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May 21, 2009

Honorable Sharla Dillon
Docket Office
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

filed electronically in docket office on 5/21/2009

IN RE: Tennessee Wastewater Systems, Inc.
Docket No. 08-00202

Dear Ms. Dillon:

Enclosed please find the Revised Settlement Agreement to be filed in this case. At the Tennessee Regulatory Authority ("TRA") Conference on May 18, 2009, the parties agreed to revise the previously filed Settlement Agreement by deleting the last sentence of paragraph 18 and the last two sentences of footnote 3 to Exhibit 1. The TRA accepted the Settlement Agreement with these revisions and the Hearing Officer requested that a revised version be filed so we are accomplishing that with this filing.

It should be noted that nothing in this Revised Settlement Agreement affects the rate design that ensures that the residents of South Ridge receive no rate increase as a result of this case.

Should you have any questions, please contact me at 615-741-8733. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Vance L. Broemel".

Vance Broemel
Assistant Attorney General

cc: All Parties of Record.

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:)
)
PETITION OF TENNESSEE WASTEWATER)
SYSTEMS, INC. FOR APPROVAL TO)
AMEND ITS RATES AND CHARGES)

No. 08-00202

**REVISED SETTLEMENT AGREEMENT BETWEEN TENNESSEE WASTEWATER
SYSTEMS, INC., AND THE CONSUMER ADVOCATE AND PROTECTION DIVISION**

For the sole purpose of settling this case, Tennessee Regulatory Authority ("TRA") Docket Number 08-00202, Robert E. Cooper, Jr., the Tennessee Attorney General and Reporter, through the Consumer Advocate and Protection Division ("Consumer Advocate"), and Tennessee Wastewater Services, Inc. ("TWSI" or "Company") (collectively referred to as "Settling Parties" herein) respectfully submit this Revised Settlement Agreement.

This Revised Settlement Agreement supplants the Settlement Agreement previously filed in this case. By agreement of the Settling Parties the Revised Settlement Agreement deletes the following language from the Settlement Agreement: (1) the final sentence in paragraph 18 "At that time, all the residential customers in South Ridge will pay a flat monthly charge of \$58.95 (the current base rate plus a 19.5% increase, plus an escrow charge)."; and (2) the final two sentences in footnote 3 on Exhibit 1, " Upon completion of their lagoon treatment facility, the South Ridge customers will pay a flat monthly charge of \$58.95. Each rate class is subject to a monthly \$0.38 bonding charge and monthly escrow charges will not change."

PROCEDURAL BACKGROUND

1. TWSI is incorporated under the laws of the State of Tennessee and is engaged in the business of offering wastewater treatment services at various locations within the State, such as Montgomery, Rutherford, and Williamson Counties. Its principal Tennessee office is located at 851 Aviation Parkway, Smyrna, Tennessee 37167.

2. TWSI is a public utility pursuant to the laws of Tennessee, and its public utility operations are subject to the jurisdiction of the TRA. TWSI has approximately 1,800 customers.

3. The Company has properly published and posted notice of its petition for a rate increase in accordance with the TRA's rules.

4. The TRA has received and placed in the public file a number of complaints about the proposed increase from ratepayers living in the South Ridge subdivision in Montgomery County. The unique concerns of those ratepayers are addressed in the Revised Settlement Agreement in paragraphs 17-18 and **Exhibit 1**.

5. On October 20, 2008, TWSI filed a petition for an increase in its rates and for approval of other revisions to its tariffs. This is TWSI's first request for a rate increase since 1999. Testimony of Charles R. Hyatt at page 2:5-6. In its petition in the present case, TWSI sought an increase in its annual revenues of \$349,485 or 43%. Testimony of Charles R. Hyatt at page 2:1-6. This proposed increase would produce an operating ratio of 8%, where operating ratio is defined as the ratio of expenses and depreciation, but excluding income taxes, to gross revenues. Testimony of Matt Pickney at Exhibit 7-A. The average increase requested by TWSI in the petition was 70% for Residential customers, 5% for Commercial customers, and 0% for Cabin or Overnight Rental customers. Testimony of Matt Pickney at page 3:8 and Exhibit 7-C

to the Testimony of Matt Pickney. The Company proposed no change in the amount collected from customers to maintain the Company's escrow account.

6. During the preparation of this rate case, the Authority designated certain members of the TRA Staff to participate, along with the Consumer Advocate, in discussions with TWSI concerning the impending rate filing. The Authority also directed the Staff to participate as a party in the rate case and any proposed Settlement Agreement. See TRA Conference transcript, April 7, 2008, at pp. 50-51. The TRA Staff, however, has withdrawn from the case and is no longer a party.

7. On November 3, 2008, the Consumer Advocate filed a petition to intervene in the rate case. The petition was subsequently granted without objection.

8. On October 24, 2008, Kings Chapel Capacity filed a petition to intervene. The petition was subsequently granted subject to certain limitations on the participation of Mr. John Powell, the representative of King's Chapel Capacity. King's Chapel Capacity is not a party to this Revised Settlement Agreement.

9. The Settling Parties to this Revised Settlement Agreement have engaged in substantial discovery and have undertaken extensive discussions to resolve all disputed issues in this case other than the issue of rate design. As a result of the information obtained during discovery and the discussions between the Settling Parties, and for the purpose of avoiding further litigation and resolving this matter upon acceptable terms, the Settling Parties have reached this Revised Settlement Agreement.

SETTLEMENT TERMS

10. Subject to TRA approval, in furtherance of this Revised Settlement Agreement, the Settling Parties have agreed to the settlement terms set forth below.

11. Effective upon approval by the TRA, rates will be implemented to increase TWSI's annual revenue by \$295,000 and to produce an operating ratio of 6.5%.¹ No changes will be made in the Company's escrow charges.

12. Through negotiations, certain adjustments have been made to the figures submitted in the Company's Petition which reduce the requested operating ratio from 8% down to 6.5% and the resulting revenue deficiency from \$349,485 to \$295,000. Those adjustments and subsequent calculations are shown in Revised Settlement Agreement **Exhibit 2**, attached. This is a savings of approximately \$163 per customer ($\$55,000 \div 1806$) from the increase originally requested by the Company.

13. In the testimony of Consumer Advocate witness Terry Buckner filed in this case, the Consumer Advocate found a revenue deficiency of approximately \$284,000. As a result of this Revised Settlement Agreement, the Company is agreeing to the Consumer Advocate's position with regard to: (1) regulated revenues of \$914,250 versus the Company's regulated revenues of \$813,489; (2) operating expenses of approximately \$1,090,791 versus the Company's operating expenses of \$1,013,810; (3) state and federal income taxes of \$29,243 versus the Company's state and federal income taxes of \$54,302; and (4) an operating margin of 6.5% versus the Company's operating margin net of income taxes of 7.63%. As a result of this Revised Settlement Agreement, the average increase for customers will be 36% rather than the initial request of 43% as filed.

14. For the purposes of settlement, the Consumer Advocate has agreed to increase its initial finding of a revenue deficiency from approximately \$284,000 to approximately \$295,000 as a result of additional information related to the actual rate case and legal expenses incurred

¹ Because this utility's plant consists primarily of customer contributed property, and the utility has little or no rate base, rates are based upon the operating ratio methodology.

by the Company. A copy of the legal expenses from the attorney for the Company is attached as **Exhibit 3**. The increase in rate case and legal expenses more closely approximates the amount in the Company's Petition. Moreover, the Company agrees to amortize its rate case costs and legal expenses over six years rather than three years saving ratepayers one-half of the annual rate case expense in this docket. Moreover, the Settling Parties agree none of the rate case costs in this filing will be borne by the ratepayers in any subsequent Company rate petition.

15. In light of the settlement terms set forth herein as a whole, the agreed-upon revenue requirement and operating ratio are fair and reasonable and will provide TWSI with a reasonable opportunity, subject to TRA approval, to earn a fair margin over expenses.

16. The Settling Parties have settled some, but not all, issues concerning rate design and agree to submit to the TRA the remaining unresolved issues. The parties agree that the revised rates of TWSI will include the following tariff changes:

- a. The annual Access Fee will increase from \$84 to \$120 (the Access Fee is a charge paid by the owners of undeveloped lots annually on December 15).
- b. The customer deposit requirement is eliminated. For customers who have already paid the customer deposit, the Company agrees to make a quarterly assessment of customers in order to determine who has become eligible for a deposit refund. When a customer becomes eligible, the Company shall give them a credit for the amount of the deposit plus interest. If any deposits are past due to be returned to a customer, the Company agrees to provide the customer with a credit for the amount of the deposit plus interest by no later than September 1, 2009. If a customer is no longer a customer prior to receiving their deposit back, the deposit

shall be used to offset any balance due on their account, and the remainder sent by check backed by good and sufficient funds to their forwarding address. If the deposit check is returned undeliverable and the Company is unable to locate the customer, any unclaimed deposits shall be paid to the State of Tennessee as Unclaimed Property. The Company agrees to provide a quarterly report, in electronically searchable format, including the names and amounts of the deposit refunds issued to each customer and whether it was turned over to State of Tennessee, Unclaimed Property, to the Consumer Advocate and TRA showing how the deposits have been returned until the process is complete. The customer's personally identifiable information on these reports shall be treated as confidential by the Settling Parties to protect them from identity theft and shall only be provided to law enforcement or as otherwise required pursuant to state or federal law.

- c. The charges for disconnection and reconnection are increased from \$10 and \$15 to \$40 and \$50, respectively. The Company is permitted to waive these charges for a customer who is in unique financial distress situations or for a customer who is disabled, or has a household member who is disabled, if it deems it appropriate. The charges for disconnection and reconnection are supported by information supplied by TWSI and attached as **Exhibit 4**. In order to make it easier for customers to adjust to the new disconnection and reconnection charges, the Company agrees as follows:

- (i) The Company agrees to provide a customer no less than 15 business days written notice via certified, return receipt requested

United States mail of the intended disconnection, including, but not limited to, information about the amount of the disconnection and reconnection charges and the total amount of the past due balance. This notice is in addition to clear and conspicuous notice of the past due balance and the possibility of disconnection on the customer's billings prior to disconnection;

(ii) The Company agrees to provide their customers the opportunity to pay the past due bill, including returned check fees and other charges, disconnection and reconnection charges in a payment plan with no interest over no less than a three (3) month billing cycle. The Company agrees that the customer would only need to pay the first installment payment in order to have service restored. Customers utilizing a payment plan would not again be eligible to be placed on any future plans for a full calendar year from the date the initial plan is implemented. Provided however, if a customer or household member is able to demonstrate a unique financial distress situation or the customer is disabled, the Company agrees to consider permitting the customer to have additional installment plan(s) during the same calendar year. If a customer on a payment plan fails to pay a monthly installment as per the terms of the plan and is more than fifteen (15) business days late on any payment, then the customer's service is subject to immediate disconnection and all past due charges in addition to disconnect/reconnect fees would be due and payable prior to having service restored. The Company is required to provide all the same disconnection notices required for any disconnection set forth in section 16 (c) (i).

(iii) The Company agrees to provide reconnection service for all customers within no more than two (2) days of receiving the first installment payment from the past due customer.

(iv) The Company agrees to permit and notify customers of the opportunity to provide an alternate address for notification of a potential disconnection. If a customer has provided such an address, the Company agrees to also provide the required notice of disconnection to that address in addition to the customer.

- d. The returned check fee will increase from \$20 to \$25. The Company agrees to provide clear and conspicuous notice of the returned check fee charge on its monthly billings to customers.
- e. In those situations where local property owners require TWSI to incur expenses for mowing or vegetation control beyond the standard allowance (eight trimmings and two bush hoggings per calendar year), those additional expenses shall be reasonable and based upon fair market value and shall be passed on by TWSI to the affected homeowners after the homeowners have first been informed in writing in a clear and conspicuous manner of the cost of the additional service in a timely manner so as to allow customers to obtain another provider if they so desire.

17. The Settling Parties to this Revised Settlement Agreement were not able to agree as to a rate design. The Consumer Advocate maintains that the revenue requirement should be met by means of a rate design which spreads the increase as evenly as practicable among the Residential customers, the Overnight Rental or Cabin customers, and the Commercial customers, with the exception of the customers in the South Ridge subdivision, Montgomery County, as shown in Revised Settlement Agreement **Exhibit 1**. The increase provided by this Revised Settlement Agreement is approximately an equal 36% for each class of customer, except for residential customers living in the South Ridge subdivision in Montgomery County. As explained further in Revised Settlement Agreement **Exhibit 1**, these customers are already paying a higher rate than other TWSI customers. The residents of the South Ridge subdivision in Montgomery County currently pay a base rate of \$23.94 plus a usage-based charge for

treatment. The usage charge is imposed by the City of Clarksville and passed on to TWSI customers on a pro rata basis.

18. According to the testimony of Consumer Advocate witness Terry Buckner at pages 16-18, the current average rate for these customers (the base charge, the usage charge, plus an escrow payment) is approximately \$60.32. (This is an average figure; a customer's actual bill depends upon the amount of water the customer uses.) Under the rate design proposed by the Consumer Advocate, the base rate for South Ridge customers will not be increased. The South Ridge customers have expected a TWSI lagoon treatment facility to be completed for some time now. Under the proposal of the Consumer Advocate, when the facility is completed, the usage-based charge from the City of Clarksville would disappear and be replaced by a flat monthly charge of \$24.00 to cover the cost of building the lagoon treatment facility. That \$24.00 charge has already been approved by the TRA.

19. In its Petition, the Company proposed to allocate the remaining revenue requirement to the Residential and Commercial customers only for the reasons explained in the pre-filed testimony of Matt Pickney. The Company neither supports nor opposes the alternative rate design proposed by the Consumer Advocate but will defer to the TRA on that issue. Subject to the terms of paragraph 22 to this Revised Settlement Agreement, the Settling Parties agree to submit this issue to the TRA without further argument except as may be necessary to respond to questions as provided in paragraphs 17 and 18 and reserving their respective rights under paragraph 24 herein.

20. TWSI reports income received from developer fees as unregulated Non-Utility Income in Account Nos. 421.3 and 421.5. TWSI asserts that the developer fees cover nonrecurring expenses incurred prior to TWSI serving customers on the system and do not

cover regulatory costs such as applying for public certificates of convenience and necessity.² TWSI further asserts that all of the work associated with the developer fees is completed by a subcontractor and also asserts that the developer fees for East Tennessee developments are a pass through to the subcontractor.

21. The Consumer Advocate has not taken a position as to whether these revenues should be regulated in this case and expressly reserves and retains the right to assert and/or request consideration of the issue of regulated and unregulated revenues, as well as other affiliate issues and concerns, in the docket opened by the TRA to address affiliate issues in the water and wastewater industry, Docket No. 09-00033 and any subsequent dockets.

22. All pre-filed testimony and exhibits are introduced into evidence without objection and shall be available for public review and inspection, and the Settling Parties waive their right to cross-examine all witnesses with respect to all such pre-filed testimony and exhibits. If, however, questions should be asked by any person, including a Director, or a person who is not a party to this Revised Settlement Agreement, the Settling Parties may present testimony and exhibits to respond to such questions and may cross-examine any witnesses with respect to such testimony and exhibits; provided, however, that such testimony and cross-examination shall be truthful. Further, the Settling Parties agree to support the Revised Settlement Agreement at the hearing for approval.

23. The provisions of this Revised Settlement Agreement are agreements reached in compromise and solely for the purpose of settlement of this matter. They do not necessarily

² In a recent filing in Docket No. 06-00077, TWSI stated that developer fees “pay for expenses associated with obtaining public service commission approvals and for inspections of the system design and construction and residential tank installations.” *In re: Petition of Tennessee Wastewater Systems, Inc. to Expand its Service Area to Include a Portion of Jefferson County, Tennessee known, as Parrott's Bay*, Correspondence from Henry Walker (unnumbered attachment, paragraph 4), November 3, 2008. As a result of that filing, TWSI was asked to provide additional information in this case to determine what impact, if any, such fees and related expenses had in determining just and reasonable rates in this case.

reflect the positions asserted by any Settling Party, and no Settling Party to this Revised Settlement Agreement waives the right to assert any position in any future proceeding, in this or any other jurisdiction. None of the signatories to this Revised Settlement Agreement shall be deemed to have acquiesced in any ratemaking or procedural principle, including without limitation, any cost of service determination or cost allocation or revenue-related methodology. This Revised Settlement Agreement shall not have any precedential effect in any future proceeding nor may it be binding on any of the Settling Parties in this or any other jurisdiction except to the limited extent necessary to implement the provisions hereof in this case.

24. The terms of the Revised Settlement Agreement have resulted from extensive negotiations between the signatories and the terms hereof are interdependent. If the TRA does not accept the Revised Settlement Agreement in whole, the Settling Parties are not bound by any position set forth in this Revised Settlement Agreement. Specifically, and without limiting the scope of this provision, the Consumer Advocate expressly reserves the right to withdraw from this Revised Settlement Agreement if the TRA adopts a rate design which differs from the one proposed by the Consumer Advocate. In the event of such action by the TRA, within twenty (20) business days, any of the signatories to this Revised Settlement Agreement would be entitled to give notice of exercising its right to terminate this Revised Settlement Agreement; provided, however, that the signatories to this Revised Settlement Agreement could, by unanimous consent, elect to modify this Revised Settlement Agreement to address any modification required by, or issues raised by, the TRA. Should this Revised Settlement Agreement terminate, it would be considered void and have no binding precedential effect, and the signatories to this Revised Settlement Agreement would reserve their rights to fully

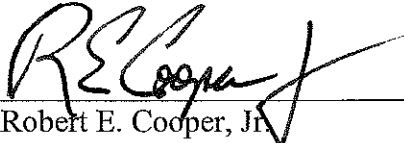
participate in all relevant proceedings notwithstanding their initial agreement subject to TRA approval to the terms of this Revised Settlement Agreement.

This the 21st day of May, 2009.

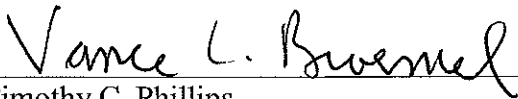
FOR TENNESSEE WASTEWATER SYSTEMS, INC.

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FOR THE CONSUMER ADVOCATE AND PROTECTION DIVISION



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CERTIFICATE OF SERVICE

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

Henry Walker
Boult, Cummings, Conners & Berry
1600 Division Street, Suite 700
Nashville, Tennessee 37203
hwalker@boultcummings.com

Charles B. Welch, Jr.
Farris Matthews Bobango PLC
618 Church Street, Suite 300
Nashville, Tennessee 37219
cwelch@farrismatthews.com

John Powell, President
King's Chapel Capacity, LLC
1413 Plymouth Drive
Brentwood, TN 37027

This the 21st day of May, 2009.


VANCE L. BROEMEL

Rate Design³

	<u>Current</u>	<u>Proposed</u>	<u>Increase</u>
Residential Rates w/o Escrow or bonding			
Fixed Film Treatment	\$24.98	\$34.02	36.17%
Deep Cell Pond Treatment	\$22.55	\$30.71	36.17%
Overnight Rental Rates w/o Escrow or bonding			
First 300 gallons per day	\$39.05	\$53.20	36.23%
Commercial Rates without Food w/o bonding			
First block	\$ 75.00	\$102.15	36.20%
Second block	\$ 15.00	\$ 20.45	36.31%
Third block	\$116.00	\$157.95	36.17%
Commercial Rates with Food w/o bonding			
First block	\$100.00	\$136.15	36.15%
Second block	\$ 18.00	\$ 24.50	36.12%
Third block	\$142.00	\$193.35	36.16%
Residential	\$396,388	\$ 497,024	\$100,636
Cabin (Inc. Commercial)	\$345,113	\$ 469,958	\$124,845
Commercial	\$ 81,907	\$ 111,533	\$ 29,626
Other	\$ 90,842	\$ 130,735	\$ 39,893
Total	\$914,250	\$1,209,250	\$295,000

³ No increases to South Ridge subdivision customers in Montgomery County.

Operating Ratio Calculations

Revenue Requirement	\$1,209,250
Operating Expenses	\$1,100,891
Net Margin before Income Taxes	\$ 108,359
State Excise Taxes @6.50%	\$ 7,043
Federal Income Taxes @22.40%	\$ 22,697
Net Margin	\$ 78,619
Percent Net Margin	6.50%
Revenue Requirement	\$1,209,250
Test Period Revenues	\$ 914,250
Revenue Deficiency	\$ 295,000

Revised Settlement Agreement Exhibit 3

105845 - Tennessee Wastewater

	Time	Expenses	Total
Jan 2008	4,218.75	0.00	4,218.75
Feb 2008	375.00	0.00	375.00
Mar 2008	3,187.50	0.00	3,187.50
Apr 2008	1,875.00	12.20	1,887.20
May 2008	375.00	0.00	375.00
June 2008	1,406.25	0.00	1,406.25
July 2008	281.25	0.00	281.25
Aug 2008	2,718.75	0.00	2,718.75
Sept 2008	4,781.25	0.00	4,781.25
Oct 2008	16,151.00	361.65	16,512.65
Nov 2008	10,275.00	37.92	10,312.92
Dec 2008	13,725.00	12.00	13,737.00
2008 TOTAL	59,369.75	423.77	59,793.52
Jan 2009	9,905.75	22.30	9,928.05
Feb 2009	8,550.00	24.00	8,574.00
Mar 2009	4,275.00	23.10	4,298.10
Apr 2009	6,000.00	0.60	6,000.60
2009 TOTAL	28,730.75	70.00	28,800.75
GRAND TOTAL	88,100.50	493.77	88,594.27

Revised Settlement Agreement Exhibit 4

*Residential Service
Disconnect/Reconnect Rates*

Service Disconnect	
Cost per Technician Hour	\$50.00
Travel Hours per call	0.65
Hours to Disconnect Service	0.15
Total Cost	\$40.00

(39 minutes)
(9 minutes)

Service Reconnect	
Cost per Technician Hour	\$50.00
Travel Hours per call	0.90
Hours to Disconnect Service	0.10
Total Cost	\$50.00

(54 minutes)
(6 minutes)