

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 25, 2008

IN RE:)	
)	DOCKET NO.
PETITION OF TENNESSEE)	06-00259
WASTEWATER SYSTEMS, INC. TO)	
RECLASSIFY SPECIFIC RESORT)	
AREAS IN SEVIER COUNTY FROM)	
RESIDENTIAL TO COMMERCIAL)	

**OPINION OF DIRECTOR RON JONES
DISSENTING FROM THE AUGUST 20, 2007,
SEPTEMBER 10, 2007, AND OCTOBER 22, 2007, DELIBERATIONS**

This docket came before a panel of the Tennessee Regulatory Authority (“Authority”) at Authority Conferences held on August 20, 2007, September 10, 2007, and October 22, 2007. The docket came before the Authority on August 20, 2007, for consideration of the settlement agreement reached between Tennessee Wastewater Systems, Inc. (“TWS”) and Starr Crest Resorts II and Ussery #1 (collectively “Starr Crest”). During the Conference, the majority voted to approve the settlement, which included a tariff filed on July 10, 2007, and to limit the applicability of the tariff to Starr Crest. The majority filed its *Order Approving Settlement Agreement* memorializing its decision on January 25, 2008. I respectfully dissent from this decision. This docket also came before a panel of the Authority at an Authority Conference held on September 10, 2007, for consideration of (1) the petition filed by TWS on October 10, 2006 and (2) the approval of the tariff filed by TWS on July 10, 2007, amended on September 6, 2007, as applicable to all overnight rental units. During the Conference, a motion was made to grant the petition and to approve the application of the overnight rental property rate to all overnight

rental properties, including the resort properties named in this docket. I voted in favor of the motion to grant the petition, but dissented from the motion to approve the tariff. Lastly, on October 22, 2007, this docket came before the Authority for consideration of the revised tariff filed on October 4, 2007. The majority filed its *Order Granting Reclassification and Approving Revised Tariff* memorializing its September 10th and October 22nd decisions on January 25, 2008. I respectfully dissent from the order with regard to the approval of the overnight rental rate.

I. RELEVANT PROCEDURAL HISTORY AND POSITIONS OF THE PARTIES

On October 10, 2006, TWS filed a petition requesting that a commercial rate structure be established for eight service areas. TWS explains in its petition that it had previously classified the customers as residential, that the customers use the properties as overnight rentals, and that the usage of the properties is not similar to a typical residence.¹ The tariff for commercial properties without food service, which was filed as an attachment to the petition and which would be applicable to the customers in the eight service areas if the petition is granted, contains the following provisions:

- a monthly minimum sewer charge per customer of \$75 for the first 300 gallons per day of design flow expected,
- an additional monthly charge per customer of \$15 for each additional 100 gallons per day of design flow expected up to a total of 1,000 gallons per day,
- flat rates - dependant on the treatment and disposal processes - for design daily flows expected over 1,000 gallons per day, but less than 3,000 gallons per day,
- a monthly sewer charge of \$116 per 1,000 gallons for design daily flows over 3,000 gallons,
- additional surcharges applicable when a customer's water meter reading exceeds the expected design flow, and
- a provision assessing the capital costs of increasing the capacity of the system to the customer in the event that the water meter readings exceed the design flow for any three consecutive months.²

¹ *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity to Correct the Rate Structure for Commercial Resort Properties*, pp. 1-2 (Oct. 10, 2006).

² *Id.* at Attachment, Tariff Rate Sheet, Commercial Sewer Service – without food service (Oct. 10, 2006).

On November 9, 2006, TWS filed a response to a data request in which it explains that the 413 customers that would be affected by the petition currently pay a flat rate of \$35.54 per month.³

On or about March 1, 2007, TWS sent its overnight rental customers, including those that were not listed in the petition, a notice regarding the reclassification.⁴ On March 28, 2007, TWS published a notice regarding the reclassification and the scheduled Authority hearing in the *Mountain Press*.⁵

On April 4, 2007, Smoky Cove filed a petition to intervene. On April 9, 2007, Starr Crest petitioned to intervene and to continue the hearing. On June 4, 2007, the Hearing Officer issued an order granting the petitions to intervene and setting a procedural schedule.⁶ Thereafter, discovery proceeded, and the parties filed pre-filed testimony.

On July 9, 2007, the panel convened to hear the petition. Prior to the start of the hearing, Starr Crest and TWS announced that they had entered into a settlement agreement. TWS explained the terms of the settlement, which included a new tariff creating a new commercial classification referred to as overnight rental properties, and requested immediate effectiveness of the tariff.⁷ Thereafter, the panel members questioned the parties and decided to consider the settlement at a later date, to continue with the hearing, and to ask TWS to file a written version of the settlement agreement in the docket.⁸

On July 10, 2007, TWS filed a letter in which it proposes “to amend its existing commercial tariff by adding a new sub-category of commercial properties: overnight rentals.”⁹ The tariff attached to the letter contains the following provisions:

³ Letter to Darlene Standley, Chief Utilities Division, from Charles Pickney, Jr., President Tennessee Wastewater Systems, Inc., dated Nov. 7, 2006, p. 1 (Nov. 9, 2006).

⁴ Transcript of Hearing, pp. 17, 113 (Jul. 9, 2007).

⁵ Electronic Mail to David Foster from Matt Pickney dated Apr. 2, 2007 (Apr. 2, 2007).

⁶ *Order Establishing a Procedural Schedule* (Jun. 4, 2007).

⁷ Transcript of Hearing, pp. 5-7 (Jul. 9, 2007).

⁸ *Id.* at 19-23.

⁹ Letter to Chairman Eddie Roberson from Henry Walker, Counsel for TWS, dated July 10, 2007 (Jul. 10, 2007).

- the monthly sewer charge per customer is based on the monthly average daily flow monitored from the unit being served,
- a monthly minimum sewer charge per customer of \$55 for the first 300 gallons per day of average daily flow,
- an additional monthly charge per customer of \$15 for each additional 100 gallons of average daily flow up to a total of 1,000 gallons per day,
- flat rates - dependant on the treatment and disposal processes - for average daily flows expected over 1,000 gallons per day, and
- a provision assessing to the customer the capital costs of increasing the capacity of the system dedicated to serve the customer in the event that the customer's usage exceeds the average daily design flow for three consecutive months.¹⁰

In response to data requests, TWS adopted the definition of overnight rentals set forth in Tenn. Code Ann. § 67-4-702(a)(11).¹¹ TWS also confirmed in the data responses that the tariff will apply to all overnight rentals served by TWS.¹²

On July 19, 2007, Smoky Cove filed objections to the settlement. In its objections, Smoky Cove argues that "TWS was unable to provide any evidence establishing the necessity for any rate increase."¹³ Smoky Cove also argues that TWS has a duty to provide notice to all affected parties and that TWS has not provided such notice.¹⁴ Smoky Cove specifically requests that the Authority limit the applicability of the settlement to only TWS and Starr Crest.¹⁵

On July 20, 2007, TWS filed its response to Smoky Cove's objections. TWS asserts that Smoky Cove's arguments should be given no weight because the objections are at odds with counsel's statements at the July 9, 2007, hearing and indicate a lack of understanding of the proposed tariff provisions.¹⁶ TWS also asserts that it provided notice to all affected property

¹⁰ *Id.* at Attachment.

¹¹ Letter to Darlene Standley, Chief Utilities Division, from Henry Walker, Counsel for TWS, dated July 25, 2007, p. 1 (Jul. 25, 2007).

¹² *Id.* at 1-2.

¹³ *Objections of Smokey Cove to Settlement and Tariff Proposed by Tennessee Wastewater Systems, Inc.*, p. 1 (Jul. 19, 2007).

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 3.

¹⁶ *Tennessee Wastewater Systems, Inc.'s Response to Objections of Smoky Cove*, p. 3 (Jul. 20, 2007).

owners when it sent out the notice on or about March 1, 2007. Specifically, TWS asserts that no additional notice is required to reduce the proposed amount of the increase.¹⁷

On July 23, 2007, Smoky Cove filed a reply to TWS's response. In its reply, Smoky Cove argues that there was "no verifiable or statistical data provided that would form the basis for reclassifying the subject properties."¹⁸ Smokey Cove further asserts that if it is reclassified, there has been no proof that \$55 is a fair and reasonable rate.¹⁹

On August 20, 2007, the panel considered the settlement agreement. A majority of the Directors voted in favor of a motion to approve the settlement agreement with the applicability of the tariff being limited to Starr Crest and to defer consideration of the general applicability of the tariff to a later date.²⁰ I voted in opposition to the motion.

Smokey Cove filed its post-hearing brief on July 30, 2007. In its brief, Smoky Cove encourages the panel to focus on the proper issue, namely whether TWS has established sufficient evidence to justify the proposed reclassification.²¹ Smokey Cove contends that TWS failed to offer any evidence with regard to usage despite having claimed in the petition that the reclassification was justified by the fact that the usage of the properties was not similar to a single family home.²² Smoky Cove asserts that TWS admitted that none of the properties have exceeded the design flow for the overall system.²³ Later in the brief, Smoky Cove addresses what it characterizes as TWS's mid-stream change of rationale, namely that the transient nature of renters and potential misuse justifies reclassification. Again, argues Smoky Cove, TWS failed to provide any statistical data that maintenance of the properties was more frequent or more

¹⁷ *Id.* at 3-4.

¹⁸ *Reply to Tennessee Wastewater Systems' Response to Objections of Smokey Cove*, p. 1 (Jul. 23, 2007).

¹⁹ *Id.*

²⁰ *Order Approving Settlement Agreement*, pp. 4-5 (Jan. 25, 2008); Transcript of Authority Conference, pp. 95-97 (Aug. 20, 2007).

²¹ *Smoky Cove Log Home Resorts, Lynn Hedrick's and HP Development's Post Hearing Brief*, p. 2 (July 30, 2007).

²² *Id.* at 1-2.

²³ *Id.* at 3.

costly for any part of the system that serves the rental units.²⁴ Smokey Cove asserts that the business interest of Mr. Hedrick will be adversely affected by a rate increase of approximately sixty-six percent.²⁵ As further justification for their opposition to reclassification, Smoky Cove states that East Sevier Utility District charges rental units a residential rate of \$35.00, does not make owners liable for capital improvements, and operates at a profit in regard to its rental-cabin units.²⁶ Smoky Cove also challenges the notice afforded to the affected ratepayers by arguing that the notice failed to indicate that there is a process through which ratepayers can object and failed to mention the potential liability for upgrades.²⁷ As a final argument in their post-hearing brief, Smoky Cove asserts that the reclassification results in a rate increase to owners.²⁸

TWS filed its post-hearing brief on August 29, 2007. TWS asserts that the properties are commercial operations under Tennessee's tax laws and that the Sevier County Electric System and the Pigeon Forge Utility Department classify the properties as commercial.²⁹ TWS next asserts that it is unreasonable for these commercial operations, some of which sleep as many as fifty guests, to be charged the residential rate, which is \$35 per month regardless of usage. TWS also supports its contention by asserting that the rental properties have higher peak usage than residential customers.³⁰ TWS contends that a failure to grant the petition would result in discrimination between the overnight rental property owners who are currently paying the commercial rate and the property owners affected by this petition.³¹ TWS next contends that any insinuation that there is a contract for residential rates that also prohibits liability for capital

²⁴ *Id.* at 4.

²⁵ *Id.* at 6.

²⁶ *Id.* at 8-9.

²⁷ *Id.* at 10-11.

²⁸ *Id.* at 11-12.

²⁹ *Tennessee Wastewater Systems, Inc.'s Post Hearing Brief*, p. 3 (Aug. 29, 2007).

³⁰ *Id.* at 4.

³¹ *Id.*

upgrades is untrue.³² TWS turns next to the rates filed with the initial Smokey Cove certificate of convenience and necessity application and points out that the revised tariff pages approved as part of the application list Smoky Cove as having both residential and commercial properties. The filed rate doctrine, continues TWS, requires TWS to charge the appropriate tariffed rate.³³ TWS responds to Smoky Cove's assertions that TWS failed to provide sufficient evidence by noting that there is no legal requirement that rates be designed on cost-of-service data. TWS notes also that it did provide uncontradicted evidence that transient renters result in a need for additional maintenance and that there is no dispute that many of the rental properties are far larger than residential houses.³⁴

On September 10, 2007, the docket came before the panel once again. The panel initially considered the issue raised by the petition of whether to classify the overnight rental properties in the eight service areas as commercial. The panel voted unanimously to grant the petition.³⁵ Thereafter, the majority voted to approve the tariff filed on July 10, 2007, as amended on September 6, 2007³⁶ and to require TWS to further amend its tariff to better explain the billing methodology.³⁷ On October 4, 2007, TWS filed a revised tariff in an effort to address the majority's concerns over the billing methodology.

II. AUGUST 20, 2007, AUTHORITY CONFERENCE

At the August 20, 2007, Authority Conference, a majority of the Directors voted in favor of a motion to approve the settlement, which included the tariff, and to limit the applicability of

³² *Id.* 5-6.

³³ *Id.* at 6.

³⁴ *Id.* at 7-8.

³⁵ *Order Granting Reclassification of Properties and Approving Revised Tariff*, pp. 5-6 (Jan. 25, 2008); Transcript of Authority Conference, p. 31 (Sept. 10, 2007).

³⁶ TWS filed an amendment to its July 10, 2007, tariff on September 6, 2007, to reflect the August 20, 2007, decision of the majority and to reflect TWS's agreement to notify customers of their ability to file a complaint with the Authority with regard to an attempt by TWS to bill customers for capital improvements.

³⁷ *See Order Granting Reclassification of Properties*, pp. 6-7 (Jan. 25, 2008); Transcript of Authority Conference, pp. 40-41 (Sept. 10, 2007).

the terms and conditions of the tariff to Starr Crest.³⁸ I voted in opposition to the motion for one reason. In my opinion, the majority's approval sanctions unjust discrimination and is unlawful. Specifically, the motion limits the applicability of the terms and conditions of a tariff designed to be of general application to a single customer without sufficient justification. In Tennessee, it is prohibited and unlawful for a carrier to commit unjust discrimination, which includes collecting a rate from a person that is greater than or less than the rate charged to another person "for a service of a like kind under substantially like circumstances and conditions."³⁹ In order to further the intent of the law, but to recognize that there may be circumstances justifying disparate treatment of particular customers, the Authority's rules provide for the filing and approval of special contracts. It is through TRA Rule 1220-4-1-.07 that a utility may petition the Authority to charge a unique rate or to apply a unique billing methodology. TRA Rule 1220-4-1-.07 provides:

(1) Special contracts between public utilities and certain customers prescribing and providing rates, services and practices not covered by or permitted in the general tariffs, schedules or rules filed by such utilities are subject to supervision, regulation and control by the Authority. A copy of such special agreements shall be filed, subject to review and approval.⁴⁰

While the rule does not set out specific criteria for the approval of a special contract, it is axiomatic that there must be some showing justifying the unique treatment of the particular customers. The Authority has in the case of other special contract dockets considered factors

³⁸ *Order Approving Settlement Agreement*, p. 4 (Jan. 25, 2008); Transcript of Authority Conference, pp. 95-97 (Aug. 20, 2007).

³⁹ Tenn. Code Ann. §65-4-122(a) (2004 Repl.). The full text of the (a) provides:

(a) If any common carrier or public service company, directly or indirectly, by any special rate, rebate, drawback, or other device, charges, demands, collects, or receives from any person a greater or less compensation for any service within this state than it charges, demands, collects, or receives from any other person for service of a like kind under substantially like circumstances and conditions, and if such common carrier or such other public service company makes any preference between the parties aforementioned, such common carrier or other public service company commits unjust discrimination, which is prohibited and declared unlawful.

⁴⁰ TRA Rule 1220-4-1-.07(1) (July 2006 Rev.).

that distinguish the customer from the general rate base. For example, the Authority has considered the ability of the customer to bypass the public utility or to use an alternative fuel source.⁴¹

The majority fails to provide any justification for approving a de facto special contract. Therefore, I cannot vote with the majority. Moreover, my review of the docket fails to yield sufficient justification for approving the tariff as a special contract.

The only factor distinguishing Starr Crest from other similarly situated customers currently billed either the residential rate or the commercial without food service rate that I have been able to detect is that Starr Crest is opposing TWS's petition in this docket and has agreed to bow out of the litigation in exchange for what it considers to be a rate reduction. I cannot justify providing one group of customers a specific rate simply because that group agreed to withdraw its objections in a pending proceeding.

Additionally, it is not surprising that the majority could not cite sufficient justification for approving a special rate and billing methodology, because TWS never intended the tariff to

⁴¹ When reviewing bypass agreements, a frequently filed type of special contract, the Authority has considered: whether the threat of bypass is imminent; whether the bypass would be uneconomic; whether rates and terms are unduly preferential or discriminatory; whether the rates are the highest that could be negotiated; the effect of margin loss on the company's rate of return; whether the agreement will allow the customer to remain competitive and contribute to the prosperity of the area; the effect on the utility's transportation revenues and profit margin; and the need for capital investment to meet the requirements of the agreement. See *In re: Petition of Atmos Energy Corporation for Approval of Gas Transportation Agreement with the Goodyear Tire and Rubber Company*, Docket No. 03-00540, *Order Granting Amended Petition and Approving Amended Gas Transportation Agreement* (Aug. 22, 2005); *In re: Petition of United Cities Gas Company for Approval of a Transportation Gas Service Agreement with Superior Industries International*, Docket No. 00-01022, *Order Accepting Settlement Agreement and Approving Transportation Gas Service Agreement* (June 25, 2002); *In re: Petition of United Cities Gas Company for Approval of a Transportation Gas Service Agreement with Mountain Home Energy Center, L.L.C.*, Docket No. 01-00138, *Order Approving Transportation Gas Service Agreement* (July 20, 2001); *In re: Petition in United Cities Gas Company, a Division of Atmos Energy Corporation, for Approval of a Gas Transportation Agreement with Middle Tennessee State University*, Docket No. 98-00277, *Order Approving Gas Transportation Agreement* (Mar. 12, 1999); *In re: Petition of Chattanooga Gas Company for Approval of Large Customer Contract Under Experimental Rule with Velsicol Chemical Corp.*, Docket No. 97-00265, *Order Disapproving Special Contract Under the Large Customer Contracts Tariff* (Mar. 17, 1998). Additionally, the Authority approved a non-bypass special contract between a methane pipeline operator and its only customer. See *In re: Application of ESG Pipeline (JC), LLC for a Certificate of Convenience and Necessity to Operate a Processed Methane Gas Distribution System in Johnson City, TN*, Docket No. 05-00244, *Order Granting Certificate of Convenience and Necessity* (Apr. 19, 2006).

apply only to Starr Crest. Therefore, TWS did not attempt to justify the special treatment. TWS has consistently maintained that the tariff would apply to all overnight rental customers.⁴² It was only after an extensive discussion of the sufficiency of the notice provided by TWS during the August 20th Authority Conference that counsel for TWS suggested that if there were notice concerns then the panel could approve the tariff revision for only Starr Crest.⁴³ At the Authority Conference, counsel did not offer any specific justification for the special treatment other than a need to mitigate any ill-effects of the perceived improper notification. This justification too is insufficient.

III. SEPTEMBER 10, 2007, AUTHORITY CONFERENCE

At the September 10, 2007, Authority Conference, a majority of the Directors voted in favor of a motion to approve the application of the overnight rental property rate to all overnight rental properties, including the resort properties in this case.⁴⁴ I voted in opposition to the motion to approve the rate because, in my opinion, there is insufficient justification for charging overnight rental customers \$55 for the first 300 gallons of average daily flow. While there is sufficient evidence to justify treating overnight rental customers differently from both residential customers and other commercial customers, that difference is addressed through the addition of a usage component to the flat rate. As to the first 300 gallons, there is no justification in the record for charging overnight rental customers more than residential customers.

As the Tennessee Supreme Court has stated, the litmus test for ratemaking is that the rates be just and reasonable – nothing more, nothing less.⁴⁵ In this regard, it is not a requirement

⁴² Letter to Chairman Eddie Roberson from Henry Walker, Counsel for TWS, dated July 10, 2007 (Jul. 10, 2007); Letter to Darlene Standley, Chief Utilities Division, from Henry Walker, Counsel for TWS, dated July 25, 2007, p. 1 (Jul. 25, 2007).

⁴³ Transcript of Authority Conference, p. 94 (Aug. 20, 2007).

⁴⁴ *Order Granting Reclassification of Properties and Approving Revised Tariff*, pp. 6 (Jan. 25, 2008); Transcript of Authority Conference, p. 41 (Sept. 10, 2007).

⁴⁵ *CF Industries v. Tennessee Public Service Commission*, 599 S.W.2d 536, 542-43 (Tenn. 1980).

of ratemaking that the proponent of rates produce specific cost of service data or that the Authority base its decision on the receipt of such data. The Authority may consider a wide array of factors in its decision making process, yet in the end it must always return to the analysis of whether the rate is just and reasonable.

The Authority has in the past approved requests of TWS to expand its certificate of convenience of necessity, which included requests to bill rental properties at the commercial rate.⁴⁶ The application of this commercial rate, more specifically, the commercial without food service rate, was never challenged until Smoky Cove intervened in this docket. Smoky Cove has throughout these proceeding contended that TWS has not properly justified the assessment of any rate on overnight rental properties that is greater than that charged to residential customers. I agree with Smoky Cove in part.

I cannot conclude from this record that it is just and reasonable to charge residential and overnight rental customers a different rate for the first 300 gallons of flow. TWS asserts through its witnesses that renters cause problems with the system that TWS must address and that residential customers do not cause.⁴⁷ This testimony is insufficient in my opinion, however, to justify disparate rate treatment for the initial 300 gallons of flow. This evaluation of the evidence is supported by TWS's testimony that it is not sure what a normal visitation cycle is for a residential development and that they have never tracked the time they spend sending people out on service calls for residential versus commercial properties.⁴⁸ The fact is that TWS has not

⁴⁶ See *In re: Petition for Approval of Tennessee Wastewater Systems, Inc. to Expand its Service Area to Include a Portion of Sevier County, Tennessee, Known as Elk Springs Resort*, Docket No. 05-00211, *Order Approving Petition to Amend Certificate of Convenience and Necessity*, p. 2 (Apr. 4, 2006); *In re: Petition for Approval of Tennessee Wastewater Systems, Inc. to Expand its Service Area to Include a Portion of Sevier County, Tennessee, Known as Sugarloaf Ridge*, Docket No. 06-00022, *Order Approving Petition to Amend Certificate of Convenience and Necessity*, pp. 2-3 (May 19, 2006).

⁴⁷ Transcript of Hearing, pp. 36, 50 (Jul. 9, 2007).

⁴⁸ *Id.* at 62, 75-76, 84.

demonstrated that renters cause more problems or, if they do, that those additional problems necessitate additional maintenance calls.

Tennessee Wastewater also asserts as a general proposition that it is just and reasonable for commercial customers to subsidize residential customers. I agree that policy considerations oftentimes drive rate design decisions to set commercial customers' rates higher than residential rates in order to ensure that residential rates are just and reasonable. To the extent such social pricing is necessary for TWS, it is accomplished through the adoption of a usage component.

Contrary to Smokey Cove's position, it is my opinion that the record demonstrates that there is a need for a usage component in the rate. The members of the commercial overnight rental category share many characteristics, but vary widely in the number of renters that may occupy a specific property. For example, one property may accommodate only four adults where another property may accommodate fifty or more adults.⁴⁹ In my opinion, the stark disparity in size and occupancy and the evidence that use of the cabins is intermittent and peaks on certain holidays demonstrate that a use based rate component is just and reasonable. Therefore, I find that it is appropriate to charge the overnight rental classification a usage based rate after the initial 300 gallons of average daily flow.

As an additional point, I address the reliance of my colleagues on the conclusion that the proposed tariff will benefit customers "who would otherwise pay a commercial rate of \$75."⁵⁰ I am unable to determine with any degree of certainty from the evidence and arguments in the record that the July 10, 2007, tariff, as amended, will in fact benefit those customers currently being billed the commercial without food service rate. It is my reading of the record that the overnight rental customers that are currently being billed under the commercial without food

⁴⁹ *Id.* at 57.

⁵⁰ *Order Granting Reclassification of Properties and Approving Revised Tariff*, p. 6 (Jan. 25, 2008).


service tariff are not being billed anything more than the \$75.00 minimum rate, because TWS has not established a design daily flow for each overnight rental property.⁵¹ Thus, it is conceivable that the alteration of the billing methodology proposed in TWS's tariff could result, at least in some instances, in a rate increase.⁵²

IV. OCTOBER 22, 2007, AUTHORITY CONFERENCE

During the October 22, 2007, Authority Conference, the majority voted to approve TWS's revised tariff filed on October 4, 2007, to address the majority's September 10, 2007, requirement to clarify the billing methodology. I voted in opposition to approval because the revised tariff contains the rate I found to be objectionable at the September 10, 2007, Authority Conference. Additionally, I note that I have concerns with the language of the October 4, 2007, revised tariff that allows TWS to determine that a customer's measured usage exceeds an average of 300 gallons per day over a thirty day period based on estimated usage. In my opinion, TWS's determination in this regard should only be based on the customer's actual usage.

V. CONCLUSION

Based on the foregoing, I respectfully dissent as set forth herein from the *Order Approving Settlement* issued on January 25, 2008 and *Order Granting Reclassification and Approving Revised Tariff* issued on January 25, 2008.



Ron Jones, Director

⁵¹ Transcript of Hearing, p. 74 (Jul. 9, 2007).

⁵² *Id.* at 74.