

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 28, 2007

IN RE:

PETITION OF CUMBERLAND BASIN
WASTEWATER SYSTEMS, LLC FOR A
CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO
SERVE AN AREA IN PUTNAM COUNTY,
TENNESSEE KNOWN AS THE BLUFFS
AT CUMBERLAND COVE

DOCKET NO.
07-00079

DISSENTING OPINION OF DIRECTOR RON JONES

This docket came before a panel of the Tennessee Regulatory Authority (“Authority”) at an Authority Conference held on July 23, 2007 for consideration of the *Petition* filed by Cumberland Basin Wastewater Systems, LLC (“CBWS”) on March 28, 2007. A majority of the panel voted to approve the commercial and residential rates proposed by CBWS and to reduce by \$3.10 the residential escrow amount proposed by CBWS.¹ The majority entered the *Order Approving Application for a Certificate of Public Convenience and Necessity and Tariff* on November 28, 2007, memorializing these decisions. Because I disagree with the decisions, I respectfully dissent, in part, from the order² and offer the following opinion in support of my vote.

¹ *Order Approving Application for a Certificate of Public Convenience and Necessity and Tariff*, pp. 3-4 (Nov. 28, 2007). In the order, the majority does not explicitly mention that it reduced the proposed residential escrow rate by \$3.10. However, that is exactly what the majority did. CBWS proposed a residential escrow rate of \$10.13, and the majority approved an escrow amount of \$7.03. Transcript of Authority Conference, p. 11 (Jul. 23, 2007); *Order Approving Application for a Certificate of Public Convenience and Necessity and Tariff*, p. 3 (Nov. 28, 2007).

² As noted in footnote 6 of the *Order Approving Application for a Certificate of Public Convenience and Necessity and Tariff*, I voted in favor of granting CBWS a certificate of public convenience and necessity and instructing CBWS to work with Authority Staff with regard to a commercial escrow amount.

I. Authority Rule 1220-4-13-.07

As a starting point, it is necessary to discuss the requirements of Authority Rule 1220-4-13-.07(8). This rule provides:

The requirement for a public wastewater utility to maintain a reserve/escrow account shall be determined by the Authority on a case by case basis. . . . Upon the filing of an initial [Certificate of Public Convenience and Necessity (“CCN”)] application, a determination shall be made regarding the establishment of a reserve/escrow account. The Authority may review the financial condition of any public wastewater utility at any time to determine whether a reserve/escrow account balance is adequate or an account should be established.

By its plain language, this rule requires the Authority to determine at the time a company seeks its initial CCN whether the company should establish an escrow account. This docket involves an application for an initial CCN, and the applicant is requesting it be permitted to establish an escrow account. Generally, an escrow account has the potential to benefit both ratepayers and the utility. However, the degree of such benefit, if any, is dependant on a thorough evaluation of the amount to be escrowed. Such an evaluation has not occurred in this docket.

II. Residential Rates

CBWS has included in its proposed residential rate of \$35.11 an amount equal to \$10.13 to be escrowed each month.³ The proposed total amount to be escrowed includes amounts to cover expenditures for activities that might be categorized as routine and non-routine. For example, Mr. Tim Huddleston, president of CBWS, testified that the amount to be escrowed included amounts to cover the replacement of plant, which might be categorized as non-routine,

³ Transcript of Authority Conference, p. 11 (Jul. 23, 2007); Revised Replacement Tariff Sheet #1 to July 3 Tariff Filing (Jul. 10, 2007).

and tank pumping, which might be categorized as routine.⁴ Mr. Huddleston explained that the proposed rates, including the amount to be escrowed, are identical to rates the Authority has approved for other wastewater service providers using similar plant.⁵ He explained that CBWS had proposed the identical rates because “the plans and specifications are not complete for the treatment system or collection system.”⁶ Mr. Huddleston further admitted that CBWS had not undertaken any independent analysis of the amount to be escrowed to determine if it would result in an under-recovery or over-recovery.⁷ However, he agreed that further proof regarding the amount to be escrowed and, thereby, the total rate to be billed would be available soon. Specifically, Mr. Huddleston agreed that CBWS would be able to provide within thirty days some type of projection as to a schedule by year for twenty years as to when plant replacements are likely to occur.⁸

In my opinion the information Mr. Huddleston agreed to provide will likely go to the heart of determining the amount of the residential rate to be escrowed. Given that this additional information will soon be available and that the information will likely improve the rate determinations, I am unwilling at this time to approve either the amount to be escrowed or the total residential rate, which includes the amount to be escrowed.

⁴ Transcript of Authority Conference, pp. 11-12 (Jul. 23, 2007); Revised Replacement Tariff Sheet #1 to July 3 Tariff Filing (Jul. 10, 2007). The majority determined that the escrow amount should include only capital equipment replacement at a rate of \$7.03, thereby, eliminating tank pumping costs from the amount to be escrowed. Transcript of Authority Conference, pp. 17 (Jul. 23, 2007). Presumably, the majority determined that tank pumping is a routine operation and maintenance activity. I have yet to make such a determination. In my opinion, the determination of this issue, if made at all, should not be made until further information is obtained from CBWS and, possibly, not until the Authority has concluded the numerous dockets convened to evaluate the escrow amounts currently in place for other wastewater service providers. *See, e.g., In re: Docket to Determine the Reserve/Escrow Requirement for Tennessee Wastewater Systems, Inc. Pursuant to TRA Rule 1220-4-12-.07(8).*

⁵ Transcript of Authority Conference, pp. 9-11 (Jul. 23, 2007).

⁶ *Id.* at 9-10.

⁷ *Id.* at 11-13.

⁸ *Id.* at 15-16.

III. Commercial Rates

As to commercial services, I agreed with my fellow panel-members that CBWS should be instructed to work with the Authority's staff with regard to the commercial escrow amount. However, I disagreed with the adoption of the commercial rate proposed by CBWS in its tariff. In my opinion, it is premature to adopt a commercial rate before receiving the information Mr. Huddleston agreed to provide and without knowing the results of the cooperative efforts of our staff and CBWS.

IV. Timing of Rate Determinations

During the July 23rd Authority Conference, it was suggested that the rates need to be set to avoid holding-up the process and to begin collecting escrow amounts now.⁹ While I agree that rates must be set prior to the initiation of service, in this case, there was no urgency to set the rates on July 23, 2007. Mr. Huddleston testified that CBWS will not have any customers until 2008¹⁰ and that he could provide information relevant to the rate determination within thirty days.¹¹ Given this testimony, there is sufficient time for the Authority to obtain valuable information and to properly evaluate the escrow amount and total residential rate in advance of the need to bill customers.

V. Conclusion

Based on the foregoing, I respectfully dissent from the *Order Approving Application for a Certificate of Public Convenience and Necessity and Tariff* issued on November 28, 2007, with

⁹ *Id.* at 20-23.

¹⁰ *Id.* at 14.

¹¹ *Id.* at 15-16.

regard to the decisions to approve the proposed residential and commercial rates and to reduce the proposed amount to be escrowed from the residential rates.



Ron Jones, Director