

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

May 2, 2017

IN RE:

INTEGRATED RESOURCE MANAGEMENT, INC.
REQUEST TO UTILIZE ALTERNATIVE
FINANCIAL SECURITY AGREEMENT
PURSUANT TO TENN. COMP. R. & REGS.
1220-4-13-.07(5)

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DOCKET NO. 16-00086

ORDER DENYING PETITION OF INTEGRATED RESOURCE MANAGEMENT, INC.
AND INSTITUTING ALTERNATIVE FINANCIAL SECURITY

This matter came before Chairman David F. Jones, Vice Chairman Robin L. Morrison and Commissioner Kenneth C. Hill of the Tennessee Public Utility Commission¹ (the “Commission” or “TPUC”), the voting panel assigned to this docket, during the regularly scheduled Commission Conference held on March 13, 2017² and on April 10, 2017, for hearing and consideration of the *Petition for Alternative Financial Security* (“*Petition*”) filed on August 17, 2016 by Integrated Resource Management, Inc. (“IRM” or the “Company”).

BACKGROUND AND PETITION

On August 17, 2016, IRM filed its *Petition* with the Commission seeking approval of the Company’s posting of alternative financial security pursuant to TRA Rule 1220-04-13-.07(5).³ In its *Petition*, IRM requests that \$50,000 be approved as an alternative form of security.⁴ Prior

¹ The Tennessee Regulatory Authority became the Tennessee Public Utility Commission by approved legislation that changed its name, which became effective April 4, 2017. See 2017 Tenn. Pub. Acts Ch. 94.

² On March 13, 2017, the panel, after hearing witness testimony, took the matter under advisement and deferred action to the following conference.

³ *Petition for Alternative Financial Security* (August 17, 2016).

⁴ *Id.* at 1.

to the filing of this *Petition*, the Commission denied the Company's request for alternative financial security, in TPUC Docket No. 14-00072.⁵

On November 17, 2014, IRM filed a letter of credit from Peoples Bank of Clifton, Tennessee, in the amount of \$110,000.⁶ Said letter of credit contains language which deems the letter of credit automatically renewed without amendment for successive one-year terms and may be canceled by giving thirty days advanced written notice to TPUC and to the Company.⁷ As of the date of the March 13, 2017 Commission Conference, TPUC had not received notice of any such cancellation of the letter of credit. According to IRM's *Petition* and supporting documentation, the Company's total income for 2015 was \$123,177.⁸ IRM alleged in its *Petition* that obtaining a letter of credit in an amount equal to the annual revenue would be an undue burden.⁹

Along with its *Petition*, IRM filed pre-filed testimony of Company president, Jeffrey Cox, and expert witness, William H. Novak. Mr. Cox stated in his pre-filed testimony that the Company would be able to obtain the proposed \$50,000 letter of credit without cost to IRM or its customers due to its beneficial relationship with Peoples Bank.¹⁰ Further, Mr. Cox testified that an increase in the amount of the security would be a labor intensive undertaking that could impact the cost to customers, and that having recently completed a rate case, it is undesirable for IRM to incur costs that would impact the rate.¹¹ Mr. Novak provided testimony that IRM could not reasonably obtain financial security in the full amount of its gross annual revenue and the

⁵ See *In re: Petition of Integrated Resource Management, Inc. d/b/a IRM Utility, Inc. to Post Financial Security*, Docket No. 14-00072, *Order Denying Petition for Alternative Financial Security* (January 1, 2015).

⁶ See *In re: Petition of Integrated Resource Management, Inc. d/b/a IRM Utility, Inc. to Post Financial Security*, Docket No. 14-00072, *Letter of Credit From Peoples Bank* (November 17, 2014).

⁷ *Id.* at 2.

⁸ *Petition for Alternative Financial Security*, p. 1 (August 17, 2016).

⁹ *Id.*

¹⁰ Jeffrey Cox, *Pre-Filed Direct Testimony*, p. 1 (August 17, 2016).

¹¹ *Id.* at 1-2.

proposed alternative financial security would be sufficient to operate the utility for approximately five months.¹² Mr. Novak also stated that the Commission approved alternative financial security of \$50,000 for Cartwright Creek, LLC in Docket No. 15-00052, and that in keeping with this precedent, IRM requests approval of its proposed alternative financial security.¹³

The Company, in response to TPUC Staff Data Requests, indicated that IRM had taken no action to arrange for replacement or additional security pending the Company's *Petition*.¹⁴ The Company also indicated that it had not submitted an application or request for financial security in the amount of the Company's annual revenue and been denied.¹⁵

STANDARD FOR COMMISSION 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

¹² William H. Novak, *Pre-filed Direct Testimony*, pp. 2-3 (August 17, 2016).

¹³ *Id.* at 3.

¹⁴ *Data Response*, p. 1 (September 29, 2016).

¹⁵ *Id.*

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 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.

THE MARCH 13, 2017 HEARING

A Hearing in this matter was held before the voting panel of Directors during the regularly scheduled Commission Conference on March 13, 2017, as noticed by the Authority on March 3, 2017. Participating in the Hearing were:

Integrated Resource Management, Inc. – Charles B. Welch, Jr., Esq., Farris Bobango, PLC, 414 Union Street, Suite 1105, Nashville, Tennessee 37219; Jeffrey W. Cox, Sr., President, Integrated Resource Management, Inc., 3434 Saint Andrews Drive, White Pine, Tennessee 37890; and, William H. Novak, President of WHN Consulting, 19 Morning Arbor Place, The Woodlands, TX 77381.

During the Hearing, Mr. Cox ratified, then summarized his pre-filed testimony and was subject to questioning before the panel and by TPUC staff. In response to questions, Mr. Cox testified that IRM had not made attempts to obtain financial security in the amount of the Company's gross revenue and that the \$110,000 letter of credit had expired and a subsequent letter of credit in the amount of \$90,000 had been obtained. Mr. Novak ratified and summarized his pre-filed testimony and was subject to questioning before the panel and by TPUC staff. Members of the public were given an opportunity to offer comments, at which time, Senator Frank Nicely presented comments in support of the Company's *Petition*.

Based upon confusion concerning which letter of credit was then effective, the panel took the matter under advisement until the next Commission Conference. The panel further ordered IRM to file its \$90,000 letter of credit within ten days.

THE APRIL 10, 2017 CONFERENCE

This matter was reconvened by the voting panel of Commissioners during the regularly scheduled Commission Conference on April 10, 2017, for the purpose of deliberations on the testimony presented at the March 13, 2017 Commission Conference and the filings subsequent to the March 13, 2017 Commission Conference.

FINDINGS AND CONCLUSIONS

In its *Petition*, IRM asked the Commission 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 the proposed alternative security does not serve the public interest under Commission Rule 1220-4-13-.07(5) because:

- 1.) IRM requested to lower its financial security requirement to \$50,000, which would constitute approximately 40 percent of IRM's gross revenue for 2015 as reported in its most recent form UD20.
- 2.) IRM has failed to show that, due to its financial condition or other pertinent factors, it cannot reasonably maintain financial security in form and amount that either complies or more substantially complies with Commission rules.

Based on these findings, the panel voted unanimously to deny IRM's *Petition*. In addition, the panel further found:

As ordered by the Commission, on March 13, 2017 IRM filed a \$90,000 letter of credit that became effective on October 31, 2016, which provides for automatic renewal without amendment for successive one-year periods until canceled, by giving 30 days' advance written notice by certified mail to the Commission.

On March 16, 2016, Peoples Bank of Clifton, Tennessee, the issuing bank, submitted advance written notice by certified mail canceling IRM's then currently-filed \$110,000 letter of credit, effective April 15, 2017. After such date, IRM will have on file with the Commission only the \$90,000 letter of credit, which constitutes approximately 73 percent of the Company's gross revenues for 2015.

The form and amount of the \$90,000 letter of credit serves the public interest based in part on the Company's gross revenues for 2015. Based upon these findings, the panel voted unanimously to approve the institution of IRM's \$90,000 letter of credit for the current year. Upon consideration, among other things, the panel instructed IRM to continue in compliance with the Commission's financial security rule by filing security in the form and amount required by the rule on or before July 1st of each year or by petitioning for approval of acceptable alternative security by May 1st upon demonstrating that such approval would serve the public interest.

IT IS THEREFORE ORDERED THAT:

1. The *Petition for Alternative Financial Security* filed on August 17, 2016 is denied.
2. The \$90,000 letter of credit filed by the Company on March 13, 2017 in compliance with this order is approved as Integrated Resource Management, Inc.'s alternative financial security through July 1, 2017.
3. The Company is ordered to comply with the filing deadlines for financial security requirements or to petition for approval of an acceptable alternative security by filing its request in accordance with the requirements and filing deadline established by Commission rules.

4. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen days from the date of this Order.

5. Any person who is aggrieved by the Commission'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 David F. Jones, Vice Chairman Robin L. Morrison and Commissioner Kenneth C. Hill concur.

ATTEST:



Earl R. Taylor, Executive Director