

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 9, 2008

IN RE:	)	
	)	
PETITION OF TENNESSEE WASTEWATER	)	DOCKET NO.
SYSTEMS, INC. TO EXPAND ITS SERVICE AREA	)	08-00029
TO INCLUDE A PORTION OF GILES COUNTY IN	)	
TENNESSEE, KNOWN AS MILKY WAY FARMS	)	

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ORDER APPROVING PETITION TO AMEND  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

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This matter came before Director Eddie Roberson, Director Sara Kyle and Director Mary W. Freeman of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a Hearing held on August 11, 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 Giles County, Tennessee, known as Milky Way Farms (“Milky Way”).

**Background**

On April 6, 1994, Tennessee Wastewater Systems, Inc.<sup>1</sup> (“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 February 15, 2008, TWS filed the *Petition* in the present matter, along with the Pre-filed Direct Testimony of Matt Pickney. On July 25, 2008,

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<sup>1</sup> 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.

TWS filed replacement pages for the *Petition* which set out proposed residential and commercial rates.

### **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***

TWS is proposing to provide wastewater service to approximately 750-900 residential and commercial lots at Milky Way with the initial wastewater system to serve 100 residential lots.

Therefore, TWS filed both commercial and residential sewer rates.<sup>2</sup> The Company will serve Milky Way 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 Charles Ausburn of Milky Way, requesting that TWS provide service to Milky Way.<sup>3</sup> 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 Milky Way.<sup>4</sup> The Company filed a service area map showing the location of Milky Way.<sup>5</sup> Finally, TWS states in its *Petition* that an application for a Tennessee Department of Environment and Conservation (TDEC) permit, filed February 11, 2008, is pending approval. TWS further states that the system should be completed within approximately sixty days.

#### **August 11, 2008 Hearing**

Public notice of the Hearing in this matter was issued by the Hearing Officer on July 24, 2008. No person sought intervention prior to or during the Hearing. During the Hearing held on August 11, 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 Milky Way.<sup>6</sup>

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 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-

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<sup>2</sup> See replacement pages for the *Petition* filed on July 25, 2008.

<sup>3</sup> See *Petition* (unnumbered attachments) (February 15, 2008): Letter from Charles Ausburn dated January 4, 2008.

<sup>4</sup> See *Petition* (unnumbered attachments) (February 15, 2008): Janet P. Vanzant, Giles County Executive, letter dated November 15, 2007; and Jamie Byrd, Manager, Fairview Water District, letter dated December 20, 2007.

<sup>5</sup> See *Petition* (unnumbered attachments) (February 15, 2008): Service area map showing the location of Milky Way.

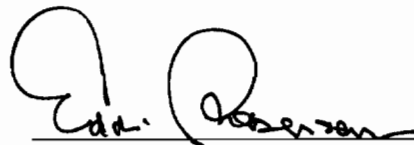
<sup>6</sup> Matt Pickney, Pre-Filed Testimony (February 15, 2008).

.04(1)(b), the panel voted unanimously to grant approval of the *Petition*, as amended and including the rates filed by the Company, contingent upon the Company receiving an operating permit from TDEC.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity*, as amended, to expand its service area to include Milky Way in Giles County, Tennessee, as shown in the map attached to the *Petition*, is approved contingent upon the Company receiving an operating permit from the Tennessee Department of Environment and Conservation.

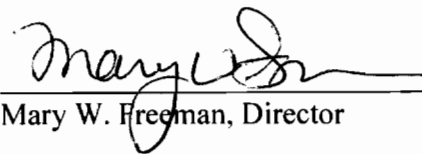
2. The Petitioner's rates for wastewater service shall be as listed in the Tariff and rate schedules filed in this docket on July 25, 2008.



Eddie Roberson, Director



Sara Kyle, Director



Mary W. Freeman, Director