

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 24, 2023

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

2023 APR 24 A 11:14

APPLICATION OF

VIRGINIA-AMERICAN WATER COMPANY

CASE NO. PUR-2021-00255

For a general increase in rates

APPLICATION OF

VIRGINIA-AMERICAN WATER COMPANY

CASE NO. PUR-2019-00176

For an Annual Informational Filing

APPLICATION OF

VIRGINIA-AMERICAN WATER COMPANY

CASE NO. PUR-2020-00249

For an Annual Informational Filing

FINAL ORDER

On November 15, 2021, Virginia-American Water Company ("VAWC" or "Company") filed an application with the State Corporation Commission ("Commission") for an increase in rates ("Application" or "Rate Case"). On December 6, 2021, and December 9, 2021, the Company supplemented its Application.

On December 21, 2021, the Commission issued an Order for Notice and Hearing in VAWC's Rate Case, which, among other things, docketed the Company's Application; directed VAWC to provide notice of its Application; provided interested persons the opportunity to comment or participate in the proceeding; directed the Commission's Staff to investigate the Application; scheduled an evidentiary hearing; and assigned a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission.

Notices of participation were filed in the Rate Case proceeding by the Hopewell Committee for Fair Water Rates ("Hopewell Committee"); the City of Alexandria, Virginia ("Alexandria"); and the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel").

On March 3, 2022, the Commission entered an Order in Case Nos. PUR-2019-00176 and PUR-2020-00249 ("AIF Proceedings") which, among other things, found that the AIF Proceedings required further process and should be addressed as part of VAWC's pending Rate Case (Case No. PUR-2021-00255).¹ The Commission directed the Hearing Examiner assigned to the pending Rate Case to make findings and recommendations pertaining to the AIF proceedings in addition to any other findings and recommendations to be made as part of the Rate Case.² On March 14, 2022, the Hearing Examiner ruled that the AIF Proceedings would proceed concurrently with the Rate Case.³

On July 19, 2022, the Hopewell Committee, Alexandria, and Consumer Counsel filed their respective Rate Case testimony. On August 16, 2022, Staff of the Commission ("Staff") filed testimony pertaining to the Rate Case and the AIF Proceedings, and Consumer Counsel filed supplemental Rate Case testimony. On September 6, 2022, VAWC filed rebuttal testimony pertaining to the Rate Case and the AIF Proceedings. Public comments were also received in the Rate Case proceeding.

¹ *Applications of Virginia American Water Company for Annual Informational Filings*, Case Nos. PUR-2019-00176 and PUR-2020-00249, Doc. Con. Cen. No. 220310081, Order at 4-5 (March 3, 2022) ("AIF Further Proceedings Order").

² AIF Further Proceedings Order at 5. In a footnote to Ordering Paragraph (1), the Commission stated: "We leave to the Hearing Examiner's discretion whether and how to combine and/or consolidate Case Nos. PUR-2019-00176, PUR-2020-00249, and PUR-2021-00255." *Id.* n.19.

³ Hearing Examiner Ruling at 2 (March 14, 2022).

On September 26, 2022, VAWC, Staff, and Alexandria (collectively, "Stipulating Participants") submitted a Joint Motion to Approve Stipulation together with a proposed Stipulation ("Stipulation") pertaining to the Rate Case and AIF Proceedings.⁴ The Hopewell Committee and Consumer Counsel were not signatories to the Stipulation. Consumer Counsel, however, recommended the Commission approve the Stipulation as a reasonable resolution of the issues.⁵

The Stipulating Participants agreed as follows:⁶

- (1) To a rate increase that would produce additional annual jurisdictional revenues of \$10.75 million;
- (2) For future cases requiring a capital structure and cost of capital until such time as VAWC files its next base rate case, the Stipulating Participants agree to a 9.7% return on equity ("ROE") and the following actual capital structure and cost of capital:

<u>Component</u>	<u>Ratemaking Capital</u>	<u>Weight</u>	<u>Cost Rate</u>	<u>Weighted Cost</u>
Short-Term Debt	\$20,144,129	7.335%	1.838%	0.135%
Long-Term Debt	\$141,673,355	51.590%	4.222%	2.178%
Preferred Stock	\$0	0.000%	0.000%	0.000%
Common Equity	\$111,850,200	40.73%	9.70%	3.951%
Investment Tax Credits	<u>\$946,123</u>	<u>0.345%</u>	6.594%	<u>0.023%</u>
Total Capitalization	\$274,613,807	100.00%		6.286%

- (3) To move forward with the second phase of consolidation for water service rates and the purchased water surcharge as proposed by the Company and consistent with the Partial Stipulation approved by the Commission in Case No. PUR-2018-00175;

- (4) To a 3-year amortization of the Company's COVID-19 regulatory asset balance as of June 30, 2021, resulting in an annual jurisdictional amortization amount of \$272,812, as calculated in

⁴ Exhibit 2.

⁵ Tr. at 37.

⁶ Stipulation at 1-4.

Staff's pre-filed adjustment. The Company will stop deferring COVID-19 related costs as of June 30, 2021, and will start amortization for book purposes as of May 1, 2022;

(5) The Company may record any amounts above or below the total Company amount of 2023 pension expense equal to \$255,101 and OPEB⁷ expense equal to (\$437,969) authorized in rates to a regulatory asset or liability, as appropriate, from the effective date of new rates in this proceeding until the Company's next base rate case. Such deferral will be subject to earnings tests during the deferral period based on total Company earnings;

(6) The Alexandria Water and Wastewater Infrastructure Surcharge ("WWISC") Earnings Test issue in Case Nos. PUR-2019-00176 & PUR-2020-00249 will be litigated before the Commission based on the record and post-hearing briefs;

(7) To the level of write-offs for the Depreciation Reserve Deficiency, OPEB Deferral, and COVID-19 Deferral in the June 2020 Earnings Test (in Case No. PUR-2020-00249 as updated by Staff in this Rate Case (Case No. PUR-2021-00255)) as presented below:

- Depreciation Reserve Deficiency: \$362,630
- OPEB Deferral: \$42,827
- COVID-19 Deferral: \$123,286; and

(8) The rates set forth on Attachment A to the Stipulation should be approved by the Commission and implemented by the Company effective May 1, 2022.

The public witness hearing was convened on September 27, 2022. The public evidentiary hearing was also convened on September 27, 2022, immediately following the public witness hearing, and concluded on September 28, 2022. VAWC, Alexandria, the Hopewell Committee, Consumer Counsel, and Staff participated in the hearing.

On November 2, 2022, VAWC, the Hopewell Committee, Alexandria, Consumer Counsel, and Staff filed post-hearing briefs.

⁷ "OPEB" stands for "Other Post-Employment Benefits."

On December 2, 2022, the Report of Alexander F. Skirpan, Jr., Chief Hearing Examiner ("Report") was issued in the Rate Case and the AIF Proceedings. In the Report, the Chief Hearing Examiner recommended the Commission enter an Order which adopts the proposed Stipulation, subject to keeping the existing rate structure for Hopewell's potable industrial customers with each existing volumetric rate block changing by the same percentage. The Chief Hearing Examiner further recommended there be no refunds of WWISC revenues collected from Alexandria district customers. Specifically, the Report made the following findings:⁸

- (1) Based on the record and Stipulation, VAWC requires a rate increase that will produce additional annual jurisdictional revenues of \$10.75 million;
- (2) VAWC's ROE is 9.7%, and the actual capital structure and cost of capital is as provided in the Stipulation and shown above, to be used for future cases requiring a capital structure and cost of capital until such time as VAWC files its next base rate case;
- (3) VAWC should move forward with the second phase of consolidation for water service rates and the [Purchase Water Surcharge] as proposed by the Company;
- (4) VAWC should use a 3-year amortization of the Company's COVID-19 regulatory asset balance as of June 30, 2021, stop deferring COVID-19 related costs as of June 30, 2021, and begin amortizing for book purposes as of May 1, 2022;
- (5) VAWC may record any amounts above or below the Company's amount of 2023 pension expense equal to \$255,101 and OPEB expense equal to (\$437,969) authorized in rates to a regulatory asset or liability, as appropriate, from the effective date of new rates in this proceeding until the Company's next base rate case. Such deferral will be subject to earnings tests during the deferral period based on total Company earnings;
- (6) VAWC should not be required to refund any WWISC revenues collected from Alexandria district customers during the Alexandria ET Period;

⁸ Report at 106-107.

(7) As specified in the Stipulation, VAWC should be directed to write-off the Depreciation Reserve Deficiency of \$362,630, OPEB Deferral of \$42,837, and COVID-19 Deferral of \$123,286;

(8) Except for the rates for Hopewell industrial potable water customers, VAWC should implement the rates set forth on Attachment A of the Stipulation effective May 1, 2022. The rate design for the Hopewell industrial potable water customers should be designed based on the current six-block rate structure with each existing volumetric rate block changing by the same percentage; and

(9) VAWC should refund, with interest as prescribed by the Commission, amounts collected as interim rates based on its Application in excess of the rates approved herein.

VAWC, Alexandria, the Hopewell Committee, Consumer Counsel, and Staff filed comments on the Report.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.⁹

Hearing Examiner's Report

After analyzing the law and weighing the evidence – and providing a thorough and detailed analysis thereof – the Hearing Examiner made the following recommendations:¹⁰

In accordance with the above findings, *I RECOMMEND* that the Commission enter an order that:

1. *ADOPTS* the findings in this Report and the Stipulation as amended; and
2. *DISMISSES* this case from the Commission's docket of active cases and passes the papers herein to the file for ended causes.

⁹ The Commission has fully considered the evidence and arguments in the record. *See also Board of Supervisors of Loudoun County v. State Corp. Comm'n*, 292 Va. 444, 454 n.10 (2016) ("We note that even in the absence of this representation by the Commission, pursuant to our governing standard of review, the Commission's decision comes to us with a presumption that it considered all of the evidence of record.") (citation omitted).

¹⁰ Report at 107 (emphases in original).

Upon consideration of this matter, the Commission concludes that the Chief Hearing Examiner's findings (1)-(5), (7),¹¹ and (8)-(9), above, are supported by law and the evidence, have a rational basis, and are adopted herein.¹² In so concluding, the Commission approves the proposed Stipulation subject to keeping the existing rate structure for Hopewell's potable industrial customers with each existing volumetric block changing by the same percentage, as recommended by the Hearing Examiner.¹³ In addition, the Commission provides further discussion below on its findings for purposes of this proceeding.

Proposed Refund of WWISC Revenues

The one exception to the Chief Hearing Examiner's findings and recommendations that the Commission does not adopt concerns Staff's recommended refund of certain WWISC revenues collected from the Alexandria district. The Chief Hearing Examiner explains:

I believe the Commission could find that based on the Alexandria [Earnings Test] Period results, Staff's proposed refund of \$419,803 of WWISC revenues collected from Alexandria customers is appropriate, based on the discussion above. However, while I find that earnings tests, by their nature, are not designed for granular causation analysis, in my opinion this case presents a situation for which the Commission should make an exception.¹⁴

¹¹ With respect to finding (7), the Commission approves an OPED deferral write-off amount of \$42,827 as reflected in the Stipulation. See Staff's Comments at 5, n15 (stating that finding (7) contained an incorrect reference to an OPEB deferral write-off of \$42,837, rather than the amount of \$42,827 contained in the Stipulation).

¹² See Report at 106-107.

¹³ In its Comments, VAWC indicated it would accept the Hearing Examiner's recommended modification to the Stipulation to continue the use of the existing six-block structure for Hopewell's industrial potable customers. VAWC Comments at 4. Staff similarly did not oppose this modification. Staff Comments at 5. The Hopewell Committee supported this modification. Hopewell Committee Comments at 3-4.

¹⁴ Report at 106.

Staff, Consumer Counsel and Alexandria disagree with the Chief Hearing Examiner's recommendation not to require refunds.¹⁵

After fully considering all the evidence and arguments both for and against the proposed refunds, the Commission finds that the record supports requiring refunds of the WWISC revenues as proposed by Staff and will so direct. The Commission's original approval of the WWISC was expressly dependent upon the use of Earnings Tests and refunds on a going-forward basis to assure that operation thereof does not result in annual earnings above the authorized ROE.¹⁶ In so ordering, the Commission, over the objection of VAWC, expressly directed "that the use of an Earnings Test should accompany the annual WWISC review and ... that refunds should be made to ratepayers, with interest, to the extent the WWISC collections result in annual earnings above the rate of return on common equity...approved below."¹⁷ Indeed, the Supreme Court of Virginia – in affirming the Commission's approval of the WWISC – recognized this Earnings Test process as perhaps the most significant qualification placed by the Commission on the implementation of the WWISC.¹⁸

¹⁵ City of Alexandria Comments at 2-3; Staff Comments at 6-11; Consumer Counsel Comments at 5-8.

¹⁶ *Application of Virginia-American Water Company, For a general increase in rates*, Case No. PUE-2015-00097, 2017 S.C.C. Ann. Rep. 288, 290-291, Final Order (May 24, 2017) (hereinafter "2015 Final Order").

¹⁷ 2015 Final Order at 291.

¹⁸ *City of Alexandria v. State Corporation Commission*, 296 Va. 79, 818 S.E.2d 33 (2018) ("The SCC's review of the WWISC was not disconnected from its overall discretionary review of VAWC's request for an increase in its base rate. It was an analysis that looked at all of the facts presented in the aggregate and in light of the statutory factors. This is particularly evident in the extensive qualifications that the [Commission] placed upon the implementation of the WWISC. Perhaps the most significant is the Earnings Test, which takes into account all of the Alexandria district's revenues from base rates and from the WWISC to determine if VAWC earned more than its approved rate of return for that district.").

The Chief Hearing Examiner reasonably rejected the majority of VAWC's arguments against Staff's recommended refund.¹⁹ The Report, however, ultimately recommends the Commission make an exception and not require a refund based on the fact that "the additional rate consolidation revenues collected from customers of the Alexandria district exceeds the level of revenues that Staff recommended be refunded."²⁰

We are not persuaded to make an exception in this case. As recognized by the Chief Hearing Examiner, earnings tests are by their nature not designed for granular causation analysis, and we decline to conduct such an analysis here. The evidence in the record shows that in the Alexandria district, VAWC earned a 10.03% ROE for the 28-month WWISC period when both base rate and WWISC revenues are considered.²¹ After accounting for refunds of \$419,803, the Company's resulting earned return is 9.57%, which is above the weighted average benchmark of 9.55% determined by the authorized ROEs during the period.²² Requiring refunds in this matter is supported by the record and, moreover, conforms with the Commission's original approval of the WWISC and the Court's affirmance thereof.

¹⁹ Report at 104-106.

²⁰ Report at 106. The Report explains that "beginning in May 2019, the legislatively mandated consolidation to [single tariff pricing ("STP")] and the Commission's 2018 Rate Order 'resulted in an approximately \$1,045,049 increase in annual revenue for the Company's Alexandria [d]istrict (which was balanced with decreases in other districts).'" Report at 106 (quoting Virginia-American Post-Hearing Brief at 24).

²¹ Ex. 25 (Long Direct) at 18. While not dispositive to our decision herein, we note further that VAWC could have, but did not, present an alternative consolidated earnings test. The approved Stipulation in Case No. PUR-2019-00185 provided in relevant part: "To the extent the Commission approves the consolidation of the cost of service study for the Company's Alexandria district with the Company's other service districts, the Company may propose substitution of a consolidated earnings test for purposes of the WWISC subsequent to the effective date of such approval." Staff Comments at 11 n.43.

²² Ex. 25 (Long Direct) at 18; Staff Comments at 9-10.

Rate Consolidation

As set forth in the Report, the Commission adopted the first one-third step toward statewide STP in Case No. PUR-2018-00175, including allocation of one-third of the PWS to the Hopewell and Eastern districts.²³ We agree with the Chief Hearing Examiner that based on the record of this case, the Commission should continue with the second one-third step towards statewide STP, by moving all rates, including the PWS, one-third closer to STP.²⁴

Finally, the Commission notes that VAWC initially proposed a rate increase of \$14.3 million.²⁵ Under the approved Stipulation, the Commission approves a \$10.75 million rate increase,²⁶ which is supported by the record. In granting this approval, the Commission further notes its awareness of the ongoing rise in gas prices, inflation, and other economic pressures that are impacting all utility customers. We are sensitive to the effects of rate increases, especially in times such as these. The Commission, however, must follow the laws applicable to this case, as well as the findings of fact supported by the evidence in the record. This is what we have done herein.

Accordingly, IT IS ORDERED THAT:

(1) The Commission adopts the Chief Hearing Examiner's findings and recommendations, with the exception of adopting recommendation number (6) related to refunds of certain WWISC revenues collected from Alexandria district customers, and makes findings as set forth herein.

²³ Report at 101. *Application of Virginia-American Water Company, For a general increase in rates*, Case No. PUR-2018-00175, 2020 S.C.C. Ann. Rep. 236 (Nov. 6, 2020).

²⁴ Report at 100-102.

²⁵ Ex. 3 (Application) at 2.

²⁶ Report at 96; Ex. 2 (Stipulation).

(2) The Chief Hearing Examiner's recommendations are hereby ordered with the exception of adopting recommendation number (6) related to refunds of certain WWISC revenues collected from Alexandria district customers.

(3) The rates and charges approved herein are fixed and substituted for the rates and terms and conditions of service that the Company placed into effect on an interim basis on May 1, 2022. VAWC shall forthwith file revised tariff sheets incorporating the findings herein on rates and charges and terms and conditions of service with the Clerk of the Commission and the Commission's Division of Public Utility Regulation. The Clerk of the Commission shall retain such filing for public inspection in person and on the Commission's website: scc.virginia.gov/pages/Case-Information. Refunds of interim rates shall be made as required below.

(4) The Company shall recalculate, using the rates and charges approved herein, each bill it rendered that used, in whole or in part, the rates and charges that took effect on an interim basis and subject to refund effective May 1, 2022, and where application of the new rates results in a reduced bill, refund the difference with interest as set out below, within ninety (90) days of the issuance of this Final Order.

(5) The Company shall refund, with interest, \$419,803 of WWISC revenues to the customers of the Alexandria district. Within ninety (90) days of the issuance of this Final Order, the Company shall complete refunds by check or through credits to customer bills.

(6) Refunds with interest for current customers may be made by a credit to the customers' accounts and shown on bills. If refunds with interest for current customers are made by a credit to the customers' accounts and shown on bills, the bills shall show the refund as a separate item or items.

(7) For former customers, refunds with interest that exceed \$1 shall be made by check mailed to the last known address of such customers.

(8) VAWC may retain refunds owed to former customers when such refund amount is less than \$1; however, if refunds owed to former customers in an amount less than \$1 are retained by the Company, the Company will prepare and maintain a list detailing each of the former accounts for which refunds are less than \$1, and in the event such former customers contact the Company and request refunds, such refunds shall be made promptly. All unclaimed refunds shall be handled in accordance with Code § 55-210.6:2.

(9) VAWC may offset the credit or refund to the extent no dispute exists regarding the outstanding balances of its current customers or customers who are no longer on its system. To the extent the outstanding balances of such customers are disputed, no offset shall be permitted for the disputed portion.

(10) Interest upon the ordered refunds shall be computed from the date payments on monthly bills were due as shown on the bills to the date each refund is made at the average prime rate for each calendar quarter, compounded quarterly. The average prime rate for each calendar quarter shall be the arithmetic mean, to the nearest one-hundredth of one percent, of the "Bank prime loan" values published in the Federal Reserve Bulletin of the Federal Reserve's Selected Interest Rates (Statistical Release H.15) for the three (3) months of the preceding calendar quarter.

(11) Within sixty (60) days of completing the refunds ordered herein, VAWC shall submit to the Divisions of Utility Accounting and Finance and Public Utility Regulation a report showing that all refunds have been made pursuant to this Final Order and itemizing the cost of the refund and accounts charged. The Company shall not recover the interest paid or the

expenses incurred in making such refunds from water or wastewater rates and charges subject to the Commission's jurisdiction.

(12) The Company shall bear all costs incurred in effecting the refunds ordered herein.

(13) This matter is dismissed.

Commissioner Patricia L. West participated in this matter.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.