

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

August 22, 2017

IN RE:

PETITION OF KING'S CHAPEL CAPACITY, LLC
TO POST ALTERNATIVE FINANCIAL SECURITY

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DOCKET NO. 17-00033

ORDER APPROVING THE PETITION OF KING'S CHAPEL CAPACITY, LLC
TO POST ALTERNATIVE FINANCIAL SECURITY

This matter came before Vice Chairman Robin L. Morrison, Commissioner Kenneth C. Hill, and Commissioner Keith Jordan of the Tennessee Public Utility Commission (the "Commission" or "TPUC"), the voting panel assigned to this docket, at the regularly scheduled Commission Conference held on July 10, 2017, for hearing and consideration of the *Petition of King's Chapel Capacity, LLC to Post Alternative Financial Security* (the "*Petition*") filed on April 26, 2017 by King's Chapel Capacity, LLC ("King's Chapel" or the "Company").

BACKGROUND AND PETITION

On April 26, 2017, King's Chapel filed its *Petition* with the Authority seeking approval of the Company's posting of alternative financial security to reduce its current financial bond from \$86,000 to \$36,000.¹ In support of the *Petition*, the Company asserts that the relief requested complies with the Commission's new wastewater rules arising from the Commission's rule making proceeding in Docket No. 16-00112. In pre-filed testimony submitted on behalf of the Company on June 30, 2017, Mr. William H. Novak recognizes that the new wastewater rules

¹ King's Chapel did not include a proposed bond in the amount of \$36,000; rather the *Petition* only requested a reduction in the amount of financial security it is required to post under TPUC Rule 1220-04-13-.07(5).

are not yet in effect; however, he asserts that the Commission has discretion under the current rules to determine the appropriate financial security for a wastewater utility on a case-by-case basis.²

The Company maintains that it is unreasonable to require wastewater utilities to post financial security on top of existing bond surcharges and requests that revenues of \$71,000 be recognized as the appropriate revenue level for determining the Commission's financial security requirement.³ The bond amount proposed by the Company is approximately 50% of King's Chapel's gross annual revenue of \$71,000.⁴

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 TPUC Rule 1220-04-13-.07(2), a public wastewater utility must furnish proof of financial security to the Commission 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 noted above may be provided pursuant to TPUC 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

² William H. Novak, Pre-filed Direct Testimony, pp. 3-4 (June 30, 2017).

³ *Petition*, p. 2 (April 26, 2017).

⁴ *Petition of King's Chapel Capacity, LLC to Post Alternative Financial Security*, p. 1 (December 21, 2015).

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.

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

THE HEARING

The Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on July 10, 2017, as noticed by the Commission on June 30, 2017. Participating in the Hearing were:

King's Chapel Capacity, LLC – John Powell, Corporate Representative, 9539 Mullin Rd., Arrington, Tennessee, 37014, and William H. Novak, Expert Witness, WHN Consulting, 19 Morning Arbor Place, The Woodlands, Texas 77381.

During the Hearing, Mr. Novak ratified, then summarized his pre-filed testimony and was subject to questioning before the panel. There were no intervening parties to the proceeding. 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*, King's Chapel has asked the Commission for approval of alternative financial security under TPUC Rule 1220-04-13-.07(5). The Commission finds as follows:

The primary goal of the Commission's financial security rule for public wastewater utilities is to ensure that sufficient funds are available in the event that a wastewater system fails or becomes insolvent. Although the amount of the alternative financial security proposed by the

Company equals approximately 50% of the Company's gross annual revenues, the amount of the bond is sufficient and acceptable in this case and granting the *Petition* is in the public interest.⁵

IT IS THEREFORE ORDERED THAT:

1. The *Petition of King's Chapel Capacity, LLC to Post Alternative Financial Security* filed on April 26, 2017 by King's Chapel Capacity, LLC is approved.

2. The amount of alternative financial security amount of a \$36,000 bond proposed by King's Chapel Capacity, LLC is approved.

3. 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.

4. 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.

Vice Chairman Robin L. Morrison, Commissioner Kenneth C. Hill and Commissioner Keith Jordan concur.

ATTEST:



Earl R. Taylor, Executive Director

⁵ As the *Petition* did not include a proposed bond, the panel did not address whether a proposed bond complied with a form acceptable to the Commission pursuant to TPUC Rule 1220-04-13-.07(1).