

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

August 5, 2020

IN RE:)	
)	
PETITION OF TENNESSEE-AMERICAN WATER)	DOCKET NO.
COMPANY REGARDING THE 2020 INVESTMENT)	19-00105
AND RELATED EXPENSES UNDER THE QUALIFIED)	
INFRASTRUCTURE INVESTMENT PROGRAM)	
RIDER, THE ECONOMIC DEVELOPMENT)	
INVESTMENT RIDER, AND THE SAFETY AND)	
ENVIRONMENTAL COMPLIANCE RIDER)	

ORDER APPROVING *PETITION* AS AMENDED

This matter came before Vice Chair Kenneth C. Hill, Commissioner Herbert H. Hilliard, and Commissioner John Hie 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 May 11, 2020 for consideration of the *Petition* filed by Tennessee-American Water Company (“TAWC”, “Tennessee-American”, or the “Company”) on November 15, 2019.

BACKGROUND

TAWC 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. On November 15, 2019, TAWC filed a *Petition* requesting Commission approval to change the tariff percentage rates for the Qualified Infrastructure Investment Program Rider (“QIIP” or “QIIP Rider”), the Economic Development Investment Program Rider (“EDI” or “EDI Rider”), and the Safety and Environmental Compliant Rider

(“Safety Rider” or “SEC”). The QIIP, EDI, and SEC (collectively, “Capital Riders”) were previously approved by the Commission on April 14, 2014 in Docket No. 13-00130.¹

On December 27, 2019, the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) filed its *Petition to Intervene*. On January 8, 2020, the Hearing Officer granted the Consumer Advocate’s intervention.

PETITION

In accordance with the tariffs approved in TPUC Docket No. 13-00130, on or before December 1st of each year, the Company shall submit to the Commission an annual filing that calculates the tariff Rider percentage rates for the upcoming calendar year.² In Pre-Filed Testimony in support of the *Petition*, Ms. Elaine K. Chambers asserted the Capital Riders were calculated consistent with the modifications and clarifications ordered in TPUC Docket Nos. 14-00121 and 15-00029, and the corrections made to the calculations in TPUC Docket Nos. 15-00111, 16-00022, 17-00020, and 18-00022.³ Ms. Chambers also noted and described the changes made in the Company’s filing and workpapers included in the *Petition*.⁴

According to Ms. Chambers, the EDI Rider is an extremely valuable tool allowing developers to expand into surrounding communities and enhancing the community’s economic development opportunities while the SEC Rider expressly highlights the reason for the investment becoming more transparent to the customers. In addition to these benefits, the Capital Riders reduce the need for a general rate case, minimize rate shock, spur economic

¹ See *In re: Petition of Tennessee-American Water Company for Approval of a Qualified Infrastructure Investment Program, an Economic Development Investment Rider, a Safety and Environmental Compliance Rider and Pass-Throughs for Purchased Power, Chemicals, Purchased Water, Wheeling Water Costs, Waste Disposal, and TRA Inspection Fee*, Docket No. 13-00130, *Order Approving Amended Petition* (January 27, 2016).

² See *Petition*, pp. 6-7 (November 16, 2018).

³ Elaine K. Chambers, Pre-Filed Direct Testimony, p. 3 (November 15, 2019).

⁴ *Id.* at 8-10.

growth and job creation, ensure safety and reliability of service, provide a timely recovery of investments, and ensure the company earns a fair rate of return.⁵

The Company proposed to begin the attrition period for the Capital Riders on January 1, 2020 and end on December 31, 2020. Approved Capital Riders are cumulative and remain in effect until reset back to zero in a rate case. Ms. Chambers asserted that no operating expenses have been included in this filing.⁶ Further, no Production Costs and Other Pass-Throughs (“PCOP”) are included in this filing. PCOP is different from the Capital Riders because it allows for the recovery or refund of changes in production costs from those authorized in the previous rate case.

Ms. Chambers testified the proposed QIIP Rider surcharge of 14.28% should produce \$6,723,700 additional revenue for the 2020 calendar year; the EDI Rider surcharge of 1.14% should produce \$536,171 additional revenue for the 2020 calendar year; and the SEC Rider surcharge of 8.79% should produce \$4,137,860 for the 2020 calendar year.⁷ The proposed surcharges would result in a typical residential customer living in the City of Chattanooga and using an average 4,154 gallons of water per month to realize a \$1.09 increase in their monthly bill.⁸

Ms. Chambers testified TAWC continues to recommend using excess Accumulated Deferred Income Tax (“EADIT”) normalization resulting from the Federal 2017 Tax Cuts and Jobs Act (“TCJA”) to offset the Capital Recovery Riders increase. She explained that Phase One of TPUC Docket 18-00039⁹ has been resolved and customers are receiving the benefit of a

⁵ *Id.* at 11-13.

⁶ *Id.* at 22.

⁷ *Id.* at 25-26.

⁸ *Id.* at 28.

⁹ *See In re: Tennessee American Water Company’s Response to Commission’s Investigation of Impacts of Federal Tax Reform on the Public Utility Revenue Requirements*, (“TAWC Tax Docket”), Docket No. 18-00039, *Order Approving Stipulation and Settlement Resolving Phase One of the Docket* (October 25, 2019).

6.62% credit.¹⁰ The Company proposed that if the Commission authorized the proposed offset of EADIT at the conclusion of Phase Two it would lessen the impact of the projected 2020 Capital Rider increase to consumers. By allowing the offset, the Commission would be allowing TAWC to maintain cash flows and financial stability.¹¹

Ms. Chambers asserted the Capital Riders remain in the public interest because they reduce the need for a general rate increase; lessen consumer rate shock; support the maintenance of infrastructure; promote economic development; ensure safety and reliability and provide for more efficient regulation. Further, Ms. Chambers asserted there have not been any changes in market conditions affecting whether the riders remain in the public interest.¹² On behalf of the Company and as part of the *Petition*, Mr. Kurt A. Stafford, P.E. provided testimony detailing the proposed capital expenditures included within each Capital Rider.¹³

POSITION OF THE CONSUMER ADVOCATE

Following discovery and exchanges of information with TAWC, Mr. David N. Dittmore submitted Pre-Filed Testimony on March 5, 2020, on behalf of the Consumer Advocate which addressed the calculations of TAWC's proposed Capital Riders. Mr. Dittmore has one recommendation regarding the calculation of the Capital Riders, namely the inclusion of tax savings of \$2,858,248 from the then pending Phase Two of Commission Docket No. 18-00039 as a credit. The Consumer Advocate's proposal, combining the result of Phase One with the Consumer Advocate's position in Phase Two would result in a composite Capital Riders credit of 12.69%.¹⁴ Mr. Dittmore's Exhibit DND-3 calculates this credit surcharge to be 6.07%.¹⁵

¹⁰ Elaine K. Chambers, Pre-Filed Direct Testimony, p. 27 (November 15, 2019).

¹¹ *Id.* at 27-28.

¹² *Id.* at 28-31.

¹³ Kurt A. Stafford, P.E., Pre-Filed Direct Testimony, p. 3 (November 15, 2019).

¹⁴ David N. Dittmore, Pre-Filed Direct Testimony, pp. 2-4 (March 9, 2020).

¹⁵ *Id.* at 4-5.

As asserted previously in Docket No. 18-00120, Mr. Dittmore continues to argue the mechanics of the Capital Riders are flawed resulting in amounts that are not in the public interest.¹⁶ He specifically asserts the rate base used to determine consumer rates exceeds the Company's actual rate base which results in Capital surcharge rates which are not just and reasonable. To alleviate this error, Mr. Dittmore urges the Commission to expeditiously proceed with Docket No. 19-00103, a docket opened by the Commission to investigate and consider changes to the Company's Capital Riders.¹⁷

Mr. Dittmore notes for the record that TAWC has over 570 miles of mains over 50 years old of which only 1% are to be replaced in 2020. He asserts the Company's rate of replacement of aging infrastructure is very low.¹⁸ The Consumer Advocate asserts that underlying data should be provided to confirm the actual replacements rather than a greater reliance on the Company's general assertions regarding replacement of its system.¹⁹

REBUTTAL OF TENNESSEE-AMERICAN

On March 23, 2020, Ms. Elaine K. Chambers submitted Pre-Filed Rebuttal Testimony indicating that TAWC disagreed with the Consumer Advocate's 6.07% credit and that the Company's position on the Phase Two issues is found in Docket No. 18-00039.²⁰ With respect to the Consumer Advocate's concerns with the Capital Riders, Ms. Chambers refers to her testimony in the previous Capital Riders filing in Docket No. 18-00120.²¹ Also, in Pre-Filed Rebuttal Testimony, Mr. Stafford disagrees with Mr. Dittmore's assertion that the Company has not provided evidence it is replacing aging infrastructure on an accelerated basis.²² The

¹⁶ *Id.* at 5-6.

¹⁷ *Id.* at 6-7.

¹⁸ *Id.* at 3, 8-9.

¹⁹ *Id.* at 8-9.

²⁰ Elaine K. Chambers, Pre-Filed Rebuttal Testimony, pp. 1-2 (March 23, 2020).

²¹ *Id.* at 2.

²² Kurt A. Stafford P.E., Pre-Filed Rebuttal Testimony.

Company references the average yearly spend since the Capital Riders were established is approximately \$1.7 million dollars and that 2020 spend is projected to include \$3 million. Mr. Stafford asserted this clearly demonstrates the Company is replacing infrastructure on an accelerated basis.²³

Mr. Stafford also testified one cannot solely rely on the age of water pipes in determining the system's performance or reliability. The Company utilizes modeling to strategically replace assets at greater risk of developing leaks.²⁴ Further, he asserted the Company is planning to continue budget increases for mains replaced and restored. A water system's components include, but are not limited to, hydrants, valves, service lines, storage tanks, booster pump stations, generators and treatment facilities, all of which are essential for providing service. Mr. Stafford acknowledged that TAWC prioritizes its capital projects to balance the need for infrastructure replacement. Mr. Stafford asserted this balance applies to all of the infrastructure listed.²⁵ While Mr. Stafford does not disagree with the data provided in Mr. Dittmore's testimony, he disagrees with his assessment and proclamation that the Company has not accelerated pipe replacement.²⁶

JOINT LETTER OF APRIL 10, 2020

On April 10, 2020, TAWC submitted a letter representing that both parties agree the sole remaining contested issue in the case involves the appropriate treatment of EADIT which will be decided in Commission Docket No. 18-00039. As such, the parties stated that this matter was ripe once the Commission made a determination on the Phase Two issues in Docket No. 18-00039. The parties waived a live hearing, opening and closing statements, and the presentation of

²³ Kurt A. Stafford P.E., Rebuttal Testimony, pg. 1 (March 23, 2020).

²⁴ *Id.* at 2-4.

²⁵ *Id.* at 3-5.

²⁶ *Id.* at 5.

witnesses. The parties indicated that although there are some disagreements with respect to the Capital Riders between the Company and the Consumer Advocate, those issues can properly be handled in Docket No. 19-00103.²⁷

MAY 11, 2020 HEARING AND APPEARANCES

The Hearing in this matter was noticed by the Commission on May 11, 2020 and held electronically via WebEx. Pursuant to Executive Order No. 16 issued by Governor Bill Lee on March 20, 2020, the Commission may meet electronically and without a physical quorum.²⁸ Electronic access to the Hearing was made available to the parties and the public. Making appearances were the following:

Tennessee- American Water Company – Melvin Malone, Esq. Butler Snow LLP, 150 3rd Avenue South, Suite 1600, Tennessee 37201

The Consumer Advocate Unit in the Financial Division – Daniel Whitaker, III., Esq. Office of the Tennessee Attorney General and Reporter, Post Office Box 20207, Nashville, Tennessee, 37219

As previously noted, the parties jointly waived live testimony of witnesses and argument. The Commission provided an opportunity for public comment, but no member of the public sought recognition.

FINDINGS AND CONCLUSIONS

Upon review of the entire evidentiary record in this matter, the panel found that the capital expenditures as filed by the Company are reasonable and consistent with previously approved methodologies. Specifically, for the Qualified Infrastructure Investment Program, the

²⁷ *Letter from Tennessee American Water Company to the Commission* (April 10, 2020).

²⁸ Due to the state of emergency declared by Governor Bill Lee relative to the Coronavirus Disease 2019 (“COVID-19”) pandemic in Tenn. Exec. Order No. 14 on March 12, 2020, (superseded by Tenn. Exec. Order No. 15 on March 19, 2020 which was extended until June 30, 2020 in Tenn. Exec. Order No. 36 on May 12, 2020), the Commission Conference was held electronically via WebEx. The public health emergency places limitations on public gatherings and meetings in order to prevent the spread of COVID-19. In convening the Commission Conference electronically, the Commission relied upon Tenn. Exec. Order No. 16 (March 20, 2020), which was extended until June 30, 2020 by Tenn. Exec. Order No. 34 (May 6, 2020), and affirmed on the record that the electronic meeting was necessary to conduct the essential business of the agency and to protect the health, safety, and welfare of Tennesseans.

panel unanimously approved a bill surcharge of 14.28%, up from last year's surcharge of 11.65%. The new surcharge will generate \$6,723,700 in annual revenues and represents a \$1,240,789 increase from the previous year.

For the Economic Development Investment Rider, the panel unanimously approved a bill surcharge of 1.14%, up from last year's surcharge of 0.65%. The new surcharge will generate \$536,171 in annual revenues and represents an increase of \$229,623 from the previous year. For the Safety and Environmental Compliance Program, the panel unanimously approved a bill surcharge of 8.79%, up from last year's surcharge of 6.88%. The new surcharge will generate \$4,137,860 in annual revenues and represents a \$901,225 increase from the previous year.

At this time and based on the record in this docket, the panel found unanimously that the Capital Riders continue to benefit both consumers and Tennessee-American. They allow the utility timely recovery of investment related expenses to ensure safe and reliable drinking water and the promotion of economic development, while benefitting consumers through reduced rate case and legal expenses that would otherwise result through expensive rate case proceedings.

Approval of the Capital Riders results in a total cumulative surcharge of 24.21% since inception of the mechanisms. However, consistent with the Commission's decision in Phase One of Docket No. 18-00039 this amount is currently being offset by 6.62% in tax savings resulting from the 2017 Tax Cuts and Jobs Act. Based on the Commission's decision in Phase Two of Docket No. 18-00039, the Capital Riders surcharge will be further offset by additional tax savings resulting from the 2017 Tax Cuts and Jobs Act.²⁹ The Company shall file a revised tariff to reflect the final 2020 capital riders surcharge including all offsets resulting from these tax savings. Calculations supporting the final 2020 surcharge rider amount shall also be submitted with the tariff.

²⁹ See TAWC Tax Docket, Docket No. 18-00039, *Final Order Resolving Phase 2 Issues* (July __, 2020).

IT IS THEREFORE ORDERED THAT:

1. A Qualified Infrastructure Investment Rider of 14.28% is adopted.
2. An Economic Development Investment Rider of 1.14% is adopted.
3. A Safety and Environmental Compliance Rider of 8.79% is adopted.
4. TAWC shall file a revised tariff to reflect the final 2020 capital riders surcharge including all offsets resulting from tax savings consistent with Commission's decision in Docket No. 18-00039.
5. 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.
6. 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.

Vice Chair Kenneth C. Hill, Commissioner Herbert H. Hilliard, and Commissioner John Hie concur.



ATTEST: _____
Earl R. Taylor, Executive Director