The documents must be produced in a way that will clearly identify to others that it contains Confidential Information. Any document so designated shall be handled in accordance with the Order. The provisions of any document containing Confidential Information may be challenged under Paragraph 14 of this Order.

4. Any individual or company subject to this Order, including Producing Parties or persons reviewing Confidential Information, shall act in good faith in discharging his/her/its obligations hereunder.

5. Parties or non-parties subject to this Order shall include Tennessee Water Service, Inc. (Company), and the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General (Attorney General). If other parties are permitted to intervene, they will be allowed access to Confidential Information only to the extent and under the conditions permitted by separate order.

6. Subject to the exceptions noted in this Paragraph, Confidential Information shall be disclosed only to the following persons:

- (A) counsel of record for the Parties in this case and associates, support staff actively engaged in assisting outside counsel of record in this Docket and any appeals therefrom;
- (B) in-house counsel for the Parties;
- (C) officers, commissioners, or employees of the Parties, including employees of the Attorney General's Office; provided that such officers,

commissioners, and/or employees shall be subject to the provisions of this Order, and shall not disclose such information further except as otherwise permitted under the terms of this Order;

- (D) TPUC Commissioners and members of the staff of the TPUC;
- (E) outside consultants and expert witnesses employed or retained by the Parties or their counsel, who have access to Confidential Information solely for evaluation, testing, testimony, preparation for trial or other services related to this Docket, provided that to the extent that any party seeks to disclose Confidential Information to any outside consultant or expert witness who is expected to testify on that Party's behalf, the Party shall give five days written notice to the Producing Party of intention to disclose Confidential Information. During such notice period, the Producing Party may move to prevent or limit disclosure for cause, in which case no disclosure shall be made until TPUC, the hearing officer, the administrative law judge or court rules on the motion. Any such motion shall be filed within three days after service of the notice. Pre-hearing conferences may be called to confer with the Parties on the Motions to Limit Disclosure. All service shall be by hand delivery, facsimile or email. All filings by email in this Docket shall be followed up by delivering a hard copy of the filing to the Docket Manager of the TPUC; and
- (F) notwithstanding anything else to the contrary, under no circumstances shall any Confidential Information be disclosed to or discussed with anyone associated with the marketing of services in competition with the products, goods or services of the Producing Party.

7. Prior to disclosure of the Confidential Information to any of the authorized persons, the counsel representing the Party who is to receive the Confidential Information shall notify the person of this Order and notify the person where it can be found on the TPUC's website or provide a copy of the Order to the recipient Commissioner, staff member, employee or, officer, who shall be bound by the terms of this Order. Prior to disclosure of Confidential Information to any outside consultant or expert witness employed or retained by a Party, counsel shall provide a copy of this Order to such outside consultant or expert witness, who shall sign an affidavit in the form of that attached to this Order attesting that he or she has read a copy of this Order, that he or she understands and agrees to be bound by the terms of this Order, and that he

or she understands that unauthorized disclosure of the documents labeled CONFIDENTIAL constitutes a violation of this Order (Affidavit). The Affidavit shall be signed in the presence of and be notarized by a notary public. Counsel of record for each Party shall provide the Producing Party a copy of each such Affidavit for retained experts expected to be called as a witness at the hearing of this matter and shall keep the Affidavits executed by all experts or consultants retained by that Party, whether or not expected to be called as a witness, on file in their respective offices.

8. If any Party or non-party subject to this Order inadvertently fails to label documents as CONFIDENTIAL in accordance with the provisions of this Order when producing such documents, such failure shall not constitute a waiver of confidentiality, provided the Party or non-party who has produced the document shall notify the recipient of the document in writing within five days of discovery of such inadvertent failure to label the document as CONFIDENTIAL.

9. At that time, the recipients will immediately treat the subject document as Confidential Information. In no event shall the TPUC, Attorney General, or any other Party to this Order, be liable for any claims or damages resulting from the disclosure of a document while not so labeled as CONFIDENTIAL. An inadvertent failure to label a document as CONFIDENTIAL shall not, in any way, affect the TPUC's determination as to whether the document is entitled to Confidential Information status.

10. If any Party or non-party subject to this Order inadvertently fails to designate documents as CONFIDENTIAL in accordance with the provisions of this Order when producing such documents and the failure is not discovered in time to provide a five business day

notification to the recipient of the confidential nature of the documents referenced in Paragraph 3 above, the failure shall not constitute a waiver of confidentiality and a Party by written motion or by oral motion at a Pre-Hearing Conference or at the Hearing on the merits may request designation of the documents as CONFIDENTIAL, and if the motion is granted by the Hearing Officer, Administrative Law Judge, or the Commission, the recipients shall immediately treat the subject documents as CONFIDENTIAL. The TPUC, the Hearing Officer, or Administrative Law Judge may also, at his or her discretion, either before or during the Pre-Hearing Conference or Hearing on the merits of the case, allow information to be designated CONFIDENTIAL and treated as such in accordance with the terms of this Order.

11. 10. Any papers filed in this Docket that contain, quote, paraphrase, compile or otherwise disclose documents covered by the terms of this Order, or any information contained therein, shall be filed with the TPUC in sealed envelopes labeled CONFIDENTIAL. The Filing Party shall also include with the filing a public version of the papers with any Confidential Information redacted. Only the redacted public version may be placed in the TPUC's public file and /or posted on the TPUC website. In the TPUC's files, each sealed envelope shall be labeled to reflect the style and docket number of this Proceeding and to identify the subject matter of the content of the sealed envelope. Further, the envelopes at the TPUC shall be maintained in a locked filing cabinet. The envelopes shall not be opened or their contents reviewed by anyone except upon order by the TPUC, hearing officer, or administrative law judge after due notice to counsel of record. Notwithstanding the foregoing, the commissioners and the staff of the TPUC may review any paper filed as Confidential Information and labeled CONFIDENTIAL without obtaining an order of the TPUC, hearing officer, or administrative law judge, provided the

commissioners and staff maintain the confidentiality of the paper in accordance with the terms of this Order.

12. Documents, information and testimony designated as Confidential Information and labeled CONFIDENTIAL, in accordance with the Order, may be disclosed in testimony at the hearing on the merits of this Proceeding and offered into evidence in any hearing related to this Action, subject to the applicable rules of evidence and to such future orders as the TPUC, hearing officer, or administrative law judge may enter. To the extent possible, any Party intending to use documents, information, or testimony designated as Confidential Information shall inform the Producing Party and the TPUC, hearing officer, or administrative law judge, prior to the hearing on the merits of the case, of the proposed use, and shall advise the TPUC, the hearing officer, or administrative law judge, and the Producing Party before use of such information during witness examinations so that appropriate measures can be taken by the TPUC, hearing officer, or administrative law judge to protect the confidential nature of the information.

13. Except for documents filed with the TPUC, all documents covered by the terms of the Order that are disclosed to the requesting party shall be maintained in files labeled CONFIDENTIAL and labeled with reference to this Order at the offices of the requesting Party's counsel of record.

14. Nothing herein shall be construed as preventing any Party from continuing to use and disclose any information:

(A) that is in the public domain,

- (B) that subsequently becomes part of the public domain through no act of such party, or violation of this Order,
- (C) that is disclosed to it by a third party, where said disclosure does not itself violate any contractual or legal obligation or terms of this Order,
- (D) that is independently developed by a Party,
- (E) that is known or used by it prior to this Proceeding, or
- (F) is otherwise not confidential under state or federal law, regulation or rule.

The burden of establishing the existence of (A) through (F) in this Paragraph shall be upon the Party attempting to use or disclose such information.

15. Any Party may contest the designation of any document or information as Confidential Information by filing a motion with the TPUC, hearing officer, administrative law judge or the courts, as appropriate, for a ruling that the documents, information, or testimony should not be so treated. All documents, information and testimony designated as Confidential Information, however, shall be maintained as such until the TPUC, hearing officer, administrative law judge, or a court orders otherwise. To the extent practicable, a motion to contest must be filed not later than five days after receipt of the material designated Confidential Information or 10 days prior to the hearing on the merits, whichever date occurs later in time or as otherwise ordered by the TPUC. Any reply seeking to protect the status of the Confidential Information must be received not later than five days prior to the hearing on the merits or as otherwise ordered by the TPUC. Motions made and subsequent replies received within the five days prior to the Hearing on the merits shall be presented to the TPUC at the hearing on the merits for a ruling.

16. No person authorized under the terms herein to receive access to documents, information, or testimony designated as Confidential Information shall be granted access until such person has complied with the requirements set forth in Paragraph 7 of this Order.

17. Any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

18. Upon an order becoming final in this Proceeding and conclusion of any appeals resulting from such an order, all the filings, exhibits and other materials designated Confidential Information and all copies thereof shall be returned to counsel of the party who produced the filings, exhibits and other materials within fifteen days of a written request from the Producing Party, or counsel in possession of such documents shall certify to counsel of the Producing Party that all the filings, exhibits and other materials designated as Confidential Information and all copies thereof have been destroyed. If requested to return any Confidential Information, the Attorney General may retain the Confidential Information if it deems it appropriate in the discharge of his duties or in the public interest. The requirements of this Paragraph shall become operative immediately upon any Party (including any intervenor) who withdraws or otherwise ceases to be a Party to the case, even though the case itself may continue to be pending. Subject to the requirements of Paragraph 10 above, the TPUC shall retain copies of information designated as confidential as may be necessary to maintain the record of this case intact.

19. After termination of this Proceeding, the provisions of this Order relating to the secrecy and confidential nature of confidential documents, information and testimony shall continue to be binding, upon Parties hereto and their officers, employers, employees, agents,

and/or others for five years unless this Order is vacated or modified or otherwise ordered by the TPUC.

20. Nothing herein shall prevent a party from seeking further protection for particular documents or prevent entry of a subsequent order, upon an appropriate showing, requiring that any documents, information or testimony designated as Confidential Information shall receive protection other than that provided herein.

21. The Attorney General and his staff have authority to enter into this Order and non-disclosure agreements pursuant to Tenn. Code Ann. § 65-4-118 which are consistent with state and federal law, regulations and rules.

22. The Attorney General and his staff agree to keep Confidential Information in a secure place and will not permit them to be seen by any person who is not an employee of the TPUC, the Office of the Attorney General and Reporter or a person who has signed a Non-disclosure Agreement.

23. The Attorney General and his staff may make copies of Confidential Information and any portion thereof. To the extent permitted by state and federal law, regulations and rules, all notes utilizing supporting information shall be subject to the terms of this Order to the extent factual assertions are derived from the supporting information.

24. To the extent permitted by state law, the Attorney General's Office may provide timely notice of any public records request so the Company may take any action it deems appropriate. The Attorney General may, consistent with the discharge of his duties, handle

materials received pursuant to this Order accordance with Tenn. Code Ann. §10-7-504(a)(5)(C) or any other law, regulation or rule.

25. Confidential Information is subject to this Order which is entered pursuant to Rule 26 of the Tennessee Rules of Civil Procedure and to the Tennessee Public Records Act, as set forth in the language of Tenn. Code Ann.

§ 10-7-503(a)(2)(A) “. . . unless otherwise provided by state law.”

26. The obligation of the Attorney General and his staff under this Order are further subject to the state’s Public Records Act and other open records statutes. Nothing in this Order is intended to violate or alter the state’s Public Records Act or Freedom of Information Act (FOIA). In the event that the Attorney General or member of his staff is served with a subpoena, public records request, FOIA request, or other request that calls for the production of confidential commercial information labeled as Confidential Information by the Company, the Attorney General will, to the extent permitted by state law or any orders of a court or other body issuing the subpoena or request, notify the Company by notifying its Counsel of the existence of the subpoena, public records request, FOIA request, or other request. Further, the Attorney General will notify the Company at least five business days before responding to any such request to the extent permitted by state law and orders of a court, as long as the Attorney General or his staff is able to respond to the request within a reasonable time to any such request. The Attorney General or his staff may elect to wait to produce such information as allowed by state law in order to provide the Company an opportunity to challenge said subpoena or request or to make arrangements to preserve the confidentiality of the confidential commercial information labeled as Confidential Information by the Company that is subject to such request.

27. The designation of any information, documents or things in accordance with this Order as constituting Confidential Information and the Attorney General or its staff's treatment of such material as confidential or proprietary in compliance with this Order is not an admission of agreement by the Attorney General or its staff that the material constitutes or contains confidential commercial information or trade secret information and shall not be deemed to be either a waiver of the State's right to challenge such designation or an acceptance of such designation. The Company agrees to designate information, documents or things provided to the Attorney General as Confidential Information only if it has a good faith basis for the claim. The Company will upon request of the Attorney General or its staff provide a written explanation of the details, including statutory authority that support its Confidential Information claim within five days of a written request. The Company also specifically agrees that it will not designate any documents as Confidential Information or label such documents as CONFIDENTIAL if the documents:

- (A) have been distributed to the public, consumers or others; or
- (B) are not maintained by the Company as Confidential Information.

28. Nothing in this Order shall prevent the Attorney General from using the Confidential Information received for investigative purposes in the discharge of the duties of the Office of the Attorney General and Reporter. Without limiting the scope of this Paragraph, nothing in the Order shall prevent the Attorney General from contacting consumers whose names were provided by the Company or from discussing with any consumer any materials that he or she allegedly received from the Company or confirming that a consumer actually received the materials.

29. All information, documents and things designated as Confidential Information and produced in accordance with this Order may be disclosed in testimony or offered into evidence at any TPUC or court hearing, trial, motion or proceeding of this matter, subject to the provisions of this Order, including Paragraph 10 and the applicable rules of evidence and any order the TPUC may enter to protect the confidentiality of information offered at any hearing or other proceeding. The Party who produced the information, documents and things designated as Confidential Information agrees to stipulate to the authentication of such information, documents and things in any such proceeding. If any Party identified information in the Confidential Information that indicates that unlawful conduct (civil or criminal) has occurred or may occur, nothing in the Order shall prevent such Party from reporting such alleged conduct to the appropriate law enforcement or regulatory agency.

30. Nothing in this Order is intended to restrict or alter federal or state laws, regulations or rules.

31. Any person who has signed a non-disclosure certificate or is otherwise bound by the terms of this Order shall continue to be bound by this Order and/or certificate even if no longer engaged by the TPUC or Intervenors.

HEARING OFFICER

This ____ day of March, 2019.

SUBMITTED FOR ENTRY:

BY: 

RYAN FREEMAN, B.P.R #033299

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.

1900 Republic Centre

633 Chestnut Street

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

IN RE:

**APPLICATION OF TENNESSEE
WATER SERVICE, INC. FOR
ADJUSTMENT OF RATES AND
CHARGES, APPROVAL OF A
QUALIFIED INFRASTRUCTURE
INVESTMENT PROGRAM, AND
MODIFICATION TO CERTAIN TERMS
AND CONDITIONS FOR THE
PROVISION OF WATER SERVICE**

DOCKET NO. 19-

AGREEMENT TO COMPLY WITH PROTECTIVE ORDER

I have reviewed the Protective Order entered in the above captioned matter and agree to abide and be bound by its terms. I understand that unauthorized disclosure of documents labeled CONFIDENTIAL will be a violation of the Order.

DATE

NAME

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, _____, a Notary Public,
_____ with whom I am personally acquainted, who
acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this ____ day of _____, _____.

NOTARY PUBLIC

My Commission Expires: _____