

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**July 3, 2013**

**IN RE:**

**PETITION OF OLD HICKORY WATER, LLC FOR A  
CERTIFICATE OF CONVENIENCE AND NECESSITY**

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**DOCKET NO.  
12-00039**

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**ORDER GRANTING CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY AND APPROVING MOTION FOR  
ALTERNATIVE SECURITY**

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This matter came before Chairman James M. Allison, Vice Chairman Herbert H. Hilliard and Director David F. Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a Hearing held on May 6, 2013 to consider the *Petition* filed by Old Hickory Water, LLC ("Old Hickory" or "Petitioner") on May 11, 2012. Old Hickory seeks a Certificate of Public Convenience and Necessity ("CCN") to provide water and wastewater utility services.

**BACKGROUND AND PETITION**

In its *Petition*, Old Hickory requests authority to provide water and wastewater service in an area of Union County, Tennessee, which was previously serviced by Hickory Star Water Company, LLC ("HSWC").<sup>1</sup> HSWC's parent company, Hickory Star, LLC ("HS") previously owned Hickory Star Marina and Campground ("HSMC"), which was a customer of HSWC. Due to a foreclosure of HSMC, HS assigned certain assets, including HSWC to a bank. The bank then sold the assets of HSWC and HSMC, to Hickory Star Resort and Marina, LLC ("HSRM")

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<sup>1</sup>See *In re: Application of Hickory Star Water Company, LLC for a Certificate of Public Convenience and Necessity for a Regulated Water and Sewer Company Operating in Union County, Tennessee*, Docket No. 99-00485, *Order Granting Certificate of Public Convenience and Necessity* (November 24, 1999).

and HSRM transferred its interest in HSWC to Old Hickory. As a result of the transaction, HSWC will have its assets transferred to Old Hickory.<sup>2</sup> The new members of Old Hickory are John Parton, David Parton and Dean Knuckles. Old Hickory is incorporated under the laws of the State of Tennessee, and its principal address is 110 Coal Drive, P.O. Box 159, Middlesboro, Kentucky 40965.

Old Hickory seeks authorization to serve the 118 former customers of HSWC.<sup>3</sup> The Petitioner asserts that it is well-qualified managerially, technically, and financially to provide the proposed water and wastewater services. John Parton and David Parton operate a private coal mining company. Dean Knuckles owns and operates construction and trucking businesses and an apartment complex, and all three owners are familiar with installing, removing, and repairing water lines from experience gained in their other businesses.

According to the *Petition*, Old Hickory will serve the public interest and will enhance the rural community served by the water/wastewater utility. In addition, the *Petition* states that the utility will gain access to additional resources and operational expertise of the Petitioner.<sup>4</sup> The Petitioner maintains that it will continue to provide service to its customers under the same rates, terms and conditions as had been offered by HSWC.<sup>5</sup> The Petitioner also filed a copy of the draft Tennessee Department of Environment and Conservation (“TDEC”) permit in Old Hickory’s name. Mr. Parton testifies that Old Hickory has the financial expertise to operate the Utility.<sup>6</sup> Based on the 2011 Annual Report<sup>7</sup> and the year-end December 31, 2012 statement, the new owners have been operating Old Hickory since January 2011, without any financial issues.

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<sup>2</sup> See *Petition*, pp. 3-4 (May 11, 2012).

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 6.

<sup>5</sup> *Id.*

<sup>6</sup> John Parton, Pre-filed Direct Testimony, p. 5 (May 11, 2012).

<sup>7</sup> See *Old Hickory Water’s First Supplemental Response To The Data Request Of February 28, 2013*, Draft 2011 Annual Report (April 11, 2013).

In addition, all three owners/members of Old Hickory signed a *Joint Affidavit of Guarantee*, demonstrating their commitment to fund the utility as necessary.<sup>8</sup> Old Hickory has also represented that it will adhere to all applicable statutes, policies, rules, and orders of the Authority.<sup>9</sup>

As financial security, Old Hickory filed proof of a bond for \$25,000, which did not comply with TRA Rule 1220-4-13-.07(2)(a) because it was less than the revenue reported by Old Hickory on the UD-20 form it submitted to the TRA. On March 10, 2013, Old Hickory filed a *Motion for Approval of Alternative Financial Security* asking the Authority to approve its \$25,000 bond. Old Hickory maintains that the bond it submitted should sufficiently cover the wastewater revenue reported by the Petitioner.<sup>10</sup> Old Hickory also asserts that its history of financial security demonstrates the financial stability of the utility.<sup>11</sup>

#### **LEGAL STANDARD FOR GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

Old Hickory's *Petition* was made pursuant to and considered in light of the criteria for granting a CCN as set forth in Tenn. Code Ann. § 65-4-201 (Supp. 2012), which provides in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

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<sup>8</sup> *Joint Affidavit of Guarantee* (February 6, 2013).

<sup>9</sup> John Parton, Pre-Filed Supplemental Direct Testimony (April 19, 2013).

<sup>10</sup> *Motion for Approval of Alternative Financial Security*, pp. 1-2 (March 10, 2013).

<sup>11</sup> *Id.* at 2.

TRA Rule 1220-4-13-.04(b) sets forth certain requirements for a wastewater CCN applicant as follows:

(b) Any public wastewater utility requesting a Certificate of Public Convenience and Necessity (CCN) authorizing such public utility to construct and/or operate a wastewater system or to expand the area in which such a system is operated, shall file an application in compliance with Rule 1220-1-1-.03 and this rule. All applicants shall demonstrate to the Authority that they are registered with the Secretary of State, have obtained the financial security required under 1220-4-13-.07, and possess sufficient managerial, financial, and technical abilities to provide the wastewater services for which they have applied. Each application shall justify existing public need and include the required financial security consistent with Tenn. Code Ann. § 65-4-201 and these rules.

#### **THE MAY 6, 2013 HEARING**

Pursuant to Tenn. Code Ann. § 65-4-204 (2004), public notice of the Hearing in this matter was issued by the Hearing Officer on April 25, 2013. No one sought intervention prior to or during the Hearing.

During the Hearing held on May 6, 2013, John Parton, owner and active member of Old Hickory, participated, presented testimony and was subject to examination by the panel. Mr. Parton's pre-filed testimony, which was entered into the record without objection, states that Old Hickory has the managerial, technical, and financial ability to provide water and wastewater services to the former customers of HSWC.

Based on the administrative record and the testimony given by Mr. Parton, the panel found that the Petitioner has met the requirements of Tenn. Code Ann. § 65-4-201 (Supp. 2012) and Authority Rule 1220-4-13-.04 by demonstrating that it has sufficient managerial, technical and financial expertise to operate the water and wastewater system in the requested area. Thereafter, the panel voted unanimously to approve Old Hickory's *Petition*. In addition, the panel found that the financial security submitted by the Petitioner is sufficient and voted

unanimously to approve Old Hickory's motion for an alternative form of financial security by accepting a bond in the amount of \$25,000.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition* of Old Hickory Water, LLC for a Certificate of Public Convenience and Necessity is approved.

2. The *Motion for Approval of Alternative Financial Security* filed by Old Hickory Water, LLC is granted.

**Chairman James M. Allison, Vice Chairman Herbert H. Hilliard and Director David F. Jones concur.**

**ATTEST:**

  
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**Earl R. Taylor, Executive Director**