

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

February 25, 2020

IN RE:	)	
	)	
PETITION OF TENNESSEE-AMERICAN WATER	)	DOCKET NO.
COMPANY IN SUPPORT OF THE CALCULATION	)	19-00031
OF THE 2019 CAPITAL RECOVERY RIDERS	)	
RECONCILIATION	)	

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ORDER GRANTING *PETITION* AS AMENDED

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This matter came before Commissioner Herbert H. Hilliard, Commissioner David F. Jones, and Commissioner John Hie of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on December 9, 2019, to consider the *Petition in Support of the Calculation of the 2019 Capital Recovery Riders Reconciliation* (“*Petition*”) filed on March 1, 2019 by Tennessee-American Water Company (“TAWC,” “Tennessee-American” or the “Company”).

**BACKGROUND AND *PETITION***

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.<sup>1</sup> In accordance with its tariff, TAWC is

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<sup>1</sup> 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-*

required to submit a reconciliation of the Capital Riders no later than March 1<sup>st</sup> of every year.

On March 1, 2019, the Company filed the *Petition*. On April 3, 2019, the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“CAD” or “Consumer Advocate”) filed a *Petition to Intervene*, which was granted by the Hearing Officer in an Order dated April 18, 2019. On August 15, 2019, the Hearing Officer issued an *Order Establishing a Procedural Schedule* and the parties engaged in discovery pursuant to that schedule. In its *Petition*, TAWC seeks approval of the 2019 Reconciliation of the Capital Riders to reflect the net under-recovery of surcharges for capital expenditures for the 2018 period.

## **POSITIONS OF THE PARTIES**

### **TAWC’s *Petition***

Tennessee-American’s *Petition*, as filed, proposed an additional QIIP surcharge of 1.638% resulting in revenue recovery of \$578,263; an EDI surcharge of -0.225% resulting in a revenue recovery of (\$79,330); and an SEC surcharge of 0.840% resulting in a revenue recovery of \$296,690.<sup>2</sup> However, the Company’s calculations underwent a series of amendments during the course of discovery and after the presentation of the Consumer Advocate’s Pre-Filed Direct Testimony. Prior to the hearing on the *Petition*, the Company sought a QIIP surcharge of -0.63% resulting in revenue recovery of (\$221,552); an EDI surcharge of -0.30% resulting in a revenue recovery of (\$105,279); and an SEC surcharge of -0.59% resulting in a revenue recovery of (\$207,986).<sup>3</sup>

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*Thoughts 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).

<sup>2</sup> Elaine K. Chambers, Pre-Filed Direct Testimony, Exhibit EKC: Capital Riders Reconciliation (March 1, 2019).

<sup>3</sup> Elaine K. Chambers, Pre-Filed Rebuttal Testimony, pp. 8-9 (October 15, 2019).

In the *Petition*, the Company asserts that the Capital Riders reduce the need for rate cases, support essential improvements in the infrastructure, reduce the rate shock to customers, support economic growth and job creation, and promote safe and reliable water service. Additionally, the Capital Riders allow the Company to make timely investments while maintaining a fair rate of return.<sup>4</sup> On behalf of the Company, Ms. Elaine K. Chambers asserted that no changes in market conditions or other factors have affected this public interest status.<sup>5</sup> For these reasons, Ms. Chambers concluded the Capital Riders remain in the public interest.

The *Petition* is made to reconcile the investment period of calendar year 2018 and incorporates the adjustments, clarifications, and corrections ordered in TPUC Docket Nos. 15-00111, 16-00022, 17-00020, 17-00124, 18-00022, and 18-00120.<sup>6</sup> The Company indicated it has not included any operating expenses for the EDI or SEC riders in the *Petition*.<sup>7</sup> Ms. Chambers testified the *Petition* includes all of the information required by the Company's tariffs and is consistent with the information provided in previously approved petitions.<sup>8</sup>

An earnings test adjustment provides oversight to ensure the Company does not exceed its authorized rate of return ("ROR"). According to the *Petition*, Tennessee-American exceeded its authorized 7.23% ROR. The Company calculated that the amount of over-earnings required a \$745,142 reduction to the reconciliation of revenues.<sup>9</sup> This amount is included in the determination of the surcharges and has the effect of reducing the amount of surcharge revenues needed to cover the revenue requirement resulting from the aforementioned riders.

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<sup>4</sup> Elaine K. Chambers, Pre-Filed Direct Testimony, pp. 39-40 (March 1, 2019).

<sup>5</sup> *Id.* at 39.

<sup>6</sup> *Id.* at 2-3.

<sup>7</sup> *Id.* at 17.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 30; Exhibit EKC.

Ms. Chambers attests that: (a) all workpapers and general ledger transactions related to capital expenditures have been provided; (b) the billing determinants from January 2018 to December 2018 have been provided; (c) the capitalization policy was filed in Docket No. 15-00029 and has not undergone any revision; (d) the Annual Reconciliation Factor Percentage Rate with supporting workpapers has been provided; (e) schedules outlining the Actual Investment Amount has been provided; (f) no prior period adjustments other than removing items in 2018 for the EDI rider that are consistent with the orders in Docket Nos. 14-00121 and 15-00029 and the Annual Performance Compensation adjustment approved in Docket No. 17-00124; (g) market conditions have been discussed and the Riders remain in the public interest; and (h) detailed information of the amount of revenues collected from customers for each of the riders has been provided in the workpapers.<sup>10</sup>

Additionally, Ms. Chambers submitted supplemental testimony to include the Bonus and Repairs deductions and the lower of the actual Net Operating Loss Carryforward or the Rider specific calculated amount.<sup>11</sup> With those changes, TAWC proposed a QIIP reconciliation surcharge of -0.463%, an EDI reconciliation surcharge of -0.291%, and an SEC reconciliation surcharge of -0.483%, resulting in a decrease to the current base bill by -1.237%.<sup>12</sup>

Company witness, Brent O'Neill, provided Pre-Filed Testimony concerning the capital expenditures included for recovery in the *Petition*.<sup>13</sup> Mr. O'Neill affirmed that the data used to prepare his exhibits was taken from the books and records of the Company, the officers and associates of the Company and other internal sources examined by him.<sup>14</sup> Mr. O'Neill asserted that net capital rider expenditures were \$13,546,799 compared to an anticipated rider total of

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<sup>10</sup> Elaine K. Chambers, Pre-Filed Direct Testimony, p. 37 (March 1, 2019).

<sup>11</sup> Elaine K. Chambers, Supplemental Testimony, pp. 2-3 (May 16, 2019).

<sup>12</sup> *Id.* at 4-6.

<sup>13</sup> Brent E. O'Neill, Pre-Filed Direct Testimony (March 1, 2019).

<sup>14</sup> *Id.* at. 3-4.

\$13,053,960, representing an over-spend of \$492,839 or 3.78%. QIIP represents \$680,946 (6.96% over budget), EDI represents \$432,817 (39.5% under budget), and SEC represents \$244,710 (11.3% over budget).<sup>15</sup> The net overspending is attributed by the Company to weather delays, changes in project costs, unscheduled main repairs, project delays, and unforeseen, high-priority projects.<sup>16</sup> Company witness, Kurt A. Stafford, later adopted Mr. O'Neill's Pre-Filed Testimony.<sup>17</sup>

### **Consumer Advocate's Direct Testimony**

On behalf of the Consumer Advocate, Mr. David Dittemore asserted in Pre-Filed Testimony that the total appropriate reconciliation for the three Capital Recovery Riders is -\$847,114 (or -2.4%), citing differences with the Company in two areas: the Company including lobbying as an Operating Expense and the Company failing to gross-up excess earnings for income taxes.<sup>18</sup> In his supplemental testimony, Mr. Dittemore modified his initial surcharge recommendation from -2.4% to -2.38%, accounting for the elimination of \$4,879 of lobbying costs that were recorded as a non-operating expense.<sup>19</sup>

With respect to the recognition of lobbying costs, Mr. Dittemore asserts that there are two reasons lobbying costs should not be included within the calculation of the Earnings Test:

1. In Tennessee and throughout the country, lobbying costs are removed from revenue requirement determinations in the establishment of utility rates; and
2. The Company's accounting method for lobbying costs is not in compliance with the NARUC Uniform System of Water Accounts, which dictates that lobbying charges are properly recorded in Account 426, a Non-Operating Expense account.<sup>20</sup>

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<sup>15</sup> *Id.* at 9-14.

<sup>16</sup> *Id.*

<sup>17</sup> Kurt A. Stafford, P.E., Pre-Filed Direct Testimony Adopting Testimony of Brent E. O'Neill, P.E. (October 23, 2019).

<sup>18</sup> David N. Dittemore, Pre-Filed Direct Testimony, p. 2 (September 26, 2019).

<sup>19</sup> Supplemental Testimony David N. Dittemore, p. 2 (October 30, 2019).

<sup>20</sup> David N. Dittemore, Pre-Filed Direct Testimony, pp. 4-5 (September 26, 2019).

In addition, Mr. Dittmore raised issues concerning the income tax implications of the Earnings Test Adjustment, claiming the Company failed to consider Income Tax Expense in the computation of excess earnings by \$299,148. According to the Consumer Advocate, the Company is ignoring the Income Tax implications of refunding the excess amounts back to the ratepayers.<sup>21</sup>

Mr. Dittmore raised additional concerns including the impact of a service outage event beginning September 12, 2019. Based on these issues and concerns, the Consumer Advocate recommended the suspension of further capital rider surcharge costs and repair deduction.<sup>22</sup> Nevertheless, in his Supplemental Testimony, Mr. Dittmore acknowledged the Company's effort to address these items and stated that he no longer supported the suspension of the Capital Rider surcharge.<sup>23</sup>

### **Rebuttal Testimony and the Consensus of the Parties**

In Rebuttal Testimony, Ms. Chambers states that she disagrees with Mr. Dittmore's characterization of the lobbying expense, citing that the Commission found that lobbying expenses should not be denied.<sup>24</sup> Nevertheless, the Company conceded a \$95,456 adjustment to the reconciliation of operating expenses due to the lobbying expenses included in operating expenses.<sup>25</sup> Ms. Chambers maintains that, in spite of what Mr. Dittmore claims, the Company has consistently and properly utilized plain tariff language as shown in the approved tariffs.<sup>26</sup> With the amendments made in Rebuttal Testimony, the Company is proposing a QIIP Rider adjustment that will show a decrease in total revenue recovery of \$221,552 (or -0.63%), an EDI

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<sup>21</sup> *Id.* at 7-8.

<sup>22</sup> *Id.* at 11-16.

<sup>23</sup> David N. Dittmore, Supplemental Testimony, p. 3 (September 26, 2019).

<sup>24</sup> Elaine K. Chambers, Rebuttal Testimony, pp. 2-3 (October 15, 2019).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 3.

Rider decrease of \$105,279 (or -0.30%), and a SEC Rider adjustment that will show a decrease of \$207,896 (or -0.59%).<sup>27</sup>

In Supplemental Testimony, the Company reiterated that it appropriately applied the language of the tariff since the Capital Rider Tariffs were approved, which do not contain language requiring a gross-up of earnings.<sup>28</sup> Nevertheless, the Company agreed to concede this issue after discussions with the Consumer Advocate and will gross-up the amount of earnings authorized to consider Income Tax Expense implications.<sup>29</sup> The Company agreed to gross-up any future earnings above authorized amounts to include income tax. However, Ms. Chambers stated that the Company did not concede the amount of lobbying expenses included by Mr. Dittmore in his testimony, but instead making a proposed adjusted QIIP Rider amount of -1.14%, a proposed EDI Rider of -0.32%, and a proposed SEC Rider of -0.92%.<sup>30</sup>

The Consumer Advocate submitted Supplemental Testimony which solidified a level of consensus between the parties regarding how Capital Riders should be calculated in the present docket. Mr. Dittmore continues to believe that \$95,456 is not an accurate reflection of the total costs associated with lobbying activity; nevertheless, he indicated he would accept that adjustment for purposes of computing the riders in the present docket.<sup>31</sup> With the modifications the Company has made in its case, the Consumer Advocate indicated it no longer supported a suspension of the Capital Rider surcharge.<sup>32</sup> The parties jointly indicated on October 30, 2019, that there were no outstanding or contested matters with respect to the *Petition* as modified.<sup>33</sup>

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<sup>27</sup> *Id.* at 8-9.

<sup>28</sup> Elaine K. Chambers, Supplemental Testimony, p. 2 (October 29, 2019).

<sup>29</sup> *Id.* at 2-3.

<sup>30</sup> *Id.* at 3-4.

<sup>31</sup> David N. Dittmore, Supplemental Testimony, p. 2 (October 30, 2019).

<sup>32</sup> *Id.* at 3.

<sup>33</sup> *Letter to Chair Morrison* (October 30, 2019).

## **THE HEARING**

The Hearing on the *Petition* was held before the voting panel assigned to this docket on December 9, 2019, as noticed by the Commission on November 27, 2019. Participating in the Hearing were:

Tennessee-American Water Company – Melvin J. Malone, Esq., Butler Snow LLP, 150 3<sup>rd</sup> Avenue South, Suite 1600, Nashville, Tennessee 37201.

Consumer Advocate Division – Daniel P. Whitaker, III. Esq., Post Office Box 20207, Nashville, Tennessee 37202-4015.

Ms. Elaine K. Chambers provided testimony telephonically on behalf of the Company. Mr. David Dittmore provided testimony on behalf of the Consumer Advocate. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

## **STANDARD FOR COMMISSION APPROVAL**

Tenn. Code Ann. § 65-5-103(d)(5) states:

(A) A public utility may request and the commission may authorize a mechanism to recover the operational expenses, capital costs or both related to other programs that are in the public interest.

(B) A utility may request and the commission may authorize a mechanism to allow for and permit a more timely adjustment of rates resulting from changes in essential, nondiscretionary expenses, such as fuel and power and chemical expenses.

(C) Upon a finding that such programs are in the public interest, the commission shall grant recovery and shall authorize a separate recovery mechanism or adjust rates to recover operational expenses, capital costs or both associated with the investment in other programs, including the rate of return approved by the commission at the public utility's most recent general rate case pursuant to § 65-5-101 and subsection (a).

## **FINDINGS AND CONCLUSIONS**

After the Hearing and upon consideration of the pleadings, testimony, and the entire administrative record, the panel found the *Petition* complies with the Company's tariff, including

the on or before March 1<sup>st</sup> filing requirement whereby the Company shall submit to the Commission the calculation of the QIIP, EDI, and SEC percentage rates for the following calendar year. Based on the evidentiary record, the panel voted unanimously to adopt the following corrected surcharges:

1. A QIIP Rider surcharge of -1.14%;
2. An EDI Rider surcharge of -0.32%; and
3. A SEC Rider surcharge of -0.92%.

These amounts represent a total surcharge of -2.38%. Finally, in conjunction with approval of these surcharges the panel required Tennessee-American to submit tariff provisions consistent with its decision.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition in Support of the Calculation of the 2019 Capital Riders Reconciliation* filed on March 1, 2019 by Tennessee-American Water Company requesting Commission approval of its Calculation of the 2019 Capital Riders Reconciliation is granted, subject to the corrections set forth above.

2. The corrected Capital Rider surcharges are adopted as follows:
- A Qualified Infrastructure Investment Rider surcharge of -1.14%;
  - An Economic Development Investment Rider surcharge of -0.32%; and
  - A Safety and Environmental Compliance Rider surcharge of -0.92%.

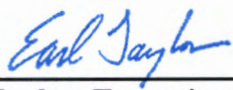
These amounts represent a total surcharge of -2.38%.

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 (15) 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 (60) days from the date of this Order.

**Commissioner Herbert H. Hilliard, Commissioner David F. Jones, and Commissioner John Hie concur.**

**ATTEST:**



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**Earl R. Taylor, Executive Director**