

WHN CONSULTING

19 Morning Arbor Place
The Woodlands, TX 77381

February 24, 2006

Mr. Ron Jones, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

RE: TRA Rulemaking Docket for Wastewater Utilities (05-00105)

Dear Chairman Jones:

At the February 21st TRA Conference, the Directors gave the public the opportunity to comment on the TRA's proposed rules for wastewater utilities in Docket 05-00105 for one week. WHN Consulting ("WHN") thanks the TRA for this opportunity and makes the following comments.

1. Bond Forfeiture for Non-renewal

By and large, WHN has found that the wastewater utilities have a strong desire to comply with the TRA's proposed rules especially as they relate to providing financial security. However, we have recently discovered that there are some technical issues with the implementation of certain portions of the proposed rules that are making compliance difficult, if not impossible, to achieve. Specifically, we believe that the proposed rules in 1220-4-13-.08 regarding Standard Forms for Filing Financial Security contain some issues that need to be addressed.

In Paragraph 8 of the Corporate Surety Bond standard form, the proposed rule states that if the bond is not to be renewed then the Surety will provide written notice to the TRA. However, in Paragraph 9 of the same form, the proposed rule states that if the bond is not to be renewed, then the entire bond will be forfeited to the TRA without hearing.¹ Finally, in Paragraph 10, the form further states that the bond will continue from year to year unless the obligations of the bond are expressly released by the TRA. Again, we believe that this language will make it difficult, if not impossible, for any utility to obtain a bond since the risk of default increases substantially for the Surety by the non-renewal responsibilities of the Principal.

There can certainly be valid reasons not to renew a particular bond. For example, the utility may decide to change bonding companies or the utility may decide to change the financial

¹ Similar language also appears in the TRA's proposed rules for the Form of Letter of Credit Notice.

security to a letter of credit or some other type of coverage. However, neither of these events should result in forfeiture of the bond.

Instead of forfeiture, WHN would urge the TRA to rely on the penalty provisions of T.C.A. § 65-4-120 to insure compliance with the TRA's proposed rules for financial security. The penalty provisions of T.C.A. § 65-4-120 provide for a fine of fifty dollars (\$50.00) for each day of violation or approximately one thousand five hundred dollars (\$1,500) per month. Since the bonding cost can be recovered from the utility's customers and the fine cannot, the penalty acts as an incentive for continued compliance. This change removes the bonding renewal burden from the bonding company and places it back on the wastewater utility.

In summary, we would ask the TRA to remove Paragraphs 9 and 10 from the "Corporate Surety Bond" form and Paragraph 4 from the "Letter of Credit" form in Section 1220-4-13-.08.

2. Waiver of Rules

We are concerned about the insertion of waiver language in Chapter 1220-4-13-.16 that allows any portion of the proposed rules to be waived upon a showing of good cause. This language leaves the impression and appearance that the TRA's proposed rules may not be applied uniformly among the different wastewater utilities.

We believe that if a rule is to be waived for one utility, then it is appropriate to waive it for all utilities through the rulemaking process instead of through a special hearing for just one utility. In addition, T.C.A. § 65-2-102(3) states that the TRA "...shall abide by any such rule adopted by it, until it shall have been changed in the manner provided for in this chapter."

In summary, we would ask the TRA to remove Chapter 1220-4-13-.16 from its proposed rules.

3. Clerical Errors

We discovered some irregularities that we believe to be clerical errors and would like to bring these to the Authority's attention.

- A. In the 3rd paragraph of the "Corporate Surety Bond" form of Section 1220-4-13-.08 it states that "Tennessee Code Annotated § 65-4-201 requires the holder of a franchise for water or sewer service to furnish a bond with sufficient security..." [Emphasis added]. In fact, the enabling language of T.C.A. § 65-4-201(e) only applies to wastewater utilities and not to water utilities. In addition, the enabling language does not specifically require the utility to furnish a bond, but instead allows "the posting of a bond or other security."
- B. In the 1st paragraph of the "Letter of Credit Notice" form of Section 1220-4-13-.08 it refers to the "Principal", while defining the utility as

Mr. Ron Jones
Comments on Proposed Wastewater Rules
Page 3

the “Company” in the “Letter of Credit” form and stating “hereinafter the ‘Company.’”

Again, thank you for the opportunity to make these comments. Should you have any questions, or need anything further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "William H. Novak", with a stylized flourish at the end.

William H. Novak