

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

November 1, 2021

IN RE:)	
)	
PETITION OF TENNESSEE-AMERICAN)	DOCKET NO.
WATER COMPANY FOR APPROVAL OF THE)	20-00126
ESTABLISHMENT OF A REGULATORY ASSET)	

**ORDER DENYING PROPOSED SETTLEMENT AGREEMENT AND GRANTING A
CONTINUANCE FOR THE HEARING ON THE MERITS**

This matter came before Chairman Kenneth C. Hill, Vice Chairman Herbert Hilliard, Commissioner Robin L. Morrison, Commissioner John Hie, 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 August 9, 2021, to hear and consider the *Stipulation and Settlement Agreement* (“*Settlement Agreement*”) of Tennessee-American Water Company (“TAWC” or the “Company”) and the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) filed on July 28, 2021. In summary, the panel denied the *Settlement Agreement* and granted a request by the Company for a continuance to prepare for a hearing on the merits.

BACKGROUND AND PETITION

On March 12, 2020, Tennessee Governor Bill Lee declared a state of public health emergency related to the COVID-19 outbreak pandemic. Several measures were implemented at both the state and local levels, including school closures and social distancing practices. These measures had varying degrees of economic stress and disruption upon Tennessee households and businesses that could impact the ability of customers to maintain payment for basic utility service. In the earliest

days of the pandemic in Tennessee, the largest regulated utilities in Tennessee communicated to the Commission their voluntary commitment to suspend disconnections for non-payment and other measures aimed at maintaining essential utility services for customers.

On March 16, 2020, the Commission issued a *Public Notice of Utility Actions to Assist Customers During the Coronavirus COVID-19 Public Health Emergency* commending those utilities that had already taken swift action and encouraging the agency's other jurisdictional utilities to do the same. On March 26, 2020, TAWC reported to the Commission regarding its emergency and operational response plan and the measures the Company had already taken to assist customers, including voluntarily suspending both cut-offs and late fees until further notice.¹

On March 31, 2020, the Commission issued an *Order Requiring All Jurisdictional Utilities to Suspend Actions to Disconnect Service for Lack of Payment During the State of Public Health Emergency* forbidding any service disconnections for lack of payment, excluding temporary cutoffs for actions necessary for repairs or impacting public safety.² The Commission took this action, after a hearing, in response to a formal petition of the Consumer Advocate to suspend cut-offs of utility service for lack of payment.

The Commission recognized that a suspension of cut-offs was not a permanent solution and that the continuation of the suspension of cut-offs could result in some past-due balances for certain customers to grow to seemingly insurmountable amounts. The disconnection suspension was lifted effective August 29, 2020, subject to the following:

1. All public utilities are required to give customers a minimum 30-day written notice of their intent to resume their regular procedures for disconnection of service for non-payment;

¹ See *In Re: Emergency Petition to Suspend Disconnections Filed by the Consumer Advocate Unit of the Financial Division of the Office of the Tennessee Attorney General*, Docket No. 20-00047 (herein *Shut Off Suspension Docket*), *Comments of Tennessee-American Water Company*, Exhibit A (March 26, 2020).

² *Shut Off Suspension Docket, Order Requiring All Jurisdictional Utilities to Suspend Actions to Disconnect Service for Lack of Payment During the State of Public Health Emergency*, pp. 7-11 (March 31, 2020).

2. Every public utility shall work with customers who are unable to pay overdue amounts by offering, upon the customer's request, a payment plan that will allow the customer to maintain service while paying off past-due amounts over a reasonable period of time;
3. Every public utility that provides natural gas, electric, water or wastewater service shall continue to submit status reports to the Commission, as previously required in the Commission's *Ongoing Request* issued March 19, 2020, on a monthly basis; and
4. All issues related to the utilities' potential recovery of costs related to the COVID-19 public health emergency may be considered in future, individual docketed proceedings.³

On November 16, 2020, TAWC filed *Tennessee-American Water Company's Petition for Approval of the Establishment of a Regulatory Asset* ("Petition"). TAWC asserted it has incurred incremental financial impacts as a result of its moratorium and the Commission's suspension of disconnection of service for lack of payment. The *Petition* specifically states:

These costs primarily relate to the disconnection moratorium, suspension of fees, related customer communications, and additional debt carrying costs. Tennessee American also expects uncollectible accounts expense to increase due to the economic impacts of the COVID-19 emergency on customers.⁴

The Company asserted it is appropriate to establish a regulatory asset when a utility incurs extraordinary costs that could not have been foreseen. Under circumstances described in the *Petition*, the Company claimed it was appropriate and prudent to establish a regulatory asset to track and ultimately recover these costs. TAWC acknowledged, however, the regulatory asset would be partially reduced by decreases to other expenses.⁵ In its *Petition* TAWC identified the foregone late fees, the incremental operating expenses, uncollectible expenses, interest expenses and the offsetting savings as follows:

Foregone Late Payment Fees	\$306,626
Costs:	

³ *Shut Off Suspension Docket, Order Lifting Suspension of Disconnections of Service for Lack of Payment with Conditions, Effective on August 29, 2020*, pp. 9-12 (September 16, 2020).

⁴ *Petition of Tennessee-American Water Company for Approval of the Establishment of a Regulatory Asset*: Docket No. 20-00126, p.6 (November 16, 2020).

⁵ *Id.* at 7.

Incremental Operating Expenses	62,391
Uncollectible Expense	154,757
Term Loan Interest Expense	112,090
Direct Offsets:	
Travel/Conference Savings	(121,398)
TOTAL	\$514,465

In conclusion, TAWC requested to be allowed to accumulate \$514,465 and any additional COVID-19 incremental costs in a regulatory asset account for potential future recovery. TAWC proposed that the method of recovery was to be determined in the Company's next general base rate case or other appropriate proceeding.⁶

In pre-filed testimony in support of the *Petition*, Ms. Elaine K. Chambers asserted the Company was pro-active in addressing the continuation of water service to its customers. Independent of and prior to the Commission's directives, the Company instituted a moratorium on any billing related disconnections of service, the timely re-connection of any previous disconnections of service, and the suspension of late fees until further notice. The Company also increased communication with its customers.⁷

In addition to providing customers water service without immediate payment, the Company also incurred incremental operating expenses such as facility preparedness, personal protective equipment ("PPE") and supplies expense, signage expense, uncollectible expense and term loan interest expense. Ms. Chambers further claimed the Company is still and will continue to incur expenses related to the pandemic and the measures taken to continue service to its customers.⁸

Ms. Chambers testified the Company's *Petition* requested the Commission to approve the establishment of a regulatory asset account which will contain the incremental expenses associated

⁶ *Id.* at 9.

⁷ Elaine K. Chambers, Pre-Filed Direct Testimony, p. 4 (November 16, 2020).

⁸ *Id.* at 5-6.

with the pandemic. Ms. Chambers forewarned that the Company is not fully aware of all incremental COVID-19 costs at this time so it will update its deferral as more information becomes available.⁹

On June 3, 2021, Mr. J. Cas Swiz adopted the direct testimony of Ms. Elaine K. Chambers due to her departure from the service company, American Water Works Service Company, Inc. (“AWWSC”).

POSITION OF THE CONSUMER ADVOCATE

In pre-filed direct testimony filed on behalf of the Consumer Advocate, Mr. Dittmore recommended the Commission reject TAWC’s request to establish a regulatory asset.¹⁰ While agreeing that the pandemic was an unforeseen event, Mr. Dittmore raised several policy questions and factual issues. Mr. Dittmore argued that the costs incurred by the Company due to the pandemic were immaterial and the Company has not provided any evidence that pandemic costs are necessary in order to avoid financial difficulty.¹¹ The Consumer Advocate points out the Company’s parent, American Water Works Company, Inc, (“American Water”) has not sought an order from this Commission to record a regulatory asset on its books.

Mr. Dittmore asserted that it is not practical or reasonable to shift all the pandemic costs to ratepayers. He testified that should the Commission allow TAWC to recover such costs, it should only be allowed to recover \$189,686, as recommended by Mr. Craig Cox. He claims shareholders are compensated for economic risk within their authorized rate of return.¹² A central point of Mr. Dittmore’s position is an analysis, found in Schedule DND-1, wherein he calculated the interest cost recovered from ratepayers through base rates and capital riders to be \$8,555,846. He then calculates the actual debt costs pursuant to the Company’s December Commission Form 3.06 to be \$3,877,753.

⁹ *Id.* at 6-7.

¹⁰ David N. Dittmore, Pre-Filed Direct Testimony, p. 2 (April 30, 2021).

¹¹ *Id.* at 3-4.

¹² *Id.* at 5,8.

He asserts the difference of \$4,678,093 represents the excess of amounts collected from ratepayers for assumed debt costs, and this excess amount is sufficient to permit the Company to absorb incremental pandemic costs.¹³

In Schedule DND-2, Mr. Dittmore calculated the requested Company's position and the Consumer Advocate's position regarding the potential recoverable costs. Per TAWC, the impact on the return on equity ("ROE") is 0.39%, while the Consumer Advocate's position represented in the calculations of Mr. Craig Cox, results in a 0.15% impact on ROE.¹⁴ Mr. Dittmore asserted the *Petition* represents an example of single issue rate-making that ignores other offsetting savings in the Company's operations and finances while pointing out it has been nine years since the Company's last rate case.¹⁵

Also on behalf of the Consumer Advocate, Mr. Craig C. Cox filed pre-filed direct testimony evaluating specific costs in the *Petition*. Mr. Cox recommended the Company only be allowed to recover late payment fees based on a three-year average and net of those charged to customers in the year 2020.

The table below illustrated his recommendation:

	Company's 3 Year average Late Payment Fees (2017-2019)	Company's Late Payment Fees Charged to Customers in 2020	CA's Maximum Recommended Foregone Late Fees
As filed, Mar 20 – Oct 20	\$283,117	\$46,246	\$236,871
Mar 20 – Dec 20	\$342,028	\$99,256	\$242,772

¹³ *Id.* at 6.

¹⁴ *Id.* at 8; Schedule DND-2.

¹⁵ *Id.* at 7.

Mr. Cox asserted that not all of the foregone late fees should be included in a regulatory asset, noting that the established ROE includes a risk premium that compensates shareholders for economic downturns.¹⁶

Mr. Cox agreed that TAWC should be reimbursed for incremental direct and allocated operating expenses and agreed with the Company's expenditures and tracking methodology.¹⁷ Mr. Cox, however, disagreed that the Company should be re-imbursed for uncollectible expenses above those authorized in the Company's last rate case. The Consumer Advocate noted that the Company's last rate case was nine years ago and there have been several acquisitions and divestitures since that time. As such, Mr. Cox contended that uncollectible expenses should be based upon a more recent time period and therefore recommended using a comparison of expenses incurred during the three years preceding the pandemic as illustrated below:

	Company Actual Uncollectible Expenses	Company's 3-year Average Uncollectible Expenses (2017-19)	CA Estimated Pandemic Related Uncollectible Expenses
As filed, Mar 20 – Oct 20	\$473,041	\$466,621	\$6,420
Mar 20 – Dec 20	\$518,164	\$546,601	\$(28,437)

Mr. Cox asserted the Company's recent uncollectible expenses are significantly higher than those included in the Company's last rate case. The Company's uncollectible expense has risen in recent years absent the pandemic. For these reasons, Mr. Cox recommended that uncollectible expenses not be allowed for recovery.¹⁸

With respect to interest expense, Mr. Cox noted that Mr. Dittmore is making the Consumer Advocate's primary recommendation that none of the Company's proposed interest expense be

¹⁶ Craig C. Cox, Pre-Filed Direct Testimony, pp. 3-4 (April 30, 2021).

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 5-6.

considered as a pandemic related cost. Should the Commission not adopt Mr. Dittmore's recommendation, Mr. Cox's recommendation would serve as an alternative proposal.¹⁹

Mr. Cox explained that American Water Capital Corporation borrowed \$500 million under a twelve-month term loan agreement in anticipation of problems associated with the pandemic of which \$11.8 million of the loan was allocated to TAWC. As an alternative to the Company's proposal, Mr. Cox recommended the Company only be allowed to recover interest expense incurred in April 2020 and none incurred after that date. Less than six weeks after obtaining the loan, American Water declared a quarterly dividend increase of 10% and one year later they declared another dividend increase of 9.5%.²⁰ Mr. Cox highlighted the fact that the Company had the liquidity to provide dividends along with the lack of a prepayment penalty on the term loan. Therefore, the Company should not have assessed any term interest to its customers after May 1, 2020. For these reasons, Mr. Cox asserted that should the Commission reject Mr. Dittmore's recommendation, Mr. Cox recommended the Company only be allowed to recover \$17,218 in term loan interest which was incurred during April 2020.²¹

With respect to the Company's travel expense savings during the pandemic, Mr. Cox asserted the Company was inconsistent in estimating its travel savings compared to uncollectibles expense. The Company used uncollectibles from its 2012 rate case to determine the change, while they used more up-to-date 2019 travel and conference expenses as a benchmark to determine savings due to the pandemic.²² Mr. Cox recommended the three-year average methodology he applied to determine uncollectible expenses, also be used to determine travel and conference savings. The following table demonstrates his recommendation:

¹⁹ *Id.* at 3-4, 6.

²⁰ *Id.* at 7.

²¹ *Id.* at 6-7.

²² *Id.* at 8.

	Company Actual Travel & Conference Expense	Company's 3-Year Average Travel & Conference Expenses (2017-19)	CA Estimated Pandemic Related Travel & Conference Savings	Company's Proposed Travel & Conference Savings
As filed, Mar 20 – Oct 20	\$12,135	\$146,363	\$134,228	\$121,398
Mar 20 – Dec 20	\$19,598	\$175,169	\$155,571	\$135,508

As with uncollectibles, Mr. Cox asserted using data from more than one recent period provides a much better representation of the Company's pre-pandemic expenses.²³ In total Mr. Cox recommended the Company be allowed to establish a regulatory asset account in the amount of no more than \$189,686.²⁴

On June 30, 2021, Mr. Dittmore adopted the direct testimony of Mr. Cox due to his departure from the Consumer Advocate.

COMPANY REBUTTAL TESTIMONY

In pre-filed rebuttal testimony by J. Cas Swiz filed on June 4, 2021, the Company disagreed with the Consumer Advocate's recommendation to reduce the regulatory asset from \$501,294 to \$189,686. Mr. Swiz cited Section 186 of the National Association of Regulatory Utility Commissioners ("NARUC") Uniform System of Accounts ("USOA") regarding "Miscellaneous Deferred Debits" as defining the accounts where all debits not elsewhere provided for shall be recorded. He asserted that the Company is only requesting to defer the financial impacts of the COVID-19 emergency with recovery of this deferral to be considered in a future proceeding. Mr. Swiz noted that the Commission has previously approved the use of deferral accounting regarding the

²³ *Id.*

²⁴ *Id.* at Schedule CCC-1.

2017 Tax Cuts and Jobs Act and most recently approved deferral of \$10,000 of due diligence costs in the Jasper Highlands Asset Purchase Agreement.²⁵

According to Mr. Swiz, the actions taken by the Company to ensure continued service to its customers were unusual or extraordinary. The Company noted the Commission's directives to utilities to focus on the continued provision of essential services and mandating suspension of disconnects for non-payment. Mr. Swiz testified that the actions of the Commission demonstrate extraordinary steps were necessary to ensure the continuation of service. In response to the Commission's directive, Mr. Swiz asserted TAWC filed the *Petition* for authority to defer expenses and losses resulting from the COVID-19 emergency.²⁶

Mr. Swiz disagreed with the Consumer Advocate that additional criteria are necessary for deferred accounting authority. He asserted the COVID-19 costs are extraordinary and non-recurring and would be excluded from a test period in a rate case. He also argued the deferral now would avoid a challenge that the request represents an improper out-of-period accounting entry. According to the Company, the materiality is irrelevant, and the question of which stakeholder group(s) should bear the risk for such costs should be raised in the proceeding where the Company is seeking recovery of the deferred costs. Mr. Swiz further testified that TAWC did experience other financial impacts, such as increased financing costs, overtime, and temporary support for ill employees for which it is not seeking deferral.²⁷

Mr. Swiz asserted the foregone late fees should be deferred for consideration of recovery at a later date. The Company waived the late fees which ultimately meant arrearage balances carried by the Company also rose. Further, late fee revenue is considered when determining base rates. Therefore, Mr. Swiz disagreed with the Consumer Advocate's calculation of the late fee revenues

²⁵ J. Cas Swiz, Pre-Filed Rebuttal Testimony, pp. 4-6 (June 4, 2021).

²⁶ *Id.* at 6-8.

²⁷ *Id.* at 8-12.

deferred during the moratorium period. Mr. Swiz asserted the actual late fees foregone were \$304,140, which represents late fees that would have been charged from March 2020 through September 2020.²⁸

With respect to the Consumer Advocate's adjustments, Mr. Swiz opposed the Consumer Advocate's recommendation to use a three-year average as a baseline for uncollectible expense. The Company determined the incremental expense of \$676,584 by comparing the amount reflected in base rates and the amount of expense actually incurred.²⁹ Mr. Swiz, however, asserted the Company's approach of using 2019 as a baseline to determine travel and conference savings is appropriate. This method uses the most recent calendar year to determine the actual savings of \$198,901.³⁰

Mr. Swiz disagreed with the Consumer Advocate's recommendation that term interest expense be limited to just April 2020, rather than the requested \$155,092. He explained the parent Company secured the loan to ensure liquidity and maintained the cash because of the uncertainty of the pandemic on the financial markets. It was like an insurance policy in the event the pandemic created an inability to obtain funds. Mr. Swiz further asserted that utilities need to attract capital in order to provide safe and reliable service, and that continuing with dividends is a practice that demonstrates financial health and helps to secure needed capital.³¹ In closing, Mr. Swiz reiterated the Company's request to defer \$345,173 of incremental and extraordinary financial impacts associated with the COVID-19 emergency.

ADMINISTRATIVE NOTICE BY THE COMMISSION

On June 30, 2021, pursuant to Tenn. Code Ann. §§ 4-5-313(6) and 65-2-109(2), the Commission took administrative notice of the Company's monthly 3.06 reports filed with the

²⁸ *Id.* at 12-16.

²⁹ *Id.* at 16-17.

³⁰ *Id.* at 18-19.

³¹ *Id.* at 20-23.

Commission for the period January 2018 through December 2020 which were filed in the docket. The Commission also took administrative notice of the Company's comparative balance sheets for the same period of which the Company claimed a designation of "confidential" which were filed under seal.

PROPOSED SETTLEMENT AGREEMENT

On July 28, 2021, the parties filed a proposed *Settlement Agreement*. The terms of the *Settlement Agreement* authorize TAWC to record a "COVID-19 Regulatory Asset" of \$149,048 for a deferral period of pandemic-related financial impacts beginning on March 1, 2020 and continuing through April 30, 2021.³² The terms further allow for the Company to request an extension(s) subject to Commission approval.³³ The parties agree that the \$149,048 deferral amount consists of the following financial impacts:

- (a) Late Fees of \$304,140 forgone during the period of March 1, 2020 through September 29, 2020;
- (b) Travel and Conference Expense savings of (\$239,933) calculated using (1) the three-year average of actual Travel and Conference costs for each month, 2017 through 2019, less (2) actual Travel and Conference costs incurred during the period March 1, 2020 through April 30, 2021;
- (c) Bad Debt Expense savings of (\$10,115) computed by comparing the actual expense during the deferral period with the level included in base rates plus the bad debt expense recovered in TAWC's Capital Recovery and Production Costs and Other Pass-Through Riders; and
- (d) Personal Protective Equipment Costs of \$94,956 for additional cleaning of facilities and vehicles, sanitizers, signage, rental equipment, and other incremental expenses and revenue losses related to COVID-19.³⁴

The parties further agree that, to the extent such existed during the deferral period, the following items are excluded from the deferral:

- (a) any lost volumetric sales revenue that may have been experienced;

³² *Settlement Agreement*, p. 2 (July 28, 2021).

³³ *Id.*

³⁴ *Id.* at 2-3.

- (b) Forgone Disconnect-Reconnect Fee revenues;
- (c) Any return earned on the unused term-loan proceeds during the period; and
- (d) Carrying costs on the regulatory asset.³⁵

The parties also exclude the interest cost assigned to TAWC associated with American Water's term loan for the period March 2020 through March 2021, which amounted to \$155,092 as of April 30, 2021.³⁶ The parties agree that TAWC shall exercise prudent efforts to identify and utilize government benefits associated with the COVID-19 emergency, whether direct grant, tax credits or other, to minimize costs to be deferred under the settlement.³⁷

Finally, the parties agree that the deferred asset shall be charged as an expense over a three-year amortization period commencing on the date new base rates become effective or January 1, 2024, whichever occurs earlier.³⁸

HEARING REGARDING THE PROPOSED SETTLEMENT

The Hearing on the *Settlement Agreement* was held before the voting panel assigned to this docket on August 9, 2021, as noticed by the Commission on July 30, 2021. Participating in the Hearing were:

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

Consumer Advocate Unit, Financial Division, Office of the Tennessee Attorney General – Karen H. Stachowski Esq., Post Office Box 20207, Nashville, Tennessee
37202-4015.

Mr. J. Cas Swiz provided testimony in support of the *Settlement Agreement*. The parties waived cross-examination. Members of the public were given an opportunity during the hearing to offer

³⁵ *Id.* at 3-4.

³⁶ *Id.* at 4.

³⁷ *Id.*

³⁸ *Id.*

comments, but no one sought recognition to do so. As noticed, a hearing on the merits was to follow any rejection of the *Settlement Agreement*.

FINDINGS AND CONCLUSIONS

Recovery of expenses from a prior period and single issue ratemaking, in general, are rarely invoked outside of authorized alternative ratemaking mechanisms. However, the Commission has authorized the recovery of unforeseen and extraordinary costs in the past. One example was the flood of May 1, 2010 that impacted several areas in Middle Tennessee. The flood swamped one regulated wastewater public utility and compelled it to incur significant expenses to perform emergency repairs to restore service to customers.³⁹ One must note that not all reported costs in the flood-related docket were authorized by the Commission for recovery.

The onset of the COVID-19 pandemic was indeed an extraordinary and unforeseen event. Nevertheless, in the present case, one must note that the pandemic has not halted or disrupted the provision of safe utility service. Whether utility service is, in fact, disrupted by an event, such as a flood, may not be the sole determining factor in the creation of a regulatory asset. However, it is relevant that the provision of utility service was not impacted by the pandemic.

The *Settlement Agreement* before the panel would authorize the creation of a regulatory asset for recovery of some of the requested costs while leaving the door open for other costs in the future. While some may insist that the creation of a regulatory asset is not the same as approving recovery of specific costs, the Commission must disagree that granting such authorization is a mere formality that does not create some form of presumption in favor of recovery. The proposed *Settlement Agreement* goes beyond the authorization of a regulatory asset and enumerates specific costs of

³⁹ See *In re: Petition of Berry's Chapel Utility, Inc. to Recover Costs to Repair Flood Damage and To Refund Customer Service Fees*, Docket No. 11-00180, *Petition of Berry's Chapel to Recover Costs to Repair Flood Damage and To Refund Customer Service Fees*, Exhibit A, (October 25, 2011); *In re: Petition of Berry's Chapel Utility, Inc. to Change and Increase Rates*, Docket No. 11-00198, *Final Order*, pp. 15-17 (August 12, 2012).

\$149,048 for recovery and leaves the door open for the proposal of recovery of other costs in the future, none of which are apparently known and measurable at this time. Nevertheless, the Commission's analysis would be the same if the *Settlement Agreement* was less comprehensive and merely authorized a regulatory asset.

In weighing whether a regulatory asset is appropriate, one must also look at the overall financial performance of the utility and consider to what extent there was a financial impact. Based on monthly financial surveillance reports filed by the Company and administratively noticed by the Commission in this docket, TAWC has not endured a significant financial impact over the course of the eight-month period it quantified COVID-19 related costs for 2020. Here, the record as it currently stands, reflects TAWC has achieved, and in some cases exceeded, its authorized return during the timeframe in which the COVID-related expenses in the *Settlement Agreement* were incurred.

The Commission appreciates the willingness of the parties to engage in settlement discussions to find ways to bridge their differences. The Commission urges this practice to continue. Nevertheless, it is the Commission that must weigh the facts and determine whether a proposed settlement should be approved. Weighing the facts that are known in the record and without a hearing on the merits, the panel cannot approve the settlement agreement presented by the parties at this time. This ruling is not a reflection upon the good faith actions and efforts of TAWC and other utilities during the early months of the pandemic in Tennessee. However, at this time, authorizing a regulatory asset to recover incremental costs from Tennessee households and businesses that spring from a time-period during which a public utility's financial performance appears to have had little impact from the pandemic is not in the public interest. As such, the parties shall proceed forward and prepare for a hearing on the merits.

Following the panel's ruling on the *Settlement Agreement*, the panel indicated it was prepared to proceed with a hearing on the merits of the *Petition*. A motion by the Company for a continuance to allow the parties to prepare for a future hearing before the panel was granted.

IT IS THEREFORE ORDERED THAT:

1. The *Stipulation and Settlement Agreement* filed on July 28, 2021 by Tennessee-American Water Company and the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General is DENIED.

2. A continuance is granted to the parties to prepare for a hearing on the merits of Tennessee American Water Company's *Petition for the Approval of the Establishment of a Regulatory Asset*, filed on November 16, 2020.

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 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 days from the date of this Order.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Chairman Kenneth C. Hill,
Vice Chairman Herbert H. Hilliard,
Commissioner Robin L. Morrison,
Commissioner John Hie, and
Commissioner David F. Jones concurring.**

None dissenting.

ATTEST:



Earl R. Taylor, Executive Director