BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

September 15, 2022

IN RE:	)	
	)	
TENNESSEE-AMERICAN WATER COMPANY PETITION IN SUPPORT OF THE CALCULATION OF THE 2022 CAPITAL RECOVERY RIDERS RECONCILIATION	))))	**DOCKET NO. 22-00021**

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

This matter came before Vice Chairman David F. Jones, Commissioner Robin L. Morrison, Commissioner Clay R. Good, Commissioner Kenneth C. Hill, and Commissioner John Hie 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 8, 2022, to consider the *Stipulation and Settlement Agreement* ("*Settlement Agreement*") filed on July 22, 2022, by Tennessee-American Water Company ("TAWC," "Tennessee-American" or the "Company") and the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General ("Consumer Advocate") to resolve the *Petition in Support of the Calculation of the 2022 Capital Recovery Riders Reconciliation* ("*Petition*") filed on March 1, 2022 by the Company. In summary, the *Settlement Agreement* was approved.

BACKGROUND AND *PETITION*

TAWC filed and gained approval to implement a Qualified Infrastructure Investment Program ("QIIP") Rider; an Economic Development Investment ("EDI") Rider; a Safety and Environmental Compliance ("SEC") Rider (collectively "Capital Riders" or the "Riders"); and a Pass-Through Mechanism for Purchased Power, Chemicals, Purchased Water, and Wheeling Water Costs in TPUC

Docket No. 13-00130.[1] In accordance with its tariff, TAWC is required to submit a reconciliation of the Capital Riders no later than March 1st of every year.

On March 1, 2022, the Company filed the *Petition*. On March 15, 2022, the Consumer Advocate filed a *Petition to Intervene*, which was granted by the Hearing Officer in an Order dated April 7, 2022. On April 8, 2022, the Hearing Officer issued an *Order Establishing Procedural Schedule,* and the parties engaged in discovery pursuant to the Procedural Schedule.

<u>POSITIONS OF THE PARTIES</u>

TAWC's *Petition*

In support of the *Petition*, Tricia N. Sinopole filed Pre-Filed Direct Testimony for the reconciliation period of January 1, 2021 through December 31, 2021. She affirmed that the calculations in the filing were consistent with the methodologies and corrections previously approved by the Commission, and all accounting data contained therein was consistent with the Company's general ledger.[2]

Ms. Sinopole testified that all three Capital Riders, consisting of the QIIP Rider, the EDI rider, and the SEC Rider, are established on an annual prospective basis using the average end-of-month balance and include only those qualified investments after the conclusion of the initial rate year established in Commission Docket No. 12-00049. The investments were adjusted by qualified plant retirements, depreciation, and property tax expenses. Additionally, the EDI and SEC Riders may include operating expenses. In the *Petition*, the Company has not included any operating expenses. According to Ms. Sinopole, the *Petition* is for reconciliation of the 2021 calendar year and only includes: 1) the comparison of actual 2021 plant additions to the amount forecasted; 2) the comparison

---

[1] *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-Throughs 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).

[2] Tricia N. Sinopole, Pre-Filed Direct Testimony, pp. 2-4 (March 1, 2022).

of revenues authorized in 2021 with the revenues actually collected from customers; 3) the 2020 reconciliation amount as authorized in Commission Docket No. 21-00030, 4) an earnings adjustment based on a comparison of 2021 earnings with the authorized earnings from Commission Docket No. 12-00049; 5) the capitalized Annual Performance Plan ("APP") reduction for the year of 2021, 6) interest on the difference, and 7) a 2021 private fire billing adjustment.[3]

Ms. Sinopole attested that the investment into various projects has not changed since the establishment of the Capital Riders, while the cost of litigating for recovery of this investment has been substantially reduced. The Capital Riders make the regulatory process more streamlined and less burdensome for all parties.[4] Ms. Sinopole testified that the Company has made the following seven changes to the excel workbooks and/or calculations of the Capital Riders from previous filings:

1. All prior year's cumulated data is being supported through the last years' final approved schedules for the calendar year 2020 in Commission Docket No. 21-00030;
2. The workbook for the 2021 actual numbers and all formulas referencing these amounts have been updated;
3. For the tax year 2020, the repairs percentages have been updated to 63.40% for Treatment & Distribution ("T&D") plant and 12.85% for the non-T&D plant;
4. For the tax year 2021, the percentage of the repair has been updated to 37.51% for T&D and 19.60% for non-T&D;
5. A Net Operating Loss Carryforward ("NOLC") of $2,023,968 was used for 2020 and $0 for 2021;
6. Accumulated deferred income tax was based on a proration of days for the year 2021; and
7. The 2021 capitalized incentive amount was included as a reduction to the revenue requirement.[5]

[3] *Id.* at 14-15.
[4] *Id*. at 7-8.
[5] *Id.* at 9-10.

Ms. Sinopole testified that the previously ordered adjustments to remove a portion of the revenue requirement for annual performance compensation in 2014, 2015, and 2016, have been made in this filing. Further, as previously ordered, the Company has excluded items related to new services, new meters, and the alternative fuel vehicles from the EDI calculations.[6]

According to Ms. Sinopole, the Capital Riders are mutually beneficial to ratepayers, the public, and the Company. Ms. Sinopole testified that the Riders primarily reduce the need for general rate cases, minimize rate shock to consumers, support ongoing maintenance, allow for the improvement of essential infrastructure, support economic development, promote growth and jobs, ensure safety and reliability of the water system, and allow for more efficient regulation. The Riders also allow the Company an opportunity to recover its expenses and earn a fair rate of return on its investments.[7] Ms. Sinopole testified that there were no changes in market conditions or other factors that affect whether the Capital Riders are still in the public interest.[8]

According to Ms. Sinopole, the amount of revenues collected from customers varied from the actual amount of revenue needed to cover a return on the Company's QIIP, SEC, and EDI investments. This was due to: 1) the projected annual revenues (based on the authorized amount of sales in Commission Docket No. 12-00049) were higher than actual revenues, and 2) the 13-month average net plant investment and the annualization for depreciation and property taxes for 2021 were more than projected.[9] Ms. Sinopole indicated that the Company inadvertently continued to apply the 2.50% surcharge authorized in Commission Docket No. 21-00030 through January 2022. In order to

[6] *Id.* at 8-10.
[7] *Id.* at 10-13.
[8] *Id.* at 34.
[9] *Id*. at 21-22.

remedy the error, the Company included revenues that were collected from January 1 to January 31, 2022.[10]

Ms. Sinopole attached exhibits to her testimony that provided the calculation of each of the riders, reflecting a QIIP Rider of negative -0.25%, an EDI Rider of positive 0.56%, and an SEC Rider of negative -1.25% for a total Capital Rider surcharge of negative -0.94%.[11] The depreciation rates, property tax rate, and cost of capital used in the calculations were consistent with that approved in the Company's last rate case Docket No. 12-00049.[12] With respect to the Earnings Test Adjustment, the Company indicated that it earned a higher rate of return than the authorized 7.23%, resulting in a ($1,079,560) adjustment to the reconciliation revenues.[13]

The *Petition's* calculations also included a 2021 Private Fire Billing Adjustment of $29,258, which is an adjustment related to negative revenue being recorded as a result of a private customer terminating service and the proration of the billing credit to adjust the bill for the inactive period during the quarter which had been billed in advance.[14] Overall, the Company requested a reduction of $329,977[15] to the reconciliation amount going forward. Ms. Sinopole calculated that the proposed reduction resulted in the average customer's bill decreasing $0.20 per month or $1.80 in 2022.[16]

In support of the *Petition*, Mr. Grady Stout, P.E. submitted Pre-Filed Testimony in which he asserted that all capital investment projects are evaluated using objective criteria to assess the risk of not performing the project. Mr. Stout testified that TAWC uses industry best practices, including a regional Capital Program Management Committee ("CPMC"), which ensures the investment plans correlate with the Company's strategic objectives. Further, a Functional Review Meeting ("FRM")

[10] *Id.* at 22-23.
[11] *Id*. at Exhibit Capital Riders Reconciliation-TNS p. 1 of 1.
[12] *Id.* at 19-20.
[13] *Id.* at 27-28.
[14] *Id.* at 28.
[15] *Id*. at Exhibit Capital Riders Reconciliation-TNS p. 1 of 1.
[16] *Id.* at 31.

Committee reviews all projects and enables project managers and operational area supervisors to coordinate projects from the initial development stage through the in-service completion. Finally, Mr. Stout testified that all construction work performed by contractors is completed through a bid solicitation process.[17]

According to Mr. Stout, the CPMC and FRM Committee oversee all projects from start to completion. Additionally, there is a process in place to ensure proposed projects meet the business needs for expenditure and usefulness. This process includes: 1) identifying the preliminary need, 2) ensuring all aspects of the project are able to begin work, 3) project change requests if the cost changes more than 5% or $100,000, 4) a post project review, and 5) asset management.[18]

For 2021, the Company overspent $1,242,604 in total for capital projects in 2021. The net overspend is comprised of:

- an underspend in the QIIP Rider of $294,259, which was primarily related to the timing of the Filter House 2 Rehabilitation,
- an overspend in the EDI Rider of $952,992 which was attributable to three projects. The first two projects were a carryover from 2020 (The River Gorge Booster Station carryover spend of approximately $420,000 and the River Gorge Transmission Mains carryover spend of approximately $195,000); and the third project was the Cummings Road Main Extension Project which exceeded the budget by approximately $334,000; and
- the $583,871 overspend in the SEC due to the Missionary Ridge pump and the Minnekahda Booster Station Replacement.[19]

---

[17] Grady Stout, P.E., Pre-Filed Direct Testimony, pp. 5-6 (March 1, 2022).
[18] *Id*. at 6.
[19] *Id.* at 8-10.

According to Mr. Stout, projects are sometimes delayed and changes occur in the actual expenditure compared to the budget amount because of unexpected changes in priorities due to outside influences or recognition of unfavorable trends. The majority of unexpected changes are due to conflicts between the Company's infrastructure and outside agencies' projects or changes that occur in the community. The CPMC meets to compare the current capital expenditures to the budget, reviews any needed changes, and approves or disapproves the movement of available capital.[20]

TAWC's Supplemental Testimony

On April 27, 2022, the Company revised the *Petition* with the Pre-Filed Supplemental Testimony of Tricia N. Sinopole. Ms. Sinopole revised the Capital Rider calculation to a net reconciliation reduction of $544,657. [21] According to the Company, the revision was necessary to reflect an adjustment for a revenue reserve omitted from the original filing and to include in the reconciliation component for the revenues billed in January and February 2022.[22] Ms. Sinopole testified a $231,110 reserve was booked in December 2021 as an estimate of the revenue reduction or credit to customers. This reserve was not passed back to customers in 2021; therefore, it should have been included in this reconciliation to ensure it is passed back to customers.[23]

According to Ms. Sinopole, the original 2021 Capital Rider Reconciliation included $107,260 for revenues related to a 2.5% reconciliation component that should not have been billed in 2022; the amount was based upon the latest information available to the Company at the time of the original filing. Ms. Sinopole testified that the Company has updated billing information to include the 2.5% reconciliation component billed in January and February 2022 resulting in a change in the billing amount from $14,932,415 to $14,912,552.[24] The reserve adjustment of $231,110 and the update to

[20] *Id*. at 11.
[21] Tricia N. Sinopole, Pre-Filed Supplemental Testimony, at Petitioner's Revised Exhibit- Capital Rider Reconciliation - TNS p. 1 of 1 (April 27, 2022).
[22] *Id*. at 1.
[23] *Id*. at 2.
[24] *Id.* at 3-4.

the reconciliation revenue resulted in a $214,680 increase in the reconciliation credit as originally filed, reflecting a QIIP Rider of negative (-0.63%) for a refund of $223,935, an EDI Rider of 0.55% for a recovery of $192,654, and a SEC Rider of negative (-1.45%) for a refund of $513,377. Composite total of negative (-1.53%).[25]

Consumer Advocate's Direct Testimony

On behalf of the Consumer Advocate, Mr. David Dittemore provided his assessment of the *Petition* and the Company's subsequent calculation corrections. Mr. Dittemore recommended the Commission approve a credit reconciliation amount of $1,087,979 which results in a negative QIIP (-1.65%), positive EDI 0.50% and negative SEC of (-1.93%) for a composite total of negative (-3.08%). To arrive at these amounts Mr. Dittemore made five adjustments to the Company's supplemental filing. Two were related to the Capital Rider revenue requirement and three were related to the excess earnings incurred during the test period.[26]

Mr. Dittemore's first adjustment corrected the Company's Accumulated Deferred Income Tax ("ADIT") balance by $355,900, an adjustment that is necessary to eliminate the understatement of TAWC's 2021 ADIT calculation. Mr. Dittemore asserted the Company accurately performed the proration calculation; however, when it divides the prorated amount by two, it results in an understatement of the test period ADIT balance. Mr. Dittemore conceded that while the methodology used by the Company is consistent with its previous filings, it does not produce a reasonable result and the Consumer Advocate is not precluded from challenging this calculation.[27]

Mr. Dittemore's second adjustment eliminated capitalized incentive compensation costs for 2017-2021 resulting in a rate base reduction of $199,790 and revenue requirement reduction of $25,637. The Company identified these costs in response to data request No. 1-21 where it stated it

---

[25] *Id.* at 5-7.
[26] David N. Dittemore, Pre-Filed Direct Testimony, pp. 3-5 (June 2, 2022).
[27] *Id.* at 5-7.

had inadvertently not removed the service company piece for 2017-2021 from the proposed Capital Rider rate base.[28] With respect to the Earnings Test Component of the Capital Rider Surcharge calculation, Mr. Dittemore is supporting excess earnings of $1,566,175 while the Company is supporting excess earnings of $1,079,560.[29]

Mr. Dittemore's third adjustment reduced rate base by $998,070, an adjustment the Consumer Advocate asserted was necessary because the Company used the Working Capital amount from its last rate case, which included Materials and Supplies, as a proxy in its earnings test, and also included its thirteen-month average for Materials and Supplies as a separate rate base component in its earning test. Mr. Dittemore asserted that the Company defends this calculation due to the Materials and Supplies amount not being clearly identified in its last rate case settlement. According to Mr. Dittemore, this results in the Company selectively updating one component of Working Capital. Mr. Dittemore does not oppose the Company's Working Capital balance being updated in the Earnings Test if it is done on a comprehensive basis. Therefore, Mr. Dittemore recommended that the Commission accept his adjustment in this case and require the Company to update all the components of its Working Capital in its next capital rider reconciliation.[30]

Mr. Dittemore's fourth adjustment increased the ADIT balance in the Earnings Test by $183,787 (effectively reducing rate base by this amount). According to Mr. Dittemore, the adjustment was necessary to remove certain ADIT components such as stock options, restricted stock units, incentives, and charitable contributions which are not recoverable as an Operating and Maintenance Expense ("O&M").[31]

---

[28] *Id.* at 7-8.
[29] *Id.* at 8.
[30] *Id.* at 9-13.
[31] *Id.* at 13.

Mr. Dittemore's fifth adjustment removed $370,933 of excess purchased power and chemical costs from O&M expenses within the Earnings Test calculation. Mr. Dittemore asserted this was necessary to remove the costs associated with the water loss in excess of the 15% loss found acceptable by the Commission. Using the data provided by the Company in its most recent Production Costs and Other Pass-Throughs Rider ("PCOP"), Mr. Dittemore calculated an unaccounted-for water loss of 25.8%. He then calculated the amount correlating to the 10.8% above the 15% to be $370,933.[32]

TAWC's Rebuttal Testimony

In response to the adjustments proposed by the Consumer Advocate, the Company submitted the Pre-Filed Rebuttal Testimony of Tricia N. Sinopole on June 21, 2022. With respect to the Consumer Advocate's first adjustment, Ms. Sinopole agreed with the increases in the balance of ADIT by $355,900.[33] The Company agreed with the Consumer Advocate's second adjustment which eliminates capitalized incentive compensation costs for 2017 to 2021. Ms. Sinopole states the Consumer Advocate's proposed adjustment matches the adjustment proposed by the Company in its data response.[34]

Ms. Sinopole agreed, to an extent, with the Consumer Advocate's third adjustment to the Earnings Test to eliminate the duplication of materials and supplies included within the Earnings Test Calculation. While Ms. Sinopole asserts the inclusion of Materials and Supplies in Working Capital in rate base is consistent with the methodology in the waste/water Annual Report, she conceded there is a portion of materials and supplies included within the Company's Working Capital balance as

[32] *Id.* at 13-17.
[33] Tricia N. Sinopole, Pre-Filed Rebuttal Testimony, p. 7 (June 21, 2022).
[34] *Id.* at 8.

identified by Mr. Dittemore which should be removed. As such, the Company agreed $301,364 should be removed from the working capital.[35]

With respect to the Consumer Advocate's fourth adjustment to increase the ADIT balance, Ms. Sinopole agreed it would be appropriate to synchronize the treatment of disallowed O&M items.[36] However, the Company noted there was no adjustment for charitable contributions in the Earnings Test and therefore no need to make an adjustment to synchronize ADIT for charitable contributions. Referencing Mr. Dittemore's Exhibit DND-6 where ADIT SYNC is $145,533 for 2021 when excluding the Charitable contributions, Ms. Sinopole agreed to the $145,533 adjustment.[37]

Ms. Sinopole opposed Mr. Dittemore's fifth adjustment to eliminate excess purchased power and chemical costs from O&M expenses within the Earnings Test calculations. Ms. Sinopole testified that non-revenue water and the PCOP Rider have never been included as an issue with respect to the Capital Rider Reconciliation and Earnings Test. The levels of system delivery or water sales have never been reported anywhere in the Capital Rider Reconciliation or Earnings Test nor should they be reported. Ms. Sinopole testified that the per-books production cost expense is the actual cost to the Company and this full amount should be included in the Earnings Test.[38]

The Company's updated exhibits reflected a QIIP Rider of negative -0.83% resulting in a revenue refund of $292,505; an EDI Rider of 0.53% resulting in a revenue recovery of $186,754; and a SEC Rider of negative -1.53% resulting in a revenue refund of $539,876. In total, the proposed Capital Rider Surcharge is a negative -1.83% which results in the average customer living in the city of Chattanooga seeing a $0.39 monthly decrease in their bill, or $3.51 for the nine months of 2022.[39]

[35] *Id.* at 2-3.
[36] *Id.* at 4.
[37] *Id.* at 4-5.
[38] *Id.* at 5-6.
[39] *Id.* at 9-11.

On August 3, 2022, the Company filed the Pre-Filed Testimony of Robert C. Lane in which Mr. Lane adopted the previously submitted Pre-Filed, Supplemental and Rebuttal Testimony of Tricia N. Sinopole.

STIPULATION AND SETTLEMENT AGREEMENT

On July 22, 2022, the Company and the Consumer Advocate submitted the *Settlement Agreement* reflecting their agreement on certain adjustments. There were three outstanding issues between the parties prior to the filing of the Settlement Agreement, but the parties agreed not to further pursue litigation of those issues in this docket. The parties, however, retained their rights to raise the issues in future dockets. The main provisions of the *Settlement Agreement* are as follows:

1. **Capital Riders Revenue Requirement.** The Parties agreed to a Capital Riders reconciliation revenue requirement credit of ($892,000).

2. **Balance of Materials and Supplies in Rate Base.** The Company seeks to update Material and Supplies to actual balances rather than using historic balances from the last rate case proceeding for the lead/lag study and other working capital components. The Parties did not resolve this issue in this Docket.

3. **ADIT Balance.** It is the Company's position that there should be no ADIT adjustment for the removal of Charitable Contributions from the ADIT balance as there was no O&M adjustment for these items. The Parties did not resolve this issue in this Docket.

4. **Eliminate Excess Purchased Power and Chemical Costs.** The Consumer Advocate seeks to adjust purchased-power and chemical expenses from the Company's O&M expenses within the Earnings Test calculation based upon it

exceeding the Commission's 15% allowable non-revenue water volume. The Parties have not resolved this issue in this Docket.[40]

The parties also provided worksheets for the determination of the reconciliation revenue requirement and resulting surcharges. The settled amount for the reconciliation is a reduction of $892,000 which results in a cumulative reduction in the existing capital rider surcharge of 2.84%, consisting of a 1.17% reduction for the QIIP Rider, a 1.01% increase for the EDI Rider, and a 2.68% reduction for the SEC Rider.[41]

THE HEARING

The hearing in this matter was noticed by the Commission on July 29, 2022 and held during its regularly scheduled Commission Conference on August 8, 2022. Appearances were made by the following:

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

Consumer Advocate Division –Karen H. Stachowski, Esq., Post Office Box 20207, Nashville, Tennessee 37202-4015.

Mr. Robert C. Lane provided testimony telephonically on behalf of the Company in support of the *Settlement Agreement*. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

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.

---

[40] *Stipulation and Settlement Agreement*, p. 3 (July 22, 2022).
[41] *Id. at* Settlement Exhibit No. 2.

> (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 the overall terms and conditions of the *Settlement Agreement* submitted on July 22, 2022 by Tennessee American and the Consumer Advocate to be reasonable, and voted unanimously to approve the Settlement as filed. Specifically, the hearing panel approved a 2022 Capital Rider reconciliation reduction in the existing capital rider surcharge of 2.84%, consisting of a 1.17% reduction for the QIIP Rider, a 1.01% increase for the EDI Rider, and a 2.68% reduction for the SEC Rider.

IT IS THEREFORE ORDERED THAT:

1. The *Stipulation and Settlement Agreement* filed on July 22, 2022 by Tennessee-American Water Company and the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General is APPROVED.

2. The Capital Rider surcharges are adopted as follows:

   - A Qualified Infrastructure Investment Rider surcharge of -1.17%;
   - An Economic Development Investment Rider increase of 1.01%; and
   - A Safety and Environmental Compliance Rider surcharge of -2.68%.

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:

Vice Chairman David F. Jones,
Commissioner Robin L. Morrison,
Commissioner Clay R. Good,
Commissioner Kenneth C. Hill, and
Commissioner John Hie concurring.

None dissenting.

ATTEST:

Earl Taylor

Earl R. Taylor, Executive Director