

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**January 25, 2008**

<b>IN RE:</b>	)	
	)	
<b>PETITION OF TENNESSEE WASTEWATER</b>	)	<b>Docket No. 06-00259</b>
<b>SYSTEMS, INC. TO AMEND ITS CERTIFICATE</b>	)	
<b>OF CONVENIENCE AND NECESSITY</b>	)	

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**ORDER GRANTING RECLASSIFICATION OF PROPERTIES AND APPROVING  
REVISED TARIFF**

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This matter came before Chairman Eddie Roberson, Director Sara Kyle, and Director Ron Jones of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at regularly scheduled Authority Conferences held on September 10, 2007 and October 22, 2007 for consideration of the *Petition of Tennessee Wastewater Systems, Inc. to Amend Its Certificate of Convenience and Necessity to Correct the Rate Structure for Commercial Resort Properties* (“*Petition*”) in which Tennessee Wastewater Systems, Inc. (“TWS” or the “Company”) seeks to reclassify certain properties from a residential to a commercial classification, under a new commercial subcategory termed “overnight rental properties.”

**PROCEDURAL BACKGROUND**

On October 10, 2006, TWS filed its *Petition* with the TRA in which the Company seeks to reclassify certain properties from a residential to a commercial classification, which would effectively result 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 March 28, 2007, a *Notice of Hearing* was issued setting this docket for hearing on April 16, 2007.

On April 4, 2007, Lynn E. Hedrick, Smoky Cove Log Home Resort, and HP Development (“Smoky Cove”) filed its *Petition to Intervene* (“*Smoky Cove Petition*”) with the Authority. On April 5, 2007, as a result of the intervention requests, the Hearing Officer entered an *Order Continuing Hearing, Suspending Tariffs, Directing Responses to Petitions to Intervene and Setting a Status Conference*. In that Order, the Hearing Officer determined that the hearing should be deferred to address the petition to intervene, and thereafter suspended the effectiveness of the tariffs until July 1, 2007.

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*”). On April 30, 2007, during the scheduled Status Conference, the Hearing Officer granted the *Smoky Cove Petition* and the *Starr Crest Petition* and established a procedural schedule which culminated with a Hearing on the Merits set for July 9, 2007. On June 4, 2007, the Hearing Officer issued an *Order Establishing Procedural Schedule*. That Order reflected the Hearing Officer’s decision to grant the *Smoky Cove Petition to Intervene* and the *Starr Crest Petition to Intervene*, as well as a procedural schedule to be observed by the parties.

On June 22, 2007, the Hearing Officer issued a *Notice of Pre-Hearing Conference and Hearing on the Merits* setting a telephonic Pre-hearing Conference on July 2, 2007 and a Hearing

on the Merits before the panel on July 9, 2007.

On July 9, 2007, the Authority held a public hearing on the *Petition* and proposed tariffs. At the start of the Hearing, TWS and Starr Crest announced to the Authority that they had reached a settlement. In light of the settlement, Starr Crest, while not withdrawing its petition to intervene, decided to forgo active participation in the Hearing. The remaining intervenor, Smoky Cove, who did not participate in the settlement, proceeded to present its case during the Hearing.

On July 10, 2007, TWS and Starr Crest filed a *Proposed Settlement Agreement and Tariff* ("*Settlement Agreement*"). The *Settlement Agreement* represents the actual terms of the settlement negotiated between TWS and Starr Crest, and designates a new customer subclass of "overnight rentals" within the commercial classification. Additionally, the *Settlement Agreement* sets a minimum rate of \$55.00 for up to 300 gallons of average waste stream flow per day, and \$15.00 per average 100 gallon increment thereafter up to 1000 gallons. For average day flows over 1000 gallons, customers will be charged pursuant to the tariff. This tariff rate is structured based on usage, whereas, the general commercial tariff rate is based on a designed capacity of the customer's wastewater system. Smoky Cove filed its objection to the *Settlement Agreement* on July 19, 2007, to which TWS filed its response on July 20, 2007.

On July 23, 2007, at a regularly scheduled Authority Conference, the panel unanimously voted to defer consideration of the *Settlement Agreement* and to suspend the proposed tariff, filed July 10, 2007, until August 31, 2007, pending responses to certain data requests submitted to the Company by Authority Staff.

At the regularly scheduled Authority Conference on August 20, 2007, a majority of the panel found that there was sufficient evidence in the record to support the application of special overnight commercial rates based on usage to Starr Crest and voted to approve the *Settlement*

*Agreement* filed on July 10, 2007, as further defined in TWS' data response of July 25, 2007, and as amended at the Conference to include certain notifications. The *Settlement Agreement* was deemed effective upon approval by a majority of the voting panel assigned to this docket on August 20, 2007, but its applicability was restricted to Starr Crest alone.

Further, the panel announced that it would consider whether application of the *Settlement Agreement* is appropriate for other similarly situated customers at the next Authority Conference. As a result, the Hearing Officer was directed to issue a notice to all of TWS' customers who may be affected explaining the terms of the tariff, requesting comments and inviting interested parties to attend the Authority Conference if they so desire. Following approval of the *Settlement Agreement*, TWS submitted its post-hearing brief on August 29, 2007. Smoky Cove had previously filed its post-hearing brief on July 30, 2007. Following approval of the *Settlement Agreement*, Starr Crest did not file a post-hearing brief.

#### **POSITION OF THE PARTIES**

TWS: TWS states that it improperly classified the following service areas in Sevier County as residential properties when each should have been classified as commercial properties: Hidden Springs, Eagle Crest, The Highlands, Falling Waters, Black Bear Ridge Resort and Smoky Cove. The Company seeks to reclassify these rental properties in Sevier County from residential to commercial. TWS asserts that, even though these particular properties were purchased in furtherance of a business venture, it mistakenly believed that they would more closely operate like a rental home and that would therefore be residential in nature. TWS contends that it "now has a substantial operating history with these properties that clearly shows these resort properties' usage are not similar to the usage of a typical home occupied by a single family."<sup>1</sup>

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<sup>1</sup> *Petition*, p. 1 (October 10, 2006).

Smoky Cove: Smoky Cove argues that TWS has not provided any data regarding usage and thus has not presented any evidence supporting reclassification of the property from residential to commercial. TWS has presented no evidence to support the proposed \$55 rate as fair and reasonable.<sup>2</sup>

Homeowners: The Authority received several letters from property owners within the resort areas at issue requesting that the Authority not allow TWS to reclassify the rates. Generally, the letters assert that because the cabins are not rented continuously, usage of the wastewater treatment system should average out to that of a comparable residential home. In addition, the homeowners contend that they were not told when they purchased their properties that the sewer classification could change.<sup>3</sup>

#### **SEPTEMBER 10, 2007 AUTHORITY CONFERENCE**

At a regularly scheduled Authority Conference on September 10, 2007, the panel first deliberated TWS' property reclassification request. The panel then convened a public hearing and conducted deliberations regarding the application of the *Settlement Tariff* previously approved by the Authority on August 20, 2007 to all overnight rental property.

The panel voted unanimously to approve TWS' request to reclassify certain properties from residential to overnight commercial after making the following findings.

1. Evidence in the record shows that the properties are required to obtain a state business license and pay state sales tax and commercial rates for electricity and water service.
2. The use of the cabins in question have been proven to be for commercial or business ventures.

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<sup>2</sup> *Reply to Tennessee Wastewater Systems' Response to Objections of Smoky Cove*, p. 1 (July 23, 2007).

<sup>3</sup> Letters from various homeowners were filed with the Authority on July 2, 2007; July 6, 2007; August 27, 2007; September 6, 2007; September 10, 2007; September 14, 2007 and October 11, 2007.

3. The determination that overnight rentals are commercial property is further supported by the Authority's decision in Docket No. 07-00090.<sup>4</sup>

A majority of the panel voted to create a separate commercial class for overnight rental properties that would be applied to similarly-situated customers, including the resort properties in this instant docket. The panel further voted to require TWS to refile its tariff to eliminate the ambiguity regarding how the customers are to be billed. In support of its decision, the majority made the following findings.

1. The creation of a separate commercial class for overnight rental properties is reasonable due to the unique characteristics of the properties.

2. The \$55 minimum rate is within the zone of reasonableness because it falls between the residential and commercial rates.

3. The new classification benefits customers who would otherwise pay a commercial rate of \$75.

#### **OCTOBER 22, 2007 AUTHORITY CONFERENCE**

At the regularly scheduled Authority Conference held on October 22, 2007, the panel considered the revised tariff filed by TWS on October 4, 2007. The Company filed the revised tariff as directed by the Authority and included a statement of the rates approved by the panel, the methodology to be used to measure actual usage, and a customer notification process when capital costs are to be borne by the customer, including a statement advising the customer of the right to file a complaint. The revised tariff provided that actual usage for those customers who exceed the average of 300 gallons per day over a thirty day period may be measured by effluent

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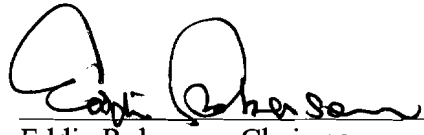
<sup>4</sup> See *In re: Petition of Integrated Resources Management, Inc. to Amend Its Certificate of Public Convenience and Necessity to Serve an Area in Sevier County, Tennessee Known As the Bird's Creek Subdivision*, Docket No. 07-00090.

flow meter, STEP pump, or potable water used by the customer. A majority of the panel voted to approve the revised tariff and to additionally require that the Company itemize any usage charges for customers who exceed the 300 gallons per day over a thirty day period and specify how the actual usage was measured.

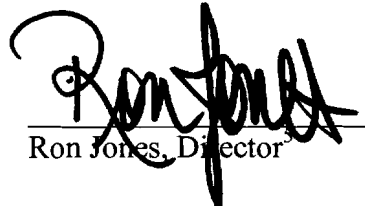
**IT IS THEREFORE ORDERED THAT:**

1. The *Petition of Tennessee Wastewater Systems, Inc. to Amend Its Certificate of Convenience and Necessity to Correct the Rate Structure for Commercial Resort Properties* to classify all of its overnight rentals as commercial overnight customers under the revised tariff is approved.

2. The revised tariff filed by Tennessee Wastewater Systems, Inc. on October 4, 2007 is in effect per the terms and conditions of the tariff. The Company is required to itemize any usage charges for customers who exceed the 300 gallons per day over a thirty day period and specify how the actual usage was measured.

  
Eddie Roberson, Chairman

  
Sara Kyle, Director

  
Ron Jones, Director<sup>5</sup>

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<sup>5</sup> Director Jones voted in favor of the motion to reclassify the overnight rental customers as commercial customers and added that it is his determination that it is appropriate to create a specific commercial classification for overnight rental properties. Director Jones voted in opposition to approving the application of the overnight rental property rate contained in the July 10, 2007 tariff, as amended on September 6, 2007, to overnight rental properties, including the resort properties in this case and voted in opposition to approval of the tariff filed on October 4, 2007. Director Jones filed a separate dissenting opinion detailing his analysis of the September 10, 2007 and October 22, 2007 tariff decisions.