

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 27, 2009

IN RE:

PETITION OF TENNESSEE WASTEWATER
SYSTEMS, INC. FOR AUTHORITY TO EXPAND
ITS SERVICE AREA TO INCLUDE A PORTION OF
HAMBLÉN COUNTY IN TENNESSEE, KNOWN AS
THE PRESERVE AT EAGLE ROCK

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DOCKET NO.
09-00007

ORDER APPROVING PETITION TO AMEND
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

This matter came before Chairman Eddie Roberson, Director Sara Kyle and Director Mary W. Freeman of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a Hearing held on March 30, 2009 to consider the *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity* (the "*Petition*") requesting that the Authority approve expansion of its service area to include a portion of Hamblen County in Tennessee known as The Preserve at Eagle Rock ("Eagle Rock").

On April 6, 1994, Tennessee Wastewater Systems, Inc.¹ ("TWS" or the "Company") received a Certificate of Public Convenience and Necessity ("CCN") in Docket No. 93-09040 from the Tennessee Public Service Commission to provide wastewater service to the Oakwood Subdivision in Maury County. Since that time, through various other dockets, the Company has been granted approval to expand its service territory to include other areas in Tennessee. The Company's principal office is located in Smyrna, Tennessee. On January 15, 2009, TWS filed

¹ Tennessee Wastewater Systems, Inc. was formerly known as On-Site Systems, Inc. This name change was effected by the TRA's order of February 19, 2004, in Docket No. 03-00518.

the *Petition* in the present matter, along with the Pre-filed Direct Testimony of Matt Pickney. TWS states in its *Petition* that the Tennessee Department of Environment and Conservation application for State Operating Permit, pursuant to TRA Rule 1220-4-13-.04(1)(c), has been submitted and the permit tracking number is SOP-08-006.²

Legal Standard for Granting Certificate of Public Convenience and Necessity

No public utility is permitted to begin construction or operation of a new utility facility or service before obtaining approval of the Authority. The procedure for obtaining a CCN evidencing such approval is set forth in Tenn. Code Ann. § 65-4-201(a) (Supp. 2008), which states as follows:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate. . . .

The Authority's permanent rules for public wastewater utilities became effective on June 12, 2006. TRA Rule 1220-4-13-.04(1)(b) sets forth certain requirements for a CCN applicant as follows:

(b) Any public wastewater utility requesting a Certificate of Public Convenience and Necessity (CCN) authorizing such public utility to construct and/or operate a wastewater system or to expand the area in which such a system is operated, shall file an application in compliance with Rule 1220-1-1-.03 and this rule. All applicants shall demonstrate to the Authority that they are registered with the Secretary of State, have obtained the financial security required under 1220-4-13-.07, and possess sufficient managerial, financial, and technical abilities to provide the wastewater services for which they have applied. Each application shall

² See *Petition*, p.1 (January 15, 2009). The Company shall file a copy of the permit with the Authority when it is received.

justify existing public need and include the required financial security consistent with Tenn. Code Ann. § 65-4-201 and these rules.

The Petition

TWS is proposing to provide wastewater service to 109 residential, overnight rental and commercial customers when the project is complete.³ The Company proposes a re-circulating trickling filter and subsurface drip dispersal system that has a projected capacity of 32,700 gallons per day that can be expanded if needed.

In support of its *Petition* and as evidence of the public need for wastewater service in the requested area, TWS attached a letter from Leon Epling, Eagle Rock developer, Sunrise Homes, Inc., requesting TWS provide service to Eagle Rock in Hamblen County.⁴ In addition, TWS attached letters from other potential wastewater service providers stating that none of the potential providers currently serves the area or intends to extend wastewater service to the Eagle Rock area.⁵ The Company filed service area maps showing the location of the Eagle Rock.⁶ TWS further states that the system should be completed within approximately sixty days after approval of the CCN.

March 30, 2009 Hearing

Public notice of the Hearing in this matter was issued by the Hearing Officer on March 2, 2009 and Re-Noticed March 13, 2009 with the Hearing being scheduled for the March 30, 2009 Authority Conference. On March 27, 2009, the Authority issued a Notice moving the starting time of the March 30, 2009 Authority Conference from 1:00 p.m. to 3:00 p.m. No person sought intervention prior to or during the Hearing. During the Hearing held on March 30, 2009, Mr. Matt Pickney, Operations Manager of TWS, presented testimony and was subject to examination

³ See *Petition*, p. 1 (January 15, 2009).

⁴ See *Petition* (unnumbered attachments) (January 15, 2009): Letter from Leon Epling dated December 29, 2008.

⁵ See *Petition* (unnumbered attachments) (January 15, 2009): Barbara C. Barile, Mayor, City of Morristown, Tennessee, letter dated December 19, 2008; David W. Purkey, Mayor, Hamblen County, Tennessee, letter dated December 22, 2008.

⁶ See *Petition*, Exhibits A1-A2 (January 15, 2009).

by the panel. The Pre-filed Testimony was entered into the record without objection. The Pre-filed Testimony states that the Company has the managerial, technical and financial ability to provide wastewater services to Eagle Rock.⁷

The panel found that TWS had met the requirements of Tenn. Code Ann. § 65-4-201(a) (Supp. 2008) and TRA Rule 1220-4-13-.04(1)(b). The panel also found that the rates filed by TWS were identical to those rates previously approved by the Authority for other areas served by the Company.

Based upon the evidentiary and administrative record as a whole and relying on the standards set forth in Tenn. Code Ann. § 65-4-201(a) (Supp. 2008) and TRA Rule 1220-4-13-.04(1)(b), the panel voted unanimously to grant approval of the *Petition*, including the rates filed by the Company.

IT IS THEREFORE ORDERED THAT:

1. The *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity* to expand its service area to include The Preserve at Eagle Rock in Hamblen County, Tennessee, as shown in the maps attached to the *Petition*, is approved.

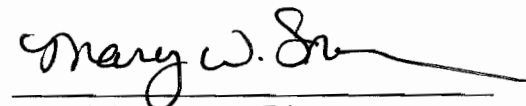
2. The Petitioner's rates for wastewater service shall be as listed in the Tariff and rate schedules filed in this docket on January 15, 2009.



Eddie Roberson, Chairman



Sara Kyle, Director



Mary W. Freeman, Director

⁷ Matt Pickney, Pre-Filed Testimony (January 15, 2009).