

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**PETITION OF TENNESSEE WASTEWATER
SYSTEMS, INC. TO AMEND ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY**

Docket No. 06-259

**OBJECTION OF SMOKY COVE TO SETTLEMENT AND TARIFF PROPOSED
BY TENNESSEE WASTEWATER SYSTEMS, INC.**

Comes now Smoky Cove, by and through undersigned counsel, and hereby submits this Objection to the Settlement and Tariff proposed by Tennessee Wastewater Systems, Inc. ("TWS") For its Objection, Smoky Cove would state unto the Regulatory Authority as follows:

1. On or about July 10, 2007, TWS filed with the Regulatory Authority, a proposal to amend its existing commercial tariff by adding a new sub-category of commercial properties: overnight rentals. This tariff would effectively apply to Starr Crest resorts, all properties currently scheduled as commercial, and any properties which were later reclassified to commercial.

2. Despite having the burden to do so under T.C.A. §65-2-109, a copy of which is attached hereto, at the initial hearing on this matter, TWS was unable to provide any evidence establishing the necessity for any rate increase. TWS was further unable to provide any evidence which would tend to support the proposed increase to \$55.00. Rather, the \$55.00 amount seems to merely be a point at which TWS and Starr Crest Resort, another Intervenor in this matter, could come to an agreement by which Starr Crest would withdraw from the proceedings.

3. At the hearing, TWS testified that the rate increase was necessary because the

company was losing money on these commercial rental cabins. While no financial data was provided to support this position and while Smoky Cove does not have access to the financial records of TWS, East Sevier Utility Company ("East Sevier"), a TRA regulated Public Utility that performs the same services and operates in the same field as TWS, has established a residential classification for all similar rental unit properties. In maintaining this classification, East Sevier charges its rental-cabin customers a flat rate of \$35.00/month and does not make the property's owner liable for capital costs in the event that the system needs to be upgraded. Despite this substantially reduced charge and the inability of East Sevier to demand capital costs from its customers, East Sevier has reported operating at a profit in regards to its rental-cabin units.

4. As no verifiable data has been presented which supports the \$55.00 amount chosen by TWS and Starr Crest Resort and East Sevier has reported operating at a profit for a drastically reduced rate, Smoky Cove respectfully objects to being bound by the terms of the settlement in the event that any Smoky Cove properties are ever reclassified as a commercial rental properties.

5. Further, to the extent that TWS attempts to revise its tariff and create a new sub-category of commercial properties that will be applicable to properties which were not a part of the original Petition, TWS has a duty to provide Notice to all affected Parties in order to enable said Parties to Intervene in the matter. As such Notice has not been provided, TWS should be precluded from binding any party to the terms of a Settlement Agreement that was reached with one particular party, Starr Crest Resort.

6. Smoky Cove would respectfully request that the Regulatory Authority decline to

approve any settlement for an amount specific that is not supported by statistical date.
Further, Smoky Cove would respectfully request that the Regulatory Authority limit the applicability of the Settlement Agreement to be binding only upon those parties that were involved in its negotiation, Tennessee Wastewater Systems, Inc. and Starr Crest Resorts.

/Christopher W. Conner
Christopher W. Conner (BPR 017724)
GARNER & CONNER, PLLC
Attorney for Smoky Cove
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing document was mailed to addresses listed below by U.S. Mail, on this 30th day of March, 2007.

Sara Kyle, Chairman
460 James Robertson Parkway
Nashville, TN 37243-0505

J. Richard Collier, as Hearing Officer
460 James Robertson Parkway
Nashville, TN 37243-0505

Interested parties as indicated by the attached list

Christopher W. Conner

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*** CURRENT THROUGH THE 2006 SESSION ***
*** ANNOTATIONS CURRENT THROUGH FEBRUARY 6, 2007 ***

Title 65 Public Utilities And Carriers
Chapter 2 Procedure Before the Tennessee Regulatory Authority

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Tenn. Code Ann. § 65-2-109 (2007)

65-2-109. Rules of evidence - Judicial notice - Burden of proof.

In all contested cases:

(1) The authority shall not be bound by the rules of evidence applicable in a court, but it may admit and give probative effect to any evidence which possesses such probative value as would entitle it to be accepted by reasonably prudent persons in the conduct of their affairs; provided, that the authority shall give effect to the rules of privilege recognized by law; and provided further, that the authority may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence;

(2) All evidence, including records and documents in the possession of the authority of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference;

(3) Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence;

(4) The authority may take notice of judicially cognizable facts and, in addition, may take notice of general, technical, or scientific facts within its specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noted. The authority may utilize its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it; and

(5) The burden of proof shall be on the party or parties asserting the affirmative of an issue; provided, that when the authority has issued a show cause order pursuant to the provisions of this chapter, the burden of proof shall be on the parties thus directed to show cause.

HISTORY: [Acts 1953, ch. 162, § 10 (Williams, § 5501.33); T.C.A. (orig. ed.), § 65-209; Acts 1995, ch. 305, § 9.]

NOTES:

Section to Section References.

Sections 65-2-101 - 65-2-109 are referred to in § 42-2-224.

Law Reviews.

Report on Administrative Law to the Tennessee Law Revision Commission, 20 *Vand. L. Rev.* 777.

Cited:

CF Indus. v. Tennessee Pub. Serv. Comm'n, 599 S.W.2d 536, 1980 Tenn. LEXIS 455 (Tenn. 1980); *Illinois Cent. G.R.R. v. Tennessee Pub. Serv. Comm'n*, 736 S.W.2d 112, 1987 Tenn. App. LEXIS 2697 (Tenn. Ct. App. 1987).

NOTES TO DECISIONS

1. In General.

1. In General.

The public service commission (now regulatory authority) is an administrative board and not a quasi-judicial body. *McMinnville Freight Line v. Atkins*, 514 S.W.2d 725, 1974 Tenn. LEXIS 456 (Tenn. 1974).