

BEFORE THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

TRA DOCKET ROOM

IN RE:

**PETITION OF TENNESSEE WASTEWATER
SYSTEMS, INC. FOR APPROVAL TO AMEND
ITS RATES AND CHARGES**

**DOCKET NO.
08-00202**

**MOTION OF TRA STAFF TO WITHDRAW AS A PARTY OR IN THE ALTERNATIVE
TO SEEK CLARIFICATION OF ROLE**

Comes now TRA Staff who has been designated as a party in this matter and moves to withdraw as a party, or in the alternative, seeks clarification from the Authority on the role TRA Staff as a party should now play in this matter. TRA Staff would show the following in support of its motion.

On April 7, 2008, at its regularly scheduled Authority Conference, the Authority reviewed the progress of Tennessee Wastewater Systems, Inc. ("TWSI" or "Company") in preparing a rate case for filing as required by the Settlement Agreement approved by the Authority in Docket No. 06-00259, *In re: Petition of Tennessee Wastewater Systems, Inc. to Reclassify Specific Resort Areas in Sevier County from Residential to Commercial*. At that time, the Authority voted to direct Darlene Standley, Chief, Utilities Division, to designate TRA Staff to participate, along with the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), in discussions with TWSI concerning the impending rate filing. The Authority further directed TRA Staff to participate as a party in the rate case and

any proposed settlement agreement.¹ Subsequently, Ginger Collier, Utilities Division, was designated as TRA Staff as a party and Rebecca Montgomery was designated as counsel for Ms. Collier in her role as TRA Staff as party.

Following the directive from the Authority, Staff participated in discussions regarding the pending rate case filing with the Company and the Consumer Advocate. Ultimately, on October 20, 2008, the Company filed its *Petition of Tennessee Wastewater Systems, Inc. To Change and Increase Certain Rates and Charges* (“Rate Petition”).² A *Petition To Intervene of King’s Chapel Capacity* (“KCC’s Petition to Intervene”) was filed on October 24, 2008, and on November 3, 2008, the Consumer Advocate filed its *Petition to Intervene* (“Consumer Advocate’s Petition to Intervene”). On November 4, 2008, the *Opposition of Tennessee Wastewater Systems, Inc. to the Petition to Intervene of King’s Chapel* (“TWSI’s Opposition”) was filed. At a regularly scheduled Authority Conference held on November 10, 2008, the voting panel of the Authority assigned to consider the proposed rate increase and revised tariff filing in this docket, suspended the tariff for ninety days, convened a contested case, and appointed a hearing officer who, among other things, was given authority to rule on petitions to intervene.³ A status conference was convened by the Hearing Officer on December 8, 2008 and the *Initial Order on Petitions for Reconsideration of the Discretionary Grant of Limited Intervention, and Report and Recommendation to Separate Corollary Issues into New Docket* (“Initial Order”) was filed on January 22, 2009.

At the status conference, the Hearing Officer granted KCC a discretionary limited intervention.⁴ Discussion then ensued regarding the status of settlement discussions between the Company, the Consumer Advocate, and TRA Staff and the best manner in which to share any

¹ Authority Conference Transcript, pp. 50-51 (April 7, 2008).

² On October 28, 2008, TWS filed a replacement Rate Petition.

³ See *Order Suspending Tariff for Ninety Days, Convening a Contested Case and Appointing a Hearing Officer*. (November 25, 2008).

⁴ *Initial Order*, pp. 6-7.

documentation regarding settlement that may currently exist.⁵ The Consumer Advocate stated that “we have had promising talks” but there was not yet a final agreement.⁶ While counsel for TWSI stated that he did not “think that there’s any realistic possibility that Mr. Powell would sign on to any type of settlement agreement involving this Company,”⁷ ultimately it was determined that the documentation would be shared with Mr. Powell on the condition that he keep it confidential.⁸

Since the status conference, Mr. Powell has been made privy to the settlement documentation. However, there is no indication that he will be joining in on any potential settlement agreement in the near term.⁹ While the *Initial Order* appears to require that Mr. Powell hire an attorney if he wishes to pursue his intervention in this docket, the door is opened for the other parties to file a settlement agreement without his agreement.¹⁰ However, even if the other parties were to file a settlement agreement the resolution of this matter would be murky because Mr. Powell – if he retains counsel – could arguably challenge any such proposed agreement.

This leads to the crux of the concern and confusion TRA Staff has about its on-going role as a party in this matter. Staff understood that the Authority directed Staff to participate as a

⁵ Status Conference Transcript, pp. 24-25, December 8, 2008.

⁶ *Id.*, p. 25.

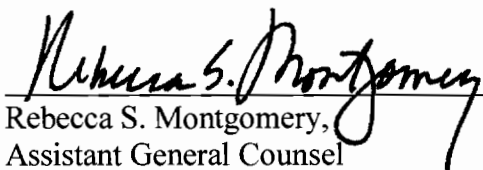
⁷ *Id.*, p. 28.

⁸ *Id.*, p. 29. In this regard, the Consumer Advocate stated “[w]e would like the opportunity to work with [Mr. Powell] and see if we can’t work through his concerns and submit something if the parties are able to agree rather than submit something that’s only got a few signatures rather than all.” *Id.*

⁹ In fact, Mr. Powell’s docket filings of January 22, 2009 evidence a desire to pursue formal discovery in this matter. It should be noted that Mr. Powell’s filings were made the same day that the *Initial Order* was issued by the Hearing Officer. In the *Initial Order*, the Hearing Officer stated that the parties were not to serve any documents “that require the services of a lawyer that are not also signed by an attorney duly licensed in Tennessee. Such documents include, but are not limited to: discovery requests. . . and execution of any proposed settlement agreement.” *Initial Order*, p. 7. Mr. Powell’s filings were signed only by him.

¹⁰ “[Mr. Powell’s] absence from prior agreement does not preclude the filing and consideration of such a proposed settlement agreement.” *Initial Order*, fn. 29.

party in this matter because the Company was having difficulty putting a rate case together.¹¹ TRA Staff participated in fruitful and productive discussions with the Consumer Advocate and the Company and believed settlement was near at the time the rate case was filed on October 20, 2008. However, for the reasons outlined above, it is TRA's Staff position that the complexion of the case has now changed significantly. The role it was directed to play in participating in discussions regarding the rate case has been completed. While it is possible that this case may still be resolved by a settlement agreement, it is uncertain when or how that may come about. Therefore, TRA Staff moves to withdraw as a party in this matter, or in the alternative, seeks clarification from the Authority regarding what role, if any, it should continue to play in this docket.


Rebecca S. Montgomery,
Assistant General Counsel

¹¹ The Company was asked for an update on the status of its impending rate case at the April 7, 2008 Authority Conference. Counsel for the Company stated: "This Company has never had a rate case. The rates that are in effect now are the rates that were basically set through discussions with the TRA Staff. And, frankly, they don't have the in-house expertise to pull together the rate case of the quality that this agency typically demands." Authority Conference Transcript, p. 48. (April 7, 2008).

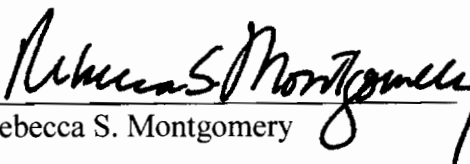
CERTIFICATE OF SERVICE

I, Rebecca S. Montgomery, hereby certify that I have served a copy of the foregoing Motion on the following persons by hand delivery or by depositing a copy of the same in the United States Mail, postage prepaid, addressed to them at the addresses shown below, this 27th day of January, 2009:

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