

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**December 4, 2013**

**IN RE:**

**PETITION OF EMERSON PROPERTIES, LLC  
FOR DECLARATORY RULING**

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**DOCKET NO.  
13-00017**

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**ORDER DENYING MOTION TO DISMISS**

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This matter came before Chairman James M. Allison, Director Kenneth C. Hill and Director David F. Jones of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on September 9, 2013 for the purpose of deliberating the motion to dismiss filed by Tennessee Wastewater Systems, Inc. (“TWSI”). Emerson Properties, LLC (“Emerson”) filed an *Amended Petition of Emerson Properties, LLC* (“*Petition*”) on March 1, 2013<sup>1</sup> concerning the Certificate of Public Convenience and Necessity (“CCN”) held by TWSI for a portion of Campbell County, Tennessee, known as Villages at Norris Lake. On March 22, 2013, TWSI filed a motion to dismiss asking that Emerson’s *Petition* be dismissed for failure to state a claim upon which relief can be granted.<sup>2</sup>

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<sup>1</sup> Emerson initially filed a *Petition for Declaratory Ruling* on January 16, 2013 and filed its *Petition* after it was determined that a request for declaratory ruling was not necessary.

<sup>2</sup> See *Answer to Petition, Motion to Dismiss the Petition* (“*Motion to Dismiss*”), *Counterclaim by Tennessee Wastewater Systems, Inc. Against Emerson Properties, LLC* (March 27, 2013).

## **BACKGROUND AND TRAVEL OF THE CASE**

### **CCN**

TWSI first received a CCN from the Tennessee Public Service Commission in 1994 in Docket No. 93-09040.<sup>3</sup> Since then, its CCN has been amended numerous times to expand its service territory. On November 6, 2006, TWSI filed a petition requesting that its service area be expanded to include Villages at Norris Lake, a subdivision in Campbell County. In support of its petition, TWSI filed a letter from the developer of Villages at Norris Lake, Land Resource Companies, requesting that TWSI provide service. In addition, letters from the mayors of LaFollette and Campbell County indicated they had no intent to provide wastewater service to that area. Although no contracts had been signed at the time of the application, TWSI estimated that the system would be complete within 60 days of Tennessee Department of Environment and Conservation (“TDEC”) and other approvals. The Authority granted the petition to amend the CCN on January 8, 2007.<sup>4</sup> TWSI filed its TDEC state operating permit with the Utilities Division of the Authority on February 28, 2007.<sup>5</sup>

### **TRA Docket 11-00199**

On November 16, 2011, in TRA Docket No. 11-00199, TWSI filed a petition requesting a declaratory ruling concerning a dispute between TWSI and the Caryville-Jacksboro Utility Commission (“CJUC”) as to which entity could legally provide wastewater service to Villages at Norris Lake.<sup>6</sup> In that petition, TWSI asserted that sewer connections for 180 lots and 17,000 feet

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<sup>3</sup> TWSI was formerly known as On-Site Systems, Inc.

<sup>4</sup> See *In re: Petition of Tennessee Wastewater Systems, Inc. to Amend its CCN to Expand its Service Area to Include a Portion of Campbell County in Tennessee Known as Villages at Norris Lake*, Docket No. 06-00277, *Order Approving Petition to Amend Certificate of Public Convenience and Necessity*, p. 3 (April 11, 2007).

<sup>5</sup> The TDEC permit was filed in Docket No. 06-00277 on November 4, 2009.

<sup>6</sup> See *In re: Petition of Tennessee Wastewater Systems, Inc. for Declaratory Ruling*, Docket No. 11-00199, *Petition of Tennessee Wastewater Systems, Inc. for Declaratory Ruling*, p. 1 (November 16, 2011).

of sewer main had been installed, and that it had spent substantial amounts of money in regulatory and engineering expenses to provide the service.<sup>7</sup> According to TWSI, CJUC had received a state operating permit from TDEC authorizing CJUC to provide services to Villages at Norris Lake.<sup>8</sup>

TWSI cited Tenn. Code Ann. § 6-51-301(a), which reads, in part:

Notwithstanding any other law, public or private, to the contrary, no municipality may render utility water service to be consumed in any area outside its municipal boundaries when all of such area is included within the scope of a certificate or certificates of convenience and necessity or other similar orders of the Tennessee regulatory authority or other appropriate regulatory agency outstanding in favor of any person, firm or corporation authorized to render such utility water service.

Therefore, TWSI asked for an order from the Authority finding:

[T]hat TWSI has a legally protected right to provide wastewater services to Villages at Norris Lake, subject to the TRA's power to modify or revoke that right and that, absent such action by the TRA, CJUC is prohibited by state law from providing wastewater service to Villages at Norris Lake.<sup>9</sup>

At the December 12, 2011 Authority Conference, the panel of Directors<sup>10</sup> appointed Jean Stone as Hearing Officer to determine whether to accept the petition for declaratory ruling and if accepted, to hear the case and render a decision on the merits.<sup>11</sup>

CJUC did not respond to the petition. However, on December 20, 2011, Emerson filed a Petition to Intervene, stating that it had an interest in the matter because it was the owner of Villages at Norris Lake, having purchased the property through bankruptcy court proceedings

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<sup>7</sup> *Id.* at 1-2. TWSI's CCN application for Villages at Norris Lake proposed the provision of wastewater service to 540 residential lots and 60 commercial lots. *See In re: Petition of Tennessee Wastewater Systems, Inc. to Amend its CCN to Expand its Service Area to Include a Portion of Campbell County in Tennessee Known as Villages at Norris Lake*, Docket No. 06-00277, *Order Approving Petition to Amend Certificate of Public Convenience and Necessity*, p. 2 (April 11, 2007).

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> Chairman Kenneth C. Hill, Director Sara Kyle and Director Mary W. Freeman were assigned to the Panel.

<sup>11</sup> *See In re: Petition of Tennessee Wastewater Systems, Inc. for Declaratory Ruling*, Docket No. 11-00199, *Order Appointing a Hearing Officer*, p. 1 (January 6, 2012).

from the previous owners, Villages at Norris Lake, LLC.<sup>12</sup> The intervention request was granted,<sup>13</sup> but Emerson declined to file a brief on the TRA's jurisdiction to consider the petition for declaratory ruling.<sup>14</sup>

The Hearing Officer issued an *Initial Order Declining to Accept or to Set Petition for Declaratory Ruling for Hearing* on January 11, 2012. The Hearing Officer determined that because the requested declaratory ruling was for an interpretation of Tenn. Code Ann. § 6-51-301(a) and that statute was not within the primary jurisdiction of, nor enforceable by, the TRA, it was inappropriate under Tennessee statutes and TRA Rules to accept the petition for hearing. Thus, the petition was deemed denied.<sup>15</sup>

#### Chancery Court Case

TWSI filed suit in the Davidson County Chancery Court against CJUC, Emerson and the TRA. The Court ultimately ruled in favor of TWS and against CJUC, determining that TWSI had the legal and exclusive right to provide wastewater to Villages at Norris Lake pursuant to its CCN. The Court also dismissed Emerson's counterclaim seeking to invalidate TWSI's CCN, holding that Emerson had failed to exhaust its administrative remedies before the TRA, because the TRA has "primary jurisdiction over the regulation of public utilities and only the TRA has

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<sup>12</sup> See *In re: Petition of Tennessee Wastewater Systems, Inc. for Declaratory Ruling*, Docket No. 11-00199, *Petition of Emerson Properties LLC to Intervene*, p. 1 (December 20, 2011). It appears that Land Resource Companies was a parent or manager of Villages at Norris Lake, LLC. Both were named in the bankruptcy proceedings, but Villages at Norris Lake, LLC was the transferor of the subdivision property.

<sup>13</sup> See *In re: Petition of Tennessee Wastewater Systems, Inc. for Declaratory Ruling*, Docket No. 11-00199, *Order Granting Petition to Intervene* (December 21, 2011).

<sup>14</sup> See *In re: Petition of Tennessee Wastewater Systems, Inc. for Declaratory Ruling*, Docket No. 11-00199, *Email from Mark Troutman to Henry Walker and Jean A. Stone dated January 4, 2012* (January 11, 2012).

<sup>15</sup> See *In re: Petition of Tennessee Wastewater Systems, Inc. for Declaratory Ruling*, Docket No. 11-00199, *Initial Order Declining to Accept or to Set Petition for Declaratory Ruling for Hearing* (January 11, 2012).

the power to award, amend, or revoke a utility's CCN, subject to judicial review.”<sup>16</sup> As a result, Emerson has now brought its *Petition* before the TRA.

### Emerson's Petition

Emerson filed its *Petition* on January 16, 2013. In its *Petition*, Emerson asserts that the property of Villages at Norris Lake was sold to it “by Bankruptcy Court Order, free and clear of other interests which extinguished TWSI’s rights in the real property comprising the Villages at Norris Lake Subdivision.”<sup>17</sup> According to Emerson, “a small portion of sewer connections and the sewer main were installed by TWSI but Emerson believes TWSI received full compensation from the prior owners for such.”<sup>18</sup> Further, in the prior owner’s bankruptcy proceedings, “all of TWSI contracts were set aside and terminated.”<sup>19</sup> Therefore, TWSI “has no interest in the real or personal property that will comprise this sewer system, has no contractual rights to obtain any interest in such, and has no right or obligation to complete the construction of the system or provide any services at all.”<sup>20</sup>

Emerson alleges that TWSI has not installed facilities within the two-year period provided for in TRA Rule 1220-04-13-.06.<sup>21</sup> According to Emerson, TWSI also cannot prohibit the encumbrance or transfer of the assets of the wastewater system as provided in TRA Rule 1220-04-13-.10, since it will not own the wastewater system. Finally, Emerson asserts that

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<sup>16</sup> See *Tennessee Wastewater Systems, Inc. v. Tennessee Regulatory Authority, et al.*, No. 12-0143-II, *Final Judgment Order*, p. 4 (Chancery Court, 20<sup>th</sup> J.D. January 7, 2013).

<sup>17</sup> *Petition of Emerson Properties, LLC for Declaratory Ruling*, p. 2 (January 16, 2013).

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> TRA Rule 1220-04-13-.06 (4) reads:

If wastewater service has not been provided in any part of the area which a public wastewater utility is authorized to serve within two (2) years after the date of authorization for service to such part, whether or not there has been a demand for such service, the Authority may require the public wastewater utility to demonstrate that it intends to provide service in the area or part thereof, or that based on the circumstances of a particular case, there should be no change in the certificated area, to avoid revocation or amendment of a CCN.

TWSI's state operating permit has either expired or will soon expire.<sup>22</sup> For these reasons, Emerson asserts that good cause exists for the Authority to terminate TWSI's CCN under TRA Rule 1220-04-13-.09(2)(a), and requests the TRA to terminate the CCN or convene a contested case to do so.<sup>23</sup>

During the Authority Conference held on February 13, 2013, the voting panel assigned to the docket voted unanimously to appoint General Counsel or her designee as Hearing Officer to determine whether to accept the *Petition*, convene a contested case proceeding, and, if accepted, prepare the matter for hearing before the panel.<sup>24</sup> On February 14, 2013, TWSI filed a *Petition to Intervene* requesting to participate in the docket.<sup>25</sup>

The Hearing Officer found that, upon the timely and proper filing of Emerson's amended petition, the matter should proceed as a contested case proceeding and be prepared for a hearing before the panel. Emerson filed its amended petition on March 1, 2013. The Consumer Advocate and Protection Division of the Office of the Attorney General ("CAPD" or "Consumer Advocate") filed a *Petition to Intervene* on March 15, 2013 "for purposes of notice and service in this proceeding on behalf of the public interest."<sup>26</sup> The Hearing Officer granted the CAPD's *Petition to Intervene* on April 2, 2103.<sup>27</sup> On March 27, 2013, TWSI filed its *Answer to Petition, Motion to Dismiss the Petition* ("Motion to Dismiss") and *Counterclaim by Tennessee Wastewater Systems, Inc. Against Emerson Properties, LLC*. In accordance with the Procedural Schedule established by the Hearing Officer, Emerson responded to the *Motion to Dismiss* on

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<sup>22</sup> *Petition*, p. 4 (January 16, 2013).

<sup>23</sup> *Id.*

<sup>24</sup> *Order Appointing a Hearing Officer* (February 19, 2013).

<sup>25</sup> *See Petition to Intervene* (February 14, 2013).

<sup>26</sup> *See Petition to Intervene* (March 15, 2013).

<sup>27</sup> *See Order Granting Consumer Advocate's Petition to Intervene* (April 2, 2013).

April 30, 2013, and TWSI filed its reply on May 7, 2013. Oral arguments on the *Motion to Dismiss* were held before the panel on July 15, 2013.

### **TWSI's MOTION TO DISMISS**

Each party has set forth its arguments in full in the record of this docket, in their pre-hearing memoranda and during oral argument on the motion. The following section is intended as a brief summary of the positions of TWSI and Emerson in this matter.

### **TWSI**

TWSI's *Motion to Dismiss* asks the Authority to dismiss Emerson's *Petition* because it fails to state a claim upon which relief can be granted. TWSI states the Davidson County Chancery Court ruled that "the bankruptcy of the former owner and the abrogation of the contract between Respondent [Emerson] and the former owner of the development 'did not affect Plaintiff's service area rights under the CCN,' which are obtained from the TRA in accordance with state law, 'not by contract with the property owner.'"<sup>28</sup> TWSI asserts that the court's ruling is "final and binding on the parties" and Emerson is barred from litigating this issue a second time.

TWSI disagrees with Emerson's argument that TRA Rule 1220-04-13-.10 prohibits a utility from mortgaging its property without Authority approval. According to TWSI, "[s]ince no utility other than TWSI can legally provide wastewater service at this location, TWSI will eventually acquire ownership of the system, which has been partially built and will own and operate the system in accordance the Authority's rules."<sup>29</sup>

TWSI maintains that the Davidson County Chancery Court opined that TWSI's CCN prohibits other utilities from serving this location unless the TRA determines that TWSI is

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<sup>28</sup> See *Motion to Dismiss*, pp. 5-6 (March 27, 2013).

<sup>29</sup> *Id.* at 6.

unwilling or unable to provide service. “There is no allegation in the Petition that Respondent is unable or unwilling to provide such service. Therefore as a matter of law, the Petition does not state a claim sufficient to warrant termination of Respondent’s [TWSI] certificate.”<sup>30</sup> TWSI asks that the TRA to dismiss Emerson’s *Petition* to terminate TWSI’s CCN.<sup>31</sup>

Emerson

In its *Response of Emerson Properties, LLC to the Motion to Dismiss Filed by Tennessee Wastewater Services, LLC* (“*Emerson’s Response*”), Emerson argues “the allegations of the Petition and Amended Petition clearly set forth a basis for termination or revocation of the CCN and shows that good cause exists under TRA Rule 1220-04-13-.09 for the termination or revocation of the CCN. Emerson submits that the *Motion to Dismiss* filed by TWSI should be denied.”<sup>32</sup> TRA Rule 1220-04-13-.09 provides in part:

(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:

(a) A finding by the Authority of material non-compliance by the holder of a CCN with any provisions of Title 65 of the Tennessee Code dealing with obtaining a public wastewater utility CCN or providing wastewater services to customers, or any order or rule of the Authority relating to the same.

(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;
2. Criminal conduct on the part of the public wastewater utility;
3. Actual, threatened or impending insolvency of the public wastewater utility;

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 7.

<sup>32</sup> *Emerson’s Response*, p. 3 (April 30, 2013).

4. Actual or threatened abandonment of the public wastewater utility by its owners or its operators;
5. Persistent, serious, substantial violations of statutes or regulations governing the public wastewater utility; or
6. Failure or inability on the part of the wastewater utility to comply with an order of any other state or federal regulatory body after the public wastewater utility has been notified of its non-compliance and given an opportunity to achieve compliance.

Emerson also argues that TWSI is not in compliance with TRA Rule 1220-04-13-.10(1), which provides:

(1) Title to all physical assets of the wastewater system managed or operated by a public wastewater utility shall not be subject to any liens, judgments, or encumbrances, except as approved by the Authority pursuant to Tenn. Code Ann. § 65-4-109.<sup>33</sup>

Emerson states that TWSI's argument that this rule is irrelevant because TWSI owns the CCN and, therefore, will own the assets in the future ignores the fact that currently, the assets are already encumbered and TWSI cannot comply with this rule.<sup>34</sup>

According to Emerson, TWSI's reliance on collateral estoppel is misplaced. Emerson maintains that its counterclaim was dismissed by the Chancery Court because "it failed to exhaust its administrative remedies before the TRA such that the Chancery Court lacked subject matter jurisdiction. The Court further states on page 4 of the Order that the dismissal as to Emerson, is 'without prejudice to the rights of Emerson Properties, LLC to proceed before the TRA.'"<sup>35</sup> Emerson argues that the Court's ruling does not bar Emerson from raising issues alleged in the *Petition* and Amended Petition as grounds for revoking TWSI's CCN.<sup>36</sup> If TWSI's CCN is revoked, Emerson maintains it is "prepared to enter into an agreement with the Caryville

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 4.

<sup>36</sup> *Id.*

Jacksboro Utility Commission for the (*sic*) providing the management of the sewer treatment system for this subdivision and such Utility Commission is willing to provide such services.”<sup>37</sup>

Emerson argues that its *Petition* sets forth a sufficient claim for relief for the revocation of TWSI’s CCN pursuant to TRA Rule 1220-04-13-.09 and asks the Authority to deny TWSI’s *Motion to Dismiss*.

### **FINDINGS AND CONCLUSIONS**

At the regularly scheduled Authority Conference held on September 9, 2013, the panel deliberated TWSI’s *Motion to Dismiss*. Upon consideration of the record, the panel found that Emerson’s *Petition* states a claim upon which relief can be granted and voted unanimously to deny TWSI’s *Motion to Dismiss* based on the following analysis.

### **Standard of Review for Motions to Dismiss**

TWSI filed its *Motion to Dismiss* pursuant to TRA Rule 1220-1-2-.03(2)(e) which allows certain defenses, including a failure to state a claim upon which relief can be granted, to be made by motion. The language of TRA Rule 1220-1-2-.03(2)(e) mirrors the Tennessee Rules of Civil Procedure 12.02(6). The standards for granting a motion to dismiss filed under Tenn. R. Civ. P. 12.02(6) have been well-established in Tennessee and provide the framework for the panel’s analysis of TWSI’s motion. In *Indiana State District Council of Laborers v. Brukardt, et al.*, the court offers a general overview of the standard of review and the rules governing consideration of a Tenn. R. Civ. P. 12.02(6) motion. It provides:

A Rule 12.02(6) motion to dismiss admits the truth of all of the relevant and material averments contained in the complaint, but it asserts that the averments nevertheless fail to establish a cause of action. *See, e.g. Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997). Therefore, when reviewing a dismissal of a complaint under Rule 12.02(6), this Court must take the factual allegations contained in the complaint as true and review the trial court’s legal conclusions de novo without giving any presumption of correctness to those conclusions. *See,*

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<sup>37</sup> *Id.*

*e.g. Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn. 1999). Because a motion to dismiss a complaint under Tennessee Rule of Civil Procedure 12.02(6) challenges only the legal sufficiency of the complaint, courts should not dismiss a complaint for failure to state a claim based upon the perceived strength of a plaintiff's proof. *See, e.g. Bell ex rel. Snyder v. Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A.*, 986 S.W.2d 550, 554 (Tenn. 1999). As Rule of Civil Procedure 8.01 only requires that a complaint set forth 'a short and plain statement of the claim showing that the pleader is entitled to relief,' courts should liberally construe the complaint in favor of the plaintiff when considering a motion to dismiss for failure to state a claim. *See, e.g., Pursell v. First Am. Nat. Bank*, 937 S.W.2d 838, 840 (Tenn. 1996). Although the allegations of pure legal conclusions will not sustain a complaint, *see Ruth v. Ruth*, 213 Tenn. 82, 372 S.W.2d 285, 287 (1963), courts should grant a motion to dismiss only when it appears that a plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief, *see, e.g., Cook v. Spinnaker's of Rivergate, Inc.*, 878 S.W.2d 934, 938 (Tenn. 1994).<sup>38</sup>

TWSI's arguments in support of its *Motion to Dismiss* greatly exceed the scope of a review of the pleadings and argue the facts of the docket. TWSI argues that this matter was litigated in Chancery Court, and Emerson is barred from litigating the issue a second time. TWSI also argues that it is not in violation of TRA Rule 1220-04-13-.10 because it will eventually gain ownership of the System because no other utility can provide wastewater service at this location. TWSI states the *Petition* does not contain an allegation that TWSI is unable or unwilling to provide service and "as a matter of law" the *Petition* does not state a claim sufficient to warrant termination of TWSI's CCN.

### **Emerson's *Petition* States a Claim Upon Which Relief Can Be Granted**

A motion to dismiss filed under TRCP 12.02(6) must challenge the legal sufficiency of the petition and not the strength of the plaintiff's evidence.<sup>39</sup> When evaluating a motion to dismiss, the panel should construe the *Petition* liberally presuming all factual allegations to be true. In addition, the Petitioner should be given the benefit of all reasonable inferences drawn

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<sup>38</sup> *See Indiana State District Council of Laborers v. Brukardt, et al.*, 2009 WL 426237, at \*5 (Tenn. Ct. App. 2009).

<sup>39</sup> *See Webb v. Nashville Area Habitat for Humanity*, 346 S.W.3d 422, 426 (2011) (citations omitted).

from the facts.<sup>40</sup> A defendant who files a motion to dismiss “admits the truth of all of the relevant and material allegations contained in the complaint, but asserts that the allegations fail to establish a cause of action.”<sup>41</sup> “To be sufficient and survive a motion to dismiss, a complaint must not be entirely devoid of factual allegations.”<sup>42</sup>

The panel found that Emerson’s *Petition* provides sufficient factual allegations to support its request to terminate TWSI’s CCN to serve the Villages at Norris Lake. In its *Petition*, Emerson claims that TWSI has not complied with TRA Rule 1220-04-13-.06 because it has not installed any facilities within two years as required by the rule. In addition, Emerson alleges that TWSI has not complied with TRA Rule 1220-04-13-.10 because it does not and will not own the real or personal property that comprises the wastewater system nor does TWSI have any interest in it. Emerson argues that “[w]ithout any interest in the real property or the personal property that will comprise the sewer system, without any contractual rights to provide any design, construction or utility services, TWSI has no valid and protectable rights in or to” a CCN. Therefore, Emerson asserts good cause exists under TRA Rule 1220-04-13-.09(2)(a) to terminate TWSI’s CCN to serve Villages at Norris Lake.

If the allegations alleged in Emerson’s *Petition* are presumed to be true as required in an analysis of a motion to dismiss, the panel found that Emerson has made a claim upon which relief can be granted and voted unanimously to deny TWSI’s *Motion to Dismiss*.

**IT IS THEREFORE ORDERED THAT:**

1. The *Motion to Dismiss* filed by Tennessee Wastewater Systems, Inc. is denied.

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<sup>40</sup> See *Indiana State District Council of Laborers v. Brukardt, et al.*, 2009 WL 426237, at \*6 (Tenn. Ct. App. 2009) (citing *Trau-Med of America v. Allstate*, 71 S.W.3d 691, 696 (Tenn. 2002)).

<sup>41</sup> See *Webb v. Nashville Area Habitat for Humanity*, 346 S.W.3d 422, 426 (2011) (citations omitted).

<sup>42</sup> *Id.* at 427.

2. The Hearing Officer is directed to continue to prepare this matter for a hearing before the panel.

**Chairman James M. Allison, Director Kenneth C. Hill and Director David F. Jones concur.**

**ATTEST:**

A handwritten signature in black ink, appearing to read "Earl Taylor", written over a horizontal line.

**Earl R. Taylor, Executive Director**