

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

June 2, 2021

IN RE:

**PETITION OF TENNESSEE-AMERICAN WATER
COMPANY REGARDING THE 2021 INVESTEMENT
AND RELATED EXPENSES UNDER THE QUALIFIED
INFRASTRUCTURE INVESTMENT PROGRAM
RIDER, THE ECONOMIC DEVELOPMENT
INVESTMENT RIDER, AND THE SAFETY AND
ENVIRONMENTAL COMPLIANCE RIDER**

**DOCKET NO.
20-00128**

**ORDER DENYING CONSUMER ADVOCATE’S MOTION TO TERMINATE
OR SUSPEND CURRENT CAPITAL RIDERS MECHANISM**

This matter came before Chairman Kenneth C. Hill, Vice Chairman Herbert H. Hilliard, and Commissioner Robin L. Morrison of the Tennessee Public Utility Commission, (“TPUC” or “Commission”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on April 12, 2021, for consideration of the *Consumer Advocate’s Motion to Terminate or Suspend Current Capital Riders Mechanism* (“*Motion*”) filed by the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) on January 6, 2021. In its *Motion*, the Consumer Advocate requests that the Commission terminate or suspend Tennessee-American Water Company’s (“TAWC” or “Company”) Capital Riders Mechanism.

I. BACKGROUND, *MOTION* AND *RESPONSE*

The General Assembly revised Tenn. Code Ann. § 65-5-103 in 2013 to allow for alternative regulatory methods and mechanisms for recovery of certain costs without the filing of a general rate case. In 2013, TAWC filed a Petition (“*2013 Petition*”) that sought approval for a Qualified

Infrastructure Investment Program Rider (“QIIP”), an Economic Development Investment Rider (“EDI”), a Safety and Environmental Compliance Rider (“SEC”), and mechanism for Pass-Throughs for Fuel, Purchased Power, Chemicals, Purchased Water, Wheeling Water Costs, Waste Disposal, and TPUC Inspection Fee (“PCOP”).¹ Collectively, the QIIP, EDI, and SEC are typically referred to as the “Capital Recovery Riders.” TAWC and the Consumer Advocate submitted a *Stipulation* which resolved contested issues and submitted the provisions of the riders, as agreed upon, to the Commission for Approval.² The Commission approved the *Stipulation* at its April 2014 Conference, finding that the proposed riders were reasonable, the approved tariffs met statutory requirements, and made the approved tariffs effective on April 15, 2014.³

In accordance with the procedure set forth in the approved *Stipulation* in Docket No. 13-00130, TAWC has submitted two annual filings each year: a budget projection filing for the upcoming year on the Capital Riders, filed on or before December 1 each year; and a reconciliation filing on or before March 1 of the following year, where budgeted and actual costs are compared and a “true up” adjustment is implemented.⁴ In Docket No. 18-00120, the Consumer Advocate intervened and opposed the Company’s *Petition*, suggesting several significant structural tariff changes.⁵ Following discovery, hearing, and deliberation, the Commission found that the “capital expenditures as filed by the Company are reasonable and the amended calculations presented by

¹ *In Re: Petition of Tennessee-American Water Company for Approval of a Qualified Infrastructure Investment Program, an Economic Development Investment Rider, a Safety and Environmental Compliance Rider, and Pass-Throughs for Purchased Power, Chemicals, Purchased Water, Wheeling Water Costs, Waste Disposal, and TRA Inspection Fee*, TPUC Docket No. 13-000130 (“2013 Rider Docket”), *Petition* (October 4, 2013) (“2013 Petition”).

² *2013 Rider Docket, Stipulation* (January 10, 2014).

³ *2013 Rider Docket, Order Approving Amended Petition* (January 27, 2016) (“2016 Order”).

⁴ See TPUC Docket Nos. 14-00121, 15-00029, 15-00111, 16-00022, 16-00126, 17-00020, 17-00124, 18-00022, 18-00120, 19-00031, 19-00105, 20-00028, and the current docket.

⁵ *In Re: Petition of Tennessee-American Water Company Regarding the 2019 Investment and Related Expenses Under the Qualified Infrastructure Investment Program Rider, The Economic Development Investment Rider, and the Safety and Environmental Compliance Rider*, TPUC Docket No. 18-00120 (“2018 Budget Docket”), David N. Dittmore, Pre-Filed Direct Testimony, p. 2 (April 23, 2019).

the Company comply with the terms and methodologies of the tariff.”⁶ The Commission also found that the Capital Riders remain in the public interest, stating, “these three Capital Rider programs continue to benefit both consumers and the Company.”⁷ Concerning the structural changes proposed by the Consumer Advocate, the Commission ordered that because the issues “contested the very structure and fundamental mechanics of a mechanism that the parties have both contributed to and shaped since it was first implemented[,]” the issues deserved a fuller examination than the time-constrained alternative regulatory mechanism dockets allowed and ordered the opening of a docket to fully examine and analyze the issues raised by the Consumer Advocate and other potential issues concerning the Capital Riders.⁸

The Commission opened TPUC Docket No. 19-00103 in order to investigate and consider potential issues and modifications concerning TAWC’s Capital Riders. The Commission designated members of its staff to participate as a party to these proceedings.⁹ In addition, the City of Chattanooga petitioned to intervene in the Investigation Docket and the Hearing Officer entered an order granting its intervention on October 1, 2020.

On November 24, 2020, TAWC filed its *Petition* (“*Petition*”) in this matter for consideration of the Company’s qualifiable 2021 investments and expenses.¹⁰ The Consumer Advocate petitioned to intervene by its filing on December 21, 2020.¹¹ Subsequent to the filing of the *Motion*,¹² the Hearing Officer entered an order granting the Consumer Advocate’s intervention.¹³ The Consumer Advocate filed, along with its *Motion*, a Memorandum of Law

⁶ 2018 Budget Docket, *Order Approving Petition as Amended*, p. 20 (November 8, 2019) (“2018 Order”).

⁷ *Id.* at 21.

⁸ *Id.* at 21-22.

⁹ *In Re: Docket to Investigate and Consider Potential Issues and Modifications to the Collective Capital Riders of Tennessee-American Water Company*, TPUC Docket No. 19-00103 (“Investigation Docket”), *Designation of Staff Participating as a Party* (March 31, 2020).

¹⁰ *Petition* (November 24, 2020).

¹¹ *Petition to Intervene* (December 21, 2020).

¹² *Consumer Advocate’s Motion to Terminate or Suspend Current Capital Riders Mechanism* (January 6, 2021).

¹³ *Order Granting the Petition to Intervene Filed by the Consumer Advocate* (January 8, 2021).

which set forth its position and arguments.¹⁴ TAWC filed its response¹⁵ to the Consumer Advocate’s *Motion* on January 20, 2021 after the Hearing Officer granted additional time for the filing of its response.¹⁶ The City of Chattanooga filed a letter to the Commission stating its support for the Consumer Advocate’s *Motion*.¹⁷

A. Consumer Advocate’s Motion

The Consumer Advocate asserts that the Capital Riders Mechanism should be terminated or suspended for two reasons: the public interest requires such termination or suspension; and to ensure due process rights are protected and hearings are conducted in a fundamentally fair manner.¹⁸ The Consumer Advocate contemporaneously filed a Memorandum of Law in support of its *Motion* setting forth facts and legal arguments in support of its position.¹⁹

The Consumer Advocate argues that the “largest factor to consider in establishing and setting rates under an alternative regulatory scheme is that any mechanism must be in the ‘public interest.’”²⁰ It urges that the arguments set forth in the 2018 Budget Docket “proposed a significant alteration to the structure of the Capital Riders” in order to ensure that these riders remain in the public interest.²¹ The Consumer Advocate states that by opening a docket to consider the proposed changes, the Commission deferred ruling on the merits of the issues the Consumer Advocate raised. In addition, the Consumer Advocate argues that deferral of structural changes to the Capital Riders mechanism to the Investigation Docket requires that any “review of whether the Capital

¹⁴ *Memorandum of Law in Support of Consumer Advocate’s Motion to Terminate or Suspend Current Capital Riders Mechanism* (January 6, 2021).

¹⁵ *Tennessee-American Water Company’s Response to the Consumer Advocate’s Motion to Terminate or Suspend Current Capital Riders Mechanism* (January 20, 2021) (“Response”).

¹⁶ *Order Granting Tennessee-American Water Company’s Motion for Extension of Time to File A Response* (January 11, 2021).

¹⁷ Letter to Chairman Kenneth Hill from the City of Chattanooga (February 10, 2021).

¹⁸ *Motion*, p. 11 (January 6, 2021).

¹⁹ *Memorandum of Law in Support of Consumer Advocate’s Motion to Terminate or Suspend Current Capital Riders Mechanism* (January 6, 2021).

²⁰ *Id.* at 7.

²¹ *Id.* at 9.

Riders mechanism remains in the public interest in light of the Consumer Advocate's arguments ...take place in the [I]nvestigation [D]ocket rather than the ongoing semi-annual filings.”²² The Consumer Advocate urges that allowing the Capital Riders to continue while the Investigation Docket, and hence, the Consumer Advocate's proposed structural changes are deferred, is not in the public interest. As such, fairness requires termination or suspension of the existing mechanism until the Investigation Docket is completed.²³ Further, the Consumer Advocate contends that since the burden of proof to show that proposed rates are just and reasonable rests with the utility, allowing the Capital Riders to continue while deferring consideration of the structural issues raised essentially requires TAWC to prove only that “its filing complies with the mechanics of previous years' submissions rather than its requirement to prove that the new rates are just and reasonable...”²⁴ The Consumer Advocate argues that TAWC would not be unfairly or significantly impacted by suspension or termination of the Capital Riders, as the Company can continue to recover funds under an alternative ratemaking mechanism at the appropriate time and if no alternative mechanism is approved, then TAWC can recover through a general rate case.²⁵

The Consumer Advocate also argues that termination or suspension of the Capital Riders is required in order to protect due process and ensure fundamental fairness. The United States and Tennessee Constitutions require due process of law that guarantees “the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’”²⁶ Due process requires that the Consumer Advocate receive a ruling on the issues raised concerning whether a mechanism is in the public interest and that rates be just and reasonable prior to the mechanism being reapproved and new

²² *Id.* at 10.

²³ *Id.* at 10-11.

²⁴ *Id.* at 11.

²⁵ *Id.* at 12.

²⁶ *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). *See* U.S. Const. amend. V, XIV; Tenn. Const. Art. I, § 8.

rates put into effect.²⁷ The Consumer Advocate argues that it is denied due process by the Commission's failure to make findings of fact and conclusions of law relative to its proposed structural changes in that the Commission did not reject the proposals in the 2018 Budget Docket, but reserved them to the Investigation Docket.²⁸

The Consumer Advocate also argues that a recent ruling in the Federal Circuit Court for the D.C. Circuit, which prohibits the tolling orders on rehearing applications under the Natural Gas Act, is analogous to the deferral of the issues concerning the structure of the Capital Riders to the Investigation Docket.²⁹ In the case, FERC issued an order tolling the 30-day ruling requirement on a petition for rehearing in order to give further consideration. FERC issued a ruling denying the petition for rehearing nine months later, after FERC had approved a pipeline construction that Allegheny had sought to prevent. Allegheny appealed. The D.C. Circuit Court vacated the FERC decision and stated that use of tolling orders can often prevent timely review of judicial decisions.³⁰ The Consumer Advocate argues that the Commission's order deferring consideration of its proposed structural changes to the Capital Riders denies the Consumer Advocate a final decision in the matter before TPUC by allowing the Capital Riders to continue and new rates become effective. The Consumer Advocate states that it does not even have an initial decision on its structural change proposals, and as such, due process requires that the Capital Riders be terminated or suspended until the Investigation Docket is concluded.³¹

The Consumer Advocate also makes the argument that if, in the Investigation Docket, the Commission determines that the issues raised by the Consumer Advocate in the 2018 Budget

²⁷ *Memorandum of Law in Support of Consumer Advocate's Motion to Terminate or Suspend Current Capital Riders Mechanism*, p. 14 (January 6, 2021).

²⁸ *Id.* at 15.

²⁹ *See Allegheny Defense Project v. FERC*, 964 F.3d 1 (U.S. D.C. Cir. 2020).

³⁰ *Memorandum of Law in Support of Consumer Advocate's Motion to Terminate or Suspend Current Capital Riders Mechanism*, pp. 15-17 (January 6, 2021) (citing *Allegheny Defense Project v. FERC*, 964 F.3d 1 (U.S. D.C. Cir. 2020)).

³¹ *Id.* at 18.

Docket were meritorious, then the Capital Riders structure will not have been in the public interest in the budget and reconciliation dockets adjudicated in the meantime. In addition, the Filed Rate Doctrine and the prohibition on retroactive ratemaking work together to provide uncertainty with regard to providing a remedy if the issues raised by the Consumer Advocate are ultimately decided in its favor. In other words, TAWC's customers may be left with no recourse if the Capital Riders are not terminated or suspended, while the Company has multiple ways available to receive a return on its investment and to recover prudent costs.³²

Finally, the Consumer Advocate urges that failure to terminate or suspend the Capital Riders would result in denying the Consumer Advocate a fair opportunity to carry out its statutory duty to represent the interests of consumers. The Consumer Advocate cites *Tennessee Consumer Advocate v. Tennessee Regulatory Authority* for the premise that failure to ensure a fair process by the Commission will result in an overturning of the Commission's decision by the appellate courts.³³ By analogy, the reservation of structural issues exclusively to the Investigation Docket denies the Consumer Advocate the opportunity to fairly represent the interests of TAWC's customers in TAWC's semi-annual filings, hence establishing reversible error in these matters.³⁴

B. TAWC's Response

The Company asserts that the Consumer Advocate's *Motion* should be denied. The Company offers three reasons in favor of such denial: the Commission conducted a full review of the evidentiary record in the 2018 Budget Docket; the Consumer Advocate failed to pursue administrative and judicial remedies; and the Commission has not prohibited the Consumer Advocate from raising certain issues outside of the Investigation Docket.

³² *Id.* at 18-20.

³³ *Id.* at 20-21 (citing *Tennessee Consumer Advocate v. Tennessee Regulatory Authority*, 1997 Tenn. App. LEXIS 148 (Tenn. Ct. App. 1997)).

³⁴ *Id.*

TAWC argues that the Consumer Advocate is in error when it urges that the structural issues raised by the Consumer Advocate were reserved to the Investigation Docket. Instead, TAWC states that the only reasonable reading of the Commission's *2018 Order* is that the Commission considered all of the evidence in the 2018 Budget Docket and declined to adopt the position of either the Consumer Advocate or the Company concerning the structural changes proposed by the Consumer Advocate.³⁵ The *2018 Order* contains findings of fact and conclusions of law based upon the entire evidentiary record that conclude that the 2018 Budget Docket *Petition* is compliant with the approved tariff, reasonable, and in the public interest. TAWC also argues that the *2016 Order* approving the Capital Riders notes that the Commission's authority and discretion applies to both the initial rate adjustment and all subsequent adjustments made under the mechanism.³⁶ The same order also requires an evaluation of reasonableness and compliance with an approved mechanism and whether the mechanism remains in the public interest. In light of these parameters, the *2018 Order* should be reasonably interpreted to mean that the Commission declined to find or accept the Consumer Advocate's assertions that the approved tariff was not reasonable or in the public interest absent acceptance of its proposed structural changes. The Company also urges that by opening a separate Investigation Docket, the Commission allowed for an in-depth examination with public comment and debate on any issues related to the Capital Riders.³⁷ In addition, TAWC states that nothing in the *2018 Order* prohibits the Consumer Advocate from raising the same or similar issues later, presupposes that the Consumer Advocate would not be able to produce more evidence in support of its position, or presumes that the Company would not be able to present evidence contrary to the Consumer Advocate's position.³⁸

³⁵ *Response*, p. 7 (January 20, 2021).

³⁶ *Id.* at 7-8.

³⁷ *Id.* at 8-9.

³⁸ *Id.* at 10.

TAWC also states that the Consumer Advocate failed to the pursue administrative and/or judicial remedies that were available to it, rendering its *Motion* without merit. TAWC observes that the *2018 Order* indicates that a Petition for Reconsideration may be filed with the Commission within fifteen (15) days of the date of the order and that a Petition for Review may be filed with the Tennessee Court of Appeals within sixty (60) days of the date of the order. The Consumer Advocate pursued neither of these remedies.³⁹ The Company reiterates that the *2018 Order* indicates that the Commission completed a review of the entire evidentiary record and found insufficient evidence to depart “from the manner in which the tariff has been administered and approved in all previous Capital Rider filings with this Commission.”⁴⁰ TAWC argues that if the Consumer Advocate determined that the *2018 Order* prevented it from being heard on the issues it raised in the 2018 Budget Docket, then it should have utilized the administrative and judicial review remedies then available rather than seeking to cure such failure through this *Motion* in a different docket.⁴¹

Finally, the Company asserts that the *2018 Order* did not prohibit the Consumer Advocate from raising certain issues outside of the Investigation Docket. TAWC argues that the *2018 Order* contains no language that prohibits or limits the Consumer Advocate from raising the same issues, or any other issues, in any case concerning the Capital Riders, despite the Consumer Advocate’s argument to the contrary. TAWC asserts that without such language in the *2018 Order* the arguments concerning the denial of a right to a fair hearing and the opportunity to have concerns addressed are without merit. Further, TAWC states that the Consumer Advocate voluntarily chose not to contest TAWC’s petition in TPUC Docket No. 19-00105, without direction or involvement from the Commission, and represented that other issues presented in pre-filed testimony may be

³⁹ *Id.*

⁴⁰ *Id.* at 11.

⁴¹ *Id.*

addressed in the Investigation Docket. Since those issues include those raised by the Consumer Advocate in the 2018 Budget Docket, the position undermines and discredits the Consumer Advocate's argument that the Commission prohibited raising such issues in other dockets.⁴² Finally, the Company distinguishes the Consumer Advocate's *Motion* from the *Allegheny* case in that the Commission's 2018 Order did nothing to prevent the Consumer Advocate from participating in subsequent dockets or precluded it from seeking administration and/or judicial remedies available to it concerning the 2018 Order.⁴³

II. THE HEARING

A Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on April 12, 2021, as noticed by the Commission on April 1, 2021. Participating in the Hearing were:

Consumer Advocate – Rachel Procaccini, Esq., Office of the Tennessee Attorney General, Financial Division, Consumer Advocate Unit, P.O. Box 20207, Nashville, TN 37202-0207.

Tennessee-American Water Company – Melvin Malone, Esq., Butler Snow LLP, The Pinnacle at Symphony Place, 150 3rd Avenue South, Suite 1600, Nashville, TN 37201.

During the Hearing, Ms. Procaccini argued the Consumer Advocate's *Motion*. Mr. Malone presented TAWC's arguments in response to the *Motion*. Following Ms. Procaccini's rebuttal argument, the Commission provided an opportunity for members of the public to offer comments. However, no person sought recognition to comment.

⁴² *Id.* at 12-13.

⁴³ *Id.* at 14.

III. FINDINGS AND CONCLUSIONS

Tenn. Code Ann. § 65-5-103(d) authorizes the Commission to “implement alternative regulatory methods to allow for public utility rate reviews and cost recovery in lieu of a general rate case proceeding before the commission.”⁴⁴ The subsection establishes certain circumstances under which alternative ratemaking mechanisms may be approved upon a finding that such mechanism is in the public interest.⁴⁵

The Tennessee Supreme Court has also held that Utility Commissions are not courts but are administrative bodies. *McCollum v. Southern Bell Tel. & Tel. Co.*, 43 S.W.2d 390 (Tenn. 1931). In exercising its ratemaking jurisdiction, the Commission’s power is an exercise of legislative authority rather than judicial authority. *Id.* Further, the appellate courts have held that while the agency exercises statutorily granted authority to perform primarily legislative and executive functions, the power to hear and determine controversies, as an incidental necessity within its functions, does not make the Commission a court as defined by the Tennessee Constitution. *In re Cumberland Power Co.*, 249 S.W. 818, 821 (Tenn. 1923). The Tennessee appellate courts have described the Commission’s statutory authority to include a function to make decisions concerning controversies arising under the statutes, rules, and regulations it implements and enforces, “which is judicial in nature or quasi-judicial.” *Tennessee Cent. Ry. Co. v. Pharr*, 29 Tenn. App. 531, 539, 198 S.W.2d 289, 292 (1946). In Tennessee, it is well-settled that courts, and in this case, the Commission in the exercise of its quasi-judicial function, speaks through its orders. *Terry v. Jackson-Madison Cty. Gen. Hosp. Dist.*, 572 S.W.3d 614, 629 (Tenn. Ct. App. 2018). Accordingly, the Commission is the ultimate arbiter of the meaning intended in its orders.

⁴⁴ Tenn. Code Ann. § 65-5-103(d).

⁴⁵ *Id.*

In the *2018 Order*, this Commission describes and examines the pre-filed testimony and pleadings on the issues presented by the Consumer Advocate on the structural issues concerning the Capital Riders as well as the rebuttal testimony and pleadings submitted by the Company concerning these issues.⁴⁶ A public hearing was convened wherein the parties submitted testimony and argument and the public was permitted to submit comment on the issues presented to the Commission.⁴⁷ The *2018 Order* specifically states that it reviewed the “entire evidentiary record in this matter” as well as the agreement of the parties in TPUC Docket No. 18-00039 which affected the calculations and applications of the tariffs in the 2018 Budget Docket.⁴⁸ Upon completion of the exhaustive review of the evidentiary record, the *2018 Order* establishes the following: (1) TAWC’s proposed capital expenditures are reasonable and amended calculations are compliant with the terms and methodologies set forth in the tariff; (2) the Capital Riders, as approved by the Commission, continue to be in the public interest, benefitting both consumers and the Company; (3) insufficient evidence was presented to provide a full examination and analysis of the contested issues concerning the structure and fundamental mechanics of the Capital Riders such that neither the position of the Consumer Advocate nor the rebuttal position of the Company was accepted on these issues; and (4) a separate docket was opened to provide the parties the opportunity to present evidence sufficient to fully examine, analyze, debate, and to provide for public comment concerning these Capital Rider issues, as well as other potential issues relative to the Capital Riders, so the Commission can give thorough consideration, analysis, and deliberation.⁴⁹

⁴⁶ 2018 Budget Docket, *2018 Order*, pp. 9-19 (November 8, 2019).

⁴⁷ *Id.* at 19-20.

⁴⁸ *Id.* at 20.

⁴⁹ *Id.* at 21-22.

In its *2018 Order*, the Commission states that consideration of issues on the structure and fundamental mechanics of the Capital Riders allows for the consideration of alterations that could improve the efficiency and transparency of the mechanisms.⁵⁰

Here, the voting panel noted that the Consumer Advocate has participated in each of the four (4) dockets concerning the Capital Riders subsequent to the 2018 Budget Docket. In TPUC Docket No. 19-00031, the Consumer Advocate initially urged for the suspension of the Capital Riders, but later withdrew the request.⁵¹ In TPUC Docket No. 19-00105, the Consumer Advocate jointly submitted one contested issue to the Commission for consideration while itself deferring certain issues on which the Consumer Advocate and the Company disagreed to the Investigation Docket.⁵² The Consumer Advocate presented contested issues and subsequently agreed with the

Company on the contested issues as evidenced in Pre-Filed Supplemental Testimony of Elaine Chambers, which the Commission accepted, approved, and found to be in the public interest.⁵³ Further, the record is clear that the Consumer Advocate did not seek to have the Commission reconsider its Order in the 2018 Budget Docket, nor did it submit the *2018 Order* to the Tennessee Court of Appeals for judicial review.

The panel further found that the *2018 Order* did not prohibit or in any way limit the Consumer Advocate's participation in any docket related to the Capital Riders, and as such, it may freely contest any issue on which it may wish to present evidence for consideration. Further, the panel found that the determination not to accept either party's position in the 2018 Budget Docket

⁵⁰ *Id.* at 22-23.

⁵¹ *In Re: Petition of Tennessee-American Water Company in Support of the Calculation of the 2019 Capital Recovery Riders Reconciliation*, TPUC Docket No. 19-00031, *Order Granting Petition as Amended*, p. 6 (February 25, 2020).

⁵² *In Re: Petition of Tennessee-American Water Company Regarding the 2020 Investment and Related Expenses Under the Qualified Infrastructure Investment Program Rider, the Economic Development Investment Rider, and the Safety and Environmental Compliance Rider*, TPUC Docket No. 19-00105, *Order Approving Petition as Amended*, pp. 5-7 (August 5, 2020).

⁵³ *In Re: Petition of Tennessee-American Water Company in Support of the Calculation of the 2020 Capital Recovery Riders Reconciliation*, TPUC Docket No. 20-00028, *Amended Order Granting Petition as Amended by Agreement of the Parties*, pp. 7-8, 10-14 (January 26, 2021).

concerning the structural issues of the Capital Riders was a determination that neither party presented evidence sufficient for the Commission to adopt such position. Instead, recognizing the limitations that statutory deadlines create in the Capital Riders budget and reconciliation dockets, this Commission established a docket to allow for a full examination of Capital Rider Issues, including, by the non-rejection language in the *2018 Order*, the issues raised by the Consumer Advocate in the 2018 Budget Docket. The panel also found that in each of the Capital Riders related dockets subsequent to the 2018 Budget Docket, this Commission has continued to find that the Capital Riders remain in the public interest as they exist. If evidence is submitted in the Investigation Docket sufficient to find that changes to the structure of the mechanism is warranted, then such finding is not a finding that previous Capital Rider tariffs were not in the public interest, but rather that such adopted changes are in the public interest going forward to implement increased efficiency and transparency in the administration of the Capital Riders. In light of the *2018 Order* and this Commission's intent concerning the meaning of its own order, the Consumer Advocate's failure to seek additional administrative or judicial review of the *2018 Order*, and the Consumer Advocate's continued participation in Capital Riders dockets subsequent to the 2018 Budget Docket in which the Consumer Advocate has contested certain issues, voluntarily deferred certain issues, and entered into agreements with TAWC on certain issues, the voting panel finds that the Consumer Advocate's *Motion* should be denied.

The voting panel determined that it is not in the public interest to terminate or suspend the Capital Riders and that neither the Consumer Advocate, nor the consumers of TAWC's utility services, are denied due process or fundamental fairness in Capital Rider proceedings. Therefore, the panel unanimously voted to deny the Consumer Advocate's *Motion*.

IT IS THEREFORE ORDERED THAT:

1. The *Consumer Advocate's Motion to Terminate or Suspend Current Capital Riders Mechanism* is denied.

2. 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.

3. 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 Robin L. Morrison concurring.**

None dissenting.

ATTEST:



Earl R. Taylor, Executive Director