

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 23, 2007

IN RE:

PETITION OF INTEGRATED RESOURCE  
MANAGEMENT UTILITY, INC. TO AMEND  
ITS CERTIFICATE OF CONVENIENCE AND  
NECESSITY

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DOCKET NO. 06-00156

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ORDER APPROVING PETITION TO AMEND  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

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This matter came before Director Eddie Roberson, Director Pat Miller, 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 August 23, 2006, to consider the *Petition of Integrated Resource Management Utility, Inc. to Amend its Certificate of Convenience and Necessity* (the “*Petition*”) requesting that the Authority amend its service area to include a portion of Sevier County, Tennessee known as Mountain Shangrila Subdivision.

**Background**

On November 10, 2003, Integrated Resource Management Utility, Inc. d/b/a IRM Utility, Inc. (“IRM”) received a certificate of public convenience and necessity (“CCN”) in Docket No. 03-00467 to provide sewer service to two (2) customers in Sevier County, Tennessee.<sup>1</sup> Since that time, through various other dockets, IRM has been granted approval to expand its service territory to include other areas of Tennessee.

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<sup>1</sup> See *In re: Application of Integrated Resource Management Utility, Inc. for a Certificate of Public Convenience and Necessity to Provide Wastewater Systems Services*, Docket No. 03-00467, *Order Approving Application for a Certificate of Public Convenience and Necessity, Tariff and Special Contract* (March 16, 2004).

On June 14, 2006, IRM filed its *Petition*, along with the Pre-filed Direct Testimony of Jeffery W. Cox, Sr.<sup>2</sup>, to expand its service area to include a portion of Sevier County, Tennessee known as Mountain Shangrila Subdivision. The Authority issued Data Requests on July 19, 2006. IRM provided responses to those Data Requests, and filed Revised Pre-Filed Direct Testimony of Jeffery W. Cox, Sr., on August 3, 2006. A *Notice of Hearing* was issued on August 10, 2006, noticing that the voting panel assigned to this docket would conduct a Hearing and deliberate the merits of the *Petition* on Wednesday, August 23, 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:

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<sup>2</sup> See *Petition, Exhibit F* (June 14, 2006).

(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**

In the *Petition*, IRM requests an expansion of its authorized service area to include a portion of Sevier County, Tennessee known as Mountain Shangrila Subdivision. A map showing the area to which IRM proposes to extend its service is attached to the *Petition*.<sup>3</sup> The system will be designed and constructed to serve a total of thirty-one (31) cabins, fourteen (14) residential and seventeen (17) commercial cabins on approximately 48.5 acres, or approximately sixteen thousand (16,000) gallons per day.<sup>4</sup>

Also in its *Petition*, IRM states that the City of Pigeon Forge and Sevier County have no desire to own, operate or provide wastewater treatment services to the area. In support of its contention, IRM attached a letter dated October 4, 2005 from Ms. Earlene M. Teaster, City Manager of the City of Pigeon Forge, advising that the City of Pigeon Forge has no plans to extend service to this area located outside of the City or Gnatty Branch.<sup>5</sup> In addition, IRM attached a letter dated December 2, 2005 from Mr. Larry Waters, County Mayor of Sevier County, affirming that the Sevier County Commission and Water/Sewer Committee does not intend to provide sewer service to Mountain Shangrila Subdivision (a.k.a., the Merritt Property on Gnatty Branch Road) within the next twelve (12) months of the date of the letter.<sup>6</sup>

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<sup>3</sup> See *Petition, Exhibit A* (June 14, 2006).

<sup>4</sup> See *Responses to Tennessee Regulatory Authority's Data Requests*, p. 2 (August 3, 2006).

<sup>5</sup> See *Petition, Exhibit B* (June 14, 2006).

<sup>6</sup> See *Petition, Exhibit C* (June 14, 2006).

In accordance with Authority Rule 1220-4-13-.04(b), the Authority received a Corporate Surety Bond from Great American Insurance Company in the amount of twenty thousand (\$20,000.00) dollars which lists IRM as the applicant and the Authority as the beneficiary.<sup>7</sup> Additionally, IRM filed a utility agreement between the owner/developer, Dudley Creek Development, LLC and Martin T. Merritt and IRM, requesting IRM to be the provider of sewer service to Mountain Shangrila Subdivision.<sup>8</sup> Finally, IRM proposes to charge identical rates in Mountain Shangrila subdivision to those previously approved by the Authority in other areas served by IRM.<sup>9</sup>

### **The August 23, 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 August 10, 2006. No persons sought intervention prior to or during the Hearing. At the Hearing held on August 23, 2006, Mr. Jeffrey Cox, President of IRM, participated in the Hearing, presented testimony and was subject to examination by the panel assigned to this docket. Charles B. Welch, Jr., Esq. of Farris, Matthews, Branan, Bobango, Hellen & Dunlap, PLC, 618 Church Street, Suite 300, Nashville, Tennessee 37219, appeared on behalf of IRM. Based upon the presentation of IRM's proof and consideration of the evidentiary record as a whole, the panel found that IRM had met the requirements of Tenn. Code Ann. § 65-4-201(a) (Supp. 2005) for the grant of a decentralized wastewater service CCN and that the proposed rates were the same as rates previously approved for IRM. In addition, the panel found that IRM had received a state operating permit from the

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<sup>7</sup> See *Petition, Exhibit D* (June 14, 2006).

<sup>8</sup> See *Petition, Exhibit E* (June 14, 2006).

<sup>9</sup> See *Petition, Exhibit G* (June 14, 2006), *Commercial Rate Sheet and Territory Summary*. The residential rate of \$35.11 per month will apply unless the owner rents the unit to the public for any portion of the year. If that occurs, the commercial rate will apply and be determined according to IRM's approved tariff rate sheet, based on total projected gallons per day.

Tennessee Department of Environment and Conservation.<sup>10</sup> Additionally, the panel took administrative notice of IRM's 2005 annual report filed with the Authority. Therefore, applying the standard set forth in Tenn. Code Ann. § 65-4-201(a) (Supp. 2005), the panel voted unanimously to approve IRM's *Petition*.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition of Integrated Resource Management Utility, Inc. to Amend its Certificate of Convenience and Necessity* to expand its service area to include a portion of Sevier County, Tennessee known as Mountain Shangrila Subdivision, as shown in the map attached to the *Petition*, is approved.

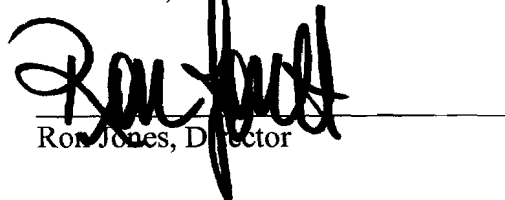
2. Integrated Resource Management Utility, Inc.'s rates for wastewater service for the Mountain Shangrila Subdivision shall be as filed in this docket.

3. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from the date of this Order.

4. Any party aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

  
Eddie Roberson, Director

  
Pat Miller, Director

  
Ron Jones, Director

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<sup>10</sup> A copy of the TDEC operating permit was submitted to the Authority at the hearing and was made part of the official record.