

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:	August 29, 2006)	
)	
PETITION FOR APPROVAL OF TENNESSEE)	DOCKET NO.
WASTEWATER SYSTEMS, INC. TO EXPAND)	06-00104
ITS SERVICE AREA TO INCLUDE A PORTION)	
OF SEVIER COUNTY, TENNESSEE, KNOWN)	
AS HAPPY CREEK)	

ORDER APPROVING PETITION TO AMEND
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

This matter came before Chairman Sara Kyle, Director Eddie Roberson and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a Hearing held on July 10, 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 its service area to include a portion of Sevier County, Tennessee known as Happy Creek.

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. TWS filed the *Petition* in this matter, along with the Pre-filed Direct Testimony of Charles Pickney, Jr., on April 17, 2006. A

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.

revised Pre-filed Direct Testimony of Charles Pickney, Jr. was filed along with TWS Data Responses on May 31, 2006.

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 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 rules for wastewater, effective December 29, 2005 through June 12, 2006. The permanent TRA Rule 1220-4-13-.04(b) became effective on June 12, 2006. TRA Rule 1220-4-13-.04(b) sets 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 April 17, 2006, TWS filed the *Petition* requesting that its service area be expanded to include a portion of Sevier County, Tennessee known as Happy Creek. The approximate acreage is 202. According to its Data Responses filed May 31, 2006, the Company seeks to provide service to approximately 17 residential and 16 commercial lots. TWS filed both commercial and residential sewer rates with the *Petition*.² Also in its *Petition*, TWS attached a letter from the developer, Keith L. Hailes, expressing his desire that TWS provide service to the parcel. 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 Happy Creek.³ The Company also attached a service area map showing the location of Happy Creek.

The July 10, 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 June 28, 2006. No person sought intervention prior to or during the Hearing. During the Hearing held on July 10, 2006, Mr. Charles Pickney, Jr., President of TWS, participated, presented testimony and was subject to examination by the panel. Mr. Pickney testified that TWS has filed an application for the required permit with the Tennessee Department of Environment and Conservation (TDEC), and that approval for the permit is currently pending.⁴ 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 Happy Creek.⁵ Additionally, the panel took

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 monthly residential rate will be \$35.11.

³ See *Petition* (unnumbered attachments) (April 17, 2006): Letter from Larry Waters, County Mayor of Sevier County, Tennessee (March 24, 2006); Letter from Cindy C. Ogle, City Manager of the City of Gatlinburg, Tennessee, to Michael Hines (March 24, 2006).

⁴ See *Transcript of Authority Conference*, July 10, 2006, Testimony of Charles Pickney, Jr., President of TWS, p. 39.

⁵ Charles Pickney, Jr., Pre-Filed Testimony, p. 1 (April 17, 2006).

administrative notice of TWS's 2005 annual report filed with the Authority.

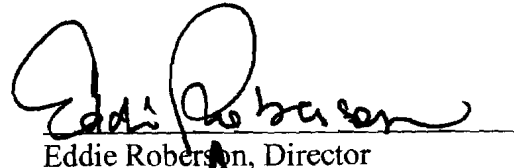
The panel found that TWS had met the requirements of Tenn. Code Ann. § 65-4-201(a) (Supp. 2005) and TRA Rule 1220-4-13-.04(b). The panel also found that the rates filed by TWS were identical to those rates previously filed by the Company.

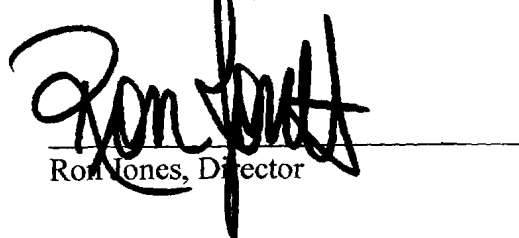
Based upon the evidentiary and administrative record as a whole and relying on the standards set forth in Tenn. Code Ann. § 65-4-201(a) (Supp. 2005) and TRA Rule 1220-4-13-.04(b), the panel voted unanimously to grant approval of the *Petition*. Further, the panel unanimously approved the rates filed 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 Happy Creek in Sevier County, Tennessee, as shown in the map attached to the *Petition*, is approved.
2. The Petitioner's rates for wastewater service shall be as listed in the Tariff and rate schedules filed with the *Petition*.


Sara Kyle, Chairman


Eddie Roberson, Director


Ron Jones, Director