

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 21, 2007

IN RE:

**PETITION FOR APPROVAL OF TENNESSEE
WASTEWATER SYSTEMS, INC. TO EXPAND
ITS SERVICE AREA TO INCLUDE A PORTION
OF FENTRESS COUNTY, TENNESSEE, KNOWN
AS FENTRESS COUNTY SERVICE AREA**

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**DOCKET NO.
05-00162**

**ORDER APPROVING PETITION TO AMEND
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

This matter came before Chairman Ron Jones, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, as part of the Hearing Calendar on February 21, 2006 to consider the *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity* (the “*Petition*”) requesting that the Authority expand the service area of Tennessee Wastewater Systems, Inc. to include a portion of Fentress County, Tennessee known as Fentress County Service Area. After hearing testimony from witnesses and considering the record in this matter, the panel voted unanimously to approve the *Petition*.

Background

On April 6, 1994, Tennessee Wastewater Systems, Inc.¹ (“TWS” or “Company”) received a Certificate of Public Convenience and Necessity (“CCN”) in Docket No. 93-09040 from the Tennessee Public Service Commission to provide wastewater service to the Oakwood

¹ Tennessee Wastewater Systems, Inc. was formerly known as On-Site Systems, Inc. This name change was effected by the TRA’s order of February 19, 2004 in Docket No. 03-00518.

Subdivision in Maury County. Since that time, through various other dockets, the Company has been granted approval to expand its service territory to include other areas in Tennessee. The Company's principal office is located in Nashville, Tennessee.

Legal Standard for Granting Certificate of Public Convenience and Necessity

No public utility is permitted to begin construction or operation of a new utility facility or service before obtaining approval of the Authority. The procedure for obtaining a CCN evidencing such approval is set forth in Tenn. Code Ann. § 65-4-201(a) (Supp. 2005), which states, in part, as follows:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate. . . .

The Authority promulgated public necessity wastewater rules effective December 29, 2005 through June 12, 2006. TRA Rule 1220-4-13-.04(b) set forth certain requirements for a CCN applicant as follows:

(b) Any public wastewater utility requesting a Certificate of Public Convenience and Necessity (CCN) authorizing such public utility to construct and/or operate a wastewater system or to expand the area in which such a system is operated, shall file an application in compliance with Rule 1220-1-1-.03 and this rule. All applicants shall demonstrate to the Authority that they are registered with the Secretary of State, have obtained the financial security required under 1220-4-13-.07, and possess sufficient managerial, financial, and technical abilities to provide the wastewater services for which they have applied. Each application shall justify existing public need and include the required financial security consistent with Tenn. Code Ann. § 65-4-201 and these rules.

The *Petition*

On June 10, 2005, TWS filed its *Petition* requesting to expand its existing service territory within Fentress County. The Fentress County Service Area encompasses a large portion of Fentress County. By the amendment, TWS proposes to serve only a portion of the requested area initially through two treatment facilities, the Clarkrange system and the Highlands area system. The *Petition* also states that additional facilities will be constructed for other systems within the service area as needed.² Charles Pickney, Jr., President of TWS, submitted pre-filed testimony in this Docket on July 25, 2005. Mr. Pickney testified that the two systems together will be initially constructed to serve approximately 1,500 homes, an industrial park and several commercial properties.³ TWS indicates that the Highland system should take about three months to build and the Clarkrange system will be completed within four months.⁴

TWS states that a Tennessee Department of Environment and Conservation (“TDEC”) permit is provided for a specific collection and disposal system and that TDEC will not issue a permit for the entire Fentress County Service Area. Therefore, TWS filed with TDEC seeking two permits for specific wastewater systems within the Fentress County Service Area (one for the Highlands system and one for the Clarkrange system). TWS did not provide the TRA with a copy of the final permit or copies of plans for the Highlands System but stated that it had applied for a permit for the Clarkrange territory. At that time, however, a permit number had not been received and no contracts had been signed.

With its *Petition*, TWS submitted letters from the Fentress County Utility District, the Mayor of the City of Jamestown, the Mayor of the City of Allardt and the Mayor of Fentress County, all of whom stated that they do not provide sewer service nor do they intend to service

² *Data Response*, No. 13, p. 3 (July 25, 2005).

³ *Data Response*, No. 10, attached as *Pre-filed Direct Testimony of Charles Pickney, Jr.*, p. 2 (July 25, 2005).

⁴ *Petition*, p. 1 (June 10, 2005).

the Clarkrange area.⁵ In addition, TWS provided a letter from the Mayor of Fentress County verifying a need for service around the Big South Fork National River and Recreation Area which is the location of the proposed Highlands system.⁶ TWS also provided a copy of a letter of clarification which stated that Fentress County had no other means of providing wastewater service to the entire Fentress County Service Area and recommending TWS as the provider of the needed wastewater service.⁷

The February 21, 2006 Hearing

Pursuant to Tenn. Code Ann. § 65-4-201(a) (Supp. 2005), public notice of the Hearing in this matter was issued by the Hearing Officer on February 1, 2006. No person sought intervention prior to or during the Hearing. At the Hearing held on February 21, 2006, TWS was represented by Henry Walker, Esq. of Boulton, Cummings, Conners & Berry, PLC. TWS presented live testimony from three witnesses: John B. Mullinix, the County Executive for Fentress County, Charles Pickney, Jr., TWS President, and State Representative John Mark Windle. During the Hearing, the panel took administrative notice of TWS's 2004 annual report filed with the Authority.

Mr. Mullinix testified regarding the economic conditions in Fentress County and the need for a wastewater treatment system to attract business and commercial concerns to the area. Mr. Mullinix described Fentress County as a very rural area in northern Middle Tennessee with a high unemployment rate. Currently, there is an industrial park in the Jamestown area which was constructed to attract new industry. With development taking place in several different areas of Fentress County, Mr. Mullinix considered the TWS system "to be something that really fit into our rural area, not only the industrial park but they could also work in some of these residential

⁵ *Id.*, see Exhibits to *Petition*.

⁶ Letter from John B. Mullinix to Charles Pickney (May 26, 2005).

⁷ Letter from John B. Mullinix to Charles Pickney (October 21, 2005).

developments that's occurring all across that – our county.”⁸ According to Mr. Mullinix, the establishment of the TWS sewer system in the Clarkrange area “. . . will take care of the industrial park and the residential areas that will provide economic growth and jobs for our area.”⁹

Mr. Pickney presented testimony and was subject to examination by the panel. Mr. Pickney's Pre-Filed Testimony, which was entered into the record in this matter, demonstrates that the Company has the managerial, technical and financial ability to provide wastewater services to the Fentress County Service Area.¹⁰ Mr. Pickney testified that the two initial treatment systems will serve approximately 1,500 residential customers and the industrial park, with approximately 50 commercial customers.¹¹ Mr. Pickney testified that the initial capacity to be created in the two systems – Clarkrange and Highlands – should serve around ten years and that it is the intent of TWS to provide service anywhere in the east part of the county.¹²

Representative Windle sent a letter to the TRA expressing support for the *Petition* of TWS.¹³ During the Hearing, Representative Windle testified to the importance of TWS's presence to the economic development of Fentress County and the potential impact this wastewater system could have on the future of Fentress County.¹⁴

Charles Welch, Esq. spoke against the granting of the *Petition*, as a member of the public, saying such a grant would be inconsistent with the TRA's decision in the On-Site case¹⁵ and with the concept of site-specific systems. Mr. Welch stated that a certificate where the provider has

⁸ Transcript of Hearing at 8-9 (February 21, 2006).

⁹ *Id.* at 9.

¹⁰ Charles Pickney, Jr., Pre-Filed Testimony, p. 1 (October 20, 2005).

¹¹ Transcript at 16.

¹² *Id.* at 17.

¹³ Letter from Representative John Mark Windle to Director Sara Kyle (February 1, 2006).

¹⁴ Transcript at 20-22.

¹⁵ *Petition of On-Site Systems, Inc. to Expand Its Service Area to Include an Area Known as Sevier County*, TRA Docket No. 03-00329.

the “right of first refusal” could inhibit competition and asked the County and the TRA to move cautiously with this application.¹⁶

At the conclusion of the hearing, the panel found that TWS had met the requirements of Tenn. Code Ann. § 65-4-201 and TRA Rule 1220-4-13-.04(b), except that the Company was given until March 13, 2006 to file the financial security required by TRA Rule 1220-4-13-.07. The panel also found that the rates filed by TWS were identical to those rates previously filed by the Company.

Based upon the evidentiary and administrative record as a whole and relying on the legal standards set forth in Tenn. Code Ann. § 65-4-201(a) (Supp. 2005), the panel voted unanimously to grant approval of the *Petition*, conditioned upon the filing by TWS of the financial security required by TRA Rule 1220-4-13-.07 by March 13, 2006, and stated that approval of this *Petition* is consistent with and not in contradiction to the policies and decisions of the TRA in granting approval of Certificates of Public Convenience and Necessity to Tennessee Wastewater Systems, Inc. in previous dockets.¹⁷ Further, the panel unanimously approved the rates filed by the Company.

IT IS THEREFORE ORDERED THAT:

1. The *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity* to expand its service area to include a certain area within Fentress County, Tennessee, known as the Fentress County Service Area as shown in the map attached to

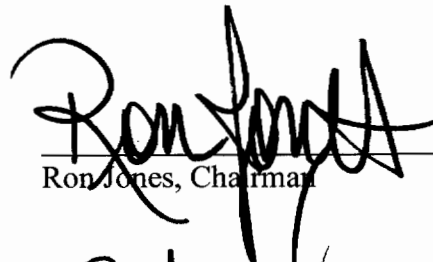
¹⁶ Transcript of Hearing Calendar, p. 23 (February 21, 2006).

¹⁷ In previous dockets in which CCNs were granted to TWS, the Authority granted approval of the CCN subject to receipt of a final approved permit from TDEC evidencing TDEC approval of the Company’s application to provide service to the requested area. TWS was also ordered to notify the Authority in writing upon receipt of an operating permit from TDEC. See TRA Docket Nos. 05-00070, 05-00116, 05-00117, 05-00138 and 05-00145.

the *Petition*, is approved subject to the Company filing the financial security required by TRA Rule 1220-4-13-.07 by March 13, 2006.¹⁸

2. Tennessee Wastewater Systems, Inc. shall provide written notification to the Authority once it has received a final approved permit evidencing the Tennessee Department of Environment and Conservation's approval of Tennessee Wastewater Systems, Inc.'s application to provide service to the Clarkrange territory and the Highlands area of Fentress County, Tennessee know as Fentress County Service Area.¹⁹

3. The rates of Tennessee Wastewater Systems, Inc. for wastewater service to the Fentress County Service Area shall be as listed in the Tariff and rate schedules filed with the *Petition*.



Ron Jones, Chairman



Pat Miller, Director



Sara Kyle, Director

¹⁸ On April 4, 2006, Tennessee Wastewater Systems, Inc. filed a letter of credit with the TRA in compliance with the Authority's decision in TRA Docket No. 06-00053, *Petition of Tennessee Wastewater Systems, Inc. to Consider Financial Security Pursuant to TRA Rule 1220-4-13-.07*.

¹⁹ Notwithstanding this requirement, no permits have been filed as of the date of entry of this Order. On June 21, 2007, in response to an inquiry from the Authority, TWS stated that the TDEC permits for the Fentress County Service Area were "pending."