

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 30, 2008

IN RE:

PETITION OF TENNESSEE WASTEWATER  
SYSTEMS, INC. TO EXPAND ITS SERVICE  
AREA TO INCLUDE A PORTION OF GILES  
COUNTY IN TENNESSEE KNOWN AS THE  
TARPLEY SHOP UTILITY DISTRICT

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) DOCKET NO.  
) 08-00161  
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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 October 20, 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 in Tennessee known as the Tarpley Shop Utility District.

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 September 4, 2008, TWS filed the *Petition* in the present matter, along with the Pre-filed Direct Testimony of Matt Pickney. On October 7, 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 additional pages to the *Petition* which include a copy of the current Letter of Credit as proof of the financial security required pursuant to TRA Rule 1220-4-13-.07.

**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 initially to one commercial customer, Pilot Travel Centers, LLC.<sup>2</sup> The Company proposes a deep cell lagoon treatment and dispersal system that has a projected capacity of 75,000 gallons per day, which will be able to serve numerous

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<sup>2</sup> *Petition*, p. 1.

developments throughout the acres.

In support of its *Petition* and as evidence of the public need for wastewater service in the requested area, TWS attached a letter from Brad Alsup, project manager for Pilot Travel Centers, LLC, requesting TWS provide service to Pilot Travel Center in the Tarpley Shop Utility District in Giles County.<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 the Pilot Travel Center in the Tarpley Shop Utility District.<sup>4</sup> The Company filed a service area map showing the location of the Tarpley Shop Utility District.<sup>5</sup> Finally, TWS states in its *Petition* that an application for a Tennessee Department of Environment and Conservation (TDEC) permit has not been submitted and will not be submitted until it has a more firm assessment of the size of the treatment facility.<sup>6</sup> TWS further states that the system should be completed within approximately 180 days after approval of the CCN.

#### **October 20, 2008 Hearing**

Public notice of the Hearing in this matter was issued by the Hearing Officer on October 8, 2008. No person sought intervention prior to or during the Hearing. During the Hearing held on October 20, 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 Pilot Travel Center in the Tarpley Shop Utility District.<sup>7</sup>

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<sup>3</sup>See *Petition* (unnumbered attachments) (September 4, 2008): Letter from Brad Alsup dated May 15, 2008.

<sup>4</sup>See *Petition* (unnumbered attachments) (September 4, 2008): Janet Vanzant, Giles County Executive, August 28, 2008 letter; and Larry Duncan, President, Tarpley Shop Utility District, letter dated June 4, 2008.

<sup>5</sup>See *Petition* (Exhibit A) (September 4, 2008): Service area map showing the Tarpley Shop Utility District.

<sup>6</sup>See *Petition*, p.1.

<sup>7</sup> Matt Pickney, Pre-Filed Testimony (September 4, 2008).

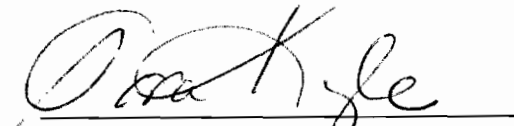
The panel found that TWS had met the requirements of Tenn. Code Ann. § 65-4-201(a) (Supp. 2007) and TRA Rule 1220-4-13-.04(1)(b). The panel also found that the rates filed by TWS were identical to those rates previously approved by the Authority for other areas served by the Company.

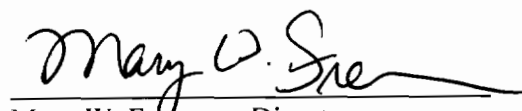
Based upon the evidentiary and administrative record as a whole and relying on the standards set forth in Tenn. Code Ann. § 65-4-201(a) (Supp. 2007) and TRA Rule 1220-4-13-.04(1)(b), the panel voted unanimously to grant approval of the *Petition*, as amended including the rates filed by the Company, 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 the Tarpley Shop Utility District 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 September 4, 2008.

  
Eddie Roberson, Director

  
Sara Kyle, Director

  
Mary W. Freeman, Director