

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 13, 2009

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

ORDER ON MARCH 5, 2009 STATUS CONFERENCE

This matter came before the Hearing Officer during a Status Conference on March 5, 2009 to resolve certain outstanding motions filed by Tennessee Wastewater Systems, Inc. ("TWSI" or the "Company"), discuss pre-hearing matters including the entry of a protective order and concerns of the parties pertaining to discovery, and establish a procedural schedule to completion.

RELEVANT PROCEDURAL BACKGROUND

During the regularly scheduled Authority Conference on February 23, 2009, the voting panel of the Tennessee Regulatory Authority ("TRA" or the "Authority") assigned in this matter voted unanimously to grant the motion of the TRA Staff to withdraw as a party¹ and to deny King's Chapel Capacity's ("KCC") motion for review² of the Hearing Officer's *Initial Order on Petitions for Reconsideration of the Discretionary Grant of Limited Intervention, and Report and Recommendation to Separate Corollary Issues Into New Docket*,³ thereby, affirming the findings

¹ *Motion of TRA Staff to Withdraw as a Party or in the Alternative to Seek Clarification of Role* (January 27, 2009).

² *Kings' Chapel Capacity's Motion for Expedited TRA Review of Hearing Officer's Order* (January 28, 2009).

³ *Initial Order on Petitions for Reconsideration of the Discretionary Grant of Limited Intervention, and Report and Recommendation to Separate Corollary Issues Into New Docket* (January 22, 2009) ("*Initial Order*").

of fact and conclusions of law set forth therein by the Hearing Officer.⁴ Further, the panel voted unanimously to accept the Hearing Officer's recommendation to open a docket to examine the use of affiliate companies by water and wastewater utilities, but declined to solicit an advisory opinion from the Office of the Attorney General on issues relating to the practice, or unauthorized practice, of law before the Authority.⁵

On February 24, 2009, a *Notice of Status Conference* was issued by the Hearing Officer setting a Status Conference on March 5, 2009. On February 29, 2009, the Hearing Officer entered an *Order Resuspending Tariff and Proposed Rate Increase for Additional Ninety Days* extending the effective date of the tariff and proposed rate increase through May 29, 2009.

MARCH 5, 2008 STATUS CONFERENCE

The Status Conference began as noticed at approximately 2:00 p.m. in the Hearing Room on the Ground Floor of the Tennessee Regulatory Authority at 460 James Robertson Parkway, Nashville, Tennessee. The parties in attendance were as follows:

TWSI – Mr. Henry M. Walker, Esq., Bradley Arant Boult Cummings, LLP, 1600 Division Street, Suite 700, Nashville, Tennessee 37203; and

Consumer Advocate – Mr. Vance Broemel, Esq., Consumer Advocate and Protection Division of the Office of the Attorney General, P.O. Box 20207, Nashville, Tennessee 37202.

Though not a party, Mr. Nathan Hinch appeared via telephone for Schaeffer International, LLC, which is the managing member of Cartwright Creek, LLC, a certificated public utility in Tennessee. As a professional courtesy, Mr. Walker, counsel for TWSI, informed the Hearing

⁴ Transcript of Authority Conference, pp. 14-17 (February 23, 2009).

⁵ *Id.* at 17-18.

Officer that Mr. Chuck Welch⁶ had recently been retained as legal counsel for KCC and, although unable to attend the Status Conference, wished to enter an appearance in the docket.

Thereafter, the Hearing Officer ruled on pending motions, solicited reports and comments from the parties, and discussed a procedural schedule to completion, along with other matters related thereto, in anticipation of a hearing on the merits before the Authority panel in May 2009.

I. Motions to Strike

On January 28, 2009, TWSI and the TRA Staff as a party⁷ filed a *Joint Motion to Strike* (“*Joint Motion*”) requesting that the Hearing Officer strike four filings made by John Powell on behalf of KCC on January 22, 2009. In its *Joint Motion*, TWSI asserts that the filings⁸ should be stricken from the record in this docket because they are in violation of the Hearing Officer’s *Initial Order* prohibiting the filing of discovery requests or legal briefs of any kind unless signed by a licensed attorney. Additionally, on January 30, 2009, TWSI filed a *Second Motion to Strike* asking the Hearing Officer to strike the “Motion for Expedited Review”⁹ filed by John Powell on behalf of KCC on January 28, 2009, on the same grounds as the *Joint Motion*. Additionally, the Hearing Officer acknowledged the *Notice Regarding King’s Chapel Filings* and *Notice Regarding King’s Chapel Appeal of Hearing Officer’s Order* filed by the Consumer Advocate on January 29, 2009 and February 3, 2009, respectively. These notices state simply that the Consumer Advocate will not respond to the KCC discovery requests, its brief concerning issues, or its motion for expedited review, as such filings were made in violation of the Hearing

⁶ A/k/a, Charles B. Welch, Jr., of the law firm of Farris Bobango PLC d/b/a Farris Mathews Bobango, PLC, 618 Church Street, Suite 300, Nashville, Tennessee 37219.

⁷ As TRA Staff has withdrawn from participation as a party in the docket, the Hearing Officer shall consider TWSI the sole remaining proponent of the *Joint Motion*.

⁸ The filings consisted of discovery requests to 1) the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”), 2) TRA Staff as a party, and 3) TWSII, and 4) the *Response of Kings Chapel Capacity to Issues Presented in the Response of Tennessee Wastewater Systems, Inc. to the Issues List of King’s Chapel*.

⁹ *Kings’ Chapel Capacity’s Motion for Expedited TRA Review of Hearing Officer’s Order* (January 28, 2009).

Officer's *Initial Order* prohibiting the filing of discovery requests or legal briefs of any kind unless signed by a licensed attorney.

During the Status Conference, the Hearing Officer stated that, in light of the Authority panel's decision affirming the Hearing Officer's *Initial Order*, the filings referenced in both the *Joint Motion* and *Second Motion to Strike* are considered a nullity, and therefore, it is not necessary that they be stricken from the record in this docket. The filings are given no effect and will not be considered by the Hearing Officer of the Authority as the docket proceeds forward; therefore, the parties are directed to disregard the filings in their entirety.

II. Settlement Negotiations & Customer Complaints

During the previously-held Status Conference on December 8, 2008, TWSI stated, and the parties agreed, that "we are very close to negotiating a final settlement."¹⁰ Thus, during the Status Conference, the Hearing Officer asked the parties to report on the status of their settlement negotiations. In response, TWSI and the Consumer Advocate stated that while discussions are on-going, a settlement is not imminent and agreed that the docket should proceed to a hearing on the merits.

Additionally, the Hearing Officer remarked that in the time period beginning November 2008 and spanning as recently as January 30, 2009, approximately twenty-seven (27) customer complaints have been filed in this docket. Thereafter, the Hearing Officer questioned TWSI concerning how it intended to address the complaints. TWSI responded that it was aware of the complaints and has been hesitant to respond due to the uncertainty concerning the settlement and resolution of the case. It further asserted that in light of the current posture of the case, unless directed otherwise by the Authority, no formal response would be forthcoming from the

¹⁰ Transcript of Status Conference, p. 8 (December 8, 2008).

Company at this time. Acknowledging the position of the Company to defer a formal response at this time, the Hearing Officer advised TWSI that the issue may be raised again in the future.

III. Procedural Schedule & Related Matters

During the Status Conference, the Hearing Officer discussed the February 19, 2009 filing of the *Consumer Advocate's Statement on Affiliate Issue in Hearing Officer's Report and Recommendation*, within which the Consumer Advocate states that it does not oppose the recommendations presented in the Hearing Officer's *Initial Order*, provided that the discovery or determination of regulated income in this rate case is not limited as a result of the new docket.¹¹ Consistent with its filing, the Consumer Advocate asserted that it is both relevant and necessary that discovery and proof concerning the use of affiliates be permitted in this docket because, to a large extent, the costs for which the company seeks recovery are derived from charges incurred from affiliates. TWSI stated that it did not dispute the relevance of affiliates in this rate case, as its petition and supporting documents plainly discuss and reference its use of affiliates.

Thereafter, the parties presented a proposed procedural schedule for the consideration of the Hearing Officer. Following some discussion, the Hearing Officer adopted the procedural schedule proposed by the parties, with some slight modifications to the discovery deadline and the inclusion of a pre-hearing conference. Neither party in attendance at the Status Conference objected to the adjustments or amendments of the procedural schedule suggested by the Hearing Officer. Therefore, the Hearing Officer hereby adopts the *Procedural Schedule*, attached as Exhibit A.

Additionally, the Hearing Officer informed the parties that all pre-filed rebuttal testimony shall include clear and specific citations cross-referencing the portions of opposing testimony

¹¹ *Consumer Advocate's Statement on Affiliate Issue in Hearing Officer's Report and Recommendation*, pp. 1-2 (February 19, 2009).

being responded to, or rebutted. Such citations are to be considered an essential component of all pre-filed rebuttal testimony filed in the docket. It is expected that incorporation of such citations will assist the Hearing Officer and the Authority in tracking the arguments of the parties, thus ensuring that all rebuttal testimony addresses the prefiled opposing testimony and does not expand the scope of the issues, concerns, or arguments therein, nor introduce any new issues, concerns, or arguments. In the event of an allegation that certain testimony has exceeded the scope of the preceding opposing testimony, the presence of cross-referencing citations should facilitate a timely verification and assessment of the substance of the testimony by the Hearing Officer or Authority.

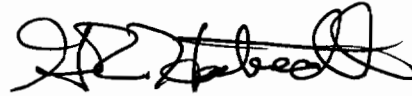
Further, the parties advised the Hearing Officer that they had reached an agreement concerning the propounding of discovery. Specifically, TWSI does not object to the Consumer Advocate propounding approximately ten additional discovery questions beyond the standard forty question restriction imposed by TRA Rule 1220-1-2-.11. In light of the agreement of the parties, the Hearing Officer waived the obligations of the requesting party to submit a motion for leave setting forth the additional discovery requests, as established in TRA Rule 1220-1-2-.11.

The Hearing Officer informed the parties that the proposed protective order, submitted by TWSI on October 21, 2008, after the deletion of the final two paragraphs therein, would be adopted and entered in the docket. Finally, the parties inquired as to the availability of TRA Staff, formerly designated as a party in this docket, to appear as a witness in the case. The parties stated that, due to her involvement in the case, Ms. Collier was particularly knowledgeable on certain portions of the rate petition. The parties asserted that, as a result, one or more parties may wish to call her as a witness at the hearing. The Hearing Officer took the matter under advisement pending further consideration.

IT IS THEREFORE ORDERED THAT:

1. The *Joint Motion to Strike* and the *Second Motion to Strike* filed by Tennessee Wastewater Systems, Inc. on January 28, 2009 and January 30, 2009, respectively, are denied for the reasons stated above.

2. The *Procedural Schedule*, attached to this Order as Exhibit A, is adopted and is in full force and effect.

A handwritten signature in black ink, appearing to read 'Gary Hotvedt', written over a horizontal line.

Gary Hotvedt, Hearing Officer

Exhibit A

Procedural Schedule ~ Docket No. 08-00202

(March 13, 2009)

Due Date	Filing or Event
March 9, 2009	Intervening Parties' Discovery Requests to TWSI Due.
March 16, 2009	TWSI's Discovery Responses Due
April 6, 2009	Intervening Parties' Pre-filed Direct Testimony Due
April 20, 2009	TWSI's Pre-filed Rebuttal Testimony Due*
April 28, 2009	Pre-Hearing Conference at 1:30 p.m.
TBD by Panel	Hearing on the Merits

*** Testimony MUST contain clear and specific citations cross-referencing the portions of opposing testimony that is being responded to, or rebutted, throughout the testimony.**