

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

SEPTEMBER 7, 2007

*In re: Petition of Tennessee Wastewater
Systems, Inc. to Amend its Certificate of
Convenience and Necessity*)
)
)

Docket No. 06-00259

**TENNESSEE WASTEWATER SYSTEMS, INC.'S MOTION TO STRIKE OR,
IN THE ALTERNATIVE, TO FILE REPLY BRIEF**

The Tennessee Wastewater Systems, Inc. ("TWS") submits that following reply to the "Response" filed by Mr. Lynn Hedrick on September 6, 2007.

The "Notice of Filing Briefs" issued by the Hearing Officer on August 22, 2007, provided for the filing of post-hearing briefs on August 28, 2007. It did not provide for "Response" briefs. Nevertheless, counsel for Mr. Hedrick filed both a post-hearing brief and, yesterday, a "Response" to the post-hearing brief filed by TWS. The Response brief should be struck and given no consideration in this case. In the alternative, TWS asks that the Authority accept this short reply from TWS.

1. Counsel for Mr. Hedrick continues to imply that there is a "contract" between Smoky Cove and TWS which requires TWS to continue charging residential rates. As previously noted by TWS, there is nothing whatsoever in either the maintenance or construction contracts about rates or the classification of customers.
2. TWS has acknowledged that it initially classified overnight rental properties as "residential" but, based on the company's experience of the past several years, now classifies such properties as "commercial" customers. As a result, similarly situated customers are not being treated the same. Such discrimination violates Tennessee law (see T.C.A. §65-4-122) and

must be corrected. Legally, it makes no difference what Mr. Hedrick thought or was told at the time he agreed with TWS to build a stand-alone wastewater system so that he could build more rental houses in his development than if he relied on individual septic tanks. As the Tennessee Supreme Court has ruled, utility rates cannot be set by private understanding but only by action of the TRA. New River Lumber Co. v. Tenn. Railway Co., 238 S.W. 867 (Tenn. 1922). The mistake initially made by TWS in telling Mr. Hedrick that overnight rental properties in his development would be classified as residential does not create a “contract” between Smoky Cove and TWS nor, more importantly, does it alter the fact that it is a criminal offense under Tennessee law for a utility and a customer to make a private agreement to charge the customer a cheaper rate than other, identical customers. New River Lumber Co., 238 S.W. at 873 (“Indeed both carrier and shipper would be indictable if they adhered to the contract.”)

3. The Maslin Industries (497 U.S. 116, 126-138 (1990)) case explains that a utility has a legal obligation to collect the proper rate even in situations where the utility’s representative wrongly tells the customer about a lower rate or where the utility and customer privately agree on a lower rate. In that situation, the utility may legally back bill the customer at the correct charge. Mr. Hedrick does not dispute that the original application filed by TWS to serve Smoky Cove includes both residential and commercial rates (unlike the applications submitted to serve the other developments listed in the petition). Legally Mr. Hedrick was on notice that TWS could have charged the commercial rate to all owners of overnight rental property in the development and, legally, could still back bill them for that amount.

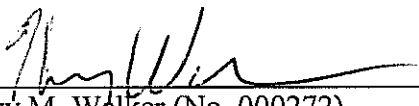
4. In light of the amended “overnight rental property” tariff filed by TWS, the reclassification of these properties will have little impact on one, two, and three bedroom rental properties. It will increase the minimum fee from \$35.00 to \$55.00 per month, a relatively small

amount as Mr. Hedrick acknowledged on the witness stand. For larger properties, the tariff imposes surcharges based on actual usage above 300 gallons per day. The tariff also allows TSW to charge the customer if the septic tank built to serve that customer needs to be enlarged but also provides that the customer can complain to the TRA if the customer disagrees with the proposed charge. Given the fact that these are commercial properties, not private homes, the modest increase in the minimum bill resulting from this reclassification petition hardly justifies the misrepresentations and misunderstandings of the one remaining complainant.

For these reasons, the reclassification petition should be approved.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

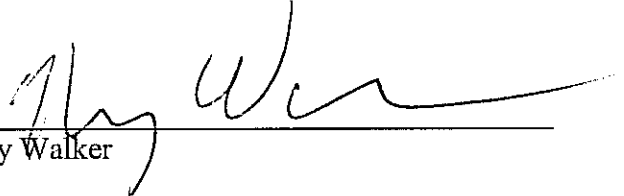
By: 
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CERTIFICATE OF SERVICE

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

Christopher W. Conner
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P.O. Box 5059
Maryville, TN 37802-5059

on this the 7 day of September 2007.



Henry Walker