

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 5, 2006

IN RE:

PETITION OF TENNESSEE WASTEWATER SYSTEMS, INC.
TO AMEND ITS CCN TO EXPAND ITS SERVICE AREA TO
INCLUDE A PORTION OF SEVIER COUNTY IN TENNESSEE,
KNOWN AS PROVIDENCE HILLS

DOCKET NO.
06-00198

ORDER APPROVING PETITION TO AMEND
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

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 September 25, 2006 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 Sevier County, Tennessee, known as Providence Hills.

Background

On April 6, 1994, Tennessee Wastewater Systems, Inc.¹ (“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 been granted approval to expand its service territory to include other areas in Tennessee. The

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.

Company's principal office is located in Nashville, Tennessee. On August 3, 2006, TWS filed the *Petition* in the present matter, along with the Pre-filed Direct Testimony of Charles Pickney, Jr. On August 9, 2006, TWS filed a Revised Tariff which updated the Residential Sewer Rate Sheets filed with the *Petition* to reflect recent bonding pass-through amounts,² and on August 28, 2006, TWS filed a data response stating that TWS has not been the subject of any written complaints within the past twelve (12) months.

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 Public wastewater utilities, effective December 29, 2005 through June 12, 2006. The permanent wastewater rules became effective on June 12, 2006. TRA Rule 1220-4-13-.04(b) sets forth certain requirements for a CCN applicant as follows:

² The Revised Tariff listed residential sewer rates and a billing summary listing the Company's residential customers, which indicated that the monthly residential rate will be \$35.55.

(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 August 3, 2006, TWS filed its *Petition* requesting that its service area be expanded to include a portion of Sevier County, Tennessee, known as Providence Hills, which is located off Providence Road near Sevierville. TWS is proposing to provide wastewater service to approximately 90 residential lots and a small commercial store on approximately 32.7 acres of land requiring an estimated eighteen thousand (18,000) gallons per day. TWS states that no contracts have been signed at this point; however, it is the intent of the parties that TWS will own the collection, treatment, and dispersal system and a permanent easement to the property occupied by the system. The estimated contributed capital from the developer is three hundred sixty thousand dollars (\$360,000); therefore, funding needed from TWS to construct the initial wastewater systems is limited. TWS is responsible for any future additions to its infrastructure. TWS provided its 2005 annual report as evidence of its financial condition. In its *Petition*, TWS proposes to charge rates identical to those previously approved by the Authority in other areas and states that no municipal utility, utility district, private wastewater service or entity in this area is seeking to serve this area. In support of its *Petition*, TWS attached a letter from the Sevier County Mayor stating that Sevier County has no plans to provide sewer service to the proposed Providence Hills property, a copy of a letter from the Water and Sewer Department

Director for the City of Sevierville stating that sewer service is not available to the proposed Providence Hills subdivision, and finally, a letter of intent from the developer, Ralph B. Laughton, President of Providence Hills at Douglas Lake expressing his desire that TWS provide service to the parcel,³ thereby demonstrating a public need for wastewater service in the requested area. TWS also filed a service area map showing the location of Providence Hills, which was marked Exhibit “A” with its *Petition*. TWS states that an application for a Tennessee Department of Environment and Conservation (TDEC) permit is being prepared.⁴ TWS further states that after receiving all required approvals, the system should be completed within approximately sixty (60) days.

The September 25, 2006 Hearing

Public notice of the Hearing in this matter was issued by the Hearing Officer on September 8, 2006 pursuant to Tenn. Code Ann. § 65-4-201(a) (Supp. 2005). No person sought intervention prior to or during the Hearing, which was held on September 25, 2006. Mr. Charles Pickney, Jr., 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 Providence Hills.⁵ Additionally, the panel took 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

³ See petition (unnumbered attachments) (August 3, 2006): Letter from Larry Waters, Mayor, Sevier County, Tennessee (May 22, 2006); Letter from Stephen W. Flynn, Water and Sewer Director for the City of Sevierville (June 5, 2006); and Letter from Ralph B. Laughton, President of Providence Hills at Douglas Lake (June 29, 2006).

⁴ Pursuant to TRA Rule 1220-4-13-.04(c), “Before initiation of service, the public wastewater utility shall file with the Authority, the TDEC approval of the design and permit for the wastewater system.”

⁵ Charles Pickney, Jr., Pre-Filed Testimony, p. 18-20 (August 3, 2006).

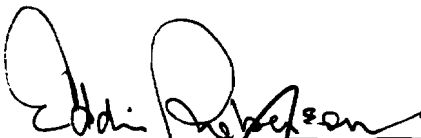
were identical to those rates previously filed by the Company.

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 Providence Hills in Sevier 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 Revised Tariff and rate schedules filed with the Authority on August 9, 2006.


Eddie Roberson, Director


Pat Miller, Director


Ron Jones, Director