

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

January 26, 2021

IN RE:	)	
	)	
PETITION OF TENNESSEE-AMERICAN WATER	)	DOCKET NO.
COMPANY IN SUPPORT OF THE CALCULATION	)	20-00028
OF THE 2020 CAPITAL RECOVERY RIDERS	)	
RECONCILIATION	)	

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AMENDED ORDER GRANTING *PETITION*  
AS AMENDED BY AGREEMENT OF THE PARTIES

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This matter came before Chairman Kenneth C. Hill, Vice Chairman Herbert H. Hilliard, and Commissioner David F. Jones 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 September 14, 2020, to consider the *Petition in Support of the Calculation of the 2020 Capital Recovery Riders Reconciliation* (“*Petition*”) filed on February 28, 2020 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 required to submit

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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-*

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

On February 28, 2019, the Company filed the *Petition*. On April 17, 2020, the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) filed a *Petition to Intervene*, which was granted by the Hearing Officer in an Order dated May 13, 2020. On May 26, 2020, the parties submitted an *Agreed Procedural Schedule* and engaged in discovery pursuant to that schedule. In its *Petition*, TAWC seeks approval of the 2020 Reconciliation of the Capital Riders to reflect the net under-recovery of surcharges for capital expenditures for the 2019 period.

### **POSITIONS OF THE PARTIES**

#### **TAWC’s *Petition***

Ms. Elaine K. Chambers filed Pre-Filed Direct Testimony in support of the *Petition* for the period January 1, 2019 through December 31, 2019.<sup>2</sup> In summary, Ms. Chambers stated the reconciliation filing was comprised of a QIIP revenue refund of (\$732,529) for nine months of 2020, or a reduction of 2.07%; an EDI revenue refund of (\$175,919) or a reduction of 0.50%; and a SEC revenue refund of (\$394,676), or a reduction of 1.12%. The typical residential customer living in the city of Chattanooga using an average 4,154 gallons of water per month will see a decrease in their monthly bill of \$0.80.<sup>3</sup>

Ms. Chambers testified the filing incorporates previously ordered modifications and corrections made in related dockets and attested the data used in the capital rider calculations was acquired from the books and records of the Company. Additionally, the Company submitted the

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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, p. 2 (February 28, 2020).

<sup>3</sup> *Id.* at 28-29.

filing was complete, accurate, any changes in previously approved methodologies were identified, and the accounting data used in the filing was consistent with the Company's general ledger.<sup>4</sup>

In her testimony Ms. Chambers claimed the capital rider mechanisms function as intended and defer fully litigated rate cases and lessen rate shock to consumers, thereby making the regulatory process less burdensome and more streamlined without reducing regulatory oversight. The rider process is more efficient, timely and less expensive to both the Company and the consumer.<sup>5</sup>

Ms. Chambers explains the following previously ordered changes have been made in this filing:

- Exclusion of new services, new meters and alternative fuel vehicles as ordered in Commission Docket No. 14-00121;
- Workpapers are provided in a format that does not use array formulas in calculations and follows a clear audit trail for calculations; and
- Worksheets demonstrating the total additions, removals and retirement, and Contributions in Aid of Construction ("CIAC") for 2019.

Furthermore, the following changes, in addition to any changes carried forward, have been made in the excel workbook or calculations from the previous capital rider filing (Commission Docket No. 19-00031):

1. All prior year's cumulative data is being supported through the last years' final approved schedules for calendar year 2018;
2. The 2019 actual numbers have been updated along with all formulas referencing these amounts;
3. The repairs percentages for tax year 2018 have been updated from last year's filing to 47.27% for Transmission and Distribution ("T&D") plant and 25.03% for non-T&D;
4. The repairs percentages for tax year 2019 have been input as 49.67% for T&D plant and 25.03% for non-T&D;
5. The net operating loss carryforward ("NOLC") has been updated for 2018 and 2019 to \$4,718,123; and
6. The 2019 capitalized incentive amount was included as a reduction to the revenue requirement.<sup>6</sup>

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

<sup>5</sup> *Id.* at 7-8, 10-13.

<sup>6</sup> *Id.* at 9.

The Company applied an annual prospective approach for the recovery of revenue sufficient to cover the capital cost, depreciation and tax expense related to the projected investment in qualified net plant investments. Net plant investment includes costs of associated retirements, CIAC, and cost of removal net of salvage value for the attrition period. The calculations are consistent with the formulas contained in the Company's tariff and include any over- or under-recovery of riders' collection for the review period of 2019.

Exhibits attached to Ms. Chamber's Pre-Filed Direct Testimony demonstrated a calculation of each of the Capital Riders individually and in total. Each rider is to be expressed as a percentage and applied to the total amount billed to each customer.<sup>7</sup> The cost of capital, depreciation rates, and property tax rate used in the Company's calculations are those which were approved in the Company's last rate case, Commission Docket No. 12-00049, as well as projected revenues which are water service revenues.<sup>8</sup>

According to Ms. Chambers, three factors were a primary cause in a variation from the actual amount of revenue collected from the riders and the amount needed to recover a return on the Company's capital investment and taxes.<sup>9</sup> First, there was a difference between the actual water revenues and those projected based upon the Company's last rate case used to determine the Capital Rider percentage. Second, the thirteen (13) - month average plant additions were less than projected, as explained in Mr. Stafford's testimony. Third, the capital rider percentage was applied to revenues over a shorter period of time than projected to occur because the 2019 Capital Riders had an effective date of August 12, 2019. Additionally, the 2019 capital rider reconciliation in Commission Docket No. 19-00031 assumed a refund from April 1, 2019 through December 31,

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<sup>7</sup> *Id.* at 15-18.

<sup>8</sup> *Id.* at 19-20.

<sup>9</sup> *Id.* at 21.

2019. The actual effective date of the 2019 Capital Rider reconciliation was December 9, 2019 through December 31, 2019, resulting in an under-refund which still must be returned to customers.<sup>10</sup>

According to Ms. Chambers, the projected revenue requirement for 2019 was \$9,026,095 while the actual required revenues were \$8,949,225, resulting in an overstatement of needed revenues in the amount of \$76,869. Additionally, the rider percentage generated \$8,120,029 while it was estimated it would generate \$9,026,095 resulting in a shortage of revenue in the amount of \$906,066.<sup>11</sup> Next, the Company did not refund the total amount due to customers for the 2018 Rider reconciliation resulting in a refund still due to customers in the amount of \$840,326. Then, the Company applied an earnings test to determine if it exceeded a rate of return higher than the 7.23% authorized in Commission Docket No. 12-00049. The Company earned 7.72% which resulted in \$1,261,764 in excess revenues. Finally, interest at the prime rate was applied resulting in \$30,231 being due to customers. These over/under-collected amounts result in an over-collection of revenues in the amount of \$1,303,124, which equates to a reconciliation factor of 3.69%. The table below summarizes the above amounts:

(Over)/Under Capital Riders Revenue Billings	\$ 906,066
Budget to Actual Adjustment	(76,869)
2018 Reconciliation Amount	(840,326)
Earnings Test Adjustment	(1,261,764)
Interest (Prime – 4.75%)	<u>(30,231)</u>
Reconciliation Amount	\$(1,303,124)
Authorized Capital Riders Revenues (9/12 <sup>th</sup> )	35,305,293
Current Reconciliation Factor Percentage	-3.69% <sup>12</sup>

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<sup>10</sup> *Id.* at 21-22.

<sup>11</sup> *Id.* at 24-25.

<sup>12</sup> *Id.* at 24-27; Exhibit Capital Riders Reconciliation - EKC.

In closing Ms. Chambers attested that she is not aware of any changes in market conditions or other factors that would affect whether the QIIP, EDI and SEC are still in the public interest.<sup>13</sup>

Company witness, Kurt A. Stafford, provided Pre-Filed Testimony concerning the capital expenditures included for recovery in the *Petition* and the variances from the projected amounts in Commission Docket No. 18-00120.<sup>14</sup> Mr. Stafford testified 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>15</sup>

Tennessee-American utilizes a regional Capital Investment Management Committee (“CIMC”) consisting of the Company President, Operations Manager, Engineering Project Manager, Financial Analyst, and Operations Specialist to establish capital budgets and review expenditures compared to budgets. Any necessary changes are reviewed by the CIMC and movement of budget funds from one project to another is approved by the Committee. To provide an added level of coordination and Functional Sign-Off (“FSO”), the Committee signs off on projects and reviews spending. According to Mr. Stafford, use of both of these committees allows Tennessee-American to immediately address projections in spending. These committees also review investment projects from inception to completion to ensure the projects meet the business need for expenditure and usefulness.<sup>16</sup>

Mr. Stafford reported that for 2019 the Company expended \$24,489,339 for capital projects while \$25,870,678 was the approved budget. This resulted in an underspend of approximately \$1,381,339.<sup>17</sup>

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<sup>13</sup> *Id.* at 32-33.

<sup>14</sup> Kurt A. Stafford P.E., Pre-Filed Direct Testimony (February 28, 2020).

<sup>15</sup> *Id.* at 3-4.

<sup>16</sup> *Id.* at 4-7.

<sup>17</sup> *Id.* at 8.

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

On behalf of the Consumer Advocate, Mr. David Dittemore asserted in Pre-Filed Testimony that the Consumer Advocate supported three adjustments which resulted in a proposed reconciliation amount of (\$1,952,489) rather than the (\$1,303,124) proposed by the Company. The Consumer Advocate's analysis resulted in a total proposed Capital Rider surcharge reduction of 5.53%, comprised of a QIIP reduction of 3.20%, an EDI reduction of 0.55%, and a SEC reduction of 1.78%.<sup>18</sup>

The first adjustment proposed by Mr. Dittemore was to exclude both Construction Work In Progress ("CWIP") and Allowance For Funds Used During Construction ("AFUDC") from the Earnings Test Adjustment. Mr. Dittemore testified that the balance of CWIP is \$12,038,372 and the balance of AFUDC is \$527,207. Using these amounts Mr. Dittemore asserted the effective return generated is 4.38%, a return well below the Company's authorized return of 7.23%. Mr. Dittemore asserted this demonstrates a revenue deficiency on plant that is not providing service to ratepayers, thereby resulting in a reduction of excess earnings that otherwise would be returned to ratepayers.<sup>19</sup>

Mr. Dittemore asserted that including these amounts are in contradiction with NARUC's Uniform System Of Accounts ("USOA") accounting requirements and results in TAWC being allowed to earn an after tax return equal to its current authorized return. Mr. Dittemore contended that the Company should not be allowed an excessive return on plant expenditures which have not provided any additional value to customers.<sup>20</sup> The Consumer Advocate conceded that while a projection of CWIP has normally been included by the Commission when setting rates in a rate

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<sup>18</sup> David N. Dittemore, Pre-Filed Direct Testimony, Exhibit DND-2 (June 30, 2020).

<sup>19</sup> *Id.* at 4-5.

<sup>20</sup> *Id.* at 5-6.

cases, Mr. Dittmore draws a distinction between a forward-looking rate case and evaluating a historic period. Mr. Dittmore asserted that the present docket is a historic review and should be based upon established accounting principles of the USOA.<sup>21</sup>

Mr. Dittmore's second adjustment excluded certain Lobbying Costs, the amount of which was designated "confidential" under a protective order in effect for the docket. Mr. Dittmore claimed that the Company is using an incremental approach to determine lobbying costs which ignores the internal labor charges and indirect charges associated with lobbying and is inconsistent with last year's earnings test. Mr. Dittmore recommended that a fully distributed cost methodology consistent with NARUC and Federal Energy Regulatory Commission ("FERC") requirements should be adopted to prevent the Company from benefiting from its understatement of lobbying costs. Mr. Dittmore identified a TAWC employee registered as a Tennessee lobbyist and identified 20% of her time as a lobbyist and 10% of her supervisor's time associated with this function. He then calculated and excluded the costs associated with these percentages.<sup>22</sup> Mr. Dittmore also alleged that his recommendation to exclude a portion of the lobbying costs is consistent with previous decisions of the Commission.<sup>23</sup> Mr. Dittmore recommended the Company be required to accurately track all employees' time spent on lobbying activities. Using this recorded time and a fully loaded labor rate, the Company should charge this amount to Account 426, Miscellaneous Nonutility Expenses, and then exclude it from net operating income.<sup>24</sup>

Mr. Dittmore's final adjustment consisted of excluding all costs associated with the September 2019 water main break. Mr. Dittmore argued that the Company is responsible for demonstrating it was not at fault for the water main break, and TAWC has failed to do so in this

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

<sup>22</sup> *Id.* at 8-12.

<sup>23</sup> *Id.* at 13-14.

<sup>24</sup> *Id.* at 14-16.



proceeding. Mr. Dittemore, therefore, recommended the costs associated with the September 2019 water main break be deferred as a regulatory asset. Until such time the Company can sufficiently demonstrate to the Commission it was not at fault, the Consumer Advocate recommended the Company should not be allowed to include the associated costs in its income statement.<sup>25</sup>

### **Rebuttal Testimony of the Company**

In Pre-Filed Rebuttal Testimony, the Company opposed the Consumer Advocate's proposal to exclude AFUDC and CWIP from the Earnings test. Ms. Chambers asserted that in the Company's last rate cases, Docket Nos. 10-00189 and 12-00049, the Commission authorized budgeted AFUDC and CWIP capital additions be used in the calculations of rate base. The Company asserted the Consumer Advocate did not raise this issue in the docket establishing the capital rider surcharges, Docket No. 13-00130, or the Company's previous capital recovery rider reconciliation case.<sup>26</sup> Ms. Chambers argued that if the Commission reverses its previous decision, that decision should only apply to AFUDC eligible amounts in the CWIP balance and Mr. Dittemore's calculation would need to be revised.<sup>27</sup>

The Company submitted that it followed the USOA by disallowing the identified lobbying expense charged above the line.<sup>28</sup> The Company's governmental affairs position was vacant during 2019 so another employee filled in on some of the functions associated with that position. That employee was paid an additional stipend of \$600.00 per month from February to September 2019. According to Ms. Chambers, the Company registered this employee as a lobbyist in an abundance of caution.<sup>29</sup> Ms. Chambers asserted that Mr. Dittemore's accusations are based upon

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<sup>25</sup> *Id.* at 16-19.

<sup>26</sup> Elaine K. Chambers, Pre-Filed Rebuttal Testimony, pp. 2-3 (July 15, 2020).

<sup>27</sup> *Id.* at 4.

<sup>28</sup> *Id.* at 5-6.

<sup>29</sup> *Id.* at 6-7.

a faulty definition of lobbying expense and is contrary to the previous decision of the Commission in Docket No. 10-00189, where it did not require the removal of any internal labor associated with lobbying efforts.<sup>30</sup>

In Pre-Filed Rebuttal Testimony filed on July 15, 2020, Mr. Stafford claimed the Company has been responsive to all discovery requests relative to the water main break in 2019. Mr. Stafford testified that the analysis of the main break in September of 2019 is being performed by an independent third-party and the Company does not have a time frame for the completion of their analysis.<sup>31</sup> Mr. Stafford also asserted that the recovery of costs associated with the provision of drinking water supplied to customers during a main break is not new, nor isolated to this event.<sup>32</sup>

#### **Supplemental Testimony of the Company**

On August 3, 2020, the Company submitted the Supplemental Testimony and amended exhibits of Ms. Chambers to summarize a settlement between the Company and the Consumer Advocate to resolve the remaining contested issues in the present docket. First, the Company agreed to remove 20% of the employee's salary that was registered as lobbyist.<sup>33</sup> The Company took the position that the agreement made here is for purposes of avoiding further litigation and is applicable only to this case. For these reasons, the Company removed \$18,000 of lobbying expense (rounded to the nearest thousand). This amount is comprised of \$18,858 (20% of registered lobbyist salary); plus \$4,800 (stipend paid to employee), less the tax effect of \$6,183.<sup>34</sup>

Second, the Company claimed the costs associated with the water main break in 2019 were properly included in the earnings test. According to Ms. Chambers, however, the Company is

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<sup>30</sup> *Id.* at 7-8.

<sup>31</sup> Kurt A. Stafford, Pre-Filed Rebuttal Testimony, pp. 1-2 (July 15, 2020).

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

<sup>33</sup> Elaine K. Chambers, Pre-Filed Supplemental Testimony, p. 3 (August 3, 2020).

<sup>34</sup> *Id.*; Exhibit - Lobbying Salary Calculation.

agreeing to defer \$81,543 of costs associated with the water main break to the next capital recovery rider filing. The Company took the position that the agreement here applies only to this docket and does not set any precedential standard. After removing the lobbying costs and water main break costs, the Company's calculated rate of return is 7.77%.<sup>35</sup>

Finally, with regard to the inclusion of CWIP and related AFUDC, the parties agreed to accept the original position of the Company and include both.<sup>36</sup> With the settlement of the three issues, the proposed capital rider reconciliation surcharges will be reduced by 2.31% for the QIIP, 0.51% for the EDI, and 1.26% for the SEC — a total reduction in the rider surcharge of 4.08%.<sup>37</sup>

### **THE HEARING**

The hearing in this matter was noticed by the Commission on September 4, 2020 and held during the regularly scheduled Commission Conference on September 14, 2020. The hearing was held electronically via WebEx. Pursuant to Executive Order No. 16 issued by Governor Bill Lee on March 20, 2020, and subsequently extended most recently by Executive Order No. 60, the Commission met electronically and without a physical quorum. Electronic access to the hearing was made available to the parties and the public. Making appearances were the following:

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 Unit, Financial Division, Office of the Tennessee Attorney General – 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 to describe the agreement between the parties. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

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<sup>35</sup> *Id.* at 3-4; Exhibit - Earnings Test.

<sup>36</sup> *Id.* at 4.

<sup>37</sup> *Id.* at Exhibit - Updated Proposed Sheet No. 12 - Riders.

## **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**

Based on the evidentiary record, the Hearing Panel found that the *Petition* and the amendments made to it by agreement of the parties complies with the tariff filing requirements whereby Tennessee-American shall submit to the Commission a reconciliation of the results of the Capital Riders operations for the previous annual review period.

The Hearing Panel further found that Tennessee-American properly included the capital investment in: (1) non-revenue producing plant for the QIIP rider; (2) the capital investment in the EDI rider made to encourage and aid economic development; and (3) the capital investment in the SEC rider necessary to meet safety and environmental regulations. The Hearing Panel further found that previously ordered changes by this Commission have been incorporated in this filing and all other changes have been properly identified.

The Hearing Panel voted unanimously to accept the agreement between the parties to: (1) exclude 20% of the salary of a certain employee performing governmental affairs functions; (2) defer the costs associated with the September 2019 water main break until the Company's next

Capital Rider filing; and (3) include Construction Work in Progress and Allowance for Funds Used During Construction in the earnings test. The Hearing Panel found these resolutions to be reasonable and in the best interest of Tennessee-American's customers.

Based on the evidentiary record, the panel voted unanimously to reduce the following surcharges.

1. A reduction in the QIIP Rider surcharge of 2.31%;
2. A reduction in the EDI Rider surcharge of 0.51%; and
3. A reduction in the SEC Rider surcharge of 1.26%.

These amounts represent a total surcharge reduction of 4.08%. 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 2020 Capital Riders Reconciliation* filed on February 28, 2020 by Tennessee-American Water Company requesting Commission approval of its Calculation of the 2019 Capital Riders Reconciliation is granted, subject to the amendments and corrections set forth above.

2. The amended Capital Rider surcharges are amended as follows:
  - A reduction in the Qualified Infrastructure Investment Rider surcharge of - 2.31%;
  - A reduction in the Economic Development Investment Rider surcharge of - 0.51%; and
  - A reduction in the Safety and Environmental Compliance Rider surcharge of - 1.26%.

These amounts represent a total surcharge reduction of 4.08%.<sup>38</sup>

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.

**FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:**

**Chairman Kenneth C. Hill,  
Vice Chairman Herbert H. Hilliard, and  
Commissioner David F. Jones concurring.**

None dissenting.

**ATTEST:**



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**Earl R. Taylor, Executive Director**

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<sup>38</sup> Amended.