

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

January 24, 2024

IN RE:

JOINT PETITION OF TENNESSEE-AMERICAN
WATER COMPANY AND CATOOSA UTILITY
DISTRICT AUTHORITY FOR APPROVAL OF
SPECIAL CONTRACT

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DOCKET NO.
23-00066

ORDER APPROVING SPECIAL CONTRACT

This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones, Commissioner Clay R. Good, Commissioner Kenneth C. Hill, and Commissioner David Crowell 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 December 11, 2023, for consideration of the *Joint Petition of Tennessee-American Water Company and Catoosa Utility District Authority for Approval of Special Contract* (“*Petition*”) filed on September 5, 2023.

BACKGROUND AND *PETITION*

On September 5, 2023, Tennessee-American Water Company (“TAWC” or “Company”) and Catoosa Utility District Authority (“Catoosa” or “Customer”) (together “the Joint Petitioners”) filed a Joint Petition (“*Petition*”) with the Commission for approval of a Special Contract (“Contract”), pursuant to Commission Rule 1220-4-1-.07.¹ The Joint Petitioners attached a copy of the Contract as an exhibit to the *Petition*.² In support of its *Petition*, the Joint Petitioners

¹ *Petition* (September 5, 2023).

² *Id.* at Exh. A.

submitted the Pre-Filed Direct Testimony of Grady Stout, Director of Engineering and Business Development for TAWC.³

The *Petition* alleges that Catoosa was established in 1945 to provide safe, potable water to the residents of Catoosa County, Georgia, serving approximately 21,000 customers. Catoosa has been a customer of TAWC for several years, beginning with its 1998 Water Purchase Agreement. Catoosa advised TAWC that it was aware of some former TAWC customers bypassing TAWC and that absent good faith negotiations for a new special contract with TAWC, Catoosa was prepared to bypass or otherwise end the contractual arrangement.⁴ Negotiations among the parties led to the Contract submitted for Commission approval.⁵

The Joint Petitioners have determined that the Contract is in their mutual best interest, as well as in the best interest of their customers. Under the terms of the Agreement, TAWC will provide potable water to Catoosa at the delivery points and in the quantities as outlined in the Agreement. As a requirements contract, Catoosa may not reduce its purchase quantities during the term of the Agreement. Purchased water shall be used exclusively for resale to Catoosa's customers within its service territory and may not be sold to other water utilities without the express prior written consent of TAWC. The initial term of the Agreement is five (5) years, with one additional five-year renewal term; the renewal term will be automatic unless terminated by either Party per the Agreement. Catoosa shall pay the applicable rate per TAWC's tariff, along with surcharges related to the Tax Cuts and Jobs Act ("TCJA"), the existing capital recovery riders, Production Costs and Other Pass-Throughs Rider Mechanism ("PCOP"), and other applicable mechanisms approved by the Commission. According to the *Petition*, the proposed Agreement is

³ Grady Stout, Pre-Filed Direct Testimony (September 5, 2023).

⁴ *Petition*, p. 2 (September 5, 2023).

⁵ *Id.* at Exh. A.

a continuation of the existing arrangement between the Parties, and, as a renewal, the only term changed from the existing arrangement is the date of execution. The Joint Petitioners allege that the proposed contract rates are fair, just, and reasonable, and are not unduly preferential or discriminatory.⁶ On October 3, 2023, the Joint Petitioners filed a document clarifying that the *Petition* refers to the 1998 water purchase agreement between the parties but should instead refer to the existing 2013 water purchase agreement between the parties. The Contract for which the *Petition* seeks approval is a continuation of the “existing but expiring 2013 water purchase agreement between the parties” making no changes from the 2013 agreement other than the execution date.⁷

The Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) sought to intervene by a petition filed on September 22, 2023.⁸ The Hearing Officer granted the intervention of the Consumer Advocate by order entered on November 2, 2023.⁹ The Consumer Advocate submitted the Pre-Filed Direct Testimony of its witness, William H. Novak on November 3, 2023.

The parties engaged in discovery through data requests and responses, as well as public records request submitted to the Commission. In addition, the Joint Petitioners submitted the supplemental testimony of its witness, Grady Stout, wherein Mr. Stout clarified that the *Petition* seeks approval of the continuation of the 2013 water purchase agreement.¹⁰

⁶ *Id.* at 3-5.

⁷ *Clarification of Joint Petition of Tennessee-American Water Company and Catoosa Utility District Authority for Approval of a Special Contract*, p. 1 (October 3, 2023).

⁸ *Petition to Intervene* (September 22, 2023).

⁹ *Order Granting the Petition to Intervene Filed by the Consumer Advocate* (November 2, 2023).

¹⁰ Grady Stout, Pre-Filed Supplemental Testimony (October 3, 2023).

POSITIONS OF THE PARTIES

The Position of the Joint Petitioners

TAWC contacted Catoosa in June 2023 about a potential renewal of the expiring arrangement between TAWC and Catoosa. Mr. Stout's testimony notes that Catoosa advised TAWC that it was aware the Company had recently lost Walden's Ridge as a sale-for-resale customer and of the alternative water option obtained by Walden's Ridge.¹¹ Mr. Stout further states that Catoosa expressed that it values the efficiency and flexibility offered by TAWC's provided water, but it believes it can eliminate the agreement with TAWC and instead provide safe reliable water via its groundwater plant and other interconnection sources. Based upon these remarks from Catoosa, Mr. Stout believes Catoosa has performed analyses, reviews, and studies assessing the viability of water sources other than TAWC.¹²

Mr. Stout describes the detrimental impact experienced by the Company and its customers from losing Walden's Ridge, explaining that sale-for-resale customers contribute to common overhead and fixed costs. Losing Walden's Ridge as a customer resulted in TAWC losing that contribution, putting upward pressure on the rates of all other TAWC customers. Additionally, these contractual agreements benefit the Company and its existing ratepayers because of the additional water revenues gained, which help offset declining customer usage experienced by TAWC.¹³ Mr. Stout also asserts that the proposed rates in the contract are fair, reasonable, and nondiscriminatory; that the proposed rates are the highest rates that could be negotiated between TAWC and Catoosa; and that the Contract is in the public interest.¹⁴

¹¹ Grady Stout, Pre-Filed Direct Testimony, pp. 4-5 (September 5, 2023).

¹² *Id.* at 4-6.

¹³ *Id.* at 6.

¹⁴ *Id.* at 8.

The Position of the Consumer Advocate

Mr. Novak presented the position of the Consumer Advocate in his Pre-Filed Testimony. Mr. Novak testifies that TAWC has available capacity to provide services in accordance with the Contract without causing detriment to existing customers. In addition, he states that the proposed rates are the highest charge for TAWC's special contract customers and that Catoosa's proposed rates will continue to pay its portion of TAWC's current cost of service and generate revenue for TAWC. Mr. Novak also states that the Contract is a continuation of the preexisting rate structure and that the Contract is beneficial to existing TAWC customers because it includes the existing base rate plus the various rider surcharges, providing for a fair contribution towards TAWC's fixed costs. Mr. Novak recommends approval of the Contract.¹⁵

STANDARD FOR COMMISSION APPROVAL

Tenn. Code Ann. § 65-5-101 authorizes the Commission to "fix just and reasonable individual rates, joint rates, fares, charges or schedules thereof, as well as ... other special rates which shall be imposed, observed, and followed thereafter by any public utility."¹⁶

TPUC Rule 1220-04-01-.07, states:

Special contracts between public utilities and certain customers prescribing and providing rates, services and practices not covered by or permitted in the general tariffs, schedules or rules filed by such utilities are subject to supervision, regulation and control by the Commission. A copy of such special agreements shall be filed, subject to review and approval.

In general, a special contract providing for discounted transportation rates in order to avoid a potential customer bypass of the utility's system is subject to additional scrutiny, in which the Commission must find, based upon criteria established by precedent, that:

1. Customer bypass is imminent;
2. Customer bypass would be uneconomic;

¹⁵ William H. Novak, Pre-Filed Direct Testimony (September 5, 2023).

¹⁶ Tenn. Code Ann. § 65-5-101(a) (West 2022).

3. Special contract rates and terms are just and reasonable and such terms are not unjustly preferential or unduly discriminatory; and,
4. The special contract rates are the highest that could be negotiated.¹⁷

THE HEARING

The Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on December 11, 2023, as noticed by the Commission on December 1, 2023. Participating in the Hearing were:

Tennessee-American Water Company – Melvin J. Malone, Esq., The Pinnacle at Symphony Place, 150 Third Avenue South, Suite 1600, Nashville, Tennessee; Grady Stout, Director of Engineering and Business Development, 109 Wiehl Street, Chattanooga, Tennessee.

Consumer Advocate – Shilina Brown, Esq., Office of the Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee; William H. Novak, Consultant, 19 Morning Arbor Place, The Woodlands, Texas.

During the Hearing, Mr. Stout ratified and summarized his Pre-Filed Testimony submitted on behalf of TAWC and was subject to cross-examination as well as questions from the panel and Commission Staff. The Consumer Advocate waived cross-examination, but Mr. Stout was subject to questions from the panel and from Commission Staff. The Commission then invited members of the public to offer comments on this docket, but no one sought recognition to offer comment.

FINDINGS AND CONCLUSIONS

In its *Petition*, TAWC and Catoosa have requested that the Commission approve a special contract pursuant to TPUC Rule 1220-04-01-.07. The Commission analyzes the special contract request utilizing the established precedential criteria: 1. Customer bypass is imminent; 2. Bypass

¹⁷ See *In re: Petition of Atmos Energy Corporation for Approval of Agreement with Brown-Forman Corporation, d/b/a Jack Daniel Distillery*, Docket No. 19-00072, *Order Approving Agreement*, p. 3 (January 22, 2020); *In re: Joint Request of Chattanooga Gas Company and Kordsa, Inc. for Approval of a Special Contract*, Docket No. 21-00094, *Order Approving Special Contract, As Modified*, p. 6 (May 13, 2022).

would be uneconomic for the Company; 3. The proposed contract rates are just and reasonable; and 4. The proposed rates are the highest that could be negotiated.

TAWC presents evidence that Catoosa has options available for bypass of TAWC's services upon expiration of the preexisting contractual agreement through other interconnection agreements and its own groundwater plant. In addition, TAWC states that based upon its experience in losing Walden's Ridge as a special contract customer, there is a detrimental effect to the TAWC's existing customers from losing the contribution to common overhead and fixed costs when a special contract customer is lost. The Consumer Advocate supports the economic benefit of having special contract customers through its witness' testimony. TAWC also presents uncontroverted testimony that the proposed rates are just, reasonable, and nondiscriminatory and that the proposed rates are the highest that could be negotiated among the parties. The Consumer Advocate supports these positions and recommends that the Contract be approved.

Therefore, the panel found that there is sufficient proof of each of the four factors necessary for approval of the proposed Contract rates. Further, the panel concluded that the Contract would benefit Tennessee ratepayers and otherwise serve the public interest. Therefore, the panel unanimously voted to approve the Contract between TAWC and Catoosa.

IT IS THEREFORE ORDERED THAT:

1. The *Joint Petition of Tennessee-American Water Company and Catoosa Utility District Authority for Approval of Special Contract* filed on September 5, 2023, is approved.
2. The special contract rates are approved on a prospective basis with an initial term ending five (5) years subsequent to the date of approval.
3. Tennessee-American Water Company is directed to file a notice in this docket demonstrating that it continues to meet the requirements for a special contract and of the parties'

intent to extend the initial term of the contract, if the parties opt to exercise the automatic five (5) year renewal period following the initial term of the contract.

4. 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.

5. 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 Herbert H. Hilliard,
Vice Chairman David F. Jones,
Commissioner Clay R. Good,
Commissioner Kenneth C. Hill, and
Commissioner David Crowell concurring.**

None dissenting.

ATTEST:

A handwritten signature in dark ink, appearing to read "Earl Taylor" with a stylized "abh" or similar mark to the right.

Earl R. Taylor, Executive Director