

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**January 28, 2009**

**IN RE:**

electronically filed 1/28/09

**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**

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**KINGS' CHAPEL CAPACITY'S MOTION FOR EXPEDITED TRA REVIEW OF  
HEARING OFFICER'S ORDER**

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Pursuant to Tenn Code Ann. § 4-5-315 and Tenn Rules & Regs. 1220-1-2-.18,<sup>1</sup> Kings' Chapel Capacity ("KCC" or "Company") files this Motion for Expedited TRA Review of the Hearing Officer's January 22, 2009 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<sup>nd</sup> Order") in this docket.

KCC requests that the Authority reconsider that portion of the January 22<sup>nd</sup> Order which limits KCC's intervention and restricts KCC representatives from reviewing any proprietary information filed by Tennessee Wastewater Systems, Inc. ("TWS") pursuant to a protective order in this docket. KCC also requests that the Authority reconsider that portion of the January 22<sup>nd</sup> Order which restricts KCC from serving documents upon other parties that may (or may not) require the services of a lawyer. Finally, KCC requests that the Authority deny the Hearing Officer's recommendation to separate the affiliate issues of TWS into a new docket.

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<sup>1</sup> Tenn. Code Ann. § 4-5-315 requires the TRA to grant motions for review of initial hearing officer orders upon the appeal of any party. Tenn. Code Ann. § 4-5-315(a). Tenn. Rules & Regs. 1220-1020-.18 provides that initial hearing officer orders shall be reviewed upon appeal by any party. To the extent Tenn. Rules & Regs. 1220-1-2-.06(6) may require permission of the Hearing Officer, KCC requests such permission by this Motion.

**1. KCC IS NOT A COMPETITOR OF TWS.**

Many of the restrictions placed on KCC by the Hearing Officer January 22<sup>nd</sup> Order appear to be due to his classification of KCC as a competitor of TWS.<sup>2</sup> However, this is an incorrect characterization. KCC does not presently serve or intend to serve any customers in TWS's service territory. Likewise, TWS does not presently serve, and is restricted from providing service to customers in KCC's present service territory. Because both TWS and KCC are regulated monopoly utilities, they are restricted from competing in each other's service territory.

To the extent that either TWS or KCC may request the TRA for authority to provide service to future service territories, then these petitions may well be competitive. However, any historical financial data filed in this case would certainly not be relevant or germane to future competitive petitions, if any. Therefore there is no reason to limit or restrict KCC's intervention based on the perceived competitive interests between TWS and KCC, and the Hearing Officer's restriction on limiting KCC's interventions on these grounds should be reversed.

**2. THE JANUARY 22ND ORDER UNFAIRLY LIMITS KCC'S ABILITY TO REVIEW INFORMATION FILED BY TWS SUBJECT TO A PROPRIETARY ORDER.**

The Hearing Officer's January 22<sup>nd</sup> Order prohibits the Company representatives of KCC from reviewing data filed by TWS that is subject to a proprietary order, provided that neither the Consumer Advocate nor the TRA Staff object to such information.<sup>3</sup> This restriction places an unfair burden on KCC in that it lets other parties to this case first decide whether any information filed by TWS is truly proprietary. Therefore, the January 22<sup>nd</sup> Order effectively grants TWS power to file all information in this case as proprietary solely to keep KCC from reviewing it.

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<sup>2</sup> January 22<sup>nd</sup> Order, Page 7.

<sup>3</sup> *Id.*

As mentioned above, KCC is not a competitor of TWS, and it is hard to imagine how any historical financial information of TWS in this case would give KCC a competitive advantage over any current or future rate issues. Therefore the Hearing Officer's restriction on limiting KCC's ability to review information filed by TWS subject to a proprietary agreement should be reversed.

**3. THE JANUARY 22ND ORDER UNFAIRLY PROHIBITS KCC FROM ISSUING DOCUMENTS WITHOUT THE SERVICES OF A LAWYER.**

As far as KCC knows, none of the existing wastewater utilities in Tennessee are presently earning what would be considered a "fair rate of return" and most are operating at a loss. The fact is that these small wastewater utilities lack the resources and scale to procure the services of a lawyer for a matter like this except when absolutely necessary.

In spite of this lack of resources, the Hearing Officer's January 22<sup>nd</sup> Order requires KCC to first obtain the services of a lawyer in order to simply request information from TWS that may be of value in this docket.<sup>4</sup> KCC may well procure the services of a lawyer if it first determines that these services are needed. However, KCC does not have the resources for legal counsel in this case at this time simply for the request of information, and we doubt that any other wastewater utility would. As a result, the Hearing Officer's January 22<sup>nd</sup> Order unfairly prohibits intervention by interested parties to this case by imposing a financial burden on intervenors, even though intervention is allowed by both TCA and the TRA's own rules. Therefore the Hearing Officer's restrictions on KCC's ability to serve documents should be reversed.

**4. THE JANUARY 22ND ORDER DENIES THE LEGAL RIGHTS, DUTIES, PRIVILEGES, IMMUNITIES, OR OTHER LEGAL INTERESTS OF KCC.**

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<sup>4</sup> *Id.*

On Page 6 of the January 22<sup>nd</sup> Order, the Hearing Officer goes into great detail on KCC's hurdle for intervention and states the following:

After reviewing the standards set forth in Tenn. Code Ann. § 4-5-310(a) as well as KCC's Petition to Intervene, the Hearing Officer found "that the petition must state facts that demonstrate the petitioner's legal rights, duties, privileges, immunities, or other legal interests" and a petition "simply stating that because rates of a competitor are involved" does not satisfy that standard. **If KCC's arguments were sufficient, that would allow virtually any other competitor to intervene in any other rate case, which is simply not a legal right under Title 65.** Therefore, the Hearing Officer denied KCC's request to intervene as a matter of right under Tenn. Code Ann. § 4-5-310(a). [Emphasis Added.]

However, the TRA has historically allowed regulated utilities to intervene in each other's rate cases without meeting the burden that the Hearing Officer appears to now require of KCC.<sup>5</sup> Again, the Hearing Officer's January 22<sup>nd</sup> Order unfairly prohibits intervention by interested parties to this case by imposing a series of legal burdens that can't be met, even though intervention is allowed by both TCA and the TRA's own rules. Therefore the Hearing Officers restrictions on KCC's ability to protect its own legal rights, duties, privileges, immunities, or other legal interests should be reversed.

## **5. THE HEARING OFFICER'S RECOMMENDATION REGARDING SEPARATING THE AFFILIATE ISSUES OF TWS INTO A NEW DOCKET SHOULD BE DENIED.**

On Page 9 of the January 22<sup>nd</sup> Order, the Hearing Officer recommends that the affiliate issues of TWS be separated into a new docket. These affiliate issues go to the very heart of KCC's primary reason for intervention, and it is our contention that their impact will significantly alter the rates ultimately approved by the TRA in this docket. However, if these affiliate issues are now moved into another docket, then their impact cannot be immediately reflected in rates charged to

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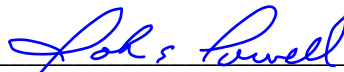
<sup>5</sup> Of special note, please see the intervention of Chattanooga Gas Company in the rate case of Atmos Energy Corporation in Docket 05-00258.

customers. Therefore the Hearing Officers recommendation to separate the affiliate issues of TWS should be denied.

## **6. CONCLUSION**

TCA and the TRA's own rules clearly allow KCC to intervene in this docket without limitation, and any restrictions placed on KCC's intervention in the Hearing Officer's January 22nd Order should be overturned. In addition, if full intervention is granted, KCC plans to offer proof of affiliate misconduct by TWS that it believes will have a material impact on TWS' rate request. Therefore, the Hearing Officer's recommendation in his January 22<sup>nd</sup> Order that moves these affiliate issues into a new docket should likewise be overturned.

Respectfully Submitted,



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John Powell, President  
Kings' Chapel Capacity

**CERTIFICATE OF SERVICE**

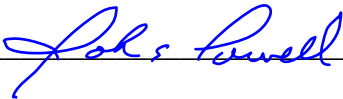
The undersigned hereby certifies that the foregoing document has been served upon the following persons by hand delivery or by United States Mail, with proper postage thereon.

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This 28<sup>th</sup> day of January, 2009.

  
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