

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 24, 2007

IN RE:

PETITION OF TENNESSEE WASTEWATER SYSTEMS,  
INC. TO EXPAND ITS SERVICE AREA TO INCLUDE A  
PORTION OF MONTGOMERY COUNTY IN TENNESSEE,  
KNOWN AS EAST MONTGOMERY SERVICE AREA

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DOCKET NO.  
06-00184

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ORDER APPROVING PETITION TO AMEND  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

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This matter came before Chairman Sara Kyle, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at the Hearing held on March 12, 2007 to consider the *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity* (the “Petition”) requesting that the Authority approve expansion of its service area to include a portion of Montgomery County Tennessee, known as East Montgomery Service Area.

**Background**

On April 6, 1994, Tennessee Wastewater Systems, Inc.<sup>1</sup> (“TWS” or the “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

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<sup>1</sup> 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.

been granted approval to expand its service territory to include other areas in Tennessee. The Company's principal office is located in Nashville, Tennessee. On July 12, 2006, TWS filed the *Petition* in the present matter along with the Pre-filed Direct Testimony of Charles Pickney Jr.

**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. 2006), 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. . . .

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 July 12, 2006, TWS filed its *Petition* requesting that its service area be expanded to include a portion of Montgomery County, Tennessee, known as East Montgomery Service Area which includes Southridge Subdivision. The Authority approved TWS' Application to amend its Certificate of Convenience and Necessity to include the Southridge Subdivision in Montgomery County in Docket No. 97-01104. TWS currently provides the collection system to Southridge Subdivision and uses the City of Clarksville's treatment system. The *Petition* states that the residents of the Southridge subdivision have been burdened with high sewer bills as a result of rate increases by the City of Clarksville. TWS now seeks to expand its current service territory to include the service area comprised of the East Montgomery Utility District, construct a treatment system and disconnect Southridge Subdivision from the City of Clarksville treatment system.

TWS is proposing to build an initial system comprising of a deep cell lagoon and drip irrigation treatment to serve the 219 lots in Southridge Subdivision. This facility will be owned and operated by TWS as part of a system of decentralized facilities in Montgomery County. TWS has provided a copy of its long term lease for property in Montgomery County for constructing the wastewater treatment system and states that other systems, most likely fixed film bioreactors, will be built to meet the needs in the East Montgomery Service Area that are not close to the lagoon. The residential sewer rate tariff for fixed film treatment will apply in these areas.

TWS states that the force main that runs to the City of Clarksville will be disconnected and a new force main will be run to the proposed lagoon. Total construction cost is estimated at \$750,000. The estimated cost of the lagoon treatment system is \$254,000 and the cost estimate to design and construct the force main is \$496,000. TWS expects a contribution from the

Developer, Comperry Development, within the first year and will then secure the remainder of the funding via a bank loan.

The City of Clarksville currently bills TWS for the treatment system costs based on water usage and TWS bills the customer for the collection and pass-thru treatment costs from the City of Clarksville. The *Petition* states that during 2005, the average monthly bill per customer was over \$70 per month. With TWS' proposed tariff, the monthly residential rate for those customers served by the lagoon treatment system will be considerably less once TWS begins providing service, and will go down even further when the loan to build the system is paid off. TWS proposes to charge rates identical to those previously approved by the Authority in East Montgomery County until the new system is built and it is able to unhook from the City of Clarksville. TWS further states that no municipal utility, utility district, private wastewater service or entity currently serves or is seeking to serve this area.

In support of its *Petition*, TWS provided a letter from the President of the East Montgomery Utility District stating that it does not intend to provide sewer service to the proposed East Montgomery Service Area. A letter from the City of Clarksville, stating that it has no objection to TWS providing sewer service for the express purpose of removing Southridge subdivision from Clarksville's system, was also provided.

In spite of the foregoing, on August 15, 2006, the Authority received a letter from Montgomery County Mayor, Mr. Douglas Weiland, requesting that this *Petition* not be approved. Mr. Weiland stated that the Montgomery County Board would hold a hearing to determine what needed to be done in the best interest of all county residents. On September 19, 2006, however, the Authority received a letter from the newly elected County Mayor, Carolyn Bowers, requesting that the Authority approve TWS' *Petition* and stating that the County intends to work with TWS to take steps to establish a public Wastewater Regulatory Authority ("WRA").

In response to a data request issued by the Authority, TWS filed a response dated October 10, 2006 with a copy to the County Mayor, stating that TWS intends to finance, build, own and operate the proposed wastewater system and will enter into negotiations with the WRA, should the County establish a WRA. The Company filed a service area map showing the location of Southridge and East Montgomery Service Area with its *Petition*. TWS also states that a site for the treatment system was secured in 2004 and Tennessee Department of Environment and Conservation (“TDEC”) has approved a facility at that site (Permit Number SOP-02014). The Company expects that the system should be completed approximately eight months after receiving all required approvals.

#### **The March 12, 2007 Hearing**

Public notice of the Hearing in this matter was issued by the Hearing Officer on February 28, 2007 pursuant to Tenn. Code Ann. § 65-4-201(a) (Supp. 2006). No person sought intervention prior to or during the Hearing, which was held on March 12, 2007. Mr. Charles Pickney, President of TWS, participated in the Hearing, presented testimony and was subject to examination by the panel. Mr. Pickney’s Pre-Filed Testimony, which was entered into the record, states that the Company has the managerial, technical and financial ability to provide wastewater services to East Montgomery Service Area.<sup>2</sup> Additionally, the panel took administrative notice of TWS’s 2005 annual report filed with the Authority.

The panel found that the rates proposed by the company is just and reasonable because it is calculated by summing the existing approved rate and additional costs directly assignable to the provisioning of service to this area.

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. 2006) and TRA Rule 1220-4-13-

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<sup>2</sup> Charles Pickney Jr., Pre-Filed Testimony Pg. 16, (July 12, 2006).

.04(b), the panel voted unanimously to grant approval of the *Petition*, which includes 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 East Montgomery Service Area in Montgomery County, Tennessee, as shown in the map marked Exhibit "A" attached to the *Petition*, is approved.

2. The Petitioner's rates for wastewater service shall be as listed in the Amended Tariff and rate schedules filed with the Authority on March 8, 2007.

  
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Sara Kyle, Chairman  
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Pat Miller, Director  
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Ron Jones, Director