

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 19, 2008

IN RE:

PETITION OF TENNESSEE WASTEWATER SYSTEMS, INC.
TO EXPAND ITS SERVICE AREA TO INCLUDE A PORTION
OF SEVIER COUNTY IN TENNESSEE, KNOWN AS
GREENBRIAR SUBDIVISION

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DOCKET NO.
08-00013

ORDER APPROVING PETITION TO AMEND
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

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 a Hearing held on February 25, 2008 to consider the *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity* (the "*Petition*") requesting that the Authority approve expansion of its service area to include a portion of Sevier County, Tennessee, known as Greenbriar Subdivision ("Greenbriar").

Background

On April 6, 1994, Tennessee Wastewater Systems, Inc.¹ ("TWS" or the "Company") received a Certificate of Public Convenience and Necessity ("CCN") in Docket No. 93-09040 from the Tennessee Public Service Commission to provide wastewater service to the Oakwood Subdivision in Maury County. Since that time, through various other dockets, the Company has been granted approval to expand its service territory to include other areas in Tennessee. The Company's principal office is located in Smyrna, Tennessee. On January 16, 2008, TWS filed the *Petition* in the present matter, along with the Pre-filed Direct Testimony of Matt Pickney.

¹ Tennessee Wastewater Systems, Inc. was formerly known as On-Site Systems, Inc. This name change was effected by the TRA's order of February 19, 2004, in Docket No. 03-00518.

Legal Standard for Granting Certificate of Public Convenience and Necessity

No public utility is permitted to begin construction or operation of a new utility facility or service before obtaining approval of the Authority. The procedure for obtaining a CCN evidencing such approval is set forth in Tenn. Code Ann. § 65-4-201(a) (Supp. 2007), which states as follows:

- (a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate. . . .

The Authority's permanent rules for public wastewater utilities became effective on June 12, 2006. TRA Rule 1220-4-13-.04(1)(b) sets forth certain requirements for a CCN applicant as follows:

- (b) Any public wastewater utility requesting a Certificate of Public Convenience and Necessity (CCN) authorizing such public utility to construct and/or operate a wastewater system or to expand the area in which such a system is operated, shall file an application in compliance with Rule 1220-1-1-.03 and this rule. All applicants shall demonstrate to the Authority that they are registered with the Secretary of State, have obtained the financial security required under 1220-4-13-.07, and possess sufficient managerial, financial, and technical abilities to provide the wastewater services for which they have applied. Each application shall justify existing public need and include the required financial security consistent with Tenn. Code Ann. § 65-4-201 and these rules.

The Petition

On January 16, 2008, TWS filed its *Petition* requesting that its service area be expanded to include a portion of Sevier County, Tennessee, known as Greebriar. TWS is proposing to provide wastewater service to approximately 10 residential lots, 41 overnight rental lots and a commercial clubhouse and office at Greenbriar. The Company will serve Greenbriar by an effluent collection system, fixed film treatment and subsurface drip dispersal system.

In support of its *Petition* and as evidence of the public need for wastewater service in the requested area, TWS attached a letter from Richard A. Carter, the owner of Thorngrove Pike Subdivision d/b/a Greenbriar, requesting that TWS provide service to Greenbriar. In addition, TWS attached letters from other potential wastewater service providers stating that none of the potential providers currently serves the area or intends to extend wastewater service to Greenbriar.² The Company filed a service area map showing the location of Greenbriar.³ Finally, TWS states in its *Petition* that an application for a Tennessee Department of Environment and Conservation (TDEC) permit, filed June 16, 2007, is pending approval.⁴ TWS further states that the system should be completed within approximately sixty days.

The February 25, 2008 Hearing

Public notice of the Hearing in this matter was issued by the Hearing Officer on February 5, 2008. No person sought intervention prior to or during the Hearing. During the Hearing held on February 25, 2008, Mr. Matt Pickney, Operations Manager of TWS, presented testimony and was subject to examination by the panel. Mr. Pickney's Pre-filed Testimony, was entered into the record without objection. The Pre-filed Testimony states that the Company has the managerial, technical and financial ability to provide wastewater services to Greenbriar.⁵ Additionally, the panel took administrative notice of TWS's 2006 annual report on file with the Authority, the Secretary of State website reflecting the corporate status of TWS, and the Company's proof of financial security on file with the Authority.

The panel found that TWS had met the requirements of Tenn. Code Ann. § 65-4-201(a) (Supp. 2007) and TRA Rule 1220-4-13-.04(1)(b). The panel also found that the rates filed by TWS

² See *Petition* (unnumbered attachments) (January 16, 2008): Larry Waters, Sevier County Mayor, letter dated November 8, 2007; and Stephen W. Flynn, Director, City of Sevierville, letter dated November 14, 2007.

³ See *Petition*, Exhibit "A" (January 16, 2008): Service area map showing the location of Greenbriar Subdivision.

⁴ On January 24, 2008, TWS filed a copy of TDEC Draft Permit No. SOP-07055 which the Division of Water Pollution Control proposes to issue. During the February 25, 2008 Hearing, Mr. Pickney stated that the Company had received its TDEC permit. See Transcript of Authority Conference, p. 104, line 14 (February 25, 2008).

⁵ Matt Pickney, Pre-Filed Testimony (January 16, 2008).

were identical to those rates previously approved by the Authority for other areas served by the Company.

Based upon the evidentiary and administrative record as a whole and relying on the standards set forth in Tenn. Code Ann. § 65-4-201(a) (Supp. 2007) and TRA Rule 1220-4-13-.04(1)(b), the panel voted unanimously to grant approval of the *Petition*, including the rates filed by the Company.

IT IS THEREFORE ORDERED THAT:

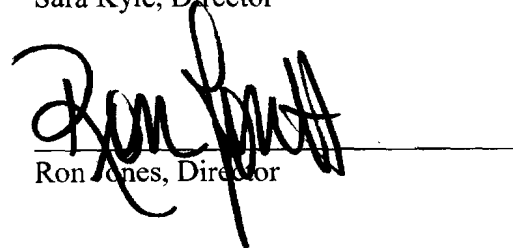
1. The *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity* to expand its service area to include Greenbriar in Sevier County, Tennessee, as shown in the map attached to the *Petition*, is approved.
2. The Petitioner's rates for wastewater service shall be as listed in its Tariffs and the rate schedule filed in this docket on January 16, 2008.



Eddie Roberson, Chairman



Sara Kyle, Director



Ron Jones, Director