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June 5, 2009

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Eddie Roberson, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

*Via Hand Delivery*

filed electronically in docket office on 06/05/09

Docket no. 09-00078

Attention: Sharla Dillon

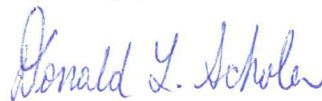
Re: Petition of Lynwood Utility Corporation to Approve Alternate Form of Financial Security under Rule 1220-4-13-.07

Dear Chairman Roberson:

I have enclosed for filing an original and five copies of the Petition of Lynwood Utility Corporation to Approve Alternate Form of Financial Security under Rule 1220-4-13-.07 in this docket including a CD with the Petition and this cover letter on it. I have also enclosed a check for \$25.00 for the filing fee of this Petition.

This Petition and cover letter are being filed electronically by electronic mail this same date. A copy has been served on Cynthia Kinser, Counsel for the Consumer Advocate. Please return the additional copy of the Petition stamp filed to me.

Sincerely yours,



DONALD L. SCHOLES

Enclosures

c: Tyler Ring  
Jim Ford  
General Cynthia Kinser

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**Nashville, Tennessee**

**In re: PETITION OF LYNWOOD UTILITY )  
CORPORATION TO APPROVE )  
ALTERNATE FORM OF )  
FINANCIAL SECURITY UNDER )  
RULE 1220-4-13-07 )**

**DOCKET NO. \_\_\_\_\_**

**PETITION**

Pursuant to T.C.A. § 65-4-201(e) and Rule 1220-4-13-.07, Lynwood Utility Corporation (Lynwood or the Company) respectfully requests that the Tennessee Regulatory Authority (the Authority), approve and accept the alternate form of financial security as permitted by Rule 1220-4-13-.07(5) as set forth in this Petition.

The full name and address of the principal place of business of Lynwood is:

Lynwood Utility Corporation  
321 Billingsly Court, Suite 4  
Franklin, TN 37065

All correspondence and communication with respect to this Petition should be sent to the following:

Donald L. Scholes  
Branstetter, Stranch & Jennings, PLLC  
227 Second Avenue North, Fourth Floor  
Nashville, TN 37201  
Telephone: 615-254-8801  
Facsimile: 615-250-3937

In support of its Petition, Lynwood states the following.

1. On June 14, 1976, the Tennessee Public Service Commission granted Lynwood Utility Company the authority to provide wastewater services in Williamson County, Tennessee. Lynwood Utility Corporation acquired the assets and operating authority of Lynwood Utility Company by an Order dated June 27, 1996 by the Tennessee Public Service Commission. At that time the sole stockholder of Lynwood Utility Corporation was David Terry. On May 12, 1999, Mr. Terry transferred all of the outstanding stock of Lynwood to Southern Utility Corporation. In January of 2003, Tyler Ring and John Ring became the sole owners of Southern Utility Corporation which owns the stock of Lynwood Utility Corporation.

2. On July 15, 2008, the Authority entered an Order Granting Alternative Financial Security in Docket No. 08-00075 in which Lynwood requested approval of a proposal for an alternate form of financial security pursuant to Authority Rule 1220-4-13-.07.

3. In filing this Petition Lynwood seeks the approval of the Authority for the same alternate form of financial security for Lynwood for the year July 1, 2009 through June 30, 2010 which was approved in Docket No. 08-00075. Lynwood asserts that the same reasons which justified the approval of the alternate form of financial security in Docket No. 08-00075 are equally applicable for the year July 1, 2009 through June 30, 2010.

4. Lynwood's financial condition has not improved since the Authority approved the alternate form of financial security for Lynwood in its Order dated July 15, 2008 for the year July 1, 2008 through June 30, 2009. Lynwood has filed a Petition of Lynwood Utility Corporation to Change and Increase Rates and Charges, Docket No. 09-00034, which is pending. Lynwood is in no better position to obtain the security required by 1220-4-13-.07 as of the date of the filing of this Petition than it was on July 15, 2008, because the financial statements which

it would present to any financial institutions or insurance companies are not significantly different than in Docket No. 08-00075.

5. Throughout its operating history, Lynwood has operated primarily from the debt and equity investments provided by its owners. In this respect, Lynwood has operated like any other traditional utility regulated by the Authority.

6. In contrast to Lynwood's embedded capital structure, many new wastewater utilities receiving certificates of public convenience and necessity (CCN) from the Authority have done so by depending fully upon the contribution of the utility plant from a third-party developer. This type of contributed capital utility has led to a number of significant questions from the Authority about whether such utilities could be considered as reliable, on-going concerns if any type of financial stress arose. To address this concern the Authority adopted Rule 1220-4-13-.07 which requires wastewater utilities file proof of financial security as required by this rule.

7. Lynwood agrees with the concerns of the Authority regarding wastewater utilities that have been created completely from the contributions from third-party developers. In such situations, Lynwood believes that additional financial security is both appropriate and necessary to insure the continuing operation of the utility.

8. Lynwood was created and maintained primarily through debt and equity contributions from its owners. In this respect, Lynwood is the same as any other traditional gas, electric or water utility approved by the Authority to operate in Tennessee. If Lynwood was an approved gas, electric or water utility, then no additional financial security would be required. Lynwood contends that classifying all wastewater utilities into a single group regardless of capital structure may not be appropriate when the Authority's rule seeks to address its concerns

over wastewater utilities financed almost exclusively by contributions of property from third-party developers.

9. Under Rule 1220-4-13-.07(2), Lynwood is required to file a corporate surety bond or irrevocable letter of credit in the form prescribed by Rule 1220-4-13-.08 in the amount of 100% of its gross annual revenue. In 2008 Lynwood's gross annual revenue was \$548,268. Lynwood does not anticipate that it will be able to get an insurance company or a financial institution to issue such a bond or irrevocable letter of credit for this amount for the same reasons set forth in Docket No. 08-00075.

10. The Authority promulgated Rule 1220-4-13-.07 pursuant to the power granted to it by the legislature in 2005. Section 1 of Chapter 62 of the 2005 Tennessee Public Acts, codified at T.C.A. § 65-4-201(e), granted the Authority the power to "direct the posting of a bond or other security by a public utility providing wastewater service or for a particular project proposed by a public utility providing wastewater service." The legislature stated that the purpose of requiring financial security by a bond or other security was "to ensure the proper operation and maintenance of the public utility or project." Lynwood asserts that no corporate surety bond or irrevocable letter of credit is needed to ensure the proper operation and maintenance of the Lynwood sewer system.

11. Lynwood has operated continuously since it received its original certificate in 1976. While Lynwood has not operated at a profit each year, there is no evidence to indicate that Lynwood will not continue to operate as an on-going concern as it has for over 30 years.

12. Lynwood is owned by Southern Utility Corporation. The current owners of Southern Utility Corporation, John Ring and Tyler Ring, have invested a substantial amount of money in Lynwood since they became the sole shareholders of Southern Utility Corporation in

January of 2003. The alternate form of financial security approved in Docket No. 08-00075 should be sufficient for the Authority to be assured that John and Tyler Ring will continue to properly operate and maintain the Lynwood sewer system.

13. One of the primary purposes of the financial security requirement as set forth in the Rule 1220-4-13-.07 is to make sure sufficient funds are available to continue the operation of a wastewater utility in the event a wastewater utility's certificate is suspended or revoked. The Authority wants to be assured funds are available for a replacement operator or a court appointed receiver to operate the utility. A corporate surety bond or irrevocable letter of credit in the amount of \$500,000 is not necessary to make sure the expenses of a replacement operator or receiver are covered in operating Lynwood. A replacement operator or a receiver will have the on-going revenues of Lynwood to use to operate its system. Currently, Lynwood's revenue from its customers is actually collected by the water providers of Lynwood's customers, the City of Franklin and H. B. & T. S. Utility District. Should a replacement operator or a receiver be appointed, these water providers by contract must send revenue generated by Lynwood's customers directly to such replacement operator, receiver or other entity directed by the Authority to continue to operate the Lynwood system with no interruption in service. Any additional expenses incurred by a replacement operator or receiver to continue to operate the Lynwood system not covered by Lynwood's monthly revenues would be minimal so that the \$20,000 letter of credit presently approved for Lynwood should cover any such expenses.

WHEREFORE, the Lynwood Utility Corporation prays that the Authority enter an Order approving the same alternate form of financial security for the year July 1, 2009 through June 30, 2010 which it approved for Lynwood in Docket No. 08-00075 which alternate form of financial security entails the submission of an irrevocable letter of credit from a financial institution in the amount of \$20,000.

Dated June 5, 2009.

Respectfully submitted,



DONALD L. SCHOLES BPR #10102  
Branstetter, Stranch & Jennings, PLLC  
227 Second Avenue North, Fourth Floor  
Nashville, TN 37219  
615-254-8801

*Attorney for Lynwood Utility Corporation*

### **Certificate of Service**

I hereby certify that a true and exact copy of the Petition has been mailed first class, postage prepaid, on this 5th day of June, 2009 to the following:

General Cynthia Kinser  
Office of the Attorney General  
Consumer Advocate and Protective Division  
P.O. Box 20207  
Nashville, TN 37202



Donald L. Scholes