

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

August 3, 2017

IN RE:

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

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DOCKET NO.
17-00034

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

This matter came before Chairman David F. Jones, Commissioner Herbert H. Hilliard and Commissioner Kenneth C. Hill of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, at a regularly scheduled Commission Conference held on July 10, 2017, to hear and consider the *Petition of Tennessee Wastewater Systems, Inc. to Post Alternative Financial Security* (“*Petition*”) filed on May 1, 2017.

BACKGROUND AND PETITION

On May 1, 2017, Tennessee Wastewater Systems, Inc. (“TWSI” or the “Company”) filed its *Petition* with the Commission seeking approval of the Company’s posting of alternative financial security of \$300,000. 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 TPUC, the Company’s annual revenue for 2016 was \$1,885,036.² The current bond amount in effect and previously approved by the

¹ *Petition*, p. 1 (May 1, 2017).

² *Id.*

Commission is approximately 66% of TWSI's gross annual revenue and its form differs somewhat from the exact form prescribed by TPUC Rule 1220-4-13-.08.³

Citing to proposed rules posted in a rulemaking proceeding in Commission Docket No. 16-00112, TWSI asserts that the amount of \$300,000 is adequate and reasonable because it would satisfy a "security in an amount of fifty percent (50%) of annual wastewater revenues in the most recent Annual Report or \$20,000, whichever is greater, with a cap of \$300,000," as has been proposed as a modification to TPUC Rule 1220-4-13-.07.⁴ The Company acknowledges that the proposed modifications to the waste water bond requirements are not yet in effect at this time; however, TWSI asserts the Commission should exercise its discretion under the present regulatory framework and approve the *Petition*.⁵ The Company is not asking to be treated under the proposed rules which are not in effect at this time.⁶ Furthermore, the Company states that approval of the *Petition* will save rate payers approximately \$1.00 a month.

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 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,

³ *In re: Petition of Tennessee Wastewater Systems Inc. to Post Alternative Financial Security*, Docket No. 16-00045, *Order Approving Petition*, p. 3 (August 8, 2016).

⁴ *Petition*, p. 2 (May 1, 2017).

⁵ Charles Hyatt, Pre-filed Direct Testimony, pp. 2-3 (May 1, 2017).

⁶ *Petition*, p. 3 (May 1, 2017).

whichever is greater. However, financial security in an alternative form to that 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 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 Authority Conference on July 10, 2017, as noticed by the Commission on June 30, 2017. 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 Commission for approval of alternative financial security under TPUC 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 Company's request to lower its financial security requirement to \$300,000 was in the public interest. The primary goal of


the Commission'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 TPUC 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 TPUC Rule 1220-04-13-.07. Accordingly, the panel voted unanimously to approve the Company's request for alternative financial security pursuant to TPUC 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 May 1, 2017 is granted.
2. 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.
3. 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, Commissioner Herbert H. Hilliard and Commissioner Kenneth C. Hill concur.

ATTEST:



Earl R. Taylor, Executive Director