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November 3, 2006

Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Pkwy.
Nashville, TN 37243-0505

**Re: In re: King's Chapel Capacity's Petition for a Declaratory Ruling Regarding the
Assignment of Wastewater Service Territory to Private Utilities in Tennessee
Docket: 05-00062**

Dear Chairman Kyle:

Tennessee Wastewater Services, Inc. ("TWS") submits the following response to the letter from John Powell to the TRA dated October 30, 2006.

This docket is on the Authority's conference agenda schedule for November 6, 2006. The docket is on the agenda to be closed. Mr. Powell states that he opposes closing the docket and that "there has been no settlement in this docket between the parties and the issues in this docket are completely unrelated to TRA Docket 04-00335 and 05-00016 . . ."

Mr. Powell is incorrect. This matter was settled fifteen months ago. The parties' settlement agreement was filed with the Authority on July 25, 2005, in Docket No. 04-00335. The agreement mostly concerns the settlement of a Williamson County lawsuit between TWS and Mr. Powell's company, King's Chapel Capacity, Inc. but also settles "all matters that may exist between [the parties]." Agreement, p. 1. The settlement discusses the Williamson County case, then states as follows (at p. 4, emphasis added):

ANY COMPLAINT OR PROCEEDING brought by a party in any other forum shall be withdrawn by the party bringing such complaint or proceeding, if possible, subject to the faithful performance of the provisions herein by the parties hereto.

At the time of this agreement, there were three pending matters at the TRA concerning TWS and King's Chapel. Those dockets are 04-00335, 05-00016, and 05-00062. The first docket is the application of King's Chapel to provide wastewater service within the certificated area of TWS. The second docket is a complaint by King's Chapel against TWS alleging that TWS had abused the authority granted to it in the certificate which gave TWS the right to serve the area sought by King's Chapel. The third is a declaratory judgment petition which was filed by King's Chapel six weeks after the complaint and raises substantially similar issues.¹

¹ See letter to Charles Welch, attorney for King's Chapel, from TRA General Counsel Richard Collier, dated November 1, 2006, in Docket 05-00016, stating that the declaratory judgment petition is a "substantially similar case" to the complaint petition.

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At a status conference on July 21, 2005, in Docket 05-00062, the parties told the Hearing Officer that a pending settlement, which had not yet been finalized, would resolve all three pending dockets, including the declaratory judgment petition. Mr. Powell himself was present at the pre-hearing conference.

The Hearing Officer asked if the settlement covered all three dockets pending before the agency. As counsel for TWS, I said (transcript at 4), "That is my understanding of the drafts that I have seen, that it resolves all outstanding disputes between the parties and that would include the declaratory ruling and the complaint and the application." Mr. Charles Welch, counsel for King's Chapel in the complaint docket (05-000160) and co-counsel in the certificate application (04-00335) stated (at 4), "Well, I'm not the attorney of record in that docket [the declaratory judgment docket, 05-00062], but I'm assuming that it does, yes." Mr. Richard Militana, counsel for King's Chapel in Docket 05-00062 and co-counsel in Docket 04-00335, arrived a few minutes later. When we asked about the status of the settlement and a pending motion in the declaratory judgment docket, he told the Hearing Officer that the proposed settlement would resolve the declaratory judgment proceeding but asked to move forward on a preliminary motion in case the settlement was not finally approved. He said to the Hearing Officer, "I would proceed on the motion. We would anticipate that it's going to be settled. I don't think pen has been put to paper at this moment." Transcript, 9-10. The settlement was signed and filed with the TRA four days later.

In sum, the settlement agreement plainly states that all pending matters at the TRA are to be withdrawn and the transcript of the pre-hearing conference, which was held after the parties had exchanged drafts of the settlement but before it had been finalized, indicates that both sides believed that the proposed settlement, once signed, would resolve all three dockets, including the petition for a declaratory ruling.

For those reasons, the TRA should proceed to close this docket.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker

HW/djc

cc: Mr. John Powell