

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 7, 2014

IN RE:)	
)	
PETITION OF EMERSON)	DOCKET NO. 13-00017
PROPERTIES, LLC)	
FOR DECLARATORY RULING)	

MOTION TO CONTINUE HEARING

Pursuant to TRA Rule 1220-1-2-.07(1), Tennessee Wastewater Systems, Inc. ("TWSI") asks to postpone the hearing now scheduled in this matter on April 14, 2014 until the Authority's June agenda conference, tentatively scheduled for June 16, 2014. The hearing in this matter was first announced in a preliminary Order issued March 25, 2014. This is the first request for a continuance since the hearing announcement.

Pursuant to TRA Rule 1220-1-2-.07(2), TWSI has contacted both the "Party Staff" and counsel for Emerson Properties LLC.¹ Counsel for the Party Staff states that while he is prepared to go forward on April 14, 2014, he does not oppose a continuance for a reasonable period of time. Counsel for Emerson Properties opposes the motion for continuance.

The purpose of the continuance is to give counsel for TWSI adequate time to prepare to defend TWSI in this "show cause" proceeding initiated by the Authority pursuant to T.C.A. § 65-2-106. The Authority has directed TWSI to "appear and show cause" why the utility's certificate

¹ The Consumer Advocate is also a party but only for the limited purposes described in the Order of the Hearing Officer issued December 4, 2013.

to provide wastewater service to "Villages at Norris Lake" should not be revoked. By law, the utility must be given an opportunity to "fully reply" to the allegations contained in the TRA's preliminary Order. In order to do that, TWSI requests that a pre-hearing conference be convened pursuant to Rule 1220-1-2-.12 in order to, inter alia, establish a discovery schedule, including depositions and the issuance of subpoenas, set dates for the pre-filing of testimony and briefs, discuss the possibility of obtaining admissions and such other matters as described in Rule 1220-1-2-.12(1)(i). Unless these procedures are followed, as they typically are in all TRA "contested case" proceedings,² counsel cannot adequately represent TWSI at the hearing.

Specifically, the Authority's Order initiating this show cause proceeding must "fully and specifically state the grounds and bases" for the Authority's tentative decision to revoke TWSI's certificate. T.C.A. § 65-2-106. The Authority's Order, however, does not cite any specific, factual evidence to support the agency's tentative conclusions nor does it cite the statutory basis of the Authority's power to revoke TWSI's certificate.³ Without that information, counsel for TWSI cannot adequately prepare a defense. Furthermore, to the extent the Authority's preliminary investigation rests on the assumption that the Caryville-Jacksboro Utility Commission ("CJUC") can provide wastewater service to Villages at Norris Lake, TWSI believes that CJUC does not now and has never intended to operate a wastewater system to serve Villages at Norris Lake and that no other provider can provide service to this development more quickly and at less cost than TWSI. Finally, TWSI believes that Emerson Properties received bond money which was required to be used for the construction of a wastewater system and

² Show cause proceedings "shall otherwise follow the provisions of this chapter with reference to contested cases." T.C.A. § 65-2-106.

³ The only statute expressly providing for the revocation of a certificate is T.C.A. § 65-4-202. That statute is not mentioned in the Order, and it is not clear how that statute applies to the facts of this case.

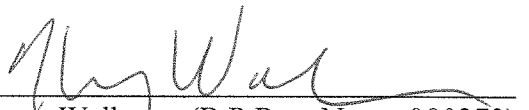
improperly converted that money to other uses. TWSI submits that Emerson Properties is required to use all of the wastewater bond money to complete the wastewater system and is still legally obligated to do so. In order to prove these allegations, TWSI must be allowed the opportunity to take discovery. T.C.A. § 4-5-311(a) states that the hearing officer "shall" issue subpoenas and effect discovery "at the request of any party." The right to discovery is especially important here because the burden of proof rests on TWSI.

At a minimum, the hearing scheduled for April 14, 2014 should be continued until June 16, 2014. The preparation of this matter for hearing would normally require substantially more time, but TWSI is aware of the need for wastewater service at Villages of Norris Lake and will expedite these proceedings accordingly. In that regard, it is also important to note that it took over eight months for the parties to prepare for a hearing on Emerson's initial complaint, seven weeks for the Authority to make an oral ruling, and nearly ten additional weeks for the agency to issue a written order. Now, more than a year after the filing of Emerson's complaint, the agency has made a preliminary determination to revoke TWSI's certificate, a draconian penalty which is virtually without precedent at the TRA. To expect TWSI to prepare for a hearing on the revocation of its certificate in less than three weeks is clearly unreasonable. Under these circumstances, denial of TWSI's request for an eight-week continuance would be a violation of due process and an abuse of the agency's discretion.

TWSI therefore respectfully asks that the hearing on this matter be continued until June 16, 2014, and that a pre-hearing conference be convened at the earliest practical time.

Respectfully submitted,

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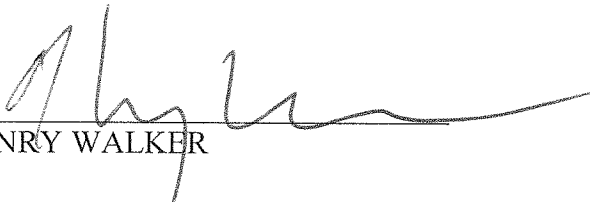
CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of April, 2014, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

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