

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 6, 2007

IN RE:

**PETITION OF TENNESSEE WASTEWATER SYSTEMS,
INC. TO RECLASSIFY SPECIFIC RESORT AREAS IN
SEVIER COUNTY FROM RESIDENTIAL TO
COMMERCIAL**

**DOCKET NO.
06-00259**

PRE-HEARING ORDER

This docket came before the Hearing Officer during a telephonic Pre-hearing Conference held on July 2, 2007, pursuant to Tenn. Code Ann. § 4-5-306, at which time the Hearing Officer heard the positions of the parties and acted on a variety of pre-hearing related matters.

BACKGROUND

On October 10, 2006, Tennessee Wastewater Systems, Inc. ("TWS," the "Company" or "Petitioner") filed its *Petition* in which the Company seeks approval by the Tennessee Regulatory Authority ("Authority") to reclassify certain properties from a residential to a commercial classification, effectively resulting in an increase in rates for those customers who are reclassified. On March 8, 2007, TWS filed several revised tariffs containing effective dates of May 1, 2007. At a regularly scheduled Authority Conference on March 26, 2007, the panel assigned to this docket voted unanimously to convene a contested case proceeding and appointed General Counsel or his designee as Hearing Officer for the purposes of preparing this matter for hearing, including hearing preliminary matters and establishing a procedural schedule to completion.

On April 4, 2007, Lynn E. Hedrick, Smokey Cove Log Home Resort and HP

Development (“Smokey Cove”) filed its *Petition to Intervene* (“*Smokey Cove Petition to Intervene*”) with the Authority. On April 9, 2007, Starr Crest Resorts II and Ussery #1 (“Starr Crest”) filed its *Petition to Intervene and to Request a Continuance* (“*Starr Crest Petition to Intervene*”). Through these petitions to intervene, the parties sought formal intervention to participate in this docket. A Status Conference was conducted by the Hearing Officer on April 30, 2007, at which time the petitions to intervene were granted and other matters were considered. On June 4, 2007, the Hearing Officer issued an *Order Establishing a Procedural Schedule*. Reflected in that Order was the Hearing Officer’s decision to grant the *Smokey Cove Petition to Intervene* and the *Starr Crest Petition to Intervene*, as well as a procedural schedule to be adhered to and observed by the parties.

Pursuant to the procedural schedule, the parties completed discovery and submitted pre-filed testimony. The Hearing Officer issued a *Notice of Pre-Hearing Conference and Hearing on the Merits* on June 22, 2007, setting a telephonic Pre-hearing Conference for July 2, 2007 and a Hearing on the merits before the panel for July 9, 2007.

JULY 2, 2007 PRE-HEARING CONFERENCE

The Pre-hearing Conference was convened telephonically at 2:00 p.m. on July 2, 2007, with the following party representatives participating:

Lynn E. Hedrick, Smokey Cove Log Home and HP Development – **Christopher Connor, Esq.**, Garner and Connor, PLLC, 250 High Street, P.O. Box 5059, Maryville, TN 37802-5059.

Starr Crest Resorts II and USSERY #1 - **Robert G. Wheeler, Jr., Esq.**, P.O. Box 110971, Nashville, TN 37222-0971 and **Randal Ussery**.

Tennessee Wastewater Systems, Inc. - **Henry Walker, Esq.**, Boulton, Cummings, Conners & Berry, PLC, 1600 Division Street, Suite 700, P.O. Box 340025, Nashville, TN 37203.

During the Pre-hearing Conference, the Hearing Officer discussed with the parties a variety of matters related to the upcoming hearing on the merits. These topics included the filing requirements of the parties, consideration of a request for telephonic testimony at the Hearing,

witnesses and exhibits to be presented, the order of presentation, the anticipated length of the hearing, and the parties' preference for either pre-hearing or post-hearing briefs. Additionally, the Hearing Officer asked the parties whether any party anticipated filing any motions pertaining to discovery, including a request for depositions to be conducted in this case, or recusal of any member of the presiding panel. Finally, the Hearing Officer inquired as to the parties' availability in the event that the Hearing was not able to proceed as scheduled on July 9, 2007.

I. DOCKET FILINGS

The Hearing Officer reminded the parties of their obligation under the TRA Rules and the Procedural Schedule issued in this docket to submit copies of all discovery responses with the Authority.¹ Additionally, pursuant to the Procedural Schedule, and as later agreed to by the parties and verbally amended by the Hearing Officer, the deadline for filing of the Intervenors' Pre-Filed Testimony in this docket was June 15, 2007. The importance of complying with the filing requirements of the Authority to promote administrative efficiency and proper preparation of the agency prior to the Hearing was again explained to the parties. Despite these agency mandates and considerations, the discovery responses and the Pre-Filed Testimony of Intervenor, Smokey Cove has not yet been received by the Authority. Accordingly, the Hearing Officer directed Smokey Cove to file its responses to discovery and Pre-Filed Testimony with the Authority without further delay. Counsel for Smokey Cove stated that the discovery responses and Pre-Filed Testimony had been mailed on June 29, 2007, and the Authority's docket room received them for filing on July 3, 2007.

II. REQUEST FOR TELEPHONIC PARTICIPATION, INCLUDING PRESENTATION OF TESTIMONY, AT HEARING

The Hearing in this matter will be conducted in accordance with the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101, *et seq.* During the Pre-hearing

¹ See, TRA Rule 1220-1-2-.11(6) and *Order Establishing Procedural Schedule*, TRA Docket 06-00259 (June 4, 2007).

Conference, counsel for Intervenor, Smokey Cove, requested that its witness be permitted to participate and present testimony telephonically at the Hearing. Tenn. Code Ann. § 4-5-312 (c) (2004) addresses electronic participation at a hearing as follows:

(c) In the discretion of the administrative judge or hearing officer and agency members and by agreement of the parties, all or part of the hearing may be conducted by telephone, television or other electronic means, if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceedings while taking place.

The Hearing Officer has considered the request of Smokey Cove and the subsequent discussion of the parties related to this request. Such requests of a party, being within the discretion of the Hearing Officer, should demonstrate an undue burden or some exceptional circumstance which would prevent personal attendance. In the opinion of the Hearing Officer, Smokey Cove presented insufficient justification to grant its request when taking these standards into account. Therefore, in accordance with the above-referenced statute, the Hearing Officer denies the request of Smokey Cove to participate and present testimony telephonically at the Hearing in this matter.

III. WITNESS & EXHIBIT LISTS

The witnesses and exhibits to be presented at the Hearing, as stated by each party at the Pre-hearing Conference, are as follows:

- TWS stated that it intended to present two witnesses, Charles Pickney and Michael Hines, and that no additional exhibits, other than that which has already been filed in the docket file, will be offered at the Hearing.
- Starr Crest stated that it intended to present only one witness, Randal Ussery, and that it would check to determine whether any supplemental exhibits would be presented; if so, same would be filed with the Authority no later than Friday, July 6, 2007.

- Smokey Cove intends to present only one witness, Lynn Hedrick, and on Thursday, July 5, 2007, filed two supplemental exhibits: *Smokey Cove Subdivision Wastewater System Construction and Expansion Contract*, and *Smokey Cove Subdivision Wastewater System Maintenance and Management Contract*.

Accordingly, the Hearing Officer directs that any exhibits which have not already been filed with the Authority in the docket file, and which any party intends to offer at the Hearing in this matter, shall be filed no later than Friday, July 6, 2007.

IV. LENGTH OF HEARING & ORDER OF PRESENTATION

During the Pre-hearing Conference, the parties discussed the length of time each anticipated the Hearing may require for completion. It was determined and agreed between the parties that the proof in this case should not require more than one-half day to present, and barring unforeseen events, the Hearing should be finished on Monday, July 9, 2007. The order of the presentation of proof and of witnesses at the Hearing in this matter shall be as follows:

- Direct: Charles Pickney - TWS
- Cross: Starr Crest, then Smokey Cove
- Direct: Michael Hines - TWS
- Cross: Starr Crest, then Smokey Cove
- Direct: Randal Ussery – Starr Crest
- Cross: Smokey Cove, then TWS
- Direct: Lynn Hedrick – Smokey Cove
- Cross: Starr Crest, then TWS

Upon the further discussion of this topic and agreement of the parties, after all parties have completed presentation of their case-in-chief, any of the above witnesses may be recalled for the sole purpose of rebuttal, provided such rebuttal testimony is expressly limited by the scope of the direct testimony.

V. BRIEFS OF THE PARTIES

During the Pre-hearing Conference, each party was permitted an opportunity to make suggestions for the submission of written argument, and to state its preference, if any, for pre-hearing or post-hearing briefs. TWS stated that it did not favor pre-hearing briefs and did not state a corresponding preference for post-hearing briefs. Both of the Intervenors indicated that post-hearing briefs would be preferred. Accordingly, the Hearing Officer determines that each party may present an opening statement, and additionally, that post-hearing briefs will be accepted by the Authority either in lieu of or supplement to an abbreviated closing argument, at the discretion of each party. Any party that wishes to submit a post-hearing brief, not greater than 15 pages in length, is permitted to do so no later than July 24, 2007.

VI. DISCOVERY & OTHER MATTERS

In light of earlier-held discussions in this case concerning the use of depositions by the parties, the Hearing Officer inquired whether any party anticipated filing a motion to conduct additional discovery, including depositions. After failing to receive a definitive response, the Hearing Officer stated that due to the short amount time pending until the Hearing date and considering the intervening national holiday any such motion must be filed by Tuesday, July 3, 2007. If any such motions were filed, responses to same would be due by Thursday, July 5, 2007. Subsequently, no discovery motions were filed with the Authority.

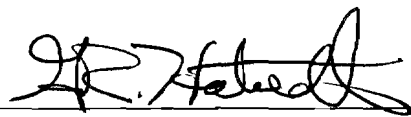
There was brief discussion of the Petitioner's Pre-filed Rebuttal Testimony, recently filed with the Authority on June 27, 2007. Attached to the pre-filed rebuttal testimony was an excerpt of the June 25, 2007 Authority Conference; specifically, a portion of the Authority Conference wherein a Hearing in TRA Docket No. 07-00090 was conducted on the *Petition of Integrated Resource Management, Inc. to Amend Its Certificate of Public Convenience and Necessity to Serve an Area in Sevier County, Tennessee Known as the Landing at Bird's Creek Subdivision*. In an effort to address any potential or impending issues and to avoid last-minute filings, the

Hearing Officer requested that the parties alert him if a motion for recusal or other similar action was being considered for filing. Counsel for the Company responded that TWS did not intend to file any such motion and that the transcript was attached for its *stare decisis* or persuasive precedent.

Finally, in the unlikely event that the Hearing should need to be postponed, the Hearing Officer inquired as to the availability of the parties for a July 23, 2007 alternate hearing date. Generally, with the caveat that clients and witnesses would need to be confirmed, the parties were available. Additionally, TWS preserved its objection on the record to postponing the hearing.

IT IS THEREFORE ORDERED THAT:

1. Intervening Party, Lynn E. Hedrick, Smokey Cove Log Home Resort, and HP Development shall file its responses to discovery and pre-filed testimony with the Authority without further delay.²
2. The request of Intervening Party, Lynn E. Hedrick, Smokey Cove Log Home Resort, and HP Development to telephonically present testimony at the Hearing is denied.
3. The decisions concerning practice and procedure at the Hearing in this matter, including party witness and exhibit lists, the order of presentation of proof and witnesses, and the submission of post-hearing briefs is hereby ordered in accordance with the Tennessee Uniform Administrative Procedures Act and as discussed herein.



Gary Hotvedt, Deputy General Counsel
as Hearing Officer

² These documents were filed with the Authority on July 3, 2007.