

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION**

**NASHVILLE, TENNESSEE**

**January 24, 2019**

IN RE:	)	
	)	
PETITION OF OLD HICKORY WATER, LLC	)	DOCKET NO.
TO POST ALTERNATIVE FINANCIAL	)	18-00098
SECURITY	)	

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**ORDER APPROVING PETITION FOR ALTERNATIVE FINANCIAL SECURITY**

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This matter came before Chair Robin L. Morrison, Vice Chair Kenneth C. Hill and Commissioner David F. Jones of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, during the regularly scheduled Commission Conference held on December 17, 2018, for hearing and consideration of the *Petition for Approval of Alternative Financial Security* (“*Petition*”) filed on September 6, 2018.

**BACKGROUND AND PETITION**

Old Hickory Water, LLC (“Old Hickory” or the “Company”) is a wastewater utility that serves customers in Tennessee and is subject to the Commission’s jurisdiction. On September 6, 2018, Old Hickory filed its *Petition* with the Commission requesting the approval of a \$5,000 bond as alternative financial security. In its *Petition*, Old Hickory states that the Company’s current surety bond is in the amount of \$20,000 and was previously approved in TPUC Docket Nos. 12-00039, 14-00091, 15-00049, 16-00077 and 17-0006, which is more than 100% of wastewater revenue.<sup>1</sup> According to the Company’s most recent UD20 report

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<sup>1</sup> *Petition*, p. 1 (September 6, 2018).

filed with the Commission, the Company's annual revenue for 2017 was \$71,512.32 of which \$2,022.10 constituted wastewater revenue.<sup>2</sup> Along with its *Petition*, the Company pre-filed direct testimony of Justin Noah, General Manager for Old Hickory Water, LLC. Mr. Noah stated in his pre-filed testimony that the amount of the bond is adequate because the Company has been operating the utility since acquisition in 2011 without any financial problems, and the customers have been served continuously without any rate increases.<sup>3</sup> Mr. Noah testified that the \$5,000 bond is more than 200% of the annual wastewater revenue of \$2,022 for 2017, and the proposed security amount along with the financial stability of Old Hickory is more than ample security to cover the wastewater revenues.<sup>4</sup>

Mr. Noah further testified that Old Hickory purchases its water supply from the City of Maynardville, and resells it to the customers of Old Hickory. This greatly reduces the expenses needed to operate a water and wastewater facility, it also assures that there will be a steady supply of water. Another example of why the proposed alternative financial security is valid.<sup>5</sup>

#### **STANDARD FOR COMMISSION APPROVAL**

Tenn. Code Ann. § 65-4-201(e) (2017) provides:

The commission 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 commission 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

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<sup>2</sup> *Id.*

<sup>3</sup> Justin Noah, Pre-Filed Direct Testimony, pp. 3-4 (September 6, 2018).

<sup>4</sup> *Id.* at 3-4.

<sup>5</sup> *Id.* at 3-4.

\$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 Commission 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 Commission.

### **THE HEARING**

The Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on December 17, 2018, as noticed by the Commission on December 7, 2018. On December 13, 2018, the Hearing Officer in this matter issued an order authorizing the Company witness to participate in the hearing electronically.<sup>6</sup> Participating in the Hearing was:

Old Hickory Water, LLC – H. LaDon Baltimore, Esq., Farris Bobango, PLC, 414 Union Street, Suite 1105, Nashville, Tennessee 37219.

The general manager of the Company, Justin Noah, provided testimony telephonically following the taking of an oath in the presence of a notary. During the Hearing, Mr. Noah 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*, Old Hickory has asked the Commission for approval of a \$5,000 bond as alternative financial security. Based on a review and consideration of the pleadings, pre-filed

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<sup>6</sup> *Order Granting Electronic Participation in Hearing* (December 13, 2018).

testimony, and the entire administrative record, the panel made the following findings and conclusions:

The panel found that the Company's annual wastewater revenue reported was \$2,026; the Company's net operating income from wastewater operations in 2017 was \$1,701; the proposed \$5,000 financial security bond represents 247% of the Company's reported annual wastewater revenue; and the Company has continuously operated the wastewater system since 2011 without any requests for customer rate increases.

Further, the panel found that in these circumstances a \$5,000 bond would provide sufficient financial security to the Commission while maintaining the affordability of customer rates. Based on these findings, the panel concluded that good cause had been shown under TPUC Rule 1220-04-13-.07(8), to modify the Company's financial security requirement. Accordingly, the panel voted unanimously to approve Old Hickory's *Petition* for alternative financial security.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition for Approval of Alternative Financial Security* filed on September 6, 2018 by Old Hickory Water, LLC 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.

**Chair Robin L. Morrison, Vice Chair Kenneth C. Hill and Commissioner David F. Jones concur.**

**ATTEST:**



**Earl R. Taylor, Executive Director**