

## WHN CONSULTING

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October 24, 2016

Mr. David Jones, Chairman  
Tennessee Regulatory Authority  
502 Deaderick Street  
Nashville, Tennessee 37243

**RE: TRA Rulemaking Docket for Wastewater Utilities (16-00112)**  
**Comments of WHN Consulting**

Dear Chairman Jones:

On September 23, 2016, the Hearing Officer in this docket gave the public the opportunity to comment on the TRA's proposed rules for wastewater utilities. WHN Consulting ("WHN") thanks the TRA for this opportunity and makes the following comments.

### **1. Expansion of Service Territory**

The TRA's proposed language regarding the expansion of service territory in Chapter 1220-4-13-.17(1) appears to be in conflict with T.C.A. § 65-4-201. Specifically, the proposed language in Chapter 1220-4-13-.17(1) reads as follows:

*Any public wastewater utility requesting a Certificate of Public Convenience and Necessity ("CCN") authorizing such public utility to establish, 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. [Emphasis added.]*

In contrast to this language for the proposed rule, T.C.A. § 65-4-201(a) reads as follows:

*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; **provided, however, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it.** [Emphasis added.]*

In summary, it appears that T.C.A. § 65-4-201(a) allows an existing utility to expand its service territory without a CCN filing when such expansion is contiguous to its existing service territory. We would therefore request that the TRA amend its proposed rule to consider such contiguous expansions.

## **2. Required Pre-approval of Disbursements from Escrow Accounts**

The TRA has approved escrow accounts for some, but not all, of the Tennessee wastewater utilities. The purpose of these escrow accounts is generally to provide funding for non-routine maintenance expenses. Currently, the determination of whether these expenses are properly classified as “non-routine” has been left to the discretion of the wastewater utility with the TRA Staff performing an after-the-fact audit of the escrow transactions.

However, the TRA’s proposed language regarding escrow accounts in Chapter 1220-4-13-.07(7) would instead require TRA pre-approval for disbursements from escrow for non-routine maintenance expenses. Specifically, the proposed language in Chapter 1220-4-13-.07(7) reads as follows:

*Reserve/escrow accounts established by a wastewater utility shall be limited to pay for or reimburse the utility for extraordinary expenses of the utility or for necessary capital projects, unless otherwise permitted by the Authority. Extraordinary expenses are those resulting from events which are infrequent and unusual in nature, and unrelated to the utility's routine service or business activities. **The utility must first receive authorization from the Authority via petition or in emergency situations authorization in writing from the Chairman of the Authority upon the written request from a representative of the utility to use such funds.** The Authority may require public wastewater utility employees having signature authority over such account to obtain a fidelity bond. The public wastewater utility's tariff shall set forth the specific amount charged to customers to fund the reserve/escrow account. [Emphasis added.]*

As shown above, the wastewater utility would first be required to either petition the TRA or receive approval from the TRA Chairman in emergency situations prior to utilizing escrow funds. However, the proposed rules don’t recognize that these non-routine repairs can sometimes happen outside of normal business hours with the need to be quickly addressed. In addition, State Operating Permits from TDEC do not allow sewage to run out when the problem can be readily attended to with proper funding. Therefore, waiting on approval from the TRA for escrow withdrawals can be impractical during emergency events that are outside the control of wastewater utilities such as lightning, uprooted trees from tornados and windstorms or contractor line cuts.

Assuming that withdrawals from escrow are incurred for prudent expenditures, which can be confirmed through after-the-fact reviews, there does not seem to be a practical operating reason for requiring pre-approval. We would therefore request that the TRA either amend or delete its proposed rule for pre-approval for escrow withdrawals.

## **3. Notice to Health Departments for Discontinuance of Service**

The TRA’s proposed language regarding the discontinuance of service to any customer in Chapter 1220-4-13-.14(5) requires notification to both the TRA and the local health department even when such notice may not be necessary. Specifically, the proposed language in Chapter 1220-4-13-.14(5) reads as follows:

*When a prospective customer is refused service, or an existing customer has service discontinued under the specific provisions included in the public wastewater utility's tariff approved by the Authority, the public wastewater utility shall notify the customer promptly of the reason. The customer notification shall include an explanation of the Authority's dispute resolution process found in Rule 1220-1-3. **A copy of such notification or other documentation shall be sent within five (5) business days to the local county health department and the Authority.** [Emphasis added.]*

Many wastewater utilities have now installed separate water shut-off valves to the customer's premises that are locked when service is discontinued. As a result, a potential health hazard is avoided, and it would seem that notice to the TRA or the local county health department would be unnecessary. We would therefore request that the TRA amend this proposed rule to recognize that such notice is not necessary when service has been discontinued through water shut-off valves.

#### **4. Waiver of the Rules**

We are concerned about the insertion of waiver language in Chapters 1220-4-13-.07(8) for financial security and 1220-4-13-.16(8) for affiliate transactions that appears to allow any portion of the proposed rules to be waived upon a showing of good cause. This language leaves the impression that waivers may be granted subjectively and that the TRA's proposed rules may not be applied uniformly among all 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 consider removing Chapters 1220-4-13-.07(8) and 1220-4-13-.16(8) from its proposed rules.

#### **5. Quarterly Reporting Threshold**

Although not specifically a part of the TRA's proposed rules, the TRA's threshold requirement for the quarterly reporting of financial results by wastewater utilities appears to be out of date. Specifically, Chapter 1220-4-01-.10(2)(e)(2) reads as follows:

*All [Sewer Utility Companies] subject to the jurisdiction of this Authority, as set forth in T.C.A. §65-4-101, which had operating revenues for the preceding year in excess of \$100,000 but less than \$1,500,000, shall submit quarterly to this Authority, Quarterly Report Form TRA-3.19, sixty (60) days after the end of the quarter covered by the report.*

According to the administrative history of this rule, it appears that the \$100,000 threshold for quarterly reporting was originally established in 1974 and has not since been revised. Adjusting for inflation since 1974, this \$100,000 threshold should now be approximately \$467,000.<sup>1</sup>

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<sup>1</sup> Bureau of Labor Statistics, CPI Detailed Report, September 2016, Page 105. Annual average CPI for 1974 = 49.6 and the annual average CPI for 2015 = 231.8, resulting in an inflation factor of 4.67. Applying a 4.67 inflation factor to the \$100,000 base reporting threshold results in a new reporting threshold of \$467,000 in 2015 dollars. For further information, please refer to <http://www.bls.gov/cpi/cpid1609.pdf>.

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The cost for small wastewater utilities to comply with the TRA's quarterly reporting can be significant. We would therefore ask the TRA to consider revising the quarterly reporting threshold for wastewater utilities in Chapter 1220-4-01-.10(2) (e)(2) as a part of its proposed rules.

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, CPA