

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 8, 2016

IN RE:

**PETITION OF TENNESSEE WASTEWATER
SYSTEMS, INC. TO POST ALTERNATIVE
FINANCIAL SECURITY**

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**DOCKET NO.
16-00045**

**ORDER APPROVING PETITION OF TENNESSEE WASTEWATER SYSTEMS, INC.
TO POST ALTERNATIVE FINANCIAL SECURITY**

This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on June 20, 2016, to hear and consider the *Petition of Tennessee Wastewater Systems, Inc. to Post Alternative Financial Security* (“*Petition*”) filed on April 27, 2016.

BACKGROUND AND PETITION

On April 27, 2016, Tennessee Wastewater Systems, Inc. (“TWSI” or the “Company”) filed its *Petition* with the Authority seeking approval of the Company’s posting of alternative financial security. The Company’s current surety bond is in the amount of \$1,248,882.¹ According to TWSI’s most recent UD20 report filed with the TRA, the Company’s annual revenue for 2015 was \$1,722,323.² The bond amount is approximately 73% of TWSI’s gross annual revenue and its form differs somewhat from the exact form prescribed by TRA Rule 1220-4-13-.08.

¹ *Petition*, p. 1 (April 27, 2016).

² *Id.*

Citing to the Authority's Order in TRA Docket No. 15-00051, TWSI asserts that the amount of the bond is adequate because it "operates a number of isolated, self-contained treatment facilities in various locations around the state" and "it is not necessary to have funds available to *operate all* of TWSI's systems since all of the separate facilities would not be expected to lose operation at the same time."³ TWSI asserts that the alternative security requested in this docket is for the same amount as the alternative security previously approved by the Authority in TRA Docket No. 15-00051.⁴ Furthermore, the Company states that although the bond language differs slightly from the form prescribed by TRA Rule, the TRA has previously found these deviations immaterial.⁵

STANDARD FOR AUTHORITY APPROVAL

Tenn. Code Ann. § 65-4-201(e) (2015) provides:

The authority shall 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 purpose of the bond or other security shall be to ensure the proper operation and maintenance of the public utility or project. The authority shall establish by rule the form of such bond or other security, the circumstances under which a bond or other security may be required, and the manner and circumstances under which the bond or other security may be forfeited.

Pursuant to TRA Rule 1220-04-13-.07(2), a public wastewater utility must furnish proof of financial security to the Authority in the amount of 100% of its gross annual revenue or \$20,000, whichever is greater. However, financial security in an alternative form to that above may be provided pursuant to TRA Rule 1220-04-13-.07(5), which states:

If the public wastewater utility proposes to post financial security other than the type or amount permitted above, it must file with the Authority by May 1 of each year a petition requesting acceptance of the security. A hearing shall be held to determine the amount of the financial security and if the form of the proposed financial security serves the public interest. At this hearing, the burden of proof shall be on the public wastewater utility to show that the proposed financial security and the proposed

³ *Petition*, pp. 1-2 (April 27, 2016). Citing *In re: Petition of Tennessee Wastewater Systems, Inc. to Post Alternative Financial Security*, Docket No. 15-00051, *Order Approving Financial Security*, p. 3 (August 12, 2015).

⁴ Charles Hyatt, *Pre-Filed Direct Testimony*, p. 2 (April 27, 2016). See *In re: Petition of Tennessee Wastewater Systems, Inc. to Post Alternative Financial Security*, Docket No. 15-00051, *Order Approving Financial Security* (August 12, 2015).

⁵ *Petition*, p. 2 (April 27, 2016).

amount will be in the public interest. The public wastewater utility shall comply with Rule 1220-4-13-.07(2) until the alternative financial security is approved by the Authority.

Finally, TRA Rule 1220-04-13-.07(1) requires that public wastewater utilities provide proof of financial security using a format prescribed by the Authority, which can be found at TRA Rule 1220-04-13-.08.

THE HEARING

The Hearing in this matter was held before the voting panel of Directors during the regularly scheduled Authority Conference on June 20, 2016, as noticed by the Authority on June 10, 2016. Participating in the Hearing was:

Tennessee Wastewater Systems, Inc. – Jeff Riden, Esq., General Counsel, and Charles Hyatt, President, Tennessee Wastewater Systems, Inc., 851 Aviation Parkway, Smyrna, Tennessee, 37169.

During the Hearing, Mr. Hyatt ratified, then summarized his pre-filed testimony and was subject to questioning before the panel. There were no intervening parties to the Docket. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

FINDINGS AND CONCLUSIONS

In its *Petition*, TWSI has asked the Authority for approval of alternative financial security under TRA Rule 1220-04-13-.07(5). Based on a review and consideration of the pleadings, pre-filed testimony and the entire administrative record, the panel found that although the amount of the surety bond in place equals only approximately 73% of the Company's gross annual revenues, the amount of the bond is sufficient and in the public interest in this case. The primary goal of the Authority's financial security rule as relates to public wastewater utilities is to ensure sufficient funds are available in the event that a wastewater system fails or becomes insolvent, and the Company's proposed alternative security accomplishes this goal. Additionally, the panel found that although the form of the bond TWSI has obtained is not identical to that prescribed for

wastewater utilities under TRA Rule 1220-04-13-.08, it is in substantial compliance with the rules and is sufficient to meet statutory and regulatory requirements under Tenn. Code Ann. § 65-4-201(e) and TRA Rule 1220-04-13-.07. Accordingly, the panel voted unanimously to approve the Company's request for alternative financial security pursuant to TRA Rule 1220-04-13-.07(5).

IT IS THEREFORE ORDERED THAT:

1. The *Petition of Tennessee Wastewater Systems, Inc. to Post Alternative Financial Security* filed on April 27, 2016 is granted.
2. Any person who is aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.
3. Any person who is aggrieved by the Authority'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 days from the date of this Order.

Chairman Herbert H. Hilliard, Vice Chairman David F. Jones and Director Kenneth C. Hill concur.

ATTEST:



Earl R. Taylor, Executive Director