

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

JULY 20, 2007

<i>In re: Petition of Tennessee Wastewater</i>)	
<i>Systems, Inc. to Amend its Certificate of</i>)	Docket No. 06-00259
<i>Convenience and Necessity</i>)	

**TENNESSEE WASTEWATER SYSTEMS, INC.'S RESPONSE TO
OBJECTIONS OF SMOKY COVE**

Tennessee Wastewater Systems, Inc. ("TWS") submits the following response to the "Objection of Smoky Cove to Settlement and Tariff Proposed by Tennessee Wastewater Systems, Inc." filed on July 19, 2007.

BACKGROUND

As the Authority is aware, TWS has filed a petition seeking to reclassify a number of overnight rental properties from "residential" to "commercial." Several such properties are already classified as "commercial" but others, such as the overnight rental cabins in the Smoky Cove development, are still being billed as "residential" customers. In the petition, TWS did not seek to change the rates and terms of its existing residential or commercial tariffs but only requested that certain overnight rental properties be reclassified as commercial.

As explained in the petition, the reclassification will affect overnight rental cabins in eight developments. Two parties intervened in opposition to the petition. Mr. Randall Ussery, who heads Starr Crest Resort, intervened on behalf of the property owners at Starr Crest. Mr. Lynn Hedrick, the developer of Smoky Cove, also intervened but did so on his own behalf, not as a representative of the cabin owners at Smoky Cove. He testified that his main concern was

that the higher commercial rate would make it more difficult for him to sell his remaining, undeveloped lots.

When the petition was heard by the TRA on July 9, 2007, TWS announced that it had reached a settlement with Starr Crest. TWS agreed to reduce the minimum commercial rate applicable to overnight rentals from \$75.00 to \$55.00 and to charge each overnight rental cabin based on the cabin's actual wastewater usage rather than on the capacity of the cabin's system. Counsel for Starr Crest stated that if those tariff changes were approved by the TRA, Starr Crest would no longer object to being reclassified as commercial property.

The parties also explained that the proposed tariff changes would not affect the overnight rental cabins in Smoky Cove which would continue to be billed as "residential" pending a decision by the TRA on the reclassification petition. Following that explanation, counsel for Mr. Hedrick stated that his client did not object to the proposed tariff changes.

ARGUMENT

The TRA is scheduled to consider these proposed tariff changes on July 23, 2007. In a filing made on July 19, 2007, Mr. Hedrick now objects to the proposed changes on the grounds that TWS was "unable to provide any evidence which would tend to support the proposed increase to \$55.00" Objection, at 1 (emphasis added). He also states that TWS should have provided notice "to all affected Parties in order to enable said Parties to Intervene in this matter." Objection, at 2. These objections have no merit and should be disregarded.

First, equitable principles of estoppel prevent a party from taking one position in a proceeding, upon which TWS relied, and then taking the opposite position just before the matter

comes before the agency.¹ Second, Mr. Hedrick's objections indicate that he does not understand the proposed tariff changes or how those changes would affect the property owners in Smoky Cove.

At the July 9 hearing, counsel for Mr. Hedrick stated correctly that the tariff changes proposed by TWS would reduce the commercial rates applied to overnight rental cabins and that even if the rental cabins at Smoky Cove were reclassified as "commercial," as requested by TWS, those owners would be better off under the proposed tariff than under the existing commercial rates. For that reason, counsel stated that his client, Lynn Hedrick, did not oppose these tariff changes. In other words, Mr. Hedrick stands to benefit either way. He either remains classified as residential or, if the rental cabins at Smoky Cove are reclassified as commercial properties, the owners would be billed the \$55.00 minimum charge proposed by TWS rather than the current \$70.00 minimum charge.²

In sum, Mr. Hedrick's recently filed objections are not only at odds with the statements of his attorney and his own sworn testimony but also indicate that he does not understand that the proposed tariff is a rate decrease from the current commercial rate. For those reasons his late-filed objections to the settlement should be given no weight.

Finally, as TWS noted at the hearing, TWS has, in fact, provided notice to all affected property owners of the proposed reclassification to commercial rates and explained those rates in a letter to every owner. See Hearing Exhibit 1. Since each owner was notified that his rate

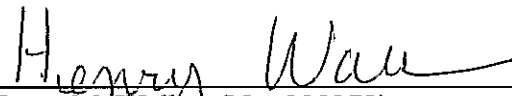
¹ See South Central Bell Telephone Company v. Tennessee Public Service Commission, 675 S.W.2d 718, 720 (1984) ("The acceptance and retention of benefits may estop an attack upon the validity of an administrative order.")

² Mr. Hedrick also testified in response to a direct question from Chairman Roberson that he did not have any objection to the proposed \$55.00 minimum charge. Although the transcript is not yet available, counsel for TWS recalls that Mr. Hedrick said he could not quarrel with the \$55.00 minimum fee, or words to the effect.

might increase from the \$35.00 residential price to the \$70.00 commercial rate, no additional notice is required to reduce the proposed amount of the increase from \$70.00 to \$55.00

Respectfully submitted,

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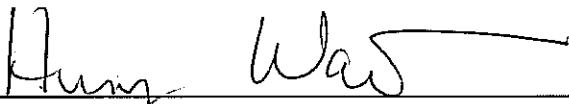
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via U.S. mail, to:

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on this the 20th day of July 2007.



Henry Walker