

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

February 26, 2021

IN RE:)	
)	
JOINT PETITION OF TENNESSEE-AMERICAN)	
WATER COMPANY AND THUNDER AIR, INC. D/B/A)	DOCKET NO.
JASPER HIGHLANDS DEVELOPMENT, INC. FOR)	20-00011
THE APPROVAL OF AN ASSET PURCHASE)	
AGREEMENT AND FOR THE ISSUANCE OF A)	
CERTIFICATE OF CONVENIENCE AND NECESSITY)	

**ORDER APPROVING ASSET PURCHASE AGREEMENT AND GRANTING
CERTIFICATE OF CONVENIENCE AND NECESSITY**

This matter came before Vice Chairman Herbert H. Hilliard, Commissioner Robin L. Morrison, and Commissioner John Hie of the Tennessee Public Utility Commission (“TPUC” or “Commission”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on December 14, 2020, for consideration of the *Expedited Joint Petition of Tennessee-American Water Company and Thunder Air, Inc. D/B/A Jasper Highlands Development, Inc. for Approval of an Asset Purchase Agreement and for the Issuance of a Certificate of Convenience and Necessity* (“*Joint Petition*”) filed by Tennessee-American Water Company (“TAWC”) and Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc. (“Thunder Air”) (collectively referred to as “Joint Petitioners”) on February 3, 2020. In the *Joint Petition*, TAWC and Thunder Air seek Commission approval of an Asset Purchase Agreement for the sale of the ownership and operation rights of a water system serving the Jasper Highlands development.

In addition, TAWC requests the requisite Certificate of Convenience and Necessity (“CCN”) for the service area and certain ratemaking and regulatory approvals from the Commission.

BACKGROUND AND JOINT PETITION

Thunder Air is a Tennessee corporation that owns approximately 9,000 acres atop Jasper Mountain in Marion County, Tennessee which is being developed. Thunder Air also owns a water system, the Jasper Highland water system (“JHWS”), that provides water service to customers within the development.¹ As the build-out and development continues, additional customers will be added to the JHWS and the system may be expanded from time to time in order to provide adequate service to the customers of the JHWS.²

TAWC is a public utility subject to the jurisdiction of the Commission. TAWC is a Tennessee corporation providing residential, commercial, industrial, and municipal water service, including service for both public and private fire protection, to the City of Chattanooga, Tennessee and surrounding areas. The public utility serves approximately 80,670 customers, including customers in Whitwell, Powell’s Crossroads, and Suck Creek in Marion County, Tennessee where the Thunder Air development is located. TAWC’s Whitwell operation is located approximately 20 miles from the JHWS.³

On February 3, 2020, TAWC and Thunder Air filed a *Joint Petition* requesting approval for TAWC to purchase the assets of JHWS from Thunder Air, including all ownership and operation rights of the JHWS. The *Joint Petition* also requests that TAWC be granted the CCN necessary for it to provide service to the customers served by the JHWS. In addition, TAWC

¹ The water system serving the Jasper Highlands Development is referred to as the Jasper Highlands Water System or “JHWS” for the remainder of this *Order*.

² *Joint Petition*, p. 2 (February 4, 2020).

³ *Id.* at. 2-3.

requests that the Commission approve proposed accounting, ratemaking, and regulatory treatment.⁴

The Joint Petitioners provided additional information to assist in the Commission's consideration of the *Joint Petition*, including the following:

1. a copy of the recorded plat including "as built" drawings of the current water system;
2. a copy of "as built" drawings for future phases of the development;
3. a copy of the current water purchase agreement between Thunder Air and the South Pittsburg Water Board of Water Works and Sewers;
4. documentation on the operation and maintenance plan for the JHWS;
5. documentation of approvals by the Tennessee Department of Environment and Conservation ("TDEC") concerning the construction of the system; and
6. all sanitary surveys conducted by TDEC.⁵

In addition, the *Joint Petition* includes documentation establishing a lease relationship between the Jasper Highlands Property Owners' Association ("JHPOA") and Thunder Air, the water rates established by the JHPOA for JHWS customers, and evidence of JHPOA's consent to the Asset Purchase Agreement.⁶ In support of the *Joint Petition*, the Joint Petitioners also submitted the Pre-Filed Direct Testimonies of Grady Stout, Interim Vice President of Operations for TAWC;⁷ Elaine K. Chambers, Director of Rates and Regulatory for Tennessee and Kentucky for American Water Works Service Company, parent company of TAWC;⁸ and Dane Bradshaw, President of Thunder Air and President of JHPOA.⁹

The *Joint Petition* states that upon Commission approval of the Asset Purchase Agreement, TAWC will purchase the JHWS, including its assets, properties, and rights, from Thunder Air for the purchase price of \$2,398,200.¹⁰ Within thirty (30) days of the closing of the Asset Purchase

⁴ *Id.* at 1-2.

⁵ *Id.* at 5-6 and Exhs. F, G, H, I, J, and K.

⁶ *Id.* at 4 and Exh. C.

⁷ Grady Stout, Pre-Filed Direct Testimony (February 3, 2020).

⁸ Elaine K. Chambers, Pre-Filed Direct Testimony (February 3, 2020).

⁹ Dane Bradshaw, Pre-Filed Direct Testimony (February 3, 2020).

¹⁰ *Joint Petition*, p. 4 (February 3, 2020).

Agreement, the parties will submit supporting documents to the Commission, including: copies of recorded deeds evidencing the transfer of JHWS real property to TAWC; copies of the Bill of Sale evidencing the transfer of all JHWS tangible and intangible personal property to TAWC; copies of all JHWS easements and other intangible personal property transferred to TAWC; and copies of any schedules attached to the Asset Purchase Agreement that were updated and/or completed.¹¹

TAWC asserts that it possesses the requisite technical, managerial, and financial capabilities to provide water service through the JHWS as evidenced by the Company's 132-year history of providing safe, reliable drinking water to its customers. TAWC is a wholly-owned subsidiary of American Water Works Company, Inc. ("AWWC"), the largest water holding company in the United States, which provides water and wastewater services to approximately fifteen (15) million people in thirty (30) states. Further, TAWC asserts that as an entity regulated by the TPUC, the Commission is familiar with TAWC's technical, managerial, and financial capabilities. TAWC reaffirms its familiarity with Commission policies, rules, and orders concerning the provision of water service and its commitment to adhere to the same.¹²

The Tennessee Department of Environment and Conservation ("TDEC") issued approvals of the final construction plans for Phases 1A and 1B of the JHWS in March 2014 and for Phase 2 of the JHWS in July 2016. TDEC conducted an initial Sanitary Survey of the JHWS in March 2016.¹³

In the *Joint Petition*, TAWC requests full rate base recognition of its investment in the JHWS, given TAWC's "unwavering commitment to provide safe, reliable drinking water to the

¹¹ *Id.* at 5.

¹² *Id.* at 6-7.

¹³ *Id.* at Exhs. J and K.

[JHWS] customers....”¹⁴ TAWC also requests proposed regulatory and/or accounting adjustments, including:

1. Utilization of the financial statements, records, and reports provided by Thunder Air to support the original cost value of utility plant in service (“UPIS”) as of the closing date;
2. Adoption of the current TPUC-approved TAWC depreciation rates for Thunder Air upon closing;
3. No utility plant acquisition adjustment (“UPAA”) with this transaction; and
4. Recovery of necessarily incurred reasonable acquisition expenses associated with the conducting necessary due diligence and prudence evaluation of the JHWS with such recovery occurring through the recording of a regulatory asset to be amortized over ten (10) years.¹⁵

TAWC requested that all of its other authorized rates and fees be made applicable to customers of Thunder Air, including late fees, service activation fees, returned check fees, disconnection fees, the Capital Recovery Riders, and the Production Cost and Other Pass-Throughs Rider (“PCOP” or “PCOP Rider”) as appropriate.¹⁶ The *Joint Petition* also states that the sale of the JHWS to TAWC is in the public interest, as TAWC’s 132-year history of providing safe, reliable drinking water to its customers will ensure that the JHWS is appropriately maintained and upgraded as conditions may warrant.¹⁷

The Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) filed a *Petition to Intervene* on February 19, 2020.¹⁸ The Hearing Officer entered an order granting the Consumer Advocate’s intervention on February 26, 2020.¹⁹

¹⁴ *Id.* at 7.

¹⁵ *Id.*

¹⁶ *Id.* at 8.

¹⁷ *Id.*

¹⁸ *Petition to Intervene* (February 19, 2020).

¹⁹ *Order Granting the Petition to Intervene Filed by the Consumer Advocate* (February 26, 2020).

Following an exchange of discovery requests and responses, the Consumer Advocate filed the testimony of its expert witness, William H. Novak.²⁰ Mr. Novak recommends approval of the acquisition and request for a CCN, but advocates for certain adjustments and restrictions on the regulatory and rate treatment requested by TAWC in the *Joint Petition*. Mr. Novak presented the position of the Consumer Advocate on alternate regulatory and rate treatments which included: portions of acquisition price not immediately payable to Thunder Air be treated as a long-term liability on the books of TAWC; an incremental acquisition adjustment be utilized, in addition to the TAWC proposed acquisition adjustment, in order to alleviate the dilutive effects on income from the acquisition which would be subject to review for reconsideration in a future rate case; the proposed recovery of \$10,000 for due diligence and closing costs be rejected; and, the TAWC capital and expense rider surcharges be excluded from the rates applicable to Thunder Air.²¹ TAWC submitted the rebuttal testimony of Brian Queen, Dane Bradshaw, Elaine Chambers, Grady Stout, and John Thornton in response to Mr. Novak's testimony.²²

Members of the public were given the opportunity to submit written comments to the Commission concerning the *Joint Petition*. The Commission received four (4) such written comments, two (2) of which expressed concerns regarding rates, but none of which expressed opposition to the transfer of ownership of the JHWS to TAWC.²³

²⁰ William H. Novak, Pre-Filed Direct Testimony (September 9, 2020).

²¹ *Id.* at 4.

²² See Brian Queen, Pre-Filed Rebuttal Testimony (September 22, 2020); Dane Bradshaw, Pre-Filed Rebuttal Testimony (September 22, 2020); Elaine Chambers, Pre-Filed Rebuttal Testimony (September 22, 2020); Grady Stout, Pre-Filed Rebuttal Testimony (September 22, 2020); and John Thornton, Pre-Filed Rebuttal Testimony (September 22, 2020).

²³ See *Public Comments* (October 5, 2020); *Public Comments* (October 6, 2020); *Public Comments* (October 12, 2020); and *Public Comments* (October 13, 2020).

POSITIONS OF THE PARTIES

The Consumer Advocate recommends that the Asset Purchase Agreement submitted by Thunder Air and TAWC be approved. Further, the Consumer Advocate agrees that TAWC possesses the requisite technical, managerial, and financial ability to provide services to customers of the JHWS and the requested CCN should be improved.²⁴ However, there remain four contested issues concerning regulatory treatment of rates and certain portions of acquisition price and costs.²⁵

Acquisition Price and Accounting Treatment

The Asset Purchase Agreement establishes a purchase price of \$2,398,200.²⁶ Payment of \$1.5 million will occur on the closing date with an additional \$898,200 to be remitted in payments subsequent to closing on a per connection basis over a ten-year period. TAWC proposes to set up the deferred payments as Customer Advances for Construction (“CAC”) and to convert any unpaid amount at the end of the ten-year period to Contributions in Aid of Construction (“CIAC”) on TAWC’s books.²⁷

The Consumer Advocate expresses concern that the purchase price increased \$898,200 from the \$1.5 million purchase price previously proposed in Docket No. 18-00099.²⁸ Mr. Novak states that TAWC provided no specific reason for the increase in purchase price. He also testifies that a proposed credit to Customer Advances is not appropriate as the Uniform System of Accounts (“USOA”) contains no provisions that allow a utility to record potential payments owed from a

²⁴ William H. Novak, Pre-Filed Direct Testimony, p. 4 (September 8, 2020).

²⁵ *Id.*

²⁶ Elaine K. Chambers, Pre-Filed Direct Testimony, p. 2 (February 3, 2020).

²⁷ *Id.* at 3.

²⁸ William H. Novak, Pre-Filed Direct Testimony, p. 8 (September 8, 2020). *See also In re: Joint Petition of Tennessee-American Water Company, and Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc. for Approval of a Purchase Agreement and for the Issuance of a Certificate of Convenience and Necessity*, Docket No. 18-00099, *Expedited Joint Petition of Tennessee-American Water Company and Thunder Air, Inc. D/B/A Jasper Highlands Development, Inc. for Approval of an Asset Purchase Agreement and for the Issuance of a Certificate of Convenience and Necessity*, p. 4 (September 7, 2018).

utility acquisition as a Customer Advance.²⁹ Mr. Novak explains that, “Customer Advances are typically intended to represent payments from the Company’s end-use customers to extend utility service to their homes and businesses in situations where the economics of such a service extension are uneconomical.”³⁰ Further, he states that the \$898,200 is appropriately recorded as Other Long-Term Debt since the deferred payments represent a long-term obligation maturing more than one year from the date of issuance and assumption as described in the USOA.³¹

TAWC disagrees that the increase in purchase price is not explained. Grady Stout testifies that both he and Dane Bradshaw describe the growth of the development community and the increase in customers served by the JHWS since the 2018 docket. In addition, Mr. Stout cites an increase in the assets of the JHWS, giving the specific example of an increase in underground water piping. Further, Mr. Stout cites an increase in the system valuation from the valuation presented in Docket No. 18-00099.³² Brian Queen states the increase in price is justified due to the expansion of the development into its third phase subsequent to the 2018, opening up an additional 200 lots.³³ Similarly, Dane Bradshaw describes the increase in water infrastructure and customers since 2018.³⁴

With regard to the accounting treatment of the deferred amount of the purchase price, Brian Queen testifies that the USOA language concerning Other Long-Term Debt does not refer to the type of “obligations” of the sort resembling the Post-Closing Payments. He also states that there is no legal obligation to pay more than the \$1.5 million purchase price and that the Post-Closing Payment structure serves to protect the interest of TAWC’s customers.³⁵ Finally, Mr. Queen states

²⁹ *Id.* at 8-9.

³⁰ *Id.* at 9.

³¹ *Id.*

³² Grady Stout, Pre-Filed Rebuttal Testimony, pp. 2-4 (September 22, 2020).

³³ Brian Queen, Pre-Filed Rebuttal Testimony, p. 5 (September 22, 2020).

³⁴ Dane Bradshaw, Pre-Filed Rebuttal Testimony, p. 3 (September 22, 2020).

³⁵ Brian Queen, Pre-Filed Rebuttal Testimony, pp. 7-9 (September 22, 2020).

that recording the deferred payments as Other Long-Term Debt would have a negative effect on TAWC as it would defer recovery to TAWC's next full rate case. However, the net income increase resulting from added customers will be recorded as rate base while Other Long-Term Debt serves as the basis for a rate base reduction would result in an artificially inflated earned rate of return.³⁶

Elaine Chambers reiterates Mr. Queen's testimony, stating that if the deferred purchase price payments are recorded as Other Long-Term Debt, the net income will increase as new customers are added but rate base that produces that net income will never materialize. She testifies that recording the payments as CAC will result in appropriate recognition of rate base in the base rate case. She also states that recording these payments as CAC is consistent with accepted regulatory practices and is consistent with TAWC's current practice.³⁷ Ms. Chambers also offers that, "recording these payments as a regulatory liability would result in the proper recognition of rate base...."³⁸

Acquisition Adjustment

The Consumer Advocate avers that TAWC's proposal to maintain the current rate structure for JHWS customers until a future rate proceeding and the regulatory treatment requested for the purchase price will ultimately bind the Commission to increase rates to TAWC's Chattanooga customers in a future rate proceeding by creating a dilutive impact on the Company's rate of return.³⁹ As a result, Mr. Novak proposes that the purchase price is not appropriate regulatory value and should be reduced through an acquisition adjustment. Mr. Novak calculated an incremental acquisition adjustment that should be recognized in order to prevent TAWC's existing Chattanooga customers from subsidizing the cost of the JHWS acquisition and resulting

³⁶ *Id.* at 9.

³⁷ Elaine K. Chambers, Pre-Filed Rebuttal Testimony, pp. 3-5 (September 22, 2020).

³⁸ *Id.* at 8.

³⁹ William H. Novak, Pre-Filed Direct Testimony, p. 10 (September 8, 2020).

operations. Mr. Novak also asserts that TAWC's forecast concerning the dilutive impact of the acquisition being completely offset by 2023 is highly speculative and based on the timing of future customer additions. He recommends that the acquisition adjustment be reviewed and considered in TAWC's next rate case.⁴⁰

TAWC disagrees with Mr. Novak's proposed negative acquisition adjustment. Brian Queen states that Mr. Novak's negative acquisition adjustment is not in the public interest because it could have a chilling effect on voluntary acquisitions that otherwise would serve the public interest by providing safe, reliable drinking water. He also states that Mr. Novak presents no ratemaking or accounting principle requiring his proposed calculation methodology. It also arbitrarily downgrades the value of assets rather than supporting just and reasonable rates that would allow TAWC to earn a fair return on its investment. Mr. Queen also points out that Mr. Novak's calculation methodology relies on an inaccurately undercounted customer total.⁴¹

Mr. Bradshaw disagrees with Mr. Novak's characterization that TAWC's customer growth forecast is highly speculative by indicating that the growth projections are based upon lot sales and previous year home builds. Mr. Bradshaw further testifies that considering the number of homes breaking ground weekly, the number of homes submitted for design approval, the need to add more approved builders, and the number of lots sold, the development remains confident in its customer growth projections.⁴² John Thornton also testifies in support of the development's customer growth projections and that the proposed negative acquisition adjustment is significant and jeopardizes the transaction. Mr. Thornton states that failure of the acquisition would not serve the public interest and that it would not serve the interest of the current customers of the JHWS.⁴³

⁴⁰ *Id.* at 11-13.

⁴¹ Brian Queen, Pre-Filed Rebuttal Testimony, pp. 10-15 (September 22, 2020).

⁴² Dane Bradshaw, Pre-Filed Rebuttal Testimony, pp. 4-5 (September 22, 2020).

⁴³ John Thornton, Pre-Filed Rebuttal Testimony, pp. 3-4 (September 22, 2020).

Due Diligence and Closing Costs

TAWC states that it has incurred necessary and reasonable acquisition expenses that are appropriate for recovery upon the closing of the transaction. Grady Stout testifies that due diligence costs result from reviewing the system assets to determine the condition of the system, the environmental regulatory information JHWS provided to TDEC, the financial information of the system, and TAWC's ability to operate the JHWS efficiently.⁴⁴ Elaine Chambers proposes that a regulatory asset be established for the due diligence and closing costs because these are legitimate and appropriate expenses related to the acquisition of assets. These incurred costs safeguard the assets of TAWC, thereby protecting the interests of both shareholders and ratepayers. Ms. Chambers testifies that TAWC proposes to amortize these costs of up to \$10,000 immediately upon closing with only the unamortized balance of the regulatory asset to be addressed in TAWC's next rate case. She further states that deferring \$10,000 of these acquisition expenses as a regulatory asset protects the interests of both ratepayers and shareholders because it allows for a full review in a future rate case. Expenses over \$10,000 will be borne solely by the shareholders. Finally, Ms. Chambers states that the request to establish a regulatory asset for the acquisition costs is proper because it benefits the customers for TAWC to ensure water quality, invest in infrastructure, and provide reliable service and customer care instead of diverting resources to unexpected legal and other complications.⁴⁵

The Consumer Advocate disagrees with recovery of \$10,000 of due diligence and closing costs through a regulatory asset. Mr. Novak testifies that the Commission addressed this issue in TAWC's acquisition of the Whitwell water system as follows:

⁴⁴ Grady Stout, Pre-Filed Direct Testimony, p. 7 (February 4, 2020).

⁴⁵ Elaine K. Chambers, Pre-Filed Direct Testimony, pp. 6-8 (February 3, 2020). *See also* Elaine K. Chambers, Pre-Filed Rebuttal Testimony, p. 8 (September 22, 2020).

...while due diligence costs are not costs associated with the delivery of water services, such costs may be incurred to safeguard the assets of the Company, thus protecting the interests of the shareholder and ratepayers. To allow recovery of a cost incurred to benefit shareholders but funded solely by ratepayers is unacceptable.⁴⁶

Mr. Novak also states that the Commission allowed recovery of approximately \$1.1 million for rate case expenses in TAWC's most recent rate case, but that while these costs have been fully amortized, the rates supporting this cost continue.⁴⁷

Application of Existing TAWC Rates, Fees and Capital and Expense Riders

The Asset Purchase Agreement states that Thunder Air will reduce its current rates, prior to closing, by the applicable TAWC capital rider surcharges to ensure that JHWS customers pay the meter rates and volumetric rates they were paying prior to the effective date of the Asset Purchase Agreement. After closing, TAWC will apply any subsequently approved capital recovery and PCOP Riders as well as all other ordinary fees applicable to all TAWC customers such as late fees, service activation fees, disconnect fees, private fire service rates, and returned check fees.⁴⁸ She also states that the application of these surcharges is consistent with the treatment approved in TAWC's acquisition of the Whitwell system.⁴⁹ In her Pre-Filed Rebuttal Testimony, Ms. Chambers reiterates that these fees and surcharges have been applied to the entire customer base since 2014 and were applied to the Whitwell customers in its acquisition. Further, she claims that the Capital

⁴⁶ William H. Novak, Pre-Filed Direct Testimony, p. 14 (September 8, 2020) (citing *In re: Joint Petition of Tennessee American Water Company, the City of Whitwell, Tennessee, and the Town of Powells Crossroads, Tennessee for Approval of a Purchase Agreement and a Water Franchise Agreement and for the Issuance of a Certificate of Convenience and Necessity*, Docket No. 12-000157, *Order Approving Purchase Agreement, Franchise Water Agreement and Certificate of Public Convenience and Necessity*, p. 21 (October 15, 2013)).

⁴⁷ *Id.* (citing *In re: Petition of Tennessee American Water Company for a General Rate Increase, Implementation of a Distribution System Infrastructure Charge and the Establishment of Tracking Mechanisms for Purchase Power, Pensions and Chemical Expenses*, Docket No. 12-00049, *Order Approving Settlement Agreement*, Exh. A, Sched. 4 (November 20, 2012)).

⁴⁸ Elaine K. Chambers, Pre-Filed Direct Testimony, pp. 8-9 (February 3, 2020).

⁴⁹ *Id.* at 9-10.

Riders include investment in safety and environmental compliance and economic development as well as infrastructure replacement. As a result, the entire customer base benefits from the spreading out of the cost of significant investment. Additional revenues derived from the acquisition are subject to the Commission's inspection fees, which, along with purchased water expense, are components of the PCOP Rider.⁵⁰ Ms. Chambers also states that system improvements described in Mr. Stout's Pre-Filed Direct Testimony would likely qualify as eligible investments under the Capital Rider.⁵¹

Mr. Novak testifies that the purpose of the Capital Rider is to accelerate infrastructure replacement for existing TAWC customers. The JHWS is relatively new and not in need of similar infrastructure replacement, negating the need for application of the Capital Rider. In addition, significant portions of the existing expense riders were designed to recover incremental costs associated with water treatment in Chattanooga. Since JHWS water is purchased wholesale from a third-party provider and does not pass through TAWC's treatment facility, it is inappropriate to apply the same surcharge rates to customers of JHWS. Accordingly, the Consumer Advocate recommends the Commission deny TAWC's request to apply the capital and expense rider surcharges to customers of the JHWS.⁵²

HEARING ON THE MERITS

A Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on October 12, 2020, as noticed by the Commission on October 2, 2020. Participating in the Hearing were the following parties:

Tennessee-American Water Company - Melvin J. Malone, Esq. and Madison C. Keyes, Esq., Butler Snow LLP, The Pinnacle at Symphony Place, 150 Third Avenue South, Suite 1600, Nashville, TN 37201; and TAWC witnesses, Grady Stout, Brian Queen, and Elaine

⁵⁰ Elaine K. Chamber, Pre-Filed Rebuttal Testimony, pp. 9-10 (September 22, 2020).

⁵¹ *Id.*

⁵² William H. Novak, Pre-Filed Direct Testimony, p. 15 (September 8, 2020).

Chambers.

Thunder Air - William H. Horton, Esq. and Carol Ballard, Esq., Horton Ballard & Pemerton PLLC, 735 Broad Street, Suite 306, Chattanooga, TN 37402; and Thunder Air witnesses, John Thornton and Dane Bradshaw.

Consumer Advocate - Daniel P. Whitaker, III, Esq., Office of the Tennessee Attorney General and Reporter, P.O. Box 20207, Nashville TN 37202-0207; and Consumer Advocate witness, William H. Novak.

The witnesses for the Joint Petitioners, Mr. Thornton, Mr. Stout, Mr. Queen, Mr. Bradshaw, and Ms. Chambers provided testimony. These witnesses were subject to questions from the voting panel of Commissioners assigned to this docket. Subsequently, the Consumer Advocate's witness, Mr. Novak provided testimony and was subject to the questions of the Commissioners.

Following the presentation of witnesses and the arguments of counsel, members of the public were given the opportunity to present public comment. However, no member of the public came forward to comment.⁵³

COMMISSION AUTHORITY

The Commission has “general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.”⁵⁴ The Tennessee Supreme Court has interpreted the supervisory and regulatory powers of the Commission as “practically plenary authority over the utilities within its jurisdiction.” *BellSouth Adver. & Publ’g Corp. v Tenn. Reg. Auth.*, 79 S.W.3d 506, 512-513 (Tenn. 2002). Tenn. Code

⁵³ Excerpt of Transcript of Commission Conference (Held Via WebEx Conferencing Platform), Docket No. 20-00011 (Contains Proprietary Information), p. 158 (October 12, 2020).

⁵⁴ Tenn. Code Ann. § 65-4-104(a) (Supp. 2020).

Ann. § 65-4-113 requires that public utilities obtain Commission approval of any proposed transfer of any authority to provide utility services to another person or entity. The statute also states:

(b) Upon petition for approval of the transfer of authority to provide utility services, the commission shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The commission shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.⁵⁵

In the *Joint Petition*, TAWC has also made application for a CCN to provide utility service through the JHWS. Tennessee law requires that no public utility is permitted to begin construction or operation of a new utility facility or service without first obtaining a CCN from the Commission, as set forth in Tenn. Code Ann. § 65-4-201(a), which states:

No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the commission, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate; provided, however, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it.⁵⁶

⁵⁵ Tenn. Code Ann. § 65-4-113(b) (Supp. 2020).

⁵⁶ Tenn. Code Ann. § 65-4-109 (Supp. 2020).

The Commission is also charged with “fix[ing] just and reasonable individual rates, joint rates, tolls fares, charges or schedules thereof...”⁵⁷ and determining whether a proposed “increase, change or alteration is just and reasonable.”⁵⁸ In addition, the Commission may approve alternate rate mechanisms such as the Capital Recovery Rider and PCOP Rider which TAWC seeks to apply to the JHWS customers in this docket. With regard to the PCOP Rider, Tenn. Code Ann. § 65-5-103(d) provides:

(d)(3)(A) A public utility may request and the commission may authorize a mechanism to recover the operational expenses, capital costs or both related to the expansion of infrastructure for the purpose of economic development, if such expenses or costs are found by the commission to be in the public interest. Expansion of economic development infrastructure may include, but is not limited to, the following:

- (i) Infrastructure and equipment associated with alternative motor vehicle transportation fuel;
- (ii) Infrastructure and equipment associated with combined heat and power installations in industrial or commercial sites; and
- (iii) Infrastructure that will provide opportunities for economic development benefits in the area to be directly served by the infrastructure.⁵⁹

Similarly, the Capital Recovery Rider is authorized in Tenn. Code Ann. § 65-5-103, which states in relevant part:

(d)(5)(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

⁵⁷ Tenn. Code Ann. § 65-5-101(a) (Supp. 2020).

⁵⁸ Tenn. Code Ann. § 65-5-103 (Supp. 2020).

⁵⁹ Tenn. Code Ann. § 65-5-103(d) (Supp. 2020).

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).⁶⁰

FINDINGS AND CONCLUSIONS

The voting panel found that the parties agree with regard to the issuance of a CCN to TAWC. Further, upon its own review of the evidentiary record, the panel found that TAWC is in good standing with the Commission and is in compliance with all Commission rules. The panel determined that based upon the record, TAWC possesses the requisite managerial, technical, and financial capabilities to operate the JHWS. Therefore, the panel voted unanimously to approve an amendment to the CCN issued to TAWC to include the JHWS.

With regard to the acquisition of the JHWS as set forth in the Asset Purchase Agreement, the voting panel found that the parties generally agree that the transfer of the ownership and operation of the JHWS to TAWC should be approved. The panel found that the acquisition of the JHWS by TAWC is in the public interest. Therefore, the panel unanimously voted to approve TAWC's acquisition of the JHWS.

The voting panel found that the purchase price set forth in the Asset Purchase Agreement is adequately justified by the substantial increase in water system assets and additional customers since the 2018 docket concerning a proposed sale of the JHWS. Further, the panel found that the JHWS net valued assets exceed the negotiated purchase price. Therefore, the panel found that the negotiated purchase price is reasonable, represents a fair value of the JHWS, and unanimously approved the purchase price.

Concerning the regulatory treatment of the portion of the purchase price to be paid post-closing, the panel found that these payments do not fit into the category of CAC because customers

⁶⁰ Tenn. Code Ann. § 65-5-103(d) (Supp. 2020).

are not advancing funds to TAWC for the buildout of facilities under the arrangement. Further, if approved as CAC, a transfer of any unpaid amount from CAC to CIAC, as proposed by TAWC, would not be proper as no funds or plant will have been contributed to TAWC under the arrangement. Because there is no obligation to pay any future amounts and future payments are contingent upon the occurrence of an event, i.e., customer additions, the panel found that the appropriate regulatory treatment is to recognize the post-closing payments as a contingent regulatory liability. Therefore, the panel unanimously voted to reject TAWC's proposed accounting treatment of post-closing payments and order that these payments be recognized as a regulatory liability.

The Consumer Advocate pointed to the Commission's order in TAWC's acquisition of the Whitwell system for the proposition that recovery of due diligence costs solely from ratepayers is unacceptable. However, the Commission also concludes that due diligence costs also protect the interests of both shareholders and ratepayers by safeguarding Company assets.⁶¹ The panel found that the due diligence and related costs are necessary in this docket to protect TAWC's assets. Further, the panel found that TAWC's proposed treatment, deferring \$10,000 of the due diligence costs by creating a regulatory asset for future recovery from ratepayers while expensing all remaining due diligence costs to shareholders, is not inconsistent with the Commission's previous decision as it spreads the burden of these costs to both ratepayers and shareholders. In addition, the panel found that the immediate amortization of the deferred regulatory asset over a ten-year period further mitigates the effect on ratepayers. The panel found the proposed plan to be

⁶¹ *In re: Joint Petition of Tennessee American Water Company, the City of Whitwell, Tennessee, and the Town of Powells Crossroads, Tennessee for Approval of a Purchase Agreement and a Water Franchise Agreement and for the Issuance of a Certificate of Convenience and Necessity*, Docket No. 12-000157, *Order Approving Purchase Agreement, Franchise Water Agreement and Certificate of Public Convenience and Necessity*, pp. 21-22 (October 15, 2013).

reasonable in light of the evidentiary record. Therefore, the voting panel unanimously approved that the proposed recovery of due diligence costs be shared between ratepayers and shareholders.

With regard to application of TAWC's existing rates, fees, Capital Rider, and PCOP Rider, the panel found that the Consumer Advocate had no opposition and took no position relative to the existing tariffed rates for late fees, service activation fees, disconnect fees, private fire service rates, and returned check fees. The uniform application of these fees is reasonable. The panel agreed that the planned improvements outlined by TAWC in Mr. Stout's testimony are likely allowable for inclusion in the existing Capital Riders and therefore, it is reasonable to apply the Capital Riders to the JHWS customers. Similarly, the panel found that while the water utilized in the JHWS will not incur costs for treatment since it is being purchased wholesale, the expense of purchasing water that is already treated is an allowable expense under TAWC's PCOP Rider. Therefore, the panel found that TAWC's PCOP Rider is reasonable and should be applied to JHWS customers. The arrangement in the Asset Purchase Agreement for Thunder Air to reduce customer rates by applicable TAWC Capital Rider surcharges allows customers of the JHWS to see a seamless transition of ownership and operation and ensure that these customers will not see a rate increase by the application of these riders. Therefore, the panel voted unanimously to approve the application of TAWC's existing Capital Investment and PCOP Riders and the application of existing tariffed service fees to JHWS customers.

The panel further found that other issues raised relate to ratemaking and future recoveries and are not related to this proceeding. Therefore, the panel voted unanimously to defer all issues related to ratemaking and future recoveries to future appropriate proceedings.

IT IS THEREFORE ORDERED THAT:

1. The *Expedited Joint Petition of Tennessee-American Water Company and Thunder*

Air, Inc. D/B/A Jasper Highlands Development, Inc. for Approval of an Asset Purchase Agreement and for the Issuance of a Certificate of Convenience and Necessity filed by Tennessee-American Water Company and Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc., is approved, in part, and denied, in part.

2. The Asset Purchase Agreement is approved.

3. In accordance with Tenn. Code Ann. § 65-4-201, a Certificate of Public Convenience and Necessity is granted to Tennessee-American Water Company to serve the areas and customers currently served by Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc.

4. The negotiated purchase price of \$2,398,200 (Two Million Three Hundred Ninety-Eight Thousand Two Hundred and 00/100 Dollars), as set forth in Paragraph 2.1 of the Asset Purchase Agreement is approved.

5. The application of existing miscellaneous services fees, including late fees, service activation fees, disconnect fees, private fire service rates, and returned check fees, as set forth in the current tariff for Tennessee-American Water Company to the customers served by the Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc. water system is approved.

6. The application of Tennessee-American Water Company's existing Capital Recovery Riders and the Production Costs and Other Pass-Throughs Rider surcharges, as set forth in the current tariff for Tennessee-American Water Company, to the customers served by the Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc. water system is approved.

7. Tennessee-American Water Company is authorized to apply its current depreciation rates to the purchased assets of the Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc. water system.

8. Tennessee-American Water Company is authorized to defer up to \$10,000 in due

diligence costs as a regulatory asset for which amortization over a ten-year period shall commence immediately upon closing.

9. Tennessee-American Water Company's request to recognize the Post-Closing Payments set forth in Paragraph 2.2 of the Asset Purchase Agreement as Customer Advances for Construction is denied. Tennessee-American Water Company is ordered to recognize these payments as a regulatory liability.

10. The authorization and approval given hereby shall not be used by any party for the purpose of inferring an analysis or assessment of the risks involved.

11. This decision is not intended to create any liability on the part of the Tennessee Public Utility Commission, the State of Tennessee, or any political subdivision thereof.

12. 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.

13. 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:

**Vice Chairman Herbert H. Hilliard,
Commissioner Robin L. Morrison, and
Commissioner John Hie concurring.**

None dissenting.

ATTEST:



Earl R. Taylor, Executive Director