BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

September 19, 2005

IN RE: Rulemaking for the Regulation of Wastewater Companies) Docket No.: 05-00105

COMMENTS OF TENNESSEE WASTEWATER SYSTEMS, INC.

Tennessee Wastewater Systems, Inc. ("TWS") submits the following comments on the proposed wastewater rules.

1. Rule 1220-4-13-.08(1)

This proposed rule states that "title to all physical assets" of the utility "shall not be subject to any liens, judgments or encumbrances." The rule would apparently prohibit a wastewater utility from pledging its assets as collateral for a loan in order, for example, to construct, expand, or repair the utility's wastewater system. Such an absolute prohibition would, in some cases, prevent a wastewater utility from being able to undertake a construction or repair project. There is no such restriction imposed on other types of public utilities, and it is doubtful whether the TRA even has the power to prohibit such a common and necessary financial practice. State law already requires that a regulated utility obtain the permission of the TRA before issuing "bonds, debentures, or other evidences of indebtedness," T.C.A. §65-4-109, allowing the agency to review each instance in which a utility pledges its assets as collateral for a significant loan ("payable in more than on year"). A blanket rule disapproving all debt issues would appear inconsistent with the purpose of the statute and the TRA's responsibility to consider such financing proposals individually.

This rule should be eliminated altogether. In the alternative, the language "except as approved by the Authority pursuant to T.C.A. §65-4-109" should be added to the rule.

2. Rule 1220-4-13-.07

This proposed rule requires each wastewater utility to furnish "acceptable financial security" to the Authority and establishes a formula to calculate the amount of that security based on the utility's actual or projected gross annual revenue. Although the rule contains a provision allowing a utility to propose an amount "other than that" produced by the formula, the rule contains no provision for a minimum bond. Under the formula, a new company planning to build a residential system would initially only be required to post a bond of as little as a few hundred dollars, far less than the amount needed to protect future customers.

TWS believes that there should be a minimum bond requirement of $100,000. In the context of the cost of constructing and maintaining a regulated wastewater system, a $100,000 bond is a relatively modest amount. In the unlikely event that a utility cannot make that requirement, the proposed rule already allows the company to ask the Authority to accept a smaller amount in appropriate cases.

3. Rule 1220-4-13-.07(8)

This rule states, in part, "Reserve/escrow accounts established by the public wastewater utility to pay for non-routine operation and maintenance expenses shall . . ." TWS believes that the meaning and purpose of an "escrow account" are well understood in regulatory accounting and that the language in the proposed rule, i.e., "to pay for non-routine operation and maintenance," may generate confusion.[1] TWS therefore suggests that the words "to pay for non-

[1] For example, is the anticipated replacement of a pump a "routine" or "non-routine" expense?

routine operation and maintenance expenses" be omitted from the rule and that the TRA rely instead on the meaning of an "escrow account" as used in regulatory accounting.

4. Rule 1220-4-13-.06(3)

This proposed rule establishes a presumption that every wastewater will actually construct facilities and offer service throughout its service area within two years, whether or not there is a need for service in all parts of the area. TWS submits that this one-size-fits-all presumption is poor public policy and not in the best interest of consumers.

The apparent purpose of the rule is to keep service areas small, restricting them to areas where development is eminent, and to give developers more influence in the selection of a wastewater utility, allowing them to choose among multiple, potential providers. TWS believes that such a policy will typically result in the developer choosing a wastewater company based solely on price, not on which company can best serve the area and not on the criteria the Authority considers when granting a certificate.

To the extent any time limits are appropriate, the Authority should consider them only on a going-forward and case-by-case basis, as contemplated by T.C.A. §65-4-202. (The Authority may "attach to . . . the certificate such terms and conditions as to time" and may revoke the certificate for failure to provide service "within the time fixed" by the agency.) This statute allows the Authority to set time limits on a prospective basis in light of the circumstances of each application. Handling these cases individually would also allow the Authority to give substantial deference to local officials in deciding whether to impose restrictions on a certificate.

Although TWS opposes any rule imposing time limits, TWS suggest that if the Authority enacts such a rule, (1) it only apply to future applications, (2) the language "to the area" contained in the first sentence be changed to "in the area," and (3) the following phrase be added

to the next-to-last sentence: "unless the wastewater utility can demonstrate that, based on the circumstances of a particular case, there should be no change in the certificated area."

Respectfully submitted,

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