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September 22, 2020

VIA ELECTRONIC FILING

Hon. Kenneth C. Hill, Chairman
c/o Ectory Lawless, Docket Room Manager
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243
TPUC.DocketRoom@tn.gov

RE: *Joint Petition of Tennessee-American Water Company and Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc. for the Approval of an Asset Purchase Agreement and for the Issuance of a Certificate of Convenience and Necessity; Docket No. 20-00011*

Dear Chairman Hill:

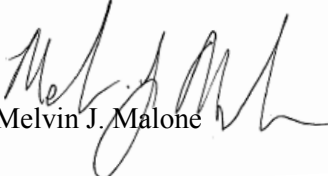
Please find attached for filing the *Rebuttal Testimony of TAWC Witnesses Elaine K. Chambers, Grady Stout, and Brian Queen, and the Rebuttal Testimony of Thunder Air, Inc. Witnesses Dane Bradshaw and John Thornton* in the above-captioned docket. As the Rebuttal Testimony of Witnesses Elaine Chambers, Brian Queen, Grady Stout, John Thornton and Dane Bradshaw contain **CONFIDENTIAL INFORMATION**, Public and Confidential versions of their respective testimony are enclosed.

Also, attached as an exhibit to TAWC Witness Brian Queen's Rebuttal Testimony is **CONFIDENTIAL EXHIBIT BQ – Rebuttal - 1**, which contains **CONFIDENTIAL INFORMATION** and is being submitted **UNDER SEAL** as **CONFIDENTIAL AND PROPRIETARY**. We have attached a CONFIDENTIAL version of this exhibit to Mr. Queen's CONFIDENTIAL Testimony, as well as a Public version of this exhibit to the Public version of Mr. Queen's Testimony.

As required, one (1) hard copy will be mailed to your office. Should you have any questions concerning this filing, or require additional information, please do not hesitate to contact me.

Very truly yours,

BUTLER SNOW LLP


Melvin J. Malone

Attachments

cc: Elaine Chambers, TAWC
William H. Horton, Thunder Air, Inc.
Daniel P. Whitaker III, Consumer Advocate Unit

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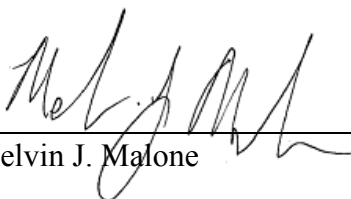
BUTLER SNOW LLP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

Daniel P. Whitaker III
Assistant Attorney General
Economic and Regulatory Section
Financial Division, Consumer Advocate Unit
Office of the Tennessee Attorney General
War Memorial Building, 2nd Floor
301 6th Avenue North
Nashville, TN 37243
Daniel.Whitaker@ag.tn.gov

This the 22nd day of September, 2020.



Melvin J. Malone

PUBLIC VERSION

TENNESSEE-AMERICAN WATER COMPANY, INC.

DOCKET NO. 20-00011

REBUTTAL TESTIMONY

OF

ELAINE K. CHAMBERS

ON

**JOINT PETITION OF TENNESSEE-AMERICAN WATER COMPANY AND
THUNDER AIR, INC. D/B/A/JASPER HIGHLANDS DEVELOPMENT, INC. FOR THE
APPROVAL OF AN ASSET PURCHASE AGREEMENT AND FOR THE ISSUANCE OF
A CERTIFICATE OF CONVENIENCE AND NECESSITY**

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Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Elaine K. Chambers and my business address is 2300 Richmond Road, Lexington, Kentucky 40502.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by American Water Works Service Company (“AWW”) as Director, Rates and Regulatory for Tennessee and Kentucky.

Q. DID YOU PREVIOUSLY SUBMIT TESTIMONY IN THIS PROCEEDING ON BEHALF OF TENNESSEE-AMERICAN WATER COMPANY (“TENNESSEE-AMERICAN,” “TAWC” OR THE “COMPANY”)?

A. Yes. I submitted Pre-filed Direct Testimony.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my testimony is to respond to the Pre-filed Testimony of Consumer Advocate Witness William H. Novak. In rebutting Mr. Novak’s Pre-filed Testimony, I will support the regulatory treatment of the acquisition of the water distribution system in the Jasper Highland’s development (the “System”) that is currently owned by Thunder Air, Inc. (Thunder Air). I will also explain why the recovery of due diligence costs are appropriate and why the Capital Recovery Riders (“Capital Riders” or “CRR”) should apply to this acquisition.

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Q. ON PAGES 8-9 OF HIS PRE-FILED TESTIMONY, MR. NOVAK CHALLENGES THE COMPANY'S PROPOSAL TO BOOK PART OF THE PURCHASE PRICE, NAMELY \$898,200, AS CUSTOMER ADVANCES FOR CONSTRUCTION. HAVE YOU REVIEWED THIS TESTIMONY?

A. Yes, I have.

Q. DO YOU AGREE WITH MR. NOVAK?

A. No, I do not.

Q. WHAT IS THE PURCHASE PRICE OF THE SYSTEM?

A. \$2,398,200 dollars.

Q. IS THIS PURCHASE PRICE CONSISTENT WITH THE ASSET PURCHASE AGREEMENT?

A. Yes. The Asset Purchase Agreement ("APA" or "Purchase Agreement") is attached to the Joint Petition as Exhibit A. As set forth in Article 2 of the Purchase Agreement, and as explained in my Pre-filed Direct Testimony, \$1.5 million will be paid on the Closing Date, with an additional \$898,200 remitted in Post-Closing Payments.

Q. WHAT IS TAWC'S PROPOSED REGULATORY TREATMENT OF THE PURCHASE PRICE?

A. The Post-Closing Payments are outlined in Article 2, Section 2.2 of the Purchase Agreement. Post-Closing Payments of \$898,200 will be set up as Customer Advances for

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Construction (“CAC”), with refunds to be paid to the developer on a per connection basis of \$1,800, over a ten-year period. Under the Purchase Agreement, the \$1,800 is paid only after each new customer is actually added to the System and served by the System for 12 consecutive months. If at the end of the ten-year period, the total amount of \$898,200 has not been paid to the developer, the remaining amount of the Customer Advances for Construction (CAC) will be transferred to Contributions in Aid of Construction (“CIAC”) on TAWC books.

Q. IN RESPONDING TO MR. NOVAK’S PRE-FILED TESTIMONY, CAN YOU EXPLAIN WHY THE PROPOSED REGULATORY TREATMENT OF THE PURCHASE PRICE IS APPROPRIATE WITH RESPECT TO THIS ACQUISITION?

A. Yes. Because the System will not be fully subscribed at closing, the \$898,200 Customer Advances for Construction (CAC) keeps a portion of the risk with the developer until new customers are added. In the next base rate case, the \$1.5 million Purchase Price plus any per connection amounts will become part of TAWC’s rate base. By paying only \$1.5 million up front, TAWC is protecting its customers. If additional customers are not added to the System by the developer, the CAC will never materialize, and the developer will not be paid any additional amounts.

Q. WHAT IS MR. NOVAK’S RECOMMENDATION FOR THE PROPOSED REGULATORY TREATMENT?

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- A. Mr. Novak recommends that the \$898,200 of Post-Closing Payments be recorded as Other Long-Term Debt instead of Customer Advances for Construction (CAC). Please refer to the Pre-filed Rebuttal Testimony of Company Witness Brian Queen for further discussion on Mr. Novak's recommendation of recording this amount as Other Long-Term Debt.

Q. HOW DOES MR. NOVAK'S RECOMMENDATION TO RECORD THE POST CLOSING PAYMENTS AS OTHER LONG-TERM DEBT AFFECT RATE BASE FOR JASPER HIGHLANDS?

- A. Recording the payments as Other Long-Term Debt will result in these payments being permanently excluded from rate base. As new customers are added, the net income will increase, but the rate base that produced the net income will never materialize under this long-term debt methodology. Without the associated rate base being recognized, TAWC's earnings test will be adversely affected due to the fact that the net income will rise, but the rate base will not. Recording the payments as CAC will appropriately result in the recognition of additional rate base in the next base rate case.

Additionally, by recommending that the Post-Closing Payments be included as Other Long-Term Debt instead of CAC, Mr. Novak appears to be gaming the negative acquisition adjustment in an effort to lower the asset value below the \$1.5 million up front payment.

Mr. Novak's position appears to be designed to deny recovery on any additional amounts paid to Thunder Air because by recording these payments as Other Long-Term Debt, there will never be any rate base recovery of these additional amounts. As further discussed by Company Witness Brian Queen, TAWC believes that we cannot record this as a long-term

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liability, as we have no legal obligation to these payments because we only pay as new customers get connected, which is not guaranteed.

Q. HOW DOES TAWC'S PROPOSAL TREAT THE UTILITY PLANT ACQUISITION ADJUSTMENT (UPAA) FOR AMOUNTS PAID TO THUNDER AIR FOR THE SYSTEM?

A. The UPAA adjustment for this acquisition is [REDACTED] at both closing and after all Post-Closing Payments are made. Even if partial payments are made in the next ten years, the UPAA adjustment does not change. TAWC's rate base for the System will be only reflective of how much is paid for the System at any point in time.

Q. PLEASE ADDRESS HOW RECORDING CAC IS CONSISTENT WITH ACCEPTED REGULATORY PRINCIPLES?

A. The setup of the \$898,200 Customer Advances for Construction (CAC) is consistent with the developer model precedence under TAWC's existing tariffs. On pages 8-9 of his Pre-filed Testimony, Mr. Novak argues that CAC is to be paid to end use customers only, but in the NARUC USOA referenced, that limitation is not present. We pay advances to developers now, and record those payments to CAC, and the developers are not the end use customer. Paying a per connection fee to the developer, in this case Thunder Air, is no different than TAWC recording these payments as CAC to various developers today.

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Q. CAN YOU ELABORATE ON HOW THE PROPOSED CAC REGULATORY TREATMENT IS CONSISTENT WITH THE DEVELOPER MODEL UNDER TAWC'S EXISTING TARIFFS?

A. Certainly. The per connection Post-Closing Payments are consistent with the developer model, as the developer model in our tariffs encompasses reimbursements (or refunds) to developers for the costs of building-out and deploying infrastructure by which new water customers in a new development are connected to TAWC's mains and become customers of TAWC. Like the Post-Closing Payments here, when TAWC operates under the tariffs in this regard, the refund does not occur until the new customer is actually added to TAWC's water system. The exhibits to the Purchase Agreement contemplate the reimbursements with respect to the Post-Closing Payments, consistent with the tariff-approved reimbursement model. As noted by TAWC Witness Mr. Stout, the developer model is commonplace for TAWC and other utilities. *See Pre-filed Direct Testimony of Mr. Stout*, pp. 10-11.

Q. HAVE THE JOINT PETITIONERS PROVIDED SUPPORT IN THIS CASE FOR THE CAC REGULATORY TREATMENT REQUESTED?

A. Yes. Pursuant to the Pre-filed Direct Testimony of TAWC Witness Grady Stout, the developer model set forth in TAWC's tariffs was submitted in Response to DR 1-11 on March 13, 2020.

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Q. HAVE THE JOINT PETITIONERS PROVIDED A DETAILED EXPLANATION OF HOW THE DEVELOPER MODEL WOULD APPLY IN THIS CASE UNDER THE CAC REGULATORY TREATMENT?

A. Yes. The Company provided a detailed explanation on pages 10 – 15 of the Pre-filed Direct Testimony of Mr. Stout and on pages 4 – 5 of my Pre-filed Direct Testimony.

Q. ARE THERE ANY POTENTIAL NEGATIVE CONSEQUENCES OF THE PROPOSED CAC REGULATORY TREATMENT TO EITHER TAWC'S EXISTING CUSTOMERS OR TO THE CUSTOMERS OF THE SYSTEM?

A. No, as I noted in my Pre-filed Direct Testimony, the Purchase Price of \$2,398,200 is much below the book value of the System. Again, by only paying \$1.5 million up front, we are protecting our customers. Thunder Air must add additional customers to receive the Post-Closing Payments. If they don't add customers, no additional funds will be paid by TAWC.

Q. WILL THE SYSTEM'S CUSTOMERS AND TAWC'S CUSTOMERS BE ON THE SAME RATE SCHEDULE?

A. No. Per my Pre-Filed Direct Testimony in this proceeding, Thunder Air will ultimately be paying the same meter and volumetric rates as prior to this acquisition. TAWC's existing customer rates will remain separate and unchanged subsequent to this acquisition. To the extent necessary, TAWC will address any tariff issues in future filings with the Commission.

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Q. IF THE COMMISSION AGREES WITH MR. NOVAK'S POSITION THAT RECORDING CAC IS NOT APPROPRIATE FOR THIS TRANSACTION, HOW CAN THESE POST-CLOSING PAYMENTS BE RECORDED IN A MANNER THAT WILL RESULT IN THE CORRECT RECOGNITION OF RATE BASE?

A. As an alternative, recording these payments as a regulatory liability would result in the proper recognition of rate base if the Commission does not agree with TAWC recording the payments as CAC. However, TAWC prefers the payments be recorded as CAC, which is how payments to developers are recorded today and consistent with past precedence.

Q. PLEASE ELABORATE ON THE COMPANY'S REQUEST TO RECOVER \$10,000 OF ACQUISITION COSTS.

A. By proposing to defer \$10,000 of due diligence and closing costs as a regulatory asset, the interests of both the shareholders and ratepayers will be protected because this will allow an opportunity for full review of the costs in a future rate case. In the manner TAWC is proposing, the costs in excess of \$10,000 will be immediately expensed, so anything above \$10,000 is not funded by ratepayers. On page 14, lines 8-9 of his Pre-filed Testimony, Mr. Novak incorrectly states that these costs are "funded solely by ratepayers." We believe TAWC's request is appropriate because prudent transaction and closing costs benefit the customer base.

Q. WHAT IS MR. NOVAK RECOMMENDATION ON TAWC'S REQUEST TO APPLY THE CAPITAL RIDER SURCHARGES TO THE SYSTEM'S CUSTOMERS?

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- A. On page 15 of his Pre-filed Testimony, Mr. Novak recommends that the Commission deny TAWC's request.

Q. IS THE APPLICATION OF THE CAPITAL RECOVERY RIDERS AND THE PCOP RIDER SUBSEQUENT TO AN ACQUISITION CONSISTENT WITH ESTABLISHED PAST PRACTICE?

- A. Yes. The practice of applying these surcharges across the entire customer base has been in place since 2014. The surcharges were also applied to the customers of the Whitwell acquisition when that transaction was completed.¹ The "Applicability" section of the Capital Rider tariffs provide that the charges will apply to all customers in all service territories. This uniform application provides benefits to the entire customer base by spreading out the cost of significant investments so that the entire system is maintained and upgraded in an efficient manner that avoids rate shock and is consistent with the streamlined regulatory methods permitted by the Tennessee General Assembly pursuant to Tenn. Code Ann. 65-5-103(d) *et seq.*, all under the safeguard oversights set forth in the CRR tariffs.

Applying the capital and expense surcharges to the System acquisition would be consistent with past practice, thus maintaining stability and predictability in the Tennessee regulatory environment. Finally, Mr. Novak's objection to including these surcharges based on the

¹ *Transcript of Proceedings*, In Re: Petition of Tennessee-American Water Company Regarding the 2015 Investment and Related Expenses Under Qualified Infrastructure Investment Program Rider, the Economic Development Investment Rider, and the Safety and Environmental Compliance Rider, TPUC Docket No. 14-00121, p. 162, ll 14-16 (April 20, 2015) (TAWC Witness Bridwell confirming that the CRRs and the PCOP Rider were applied to Whitwell customers pursuant to the tariffs.).

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age and source water of the System are not valid reasons to deviate from the benefits of the uniform application of these tariffs. The Capital Riders include investment in more than just infrastructure replacement. They also cover safety and environmental compliance investments, as well as economic development investments. Mr. Stout described the investments expected for the System, such as AMR meter installation and SCADA improvements. *See Pre-filed Direct Testimony of TAWC Witness Grady Stout*, pp. 7-8. These would both likely fall within the Capital Riders eligible investments. Additionally, the revenues from the System are subject to Tennessee Public Utility Commission Inspection fee expense and purchase water expense, both of which are components of the PCOP rider.

Q. DO YOU AGREE WITH MR. NOVAK’S ASSERTION THAT THE ACQUISITION OF THE SYSTEM WILL IMPACT THE RATES OF CURRENT TAWC RATEPAYERS?

A. No. As set forth in the Joint Petition and supporting documentation, the System will be operated by TAWC as a separate business unit in the TAWC accounting system. TAWC may propose to combine the rates for both the System and the other portions or the balance of the TAWC system as appropriate at a future time but is not proposing to do so at this time.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes. I reserve the right to submit further testimony as is appropriate.

STATE OF Kentucky)
)
COUNTY OF Fayette)

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Elaine K. Chambers, being by me first duly sworn deposed and said that:

She is appearing as a witness on behalf of Tennessee-American Water Company before the Tennessee Public Utility Commission, and if present before the Commission and duly sworn, her testimony would be as set forth in her pre-filed testimony in this matter.

Elaine K. Chambers

Elaine K. Chambers

Sworn to and subscribed before me
this 22nd day of September, 2020.

Sharon Miller

Notary Public ID# KYNP9273

My Commission Expires: 7/25/24