

IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE:)
)
PETITION OF TENNESSEE) DOCKET NO. 08-00202
WASTEWATER SYSTEMS, INC. FOR)
APPROVAL TO AMEND ITS RATES)
AND CHARGES)

CONSUMER ADVOCATE'S STATEMENT ON AFFILIATE ISSUE IN HEARING
OFFICER'S REPORT AND RECOMMENDATION

Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), hereby states his position with regard to the Hearing Officer's recommendation regarding certain affiliate issues as set forth in his *Initial Order on Petitions for Reconsideration of the Discretionary Grant of Limited Intervention, and Report and Recommendation to Separate Corollary Issues into New Docket* ("Report and Recommendation"), issued on January 22, 2009.¹ In essence, the Hearing Officer made two recommendations with regard to affiliates: (1) that a new docket be opened to investigate a possible "use of affiliates in order to shield regulated operations and revenues from TRA jurisdiction;" and (2) that the issue of when and whether a Certificate of Convenience and Necessity ("CCN") is required for an affiliate engaged in the construction of wastewater facilities be added to this new docket. *Id.* at pages 9-10.

The Consumer Advocate is not opposed to this recommendation as long as it: (1) does not limit or impede the necessary discovery of affiliate activities in the present rate case since a

¹ The Consumer Advocate supports the Hearing Officer's efforts to insure that all parties and their representatives comply with the unauthorized practice of law statutes set forth at Tenn. Code Ann. 23-3-101, *et al.* when appearing before the TRA and/or making filings or the like before the Authority.

great part of the costs for which Tennessee Wastewater is seeking recovery in its proposed rate increase comes from affiliate charges; and (2) does not prohibit or limit the determination of what is in fact regulated income since it is impossible to determine just and reasonable rates if all regulated income is not identified and included in the ratemaking analysis.

In his Report and Recommendation, the Hearing Officer stated as follows:

KCC's Issues List brings only one new question to this docket, the concern "about TWS' use of affiliates in order to shield regulated operations and revenues from TRA jurisdiction." This Hearing Officer finds that while this issue raises a valid concern and is an issue that the Authority should investigate and consider, it is not an issue that belongs in the instant rate case. Therefore, the Hearing Officer recommends that the panel separate this issue from the rate case and open a new docket to consider both TWS' and the entire wastewater industry's use of affiliates.

If the Authority should open a new docket for the above purpose, the Hearing Officer recommends that Tenn. Code Ann. § 65-4-201 be rigorously analyzed, with close attention paid to the requirement that prior to construction of a public wastewater facility, any builder shall obtain "a certificate that the present or future public convenience and necessity ["CCN] require or will require such construction."

No public utility shall establish or begin the construction of, or operate any line, plan, 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;*** provided, however, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plan, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it. (emphasis added).

The Hearing Officer is of the opinion that some of the "affiliates" that could be the subject of a new docket are currently involved in such construction, and therefore may be doing business without proper certification from the Authority. If such affiliates are

appropriately included in the regulated wastewater industry, the Authority could better regulate the industry's operations and reported revenues.

Report and Recommendation at pages 9-10 (footnotes omitted).

At this time, the Consumer Advocate is not opposed to hearing in another docket the issue of whether Tennessee Wastewater is using "affiliates in order to shield regulated operations and revenues from TRA jurisdiction." *Id.* If, however, the proof in the present case clearly shows that income of an affiliate is regulated income, the Consumer Advocate cannot see how such income could be excluded from company revenue in a rate case.

Furthermore, the Consumer Advocate believes that discovery and proof on the use of affiliates, particularly as to how those affiliates charge for services provided to Tennessee Wastewater, is essential to this rate case. Indeed, if no proof or reference to affiliates is allowed, the rate case as filed by Tennessee Wastewater would virtually disappear because the greatest part of the costs for which they are seeking recovery comes from affiliates.

The Consumer Advocate would point out that the Hearing Officer made this recommendation about affiliates without receiving an Issues List from the Consumer Advocate or the TRA Staff. This is in no way a criticism of the recommendation. The Consumer Advocate fully understands the procedural difficulty the case is in with regard to the issue of how King's Chapel Capacity is to proceed in this case and the need to move the case forward. However, as will be shown further below, the affiliate issue is one of considerable complexity and is completely intertwined in the case. Thus, it is an issue that almost certainly needs further discussion from the parties before final limits are set. At a minimum, if this recommendation is accepted it would be advisable to allow this issue to be reopened, if necessary.

The relevance of affiliates to this rate case can be seen from the most cursory review of the testimony filed by Tennessee Wastewater. For example, Mr. Charles Hyatt testified that

Tennessee Wastewater is allocated or charged a “management fee” based on costs or charges from affiliates:

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Similarly, Mr. Charles Pickney, Jr., testifying for the company stated that Tennessee Wastewater is “very dependent” on the “Adenus Group” affiliates:

6. Q. Do you have other information that would be useful in evaluating this case?
- A. Tennessee Wastewater relies heavily on support services from Adenus Utilities Group, law and accounting firms and subcontractors. The small size of the subdivisions being served (average 33 customers) and the wide dispersion of the subdivisions (in more than 20 counties across the state) presents some unique challenges. It is not practical at this time to have full time staff that would spend most of their time traveling to the widely dispersed wastewater systems. Locating, training and managing reliable and efficient subcontractors is very important and particularly challenging.

Providing reliable service to a widely dispersed customer base requires unique business processes and specialized management skills that enable the company to effectively provide service to customers when it is not feasible to have a local office in the many small communities we serve.

Tennessee Wastewater is also very dependant on Adenus Group for support. Managerial oversight, financial analysis, marketing, relations with financial institutions and governmental relations are key areas. For example, Tennessee Wastewater is heavily dependant on corporate support when working with local community leaders as we seek to serve new areas across the state.

7. Q. Could you briefly describe the following companies: Adenus Group, LLC; Adenus Utilities Group, LLC; Adenus Technologies, LLC; Adenus Solutions Group, LLC; Adenus Capacity, LLC; Tennessee Wastewater System, Inc.;

Alabama Wastewater Systems, Inc.; Georgia Wastewater Systems, LLC; Commonwealth Wastewater Systems, LLC; and Adenus Operations, LLC.

- A. Adenus Group, LLC is a limited liability holding company that owns all of the other Adenus companies (see Exhibit 9-A for more detail)

Adenus Utilities Group, LLC is a subsidiary limited liability holding company that owns the utility companies as well as Adenus Operations.

Adenus Technologies, LLC is a company that manufactures, distributes and sells equipment and products to the wastewater industry.

Adenus Solutions Group, LLC is a company that provides wastewater related engineering and technical services as well as construction services.

Adenus Capacity, LLC is a company that manages the creation of large scale wastewater treatment facilities.

Tennessee Wastewater Systems, Inc. is a utility company that owns, operates and maintains wastewater treatment systems across the state of Tennessee.

Alabama Wastewater Systems, Inc. is a utility company that owns, operates and maintains wastewater treatment systems in the state of Alabama.

Commonwealth Wastewater Systems, LLC is a utility company that owns, operates and maintains wastewater treatment systems in the state of Kentucky.

Georgia Wastewater Systems, LLC is a utility company that owns, operates and maintains wastewater treatment systems in the state of Georgia.

Adenus Operations, LLC is a company that provides operation and maintenance services to cities, water/wastewater authorities, commercial customers, and public utility companies.

8. Q. Please provide a listing of all Adenus employees, and indicate whether their salary is allocated or not.

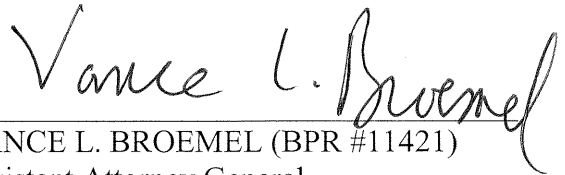
- A. Please see Exhibit 10-A.

Testimony of Charles Pickney, Jr. at page 2:9-3:28.

SUMMARY

In light of these clear and essential references to affiliates by the company, the Consumer Advocate maintains that discovery and proof of affiliates is necessary for this case. Furthermore, any clearly regulated income should be allowed to be included as revenue for the purpose of setting rates.

RESPECTFULLY SUBMITTED,



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Dated: February 19th, 2009.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition to Intervene was served via U.S. Mail or electronic mail upon:

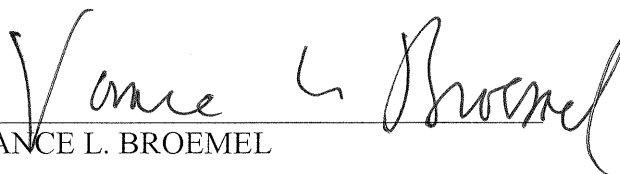
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This the 19th day of February, 2009.


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