

RECEIVED
BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

January 22, 2009

IN RE:

**PETITION OF TENNESSEE WASTEWATER)
SYSTEMS, INC. TO CHANGE AND)
INCREASE CERTAIN RATES AND)
CHARGES SO AS TO PERMIT IT TO)
RECOVER COSTS ASSOCIATED WITH)
FURNISHING WASTEWATER SERVICE TO)
ITS CUSTOMERS)**

DOCKET NO. 08-00202

**RESPONSE OF KINGS CHAPEL CAPACITY TO ISSUES PRESENTED IN THE
RESPONSE OF TENNESSEE WASTEWATER SYSTEMS, INC TO THE ISSUES
LIST OF KING'S CHAPEL**

King's Chapel Capacity, LLC ("KCC"), files this response to the response filed by TWS and counsel on December 19th and would request that the TRA take notice of misleading statements made by Tennessee Wastewater System's, Inc (TWS) counsel.

In this present docket 08-00202 counsel on behalf of TWS made the following Statement at the December 8th 2008 status conference:

Mr. Powell has intervened in the past in a number of cases involving Tennessee Wastewater. The authority has consistently ruled against him, and we think that his motivations in those proceedings have been made abundantly clear that he has no legitimate interest in these proceedings other than to do financial harm to this company.

Kings Chapel Capacity, LLC (KCC) nor I, John Powell has ever filed an intervention with the exception of this one at the TRA. KCC would also claim that if the authority

constantly ruled against KCC or me, we would not be here, in this, our **first** intervention. TWS counsel is attempting to maliciously damage my personal character with false statements and mislead the TRA with false information in regards to KCC's reasons for intervention.

In TWS's latest response to this present docket filed on December 19th 2008, TWS counsel states as follows:

PAGE TWO:

*Kings Chapel has engaged in **similar tactics** against TWS in the past, **falsely** accusing the company of various "abuses." See TRA 05-00016*

PAGE FOUR

*Mr. Powell's allegations about the use of affiliates by TWS appear to be an attempt to resurrect the same **baseless charges** he made nearly four years ago in Docket 05-00016. TWS responded strongly to those allegations which, as TWS said at the time **Mr. Powell knew to be untrue.** See answer of Tennessee Wastewater Systems, Docket 05-00016, March 11 2005.*

TWS and it's counsel knows that the charges made in that complaint were not baseless and he knows that I knew them to be true rather than untrue. Counsel and TWS knew them to be true based on discovery they themselves provided, and which counsel had and still has access to. Our response to the TWS response dated March 11 2005 was not filed because our counsel advised it would go against the spirit of the settlement agreement, that was being negotiated. TWS dodged a bullet. However, TWS counsel continues to

make reference to this case only in an attempt to damage my character, reputation and reasoning. It is fact that that in prior proceedings KCC overwhelming prevailed in the Williamson County Court in which TWS counsel in his motion to hold proceedings in abeyance in docket 04-00335 states:

themselves. Thus, they seek a certificate from this agency. Based on the statutory standard set forth in T. C. A. § 65-4-203(a), the TRA is required to make findings about the incumbent's ability to provide the requested service and the applicant's capability to provide service. Those issues, of course, lie at the heart of the pending lawsuit in Williamson County. Until those issues are resolved, the Authority has little choice but to hold these proceedings in abeyance.

Those issues and others were resolved in KCC's tremendous favor in the Williamson County Court, the only issues that the TRA has ruled against KCC in favor of TWS was to hold important proceedings in abeyance, not much of a victory, those being the proceeding to obtain a CCN (docket 04-00335) and the complaint proceeding (docket 05-00016). Eventually, KCC received its CCN in docket 04-0035 and the serious complaint issues in docket 05-00016 were never investigated by the TRA. I have always told the truth not untruths and I have never employed as a tactic falsely accusing TWS of various abuses as TWS and counsel would have the TRA believe.

TWS Counsel states in his latest response in this Docket:

PAGE 5

Any attorney who did what Mr. Powell has done would likely be subject to disciplinary action.

I would suggest that what TWS counsel has done would likely be subject to disciplinary action. If I was an attorney and took an oath in this state to practice law I would not be in violation, as I personally believe TWS counsel to be, of Rule 8, several chapters, of the Tennessee Rules of the Supreme Court.

Counsel representing TWS has direct evidence that I was not making false allegations in docket 05-00016. It is counsel of TWS who is resurrecting the past and opening doors, to previous TRA dockets. TWS counsel has stated as if fact in his last response to this docket that Mr. Powell engaged in similar tactics against TWS in the past, falsely accusing the company of various "abuses.", TWS counsel can not provide proof that any accusations were false. The Tennessee supreme courts states that a witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others." TWS counsel does not have any personal knowledge of this case, as would be the case of a witness. Instead, TWS counsel, as an advocate for his client, would be required to show evidence supporting his explanations and comments. In fact it would appear that TWS counsel is perpetuating a fraud by his continued representation of TWS. TWS and counsel would have this hearing officer and the authority review proceedings or statements made by TWS counsel in Docket 05-00016 as if they were fact, while TWS and counsel realize that issues in docket 05-00016 were never adjudicated.

TWS counsel and other parties are concerned about the unauthorized practice of law. To that end I have researched codified law and discovered that Under state code, 4-5-305 which is relative and controls this proceeding.

4-5-305 Representation

4-5-305 part (a) Any party may participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

I am a duly authorized representative of KCC, and may participate. By **limiting** my participation does not serve justice and goes against this code.

Furthermore, under **Title 23 Attorneys at Law** of State Code, (which regulates law practice) Chapter 3 Unauthorized Practice and Improper states under part 23-3-113:

23-3-113. Practice before administrative boards and agencies excepted.-

The enforcement provisions of this part shall not apply to any person while practicing before state administrative boards and agencies who is authorized by statute to practice and act in a representative capacity before such state or local administrative boards and agencies

State code is clear I will not be in violation of engaging in activities which would constitute the unauthorized practice of law as suggested by counsel of TWS. The hearing officer by state code 4-5-310 part (d) may modify his order at any time by giving notice to the parties. Therefore my request to be granted intervention without condition or limitation is justified by state code especially because I am not an attorney.

TWS and counsel state that I have failed to respond to the Hearing officers instructions. My response to the request of the Hearing Officer, filed December 17th 2008, I feel is direct and to the point. TWS's complete and total use of affiliates is one major concern and **issue** in this present rate case. TWS has chosen to use the same affiliates that engineer, construct, sell component parts, to operate their utility, they have chosen to self

deal. It appears that TWS is concerned that KCC might do business with other vendors that have never done business with affiliates of TWS. This would affect the market share of TWS affiliates and has nothing to do with a rate case. I may add a more specific issues list in the future in this rate case, however, those issues will be addressed once facts and evidence bear through proper discovery in this case; I would think it to be a waste of time to base or make a list of specific issues on assumption, speculation and industry hearsay, this would not be fair to TWS. **KCC can never be a direct competitor of TWS**, this makes all information that may be relative in this rate case non confidential, and KCC respectfully requests that all information be made public and non confidential. To our information and belief TWS has no proprietary information that would be of a confidential basis. It appears that TWS seems to think that KCC is a direct competitor; it appears they can not distinguish their affiliates from their utility. KCC will never own or be partners with affiliates who sell, constructs, engineers or maintains, operates or repairs wastewater systems, in that respect KCC is not a competitor. Competition is good in the **unregulated** aspects of the wastewater industry, utilities who engage and do business with vendors they are not affiliated with and instead deal with vendors based on price of product and service provide real cost and values to rate payers. As an example, I may pay a relative \$400.00 dollars to wash my car when it could have been washed for \$25.00 dollars by someone else, use of affiliates by regulated public utilities should be closely examined. I feel that is why the TRA adopted the following rule:

1220-4-13-.09 PROCEDURE FOR SUSPENSION OR REVOCATION OF CCN, FORFEITURE OF WASTEWATER UTILITY FUNDS, AND CLAIMS AGAINST FINANCIAL SECURITY.

(1) Where a public wastewater utility through the actions of its owner(s), operator(s), or representative(s) demonstrates an unwillingness, incapacity, or refusal to effectively operate and/or manage the

wastewater system(s) in compliance with these rules and Tennessee statutes, or the wastewater system(s) has been abandoned, the Authority shall take appropriate action based on good cause that may include suspension or revocation of a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or making a claim against the public wastewater utility's financial security.

(2) Good cause shall include, but is not limited, to the following:

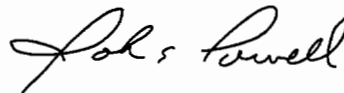
(b) A finding by the Authority of:

1. Fraud, dishonesty, misrepresentation, **self-dealing**, managerial dereliction, or gross mismanagement on the part of the public wastewater utility;

I went further and explained our purpose for intervention in this docket it is clear and addressed in the December 17th filing it is: **“to determine the appropriate cost of service for TWS specifically and the wastewater industry in general.”**

Respectfully submitted,

KING'S CHAPEL CAPACITY, LLC



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document has been served upon the following persons by hand delivery or by United States Mail, with proper postage thereon.

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This ⁷th day of January, 2009.
22

