

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	April 4, 2006)	
)	
PETITION FOR APPROVAL OF TENNESSEE)	DOCKET NO.
WASTEWATER SYSTEMS, INC, TO EXPAND)	05-00211
ITS SERVICE AREA TO INCLUDE A PORTION)	
OF SEVIER COUNTY, TENNESSEE, KNOWN)	
AS ELK SPRINGS RESORT)	

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

This matter came before Chairman Ron Jones, Director Deborah Taylor Tate 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 heard on October 17, 2005 to consider the *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity* (the "*Petition*") requesting that the Authority expand its service area to include a portion of Sevier County, Tennessee known as Elk Springs Resort.

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 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.

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.

TWS filed the *Petition* in this matter on August 2, 2005. The Authority issued a Data Request on September 13, 2005. TWS provided a response to the Data Request in a timely manner. TWS filed the Pre-filed Direct Testimony of Charles Pickney, Jr. on September 20, 2005.

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) (2004), which states 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 *Petition*

On August 2, 2005, TWS filed the *Petition* requesting that its service area be expanded to include a portion of Sevier County, Tennessee known as the Elk Springs Resort. According to the *Petition*, the Company initially seeks to provide service to approximately 150 commercial rental homes. However, the *Petition* states that some of the lots may be sold as residential. Therefore, TWS filed both commercial and residential sewer rates with the *Petition*.² TWS also attached a letter from the developer expressing its desire that TWS provide service to the property. In addition, TWS attached letters from other potential wastewater service providers stating that none of the potential providers currently serves the area or intends to extend wastewater service to Elk Springs Resort.³ The Company also attached a service area map showing the proposed location of Elk Springs Resort.

² TWS filed with the *Petition* a Tariff Sheet with commercial sewer rates and a billing summary listing the Company's residential customers and indicating that the residential rate will be \$35.11

³ See *Petition* (unnumbered attachments) (August 2, 2005): Letter from Ken L. Maples, Assistant County Mayor, Sevier County, to Michael Hines, Vice-President, Tennessee Wastewater Systems, Inc. (July 11, 2005); Letter from Cindy Cameron Ogle, City Manager, City of Gatlinburg, to Michael Hines, Vice-President, Tennessee Wastewater Systems, Inc. (June 24, 2005).

The October 17, 2005 Hearing

Pursuant to Tenn. Code Ann. § 65-4-201(a) (2004), public notice of the Hearing in this matter was issued by the Hearing Officer on September 27, 2005. No person sought intervention prior to or during the Hearing. During the Hearing held on October 17, 2005, Mr. Charles Pickney, President of TWS, participated, presented testimony and was subject to examination by the panel. Mr. Pickney's Pre-Filed Testimony was entered into the record in this matter. The Pre-Filed Testimony states that the Company has the managerial, technical and financial ability to provide wastewater services to Elk Springs Resort.⁴ Additionally, the panel took administrative notice of TWS's 2004 annual report filed with the Authority. At the time of the Hearing, TWS had not yet received a final approved permit from the Tennessee Department of Environment and Conservation ("TDEC") for the system.

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) (2004), the panel found that the petitioner has met the requirements established by the agency and § 65-4-201, but has not received a permit from TDEC.⁵ The panel further found that TWS has filed rates identical to those previously approved by this agency. Therefore, the panel voted unanimously to grant approval of the *Petition* subject to receipt of a final approved permit from TDEC evidencing its approval of the Company's application to provide service to Elk Springs Resort. The panel also ordered that TWS notify the Authority in writing at the time it receives a permit from TDEC for Elk Springs Resort.

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 Elk Springs Resort in Sevier County,

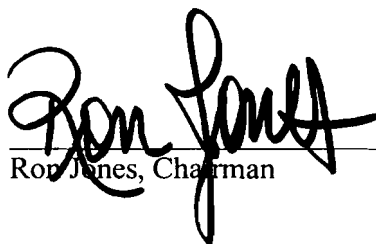
⁴ Charles Pickney, Jr., Pre-Filed Testimony, p. 1 (September 20, 2005).

⁵ Director Kyle voted to grant the CCN after applying the standards set forth in Tenn. Code Ann. § 65-4-201. She disagrees with the statement that requirements other than Tenn. Code Ann. § 65-4-201 have been established by the TRA and disagrees with the finding that standards other than those established by statute or promulgated by Authority rule should be used to evaluate the *Petition*.

Tennessee, as shown in the map attached to the *Petition* is approved subject to receipt of a final approved permit from the Tennessee Department of Environment and Conservation.

2. The Petitioner's rates for wastewater service shall be as listed in the Tariff and rate schedules filed with the *Petition*.

3. 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 Elk Springs Resort in Sevier County, Tennessee.



Ron Jones, Chairman

Deborah Taylor Tate, Director⁶



Sara Kyle, Director

⁶ Director Tate voted in agreement with the motion made by Chairman Jones but resigned her position as director before the issuance of this order.