

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 25, 2008

IN RE:

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

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Docket No. 06-00259

ORDER APPROVING SETTLEMENT AGREEMENT

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 July 23, 2007 and August 20, 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 #I (“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*"), attached hereto as Exhibit A. 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.

JULY 23, 2007 AUTHORITY CONFERENCE

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.

AUGUST 20, 2007 AUTHORITY CONFERENCE

At the regularly scheduled Authority Conference on August 20, 2007, the panel deliberated the *Settlement Agreement* filed by TWS and Starr Crest Resorts. Under the terms of

the settlement, TWS agreed to create a new category of commercial customers called “overnight rentals,” as that term is defined in T.C.A. §67-4-702(a)(11), and to set usage-based rates for these properties starting with a minimum monthly bill of \$55.00.¹ Prior to deliberations, Chairman Roberson inquired whether the parties would consider an amendment to the proposed *Settlement Agreement* to include TRA pre-approval of any capital costs assessed to consumers. Following a recess, responding to Chairman Roberson’s inquiry, TWS stated that when invoking the capital costs assessment portion of the tariff it would notify customers in writing of the reasons and inform the customer that a complaint could be filed with the Authority if there was disagreement. Starr Crest affirmed its agreement with TWS’ proposed modification of the *Settlement Agreement*. Also, at this time, TWS confirmed its intention to expand the terms of the *Settlement Agreement* to apply to all commercial customers determined to be “overnight rentals,” including those properties designated in its *Petition*, upon TRA approval to reclassify them to a commercial classification.

Thereafter, the panel deliberated the *Settlement Agreement*, as amended, filed by TWS and Starr Crest Resorts. 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.


¹ Following the filing of the revised “overnight rental” tariff, TWS published notice of the proposed rates in a newspaper of general circulation in Sevier County. The notice also described how interested persons could file comments on the proposed tariff with the TRA. See letter of September 6, 2007, from Henry Walker to TRA Chairman Eddie Roberson.

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.

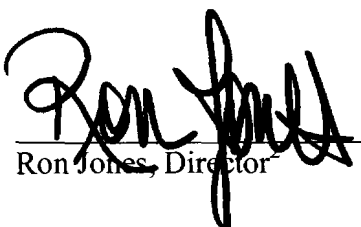
IT IS THEREFORE ORDERED THAT:

1. The *Proposed Settlement Agreement and Tariff*, attached hereto as Exhibit A, creating a new category of commercial customers called "overnight rentals" is approved applicable only to Starr Crest Resorts II and Ussery #I.

2. The Hearing Officer is directed to issue a notice to all Tennessee Wastewater Systems, Inc. customers notifying them of the Authority's upcoming deliberations regarding whether to apply the terms of the *Proposed Settlement Agreement and Tariff*, attached hereto as Exhibit A, to other Tennessee Wastewater Systems, Inc. customers. The notice should explain the terms of the tariff, request comments and invite interested parties to attend the September 10, 2007 Authority Conference if they so desire.


Eddie Roberson, Chairman


Sara Kyle, Director


Ron Jones, Director

² Director Jones voted in opposition to the August 20, 2007 motion and filed a separate opinion explaining his vote.



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TRA. DOCKET ROOM

July 10, 2007

Eddie Roberson, Chairman
Tennessee Regulatory Authority
460 James Robertson Pkwy
Nashville, TN 37243-0505

Re: *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity*
Docket No. 06-00259

Dear Chairman Roberson:

Tennessee Wastewater Systems, Inc. ("TWS") proposes to amend its existing commercial tariff by adding a new sub-category of commercial properties: overnight rentals. As shown on the attached tariff, the revised tariff includes the following changes.

- ❖ The minimum bill (for average daily usage up to 300 gallons per day) will be \$55.00.
- ❖ Usage charges above the minimum amount will be based on the customer's usage, rather than on the designed capacity of the system serving the customer.
- ❖ The paragraph on capital improvements is clarified to indicate that a customer may only be charged for capital improvements on that portion of the plant designed and dedicated to serve only that customer.

TWS also agrees that it will initially apply the minimum bill to all overnight rentals but will increase the bill based on usage as the usage is measured by TWS.

Finally, TWS agrees that in its next general rate case, scheduled to be filed no later than December 31, 2007, TWS will not propose to change the \$55.00 minimum bill for overnight rental properties nor will it propose to change the method of billing overnight rental properties based on usage, as opposed to designed capacity.

TWS has agreed with Starr Crest Resort, an intervenor in this case, that if this proposed settlement and tariff are approved by the Authority, Starr Crest will withdraw from these proceedings.

Exhibit A

July 10, 2007

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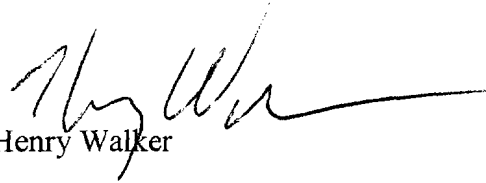
Robert Wheeler, counsel for Starr Crest, has reviewed this letter and accompanying tariff and has authorized me to state that this letter and tariff accurately describe the settlement and that Starr Crest will withdraw upon approval of this agreement.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

Henry Walker

A handwritten signature in black ink, appearing to read 'Henry Walker', is written over the printed name.

HW/djc

Enclosure

cc: All parties

WASTEWATER UTILITY SERVICE

CHECK SHEET

Sheets of this tariff are effective as of the date shown at the bottom of the respective sheet(s). Original and revised sheets as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this sheet.

SECTION	SHEET	REVISION	SECTION	SHEET	REVISION
1	1	1 st Revised	5	3	3 rd Revised
1	2	4 th Revised*	6	1	1 st Revised
1	3	1 st Revised*	6	2	1 st Revised
1	4	Original	6	3	Original*
1	5	Original			
1	6	Original			
1	7	Original			
2	1	Original			
2	2	Original			
2	3	Original			
2	4	Original			
2	5	Original			
2	6	Original			
2	7	Original			
2	8	Original			
2	9	1 st Revised			
3	1	Original			
3	2	Original			
3	3	Original			
3	4	1 st Revised			
3	5	3 rd Revised			
4	1	2 nd Revised			
4	2	2 nd Revised			
5	1	Original			
5	2	Original			

WASTEWATER UTILITY SERVICE

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Commercial Rate (overnight rental)	3 (T)

WASTEWATER UTILITY SERVICE

SECTION 6 – COMMERCIAL RATES SHEET**Overnight Rental Units**

The monthly sewer charge per customer is based on the monthly average daily flow monitored from the unit being served. A minimum of \$55 per month will be charged for up to the first 300 gallons per day of average daily flow. For each additional 100 gallons per day of average daily flow, up to a total of 1,000 gallons per day, an additional charge of \$15.00 per month per 100 gallons will be levied. For average daily flows over 1,000 gallons per day, the following additional monthly charges per 1,000 gallons of average daily flow will apply.

Disposal

<u>Treatment</u>	<u>Disposal</u>		
	<u>Drip Irrigation</u>	<u>Point Discharge</u>	<u>Off Site</u>
<u>Fixed Film</u>	\$140.00	\$165.00	N/A
<u>Lagoon</u>	\$116.00	\$140.00	N/A

If a customer's usage exceeds the average daily design flow for three consecutive months, the customer may be required to pay any capital costs associated with increasing the capacity of that portion of the system designed and dedicated to serve that customer

Fees: Nonpayment – 5% Reconnection - \$15
 Disconnection - \$10 Returned Check - \$20
 All rates are subject to a \$0.41 bonding fee

Issued: July 10, 2007
Issued By: Charles Pickney, Jr.
President

Effective: August 1, 2007