

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

**IN RE:** )  
 )  
**PETITION OF TENNESSEE WASTEWATER )**  
**SYSTEMS, INC. TO AMEND ITS )** **DOCKET NO. 06-259**  
**CERTIFICATE OF CONVENIENCE AND )**  
**NECESSITY )**

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**SMOKY COVE LOG HOME RESORTS, LYNN HEDRICK'S and HP  
DEVELOPMENT'S RESPONSE TO TENNESSEE WASTEWATER SYSTEMS,  
INC'S POST-HEARING BRIEF**

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Come now the Intervenors in this matter, Smoky Cove Log Home Resorts, HP Development, and Lynn Hedrick, by and through counsel, and hereby file this Response to the Post Hearing Brief of Tennessee Wastewater Systems, Inc.

**ARGUMENT**

Contrary to the position taken by Tennessee Wastewater Systems, Inc. in the introduction to their Post-Hearing Brief, to describe this matter as anything other than a case regarding rates is to engage in a futile exercise of semantics. Whether the regulatory authority looks at this issue as one in which the classification changes and so the rates go up or the rates are simply increased, a proposed rate increase is at the very heart of this matter and to attempt to frame the issue as anything different than that is merely an attempt to further convolute the issue in order to hide the fact that no data exists or has been presented which would justify the proposed rate increase.

TWSI states time and time again that it is "unreasonable" for cabins that serve as overnight rentals to be charged commercial rates. Despite this assertion, there is absolutely nothing in the record which suggests why or how this is unreasonable. There is no data as to increased costs for the utility or for increased strain on the system. Rather,

all that has been presented in this matter is a tremendous amount of conjecture and speculation on behalf of TWSI. Surely, as a regulated entity, it requires more than mere speculation that costs could be increased to justify a rate change.

To further distort the issue here, TWSI also attempts to rely upon numerous rulings by the Regulatory Authority which are easily distinguishable from the case at hand in that the request in each of these other cases to approve commercial rates for similar properties was presented *before* any contracts were entered with the property developers. In the instant matter, the exact opposite is true in that TWSI represented to Lynn Hedrick and Smoky Cove that the properties would be classified as residential and presented a rate scheme in order to induce Mr. Hedrick to utilize TWSI's services only then to go back and attempt to change the rates. In each of the other Dockets, TWSI established with the developer that a commercial rate would apply to some properties from the outset and thus, the developer in those circumstances was able to make a decision regarding whether those rates would best suit the needs of its properties prior to executing any binding agreement. It is this fundamental difference between the cases relied upon by TWSI as controlling authority and this instant matter that has spawned this issue altogether. TWSI should be precluded from negotiating and materially representing one set of rates and classifications as being enforceable, thereby inducing a party to enter a ninety-nine plus year contract, only to come back later and attempt to modify those rates in order to generate a higher profit margin for the company.

TWSI further attempts to persuade this authority by suggesting that it would be inequitable to allow TWSI to charge one set of rates to some overnight rentals and different set to others. A statement of this nature, however, begs the question: which is

more equitable, allowing a regulated entity to represent one set of rates and then change those represented rates at a whim in order to boost profits or to require the regulated entity to be bound by the very terms which they negotiated and agreed upon? It is the position of the Intervenor in this matter that TWSI should be required to honor the terms of the agreement which they developed and which they negotiated. It should be the position of this Regulatory Authority that the regulated public utilities in this state should not be permitted to generate business by negotiating one set of rates only to change those rates later without any documented justification for doing so.

To the extent that TWSI attempts to persuade this Regulatory Authority that the utility would have been authorized to charge commercial rates based upon the “filed rate” doctrine, the Intervenor feels it necessary to address the fact that TWSI’s argument is without legal merit. A reading of the case cited in support of this idea, Maslin Industries v. Primary Steel, 497 U.S. 116, 126-138 (1990), quite clearly states that a utility may not charge less than their scheduled rate and in the event that they do, they are entitled to collect backcharges. There is nothing in that case which suggests that charging a scheduled rate that is lower than another scheduled rate opens the door to collecting backcharges based on the difference in the two rates. While this matter is not before this authority and likely would be dismissed before any court, Intervenor feels it necessary to have addressed this issue in order to insure that the Regulatory Authority not be misled by a misstatement of the law.

The Intervenor in this matter would encourage the Regulatory Authority to closely examine the arguments presented here and to make an objective determination in the spirit of the Authority’s purpose – to promote equity in the regulation of public

utilities. After objectively reviewing all of the documentation provided by TWSI in support of their rate increase, the Authority truly believes that a rate increase of an arbitrary and unestablished amount is justified then the rate increase should be given. However, if the Authority finds that there has been no documentation to support the needs of the increase or the amount thereof and that the utility negotiated these rates and thereby bound themselves based on these representations, then the Intervenors would request that the Authority not be a 'rubber stamp' and approve this Petition just because it has been requested.

Respectfully submitted this 6<sup>th</sup> day of September, 2007.

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