

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

November 8, 2024

IN RE:)	
)	
PETITION OF TENNESSEE-AMERICAN WATER)	DOCKET NO.
COMPANY’S 2024 INCREMENTAL CAPITAL)	24-00011
RECOVERY RIDER TARIFF)	

ORDER GRANTING PETITION AS AMENDED

This matter came before Chairman David F. Jones, Commissioner Herbert H. Hilliard, Commissioner Robin L. Morrison, Commissioner Clay R. Good, 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 August 12, 2024, to consider the *Tennessee-American Water Company’s 2024 Incremental Capital Recovery Rider Tariffs Petition* (“Petition”) filed on March 8, 2024, by Tennessee-American Water Company (“TAWC,” “Tennessee-American,” or the “Company”).

BACKGROUND AND PETITION

TAWC received approval to implement a Qualified Infrastructure Investment Program (“QIIP”) Rider; Economic Development Investment (“EDI”) Rider; Safety and Environmental Compliance (“SEC”) Rider (collectively “Investment Riders” or “Capital Riders”); and a Pass-Through Mechanism for Purchased Power, Chemicals, Purchased Water, and Wheeling Water (“PCOP”) in TPUC Docket No. 13-00130.¹ In Docket No. 19-00103, the Capital Riders were

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).

revised from a two (2) filings process per year to one (1) annual filing for the Incremental Capital Recovery Rider (“ICRR”).² Going forward, the Incremental Capital Recovery Revenue Requirement (“ICRRR”) will be calculated by comparing current eligible capital additions with authorized capital amounts already included in rates from the prior period.³ Using the authorized return on equity (“ROE”) from the TAWC’s most recent rate case in 2012 of 10%, an earning test is applied to the ICRRR calculations. Any excess earnings will zero out any ICRRR for the filing year. In accordance with its approved tariff, the Company is to submit no later than March 1st of every year an ICRR of the QIIP, SEC, and EDI riders.

On March 8, 2024, the TAWC filed its *Petition*. The Company indicated that prior to the March 1, 2024 deadline, it determined that it would require additional time to prepare the *Petition* and had informed the parties to Docket No. 19-00103 of its status. According to TAWC, no party objected to the request for additional time.⁴ In support of the *Petition*, Robert C. Lane filed pre-filed direct testimony which covered the development and history of the Company’s Capital Rider. Previous calculations of Capital Recovery Riders were calculated using a forward-looking test year based on planned capital additions, which was reconciled in the following year based on actual costs. The previous Capital Recovery Riders are referred to “Legacy Capital Recovery Riders.”⁵ Mr. Lane testified that the Legacy Capital Recovery Riders were set going forward at the levels established in Commission Docket No. 23-00018 and will remain in place and unchanged until TAWC’s next rate case at which time they will be eliminated, and the associated

² During different points in the proceedings, the parties employed the terms “Incremental Capital Recovery (“ICR”)” and “Incremental Capital Rider Recovery (“ICRR”)” which refer to the same mechanism and the corresponding tariff. The Commission has utilized “Incremental Capital Rider Recovery (“ICRR”)” for consistency to refer to both the mechanism and the tariff.

³ See *In re: Docket to Investigate and Consider Potential Issues and Modifications to the Collective Capital Riders of Tennessee-American Water Company*, Docket No. 19-00103, *Order Approving Stipulation and Settlement Agreement* (January 31, 2024).

⁴ *Petition*, Cover-Letter to Chairman Herbert H. Hilliard (March 8, 2024).

⁵ Robert C. Lane, Pre-Filed Direct Testimony, p. 8 (March 8, 2024).

costs and investments will be rolled into the setting of new base rates.⁶

The ICRR tariff that emerged from the approved settlement in Docket No. 19-00103 is calculated on a historic test year and determines the revenue requirement associated with capital investments made during the previous year. A true-up of actual revenues to authorized rider revenue is performed to determine any over/under- collections from the prior period.⁷ Mr. Lane attested that the source of data used to prepare the Company's exhibits is from the books and business records of TAWC for the period covered January 1, 2023, through December 31, 2023.⁸

Mr. Lane provided an overview of the annual ICRR that is based on a historic test year and calculates the needed revenue to recover the cost of eligible capital investments made under its QIIP, EDI, and SEC during the previous year.⁹ There are four (4) steps to calculating the ICRRR. First, Mr. Lane calculated that the incremental capital placed in service during the 2023 period was \$5,037,869. Second, the revenue requirement associated with this capital outlay was calculated to be \$835,400. Third, the amount of over or under-collection of revenue was determined to be an over-collection of \$362,155 and the ICRRR was adjusted to \$500,782 after deducting the over-collection. Fourth, the ROE was calculated to determine how much of the ICRRR is recoverable from customers. In this case the ROE was determined to be above that authorized in TAWC's last rate case; therefore, the ICRRR to be recovered is \$0.00.¹⁰

The revenue requirement is the annual cost incurred for the capital invested by the Company for eligible investments (invested dollars, depreciation, property tax, and franchise fees). Over or under-collection of revenues is determined by comparing the actual rider revenues collected to the amount authorized for 2022 in Commission Docket No. 23-00018. The ROE test

⁶ *Id.*

⁷ *Id.* at 7-8.

⁸ *Id.* at 4-5.

⁹ *Id.* at 5-7.

¹⁰ *Id.* at 7-10.

is performed by determining if the adjusted Net Income, reflecting the current ICRRR net (over or under-collection from the prior period), divided by the calculated TAWC equity is less than the most recently authorized ROE (currently set at 10%).¹¹

Mr. Lane testified that there is no difference in the projects or the investment for those projects, now or before approval of the ICRR. The difference is in the deferral of full rate cases, the lessening of rate shock to customers, supporting the maintenance and improvement of essential infrastructure, supporting opportunities for economic development, growth, and job creation, and ensuring safety and reliability. Mr. Lane attested that the Company's *Petition* includes all previous changes ordered by the Commission.¹²

Mr. Lane testified that the ICRR is calculated as a percentage, which is applied to the total amount billed to each customer prior to the inclusion of any other taxes, charges, or surcharges. The ICRR and the Legacy Capital Recovery Riders are combined into one line item on the bill of each customer, which also includes the Tax Cuts and Jobs Act ("TCJA") tax expense approved by the Commission. The cost of capital, depreciation rates, property tax rate, federal income tax rate, and base rate revenues are those last authorized by the Commission. The Cash Working Capital is calculated consistent with the methodology last approved by the Commission.¹³

Mr. Gary Stout, P.E., provided pre-filed direct testimony discussing TAWC's capital investment plan, the oversight for expenditures and changes to the plan, and the level of Capital Recovery Riders eligible expenditures for 2023.¹⁴ According to Mr. Stout, planning needs are addressed in both the short-term (one year) and longer term (five years). The projects are prioritized using objective criteria based on the need and risk of the project. The Engineering

¹¹ *Id.* at 10-11.

¹² *Id.* at 13-17.

¹³ *Id.* at 22-24.

¹⁴ Grady Stout P.E., Pre-Filed Direct Testimony, pp. 3-4 (March 8, 2024).

Department develops a proposed capital budget which is shared with Supervisors, Managers, the Vice President of Operations, and TAWC President for their review and approval.¹⁵ This budget is also shared with the Service Company for input on the reasonableness of projects and their forecasted costs.

Mr. Stout testified that the Capital Investment Plan is continually monitored during the year by a regional Capital Program Management Committee (“CPMC”) to ensure that the Plan is meeting the goals and strategic intent of the business. This CPMC also reviews variances and makes suggestions to bring the expenditures back in line with the budget. According to Mr. Stout, if changes in the budget become necessary, the CPMC reappropriates money to offset the changes in capital needs. Mr. Stout testified that there is a Functional Review Meeting (“FRM”) Committee that meets monthly to review spending and approve projects. According to Mr. Stout, both of these committees provide a continuous review of capital expenditures and reallocation of capital as needed.¹⁶ According to Mr. Stout, the control and oversight process includes five stages: 1) a Preliminary Need Identification defining the project at an early stage; 2) a Project Implementation Proposal that confirms all aspects of the project are in a position 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.¹⁷

Mr. Stout testified that the Company focused on main replacements during 2023.¹⁸ Two Capital Investment Projects included in the QIIP were placed in service during 2023, the Lookout Valley Redundancy Booster Station and the Magnolia Main Replacement. The EDI includes facilities necessary to perform the work associated with economic growth of the community. The

¹⁵ *Id.* at 4-5.

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 10.

¹⁸ *Id.* at 12-14.

SEC includes System Control and Data Acquisition (“SCADA”) Equipment and Systems, Security Equipment and Systems, and Process Plant Facilities.¹⁹ The SEC also includes Whitwell Raw Water Intake Improvements which provides additional improvements to the raw water intake located along the Sequatchie River.²⁰ Mr. Stout attested that the Company spent \$19,021,340 in QIIP, \$837,529 in EDI and \$6,919,438 in SEC in 2023.²¹

CONSUMER ADVOCATE’S DIRECT TESTIMONY

On behalf of the Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”), Mr. David Dittemore filed his pre-filed testimony discussing his assessment of the *Petition* on April 26, 2024, pursuant to a procedural schedule following the intervention of the Consumer Advocate. In his testimony, while Mr. Dittemore expressed concern with the excess earnings the Company reported with the *Petition*, he stated that in the context of this docket and after the review of the ICRR, the magnitude of over-earnings is not a critical factor.²² Therefore, while he did not recommend a show cause proceeding be initiated at this time, Mr. Dittemore encouraged the Commission to continue monitoring the Company’s earnings for reasonableness.²³

Because the tariff does not explicitly address a customer refund of excess earnings, Mr. Dittemore agreed that the Company should retain the over-collection.²⁴ However, Mr. Dittemore asserted the retaining of excess recoveries from the Legacy Capital Recovery Riders is unjust and unreasonable. For these reasons, Mr. Dittemore recommended the Commission require the Company to modify its tariff to state any over/under collection of previously authorized capital

¹⁹ *Id.* at 28-30.

²⁰ *Id.* at 31.

²¹ *Id.* at 32.

²² David N. Dittemore, Pre-Filed Direct Testimony, p. 5 (April 26, 2024).

²³ *Id.* at 4-5.

²⁴ *Id.* at 7.

rider surcharges will be either returned to or collected from ratepayers.²⁵ Mr. Dittmore noted that in the settlement agreement in Commission Docket No. 19-00103, the parties recognized that previously authorized capital rider revenue was not at risk and would be considered the Legacy Capital Recovery Riders surcharge. Language in the same agreement indicated a recognition of a reconciliation of the Legacy Capital Recovery Riders.²⁶

In response to a Commission data request, the TAWC acknowledged the TCJA credit should be (3.82%) rather than (3.72%); and confirmed that it is billing the correct percentage of (3.82%). Therefore, Mr. Dittmore recommended that the Commission confirm the correct TCJA credit is (3.82%).²⁷ According to Mr. Dittmore, if the Company were required to submit its Balance Sheet and Income Statement with future ICRR filings, it would allow the Consumer Advocate to trace the Company's rate base and net operating income components to a source document. Mr. Dittmore asserted the Company has this information available at the time of filing its ICRR, and it would not place an additional burden on the Company to submit such information. Therefore, Mr. Dittmore recommended the Commission require the Company to submit its Balance Sheet and Income Statement supporting its ICRR and ROE earning test calculation in future ICRR filings.²⁸

TENNESSEE-AMERICAN'S REBUTTAL TESTIMONY

In response to the recommendations proposed by the Consumer Advocate, the Company submitted the pre-filed rebuttal testimony of Mr. Lane. The Company agreed with the Consumer Advocate that the ICRR was calculated in accordance with the current tariff and the over-collection should be retained by TAWC.²⁹ Mr. Lane disagreed there was a need to change the ICRR tariff as

²⁵ *Id.* at 6-9.

²⁶ *Id.* at 7-8.

²⁷ *Id.* at 9.

²⁸ *Id.* at 10.

²⁹ Robert C. Lane, Pre-Filed Rebuttal Testimony, p. 3 (May 10, 2024).

recommended by Mr. Dittemore. Mr. Lane asserted that the *Petition* was consistent with the tariff and that it functions symmetrically to both over and under-collections. Additionally, the Company filed a General Rate Petition in Commission Docket No. 24-00032 on May 1, 2024, and when new rates are adopted in that docket, legacy rates will cease to exist. As such, Mr. Lane recommended that the Commission delay consideration of the issue until a later date.³⁰

Mr. Lane confirmed the appropriate TCJA adjustment is -3.82%, inclusive of the adjustment for Accumulated Deferred Income Tax (“ADIT”).³¹ Mr. Lane did not object to the Commission requiring the Company to submit its supporting Balance Sheet and Income Statement in future ICRR filings.³²

SUPPLEMENTAL TESTIMONY OF THE CONSUMER ADVOCATE

After the filing of the Consumer Advocate’s pre-filed direct testimony on April 26, 2024, the Company filed a petition for a general rate increase in Docket No. 24-00032. The Consumer Advocate asked to file supplemental testimony to address the Company’s rebuttal testimony concerning the impact of the Company’s new ICRR tariff proposals in TAWC’s new rate case in Docket No. 24-00032 and the Consumer Advocate’s recommendations considering the Company’s new position in TAWC’s rebuttal testimony.³³ The Consumer Advocate was subsequently granted permission by the administrative judge.³⁴

In supplemental testimony, Mr. Dittemore recommended all issues related to the ICRR be addressed in a stand-alone docket and that the Commission should reject the presumption of the Company that the rate case negates the need to true-up future ICRR collections.³⁵ The Consumer Advocate and the Company agreed with a reset to zero for the legacy ICR. Nevertheless, Mr.

³⁰ *Id.* at 3-6.

³¹ *Id.* at 7-8.

³² *Id.* at 8.

³³ *Consumer Advocate’s Motion for Leave to File Supplemental Testimony of David N. Dittemore* (May 21, 2024).

³⁴ *Order Granting Consumer Advocate’s Motion for Supplemental Testimony* (June 14, 2024).

³⁵ David N. Dittemore, Pre-Filed Supplemental Testimony, pp. 1-2 (May 21, 2024).

Dittemore testified that the Company's proposal is incomplete in both this docket and the rate case. The Company did not differentiate the upcoming 2025 filings from the 2026 and 2027 in this case or in the rate case.³⁶ Mr. Dittemore asserted that if the Company makes a filing in March 2025, it would be related to investments made in 2024 and the related costs incurred in 2025. According to Mr. Dittemore, for a new ICRR to operate consistently with the Legacy Capital Recovery Riders, it would be necessary to eliminate all ICRR qualifying investments from rate base in Docket No. 24-00032.³⁷

According to Mr. Dittemore, the tariff submitted in the Company's rate case is problematic. First, there are references in the proposed tariff that would be applicable to the 2027 ICRR but not the 2025 ICRR. According to Mr. Dittemore, language has been removed leaving questions as to how the Company intends to calculate the ICRR in its 2025 filing.³⁸ Mr. Dittemore testified that the proposed tariff in the rate case calls for an annual filing, yet the Company does not address what would be in the 2026 filing since all of the investment made in 2025 would have been included in the rate case. As all 2025 capital expenditures would have been included in the rate case, 2026 is the first year that capital expenditures would not be recovered through base rates.³⁹

In summary, Mr. Dittemore asserted that the rate case is not the docket to accommodate ICRR issues and the ICRR as it exists to date can continue to be used in the future. A docket similar to Docket No. 19-00103 would better fit interested parties and the Company to resolve the complexity of the ICRR issues rather than a rate case.⁴⁰ Additionally, because TAWC has proposed modifications to the ICRR in the rate case, Mr. Dittemore revised his recommendation in this docket to include a recommendation that going forward over/under-recoveries should be

³⁶ *Id.* at 3.

³⁷ *Id.* at 3-5.

³⁸ *Id.* at 5-6.

³⁹ *Id.* at 6-7.

⁴⁰ *Id.* at 7-8.

reconciled. This would require that the Company defer over/under-collections in a regulatory liability/asset account for future disposition by the Commission. Finally, Mr. Dittmore recommended the Commission require TAWC to provide justification for its intent to use deferred accounting in Commission Docket No. 19-00103 based on TAWC's ICRR tariff proposal in Docket No. 24-00032 and because the Company is over-earning.⁴¹

SUPPLEMENTAL TESTIMONY OF THE COMPANY

On June 4, 2024, Mr. Lane filed pre-filed supplemental testimony on behalf of the Company. According to Mr. Lane, the Company is not seeking any material change to the ICRR Tariff in TAWC's rate case in Docket No. 24-00032.⁴² Although the proposed changes to the ICRR tariff were either non-substantive or immaterial, the Company pledged to submit a Revised Exhibit BL-2 in Docket No. 24-00032 to clarify its intent and to correct unintentional redlines and formatting issues.⁴³

Citing the Consumer Advocate's apparent concerns with Mr. Stout's testimony in the Company's rate case in Docket No. 24-00032 regarding expanding the scope of ICRR qualifying investments to include customer-owned lead and galvanized steel service lines, Mr. Lane testified that such policy issues should be resolved in a rate case.⁴⁴ Moreover, approval of such a program would not require a material change in the ICRR. Mr. Lane disagreed with Mr. Dittmore that TAWC failed to address key components of a well-functioning ICRR tariff and asserted the Consumer Advocate has not provided sufficient grounds for this item to only be considered in a stand-alone ICRR proceeding. Further, Mr. Lane maintained that this issue is germane to the rate case docket and not an issue in the instant docket.⁴⁵

⁴¹ *Id.* at 10-11.

⁴² Robert C. Lane, Pre-Filed Supplemental Rebuttal Testimony, p. 4 (June 4, 2024).

⁴³ *Id.* at 4-5.

⁴⁴ *Id.* at 6-7.

⁴⁵ *Id.* at 7-8.

PRE-HEARING POSITION OF THE PARTIES

The Consumer Advocate and TAWC jointly represented in a letter on June 11, 2024, that there were no longer any contested issues remaining in the docket.⁴⁶ In addition, the Consumer Advocate and the Company indicated they would continue discussions regarding the appropriate docket to consider modifications of the ICRR tariff. TAWC will track ICRR “over/under recoveries effective January 1, 2024, comparing actual ICRR Tariff collections with those approved by the Commission.”⁴⁷ The parties indicated it is their intent that any regulatory liability will be returned to customers, and the balance of any regulatory asset shall be recovered from customers.

THE HEARING

The hearing in this matter was noticed by the Commission on June 7, 2024, and held during the regularly scheduled Commission Conference on June 17, 2024. The following appearances were noted:

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

Consumer Advocate Division – Victoria Glover, 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 of adjustments to the *Petition*. Mr. David Dittmore was present by telephone on behalf of the Consumer Advocate to answer questions of the Commissioners. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so. The panel indicated it would deliberate during a future conference.⁴⁸ The panel reconvened during the Commission Conference on August 12, 2024, for deliberation.

⁴⁶ *Joint Letter to Chairman Herbert H. Hilliard* (June 11, 2024).

⁴⁷ *Id.* at 2.

⁴⁸ Transcript of Commission Conference, p. 35 (June 17, 2024).

STANDARD FOR COMMISSION APPROVAL

Tenn. Code Ann. § 65-5-103(d)(5) states:

(A) A public utility may request and the commission may authorize a mechanism to recover the operational expenses, capital costs or both related to other programs that are in the public interest.

(B) A utility may request and the commission may authorize a mechanism to allow for and permit a more timely adjustment of rates resulting from changes in essential, nondiscretionary expenses, such as fuel and power and chemical expenses.

(C) Upon a finding that such programs are in the public interest, the commission shall grant recovery and shall authorize a separate recovery mechanism or adjust rates to recover operational expenses, capital costs or both associated with the investment in other programs, including the rate of return approved by the commission at the public utility's most recent general rate case pursuant to § 65-5-101 and subsection (a).

FINDINGS AND CONCLUSIONS

Based on the evidentiary record, the panel found that the zero percent (0%) Incremental Capital Recovery Rider ("ICRR") rate filed by the Company is reasonable and consistent with previously approved methodologies in Docket No. 19-00103. Approval of this ICRR rate will result in a total Capital Recovery Rider of 36.30%. However, consistent with the Commission's decision in Docket No. 18-00039, this amount is currently offset by a net TCJA tax savings credit of 3.82%.

The panel further found the Capital Recovery Rider programs continue to serve the public interest by benefitting both consumers and the Company. The programs allow the utility timely recovery of investment related expenditures to ensure safe and reliable drinking water and the promotion of economic development, while also benefitting consumers through reduced rate case and legal expenses which might otherwise result in the absence of these programs. While additional changes or modifications may be necessary, the parties have expressed an openness to continue to discuss the issue. Accordingly, the panel voted unanimously to approve a Capital Recovery Rider Surcharge of 36.30% and an offsetting net TCJA tax credit of 3.82%.

IT IS THEREFORE ORDERED THAT:

1. The *Tennessee-American Water Company's 2024 Incremental Capital Recovery Rider Tariffs Petition* filed on March 8, 2024, by Tennessee-American Water Company and amended by the increasing the Tax Cut and Jobs Act tax savings credit to 3.82% is APPROVED.

2. A total Capital Recovery Rider of 36.30%, offset by the Tax Cut and Jobs Act tax savings credit of 3.82%, for a rate change of zero percent (0%) is APPROVED.

3. Any person(s) 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.

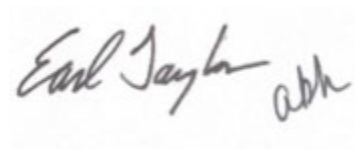
4. Any person(s) aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Chairman David F. Jones,
Commissioner Herbert H. Hilliard,
Commissioner Robin L. Morrison,
Commissioner Clay R. Good, 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