

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION**

**NASHVILLE, TENNESSEE**

**January 31, 2024**

**IN RE:**

**DOCKET TO INVESTIGATE AND CONSIDER  
POTENTIAL ISSUES AND MODIFICATIONS TO THE  
COLLECTIVE CAPITAL RIDERS OF TENNESSEE-  
AMERICAN WATER COMPANY**

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**DOCKET NO.  
19-00103**

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**ORDER APPROVING *STIPULATION AND SETTLEMENT AGREEMENT***

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This matter came before Chairman Herbert H. Hilliard, Commissioner Robin L. Morrison, Commissioner Clay R. Good, Commissioner Kenneth C. Hill, 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 11, 2023, for consideration of the *Stipulation and Settlement Agreement* (“*Settlement Agreement*”) filed on October 26, 2023.

**BACKGROUND**

Tennessee-American Water Company (“TAWC” or “Company”) provides residential, commercial, industrial, and municipal water service to customers in Tennessee and North Georgia. TAWC is a wholly owned subsidiary of American Water Works Company, Inc. In Docket No. 13-00130, TAWC submitted, and the Commission approved, three (3) Capital Recovery Riders and a Pass-Through Mechanism for Purchased Power, Chemicals, Purchased Water, and Wheeling Water (“PCOP”) in accordance with Tenn. Code Ann. § 65-5-103, *et seq.* and Commission Rule 1220-4-1-.04. The Capital Recovery Riders include: the Qualified Infrastructure Investment Program Rider, (“QIIP”) to recover capital costs relating to qualified non-revenue producing infrastructure

investment projects; the Economic Development and Investment Rider (“EDI”), to recover operational expenses, capital costs, or both related to the expansion of infrastructure purposed for economic development; and, the Safety and Environmental Compliance Rider (“SEC”), to recover the operations expenses, capital costs, or both related to safety and environmental compliance (collectively, the “Capital Riders”).<sup>1</sup> The tariff for the Capital Riders require TAWC to submit the Capital Rider tariff percentage rates for the QIIP, EDI, and SEC for the upcoming calendar year.

During proceedings on the Company’s request for approval of 2019 proposed changes to the Capital Riders, the Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) asserted that the framework of the surcharge calculations improperly allowed the Company to earn a return on investment that had not been funded by the Company’s shareholders. The Consumer Advocate raised six issues in support of its claim: 1) Imbalance in Rate Base; 2) Addition of a Rate Base Limiting Factor to the existing tariff; 3) Addition of Modified Earnings Test Language; 4) Exclusion of the Earning Test from recovery in the PCOP; 5) Proposal to eliminate regulatory lag; and 6) Change to an annual filing.<sup>2</sup> In rebuttal, TAWC asserted that the Capital Riders are functioning as intended and permit the Company “to implement significant and required non-optional solutions while avoiding regulatory lag and lessening rate shock to its customers, both of which were expressly cited by [the] Commission in its approval of the Riders.”<sup>3</sup> Finding that the Consumer Advocate “has not alleged that the Company has failed to materially follow the tariff in this matter, but rather has contested the very structure and fundamental mechanics of a

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<sup>1</sup> *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).

<sup>2</sup> *In re: Petition of Tennessee-American Water Company Regarding the 2019 Investment and Related Expenses Under the Qualified Infrastructure Investment Program Rider, the Economic Development Investment Rider and the Safety and Environmental Compliance Rider*, Docket No. 18-00120, *Order Approving Petition as Amended*, pp. 9-14 (November 8, 2019) (the “2019 Order”).

<sup>3</sup> *Id.* at 19.

mechanism that the parties have both contributed to and shaped since it was first implemented[.]”<sup>4</sup> the Commission ordered that a new docket be opened to “address potential issues and proposed modifications to improve, make more transparent, or streamline the collective Capital Riders.”<sup>5</sup>

The Commission opened the current docket and designated Commission Staff to participate as a party (“Party Staff”) in the docket. The City of Chattanooga, Tennessee (“City of Chattanooga” or “City”) requested to intervene as a party by a petition filed on September 28, 2020. The Hearing Officer granted the City’s intervention by order entered October 1, 2020. The Consumer Advocate participated as a party to the docket as established in the *2019 Order*.

#### **STIPULATION AND SETTLEMENT AGREEMENT**

On October 26, 2023, the Consumer Advocate filed the *Settlement Agreement* on behalf of TAWC, City of Chattanooga, Party Staff, and the Consumer Advocate. The parties also submitted the Pre-Filed Direct Testimony of Robert C. Lane, Senior Manager of Rates and Regulatory for TAWC and the proposed Incremental Capital Recovery Rider Tariff.<sup>6</sup> The parties assert that the *Settlement Agreement* will result in an improved, more transparent process, and efficiently streamlines the alternative regulatory mechanism. The provisions of the *Settlement Agreement* require:

1. The annual filing, to begin with the 2024 filing for qualifying investments made through December 31, 2023, will be filed no later than March 1<sup>st</sup> of each year and will compute the annual capital rider revenue requirement.
2. The Return on Earnings (“ROE”) test will determine any limitation, if applicable, to the recovery of the incremental capital rider recovery requirement (“ICRRR”).

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<sup>4</sup> *Id.* at 21.

<sup>5</sup> *Id.* at 22.

<sup>6</sup> *Stipulation and Settlement Agreement, Pre-Filed Direct Testimony Supporting the Settlement Agreement, and TAWC Proposed Incremental Capital Recovery Rider Tariff on Behalf of the Consumer Advocate, TN Public Utility Commission Party Staff, and City of Chattanooga* (October 16, 2023) (“*Settlement Agreement*” as also indicated in introduction).

3. Rate Base will be determined using the thirteen-month average balances, measured from December through December, for TAWC during the test period.

4. TAWC's book Net Income shall be the starting point in determining the Adjusted Net Income.

5. TAWC shall provide the thirteen-month average of short-term and long-term debt balances from its books during the study period and provide the weighted average cost of both types of debt.

6. The ROE will be determined by dividing the adjusted Net Income by the level of equity investment.

7. Regulatory lag will be determined based upon the ICRRR component from the mid-point of the study period through the mid-point of the collection period.

8. The Company is allowed to defer past in-service depreciation, property tax, and carrying costs associated with debt expense of ICRRR eligible investments.

9. A listing of all schedules to be included with each reconciliation filing.<sup>7</sup>

In support of the *Settlement Agreement*, Mr. Lane testifies that the *Settlement Agreement* accurately represents the unanimous agreement of the parties and compromise resolutions of the issues raised during the parties' discussions in this docket.<sup>8</sup> In addition, he highlights key features of the *Settlement Agreement* as follows: elimination of two annual filings in favor of one annual historical filing; definition of the ICRRR as the computation resulting from comparing the current amount of eligible capital investment and the authorized investment already included in rates from the prior year; ensuring that the Company's Rate Base is reflected in base rates plus the Rate Base associated with the Company's capital riders does not exceed the Company's actual Rate Base;

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<sup>7</sup> *Settlement Agreement*, pp. 2-7.

<sup>8</sup> *Id.* at Robert C. Lane, Pre-Filed Direct Testimony, pp. 3-4.

maintains the originally approved methodologies approved in Docket No. 13-00130, except as necessary for implementation of the *Settlement Agreement*; and provision for transition from the current Capital Riders Tariff to the proposed Capital Riders Tariff.<sup>9</sup> Mr. Lane asserts that the provisions of the *Settlement Agreement* are in the public interest, providing a regulatory mechanism that fairly balances the consumers' and Company's interests.<sup>10</sup>

### **FINDINGS AND CONCLUSIONS**

The Commission is granted “general supervisory and regulatory power, jurisdiction and control over all public utilities.”<sup>11</sup> Among the Commission’s regulatory jurisdiction is the power “to fix just and reasonable individual rates, joint rates, tolls, fares, charges or schedules thereof, as well as commutation, mileage, and other special rates which shall be imposed, observed, and followed thereafter by any public utility as defined in § 65-4-101(a).”<sup>12</sup> The Commission is further authorized to approve alternative regulatory methods allowing for mechanisms to recover operational expenses, capital costs, or both, for safety, infrastructure expansion for economic development, nondiscretionary expenses, and other purposes established by statute.<sup>13</sup> Such alternative regulatory mechanism are required to be in the public interest.<sup>14</sup>

Upon review of the *Settlement Agreement*, docket filings, pre-filed testimony, and all evidence in the record, the voting panel found that the parties thoroughly and diligently examined the issues raised by the Consumer Advocate in Docket No. 18-00120, engaging in extensive discussions and exchanges of information over a nearly four-year period. Over the course of the discussions, the parties have provided updates on progress, indicating that the issues are complex, and that the

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<sup>9</sup> *Id.* at 4-5.

<sup>10</sup> *Id.* at 6.

<sup>11</sup> Tenn. Code Ann. § 65-4-104 (2022).

<sup>12</sup> Tenn. Code Ann. § 65-5-101(a) (2022).

<sup>13</sup> Tenn. Code Ann. § 65-5-103(d) (2022).

<sup>14</sup> *Id.*

transition from two (2) capital rider filings per year to a single filing proved to be challenging.<sup>15</sup> The *Settlement Agreement* represents the compromise resolution of all disputed issues and is supported by all parties. The *Settlement Agreement* clearly outlines the framework of the new Capital Recovery Rider mechanism and the design changes proposed. The *Settlement Agreement* does not limit any of the parties' ability to seek modification of the rate design in the future. The process is streamlined to require one filing based upon an historic test year reviewing costs, revenues, and investments instead of two (2) annual filings under the current Capital Rider Recovery Tariff and maintains the integrity of the Rate Base used to calculate the capital rider recovery revenue.

The panel further unanimously found that the proposed changes to the Capital Riders set forth in the *Settlement Agreement* are in the public interest and will benefit both consumers and Tennessee-American. The provisions of the *Settlement Agreement* support the Company's timely investment in critical infrastructure, which is dedicated to serving customers, while allowing TAWC the opportunity to earn a reasonable return on invested capital. These Capital Riders allow the utility timely recovery of investment related expenses while deferring costly rate cases by adjusting rates annually, which also serves to avoid consumer rate shock and assuring affordable rates.

Therefore, the voting panel found that the terms of *Settlement Agreement* are just and reasonable and in the public interest. The panel unanimously voted to approve the *Settlement Agreement* and the tariff attached to the testimony of Robert C. Lane.

**IT IS THEREFORE ORDERED THAT:**

1. The *Stipulation and Settlement Agreement* filed on behalf of the Consumer Advocate Division of the Office of the Tennessee Attorney General, Tennessee-American Water Company,

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<sup>15</sup> See Tennessee-American Water Company Status Update in Response to the Commission April 9, 2021 Notice of Filing (May 3, 2021); Update of the Parties in Response to the Hearing Officer's Notice of Filing of January 24, 2022 (February 10, 2022); and Letter to Chairman Kenneth C. Hill Re: Status Update of the Joint Parties, From Karen Stachowski, Consumer Advocate (May 27, 2022).

Commission Staff as a Party, and the City of Chattanooga on October 26, 2023, is approved.

2. 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.

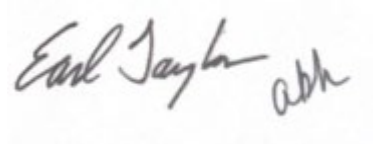
3. Any person who is aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

**FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:**

**Chairman Herbert H. Hilliard,  
Commissioner Robin L. Morrison,  
Commissioner Clay R. Good,  
Commissioner Kenneth C. Hill, and  
Commissioner John Hie concurring.**

None dissenting.

**ATTEST:**

A handwritten signature in dark ink, appearing to read "Earl Taylor" followed by a smaller, less legible signature or initials "abh".

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**Earl R. Taylor, Executive Director**