

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 22, 2011

IN RE:

PETITION OF DSH & ASSOCIATES, LLC, TO OBTAIN A
CCN FOR THE SERVICE OF THE PART OF CAMPBELL
COUNTY, TENNESSEE KNOWN AS LAKESIDE ESTATES

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DOCKET NO.
11-00020

ORDER APPROVING PETITION FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

This matter came before Director Kenneth C. Hill, Director Sara Kyle, and Director Mary W. Freeman of the Tennessee Regulatory Authority (“TRA” or “Authority”), the voting panel assigned to this docket, for a Hearing convened during its regularly scheduled Authority Conference held on July 11, 2011, to consider the *Amended Petition of DSH & Associates, LLC to Obtain a Certificate of Public Convenience and Necessity for the Service of the Part of Campbell County, Tennessee, known as Lakeside Estates* (“*Amended Petition*”).

BACKGROUND

On February 2, 2011, DSH & Associates, LLC (“DSH” or “Company”) filed a petition requesting a Certificate of Public Convenience and Necessity (“CCN”) to operate a wastewater disposal system in Lakeside Estates of Campbell County.¹ On June 14, 2011, DSH filed an amended petition to reflect certain changes and corrections to the initial petition. Then, on June 28, 2011, DSH filed its *Amended Petition* for the consideration of the Authority. Lakeside Estates is owned and being developed by Trimbach Development, L.L.C. (“Developer”).

¹DSH is a chartered corporation certified to do business in the State of Tennessee.

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 without first 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. . . .

TRA Rule 1220-4-13-.04(1)(b) also 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 justify existing public need and include the required financial security consistent with Tenn. Code Ann. § 65-4-201 and these rules.

AMENDED PETITION

In its *Amended Petition*, DSH states that the existing and proposed expansion of the wastewater system will be used to provide an affordable, environmentally friendly solution for wastewater disposal to approximately 200 residential and commercial lots, once the system is

fully built out.² The sewage disposal system will be a low-pressure STEP collection system with a 17-plus acre drip treatment system.³ The current system has a design flow rate of 12,000 gallons per day. Upon completion of Phase II, the system's design flow rate will increase to 16,000 gallons per day.⁴

In its *Amended Petition*, DSH states that upon Authority approval, the Developer will transfer ownership of the wastewater treatment plant, drip fields, and associated land acreage to DSH.⁵ In addition, the LaFollette Utilities Board, which has operated the existing decentralized wastewater system located at Lakeside Estates for approximately three years, has agreed to release its state operating permit to DSH.⁶ In reliance on this agreement, the Company states that it has petitioned the Tennessee Department of Environment and Conservation ("TDEC") for a transfer of State Operating Permit (SOP No. 07073) to serve the development.⁷

In support of its *Amended Petition*, the Company has submitted financial information, estimated operating revenues and costs, and biographical information for DSH management personnel. In further support of its *Amended Petition* and as evidence of the public need for wastewater service in the requested area, DSH attached a letter from the Developer requesting that DSH provide service to Lakeside Estates.⁸ In addition, DSH attached letters from other potential wastewater service providers confirming that none of the potential providers currently serves or intends to extend wastewater service to the Lakeside Estates area.⁹ The Company also

²*Amended Petition*, p. 36-37 (June 28, 2011).

³*Amended Petition*, p. 62 (June 28, 2011).

⁴*Amended Petition*, p. 135 (June 28, 2011).

⁵ *Amended Petition*, p. 15 (June 28, 2011).

⁶ *Id.*

⁷*Amended Petition*, pp. 33 & 159 (June 28, 2011).

⁸*Amended Petition*, p. 31 (June 28, 2011).

⁹*Letters From Local Utilities, County And City Mayors, DSH Financial Statements (proprietary) And Property Transfer Letter*, unnumbered attachments (March 28, 2011): William Baird, Mayor, Campbell County, dated March 24, 2011; Michael R. Stanfield, Mayor, City of LaFollette, Tennessee, dated March 24, 2011; Frank Wallace, Caryville Jacksboro Utility, dated March 15, 2011; Jack Cannon, Mayor, Town of Jacksboro, Tennessee, dated March 17, 2011; Robert Stooksbury, Mayor, City of Caryville, Tennessee, dated March 24, 2011.

filed service area maps showing the location of Lakeside Estates.¹⁰ Finally, the Company included the sworn pre-filed testimony of Doug Hodge, Owner and Operator of DSH, further affirming the Company's managerial, financial, and technical qualifications.

JULY 11, 2011 HEARING

Public notice of the Hearing in this matter was issued by the Hearing Officer on July 1, 2011. No person sought intervention prior to or during the Hearing. During the Hearing held on July 11, 2011, Mr. Doug Hodge, Owner and Operator of DSH, presented testimony and was subject to examination by the panel. Thereafter, the panel questioned Mr. Hodge concerning the size and capacity of the wastewater treatment system, plans for expansion of the system, customer rates and tap fees, and the initial costs of constructing the system.¹¹ All submitted filings, including the Pre-filed Testimony of Doug Hodge, were entered into the record without objection. Within his Pre-filed Testimony, Mr. Hodge states that the Company has the managerial, technical, and financial ability to provide wastewater services to Lakeside Estates.¹²

Upon conclusion of the testimony, the panel solicited public comment on the *Amended Petition*, but no one sought recognition to comment. Finding that DSH meets the requirements of Tenn. Code Ann. § 65-4-201(a) (Supp. 2008) and TRA Rule 1220-4-13-.04(1)(b), the panel additionally found that the Company has demonstrated that it has sufficient managerial, financial, and technical qualifications to provide the services for which it has applied and has affirmed that it will adhere to all applicable Authority policies, rules, and orders. Thereafter, 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

¹⁰ *Amended Petition*, pp. 106-112 (June 28, 2011).

¹¹ Transcript of Authority Conference, pp. 83-93 (July 11, 2011).

¹² *Amended Petition*, Pre-Filed Sworn Testimony of Doug Hodge, p. 35-44, 36 (June 28, 2011).

unanimously to grant approval of the *Amended Petition*, contingent upon the approval of a State Operating Permit from TDEC.

IT IS THEREFORE ORDERED THAT:

The *Amended Petition of DSH & Associates, LLC to Obtain a Certificate of Public Convenience and Necessity for the Service of the Part of Campbell County, Tennessee, known as Lakeside Estates*, and attached tariff, is hereby approved contingent upon the grant of a State Operating Permit from the Tennessee Department of Environment and Conservation.


Kenneth C. Hill, Director


Sara Kyle, Director


Mary W. Freeman, Director