

IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE:)	
)	
SHOW CAUSE PROCEEDING)	DOCKET NO. 13-00017
AGAINST TENNESSEE)	
WASTEWATER SYSTEMS, INC.)	
)	

CONSUMER ADVOCATE'S RESPONSE IN OPPOSITION TO
MOTION TO CONTINUE HEARING

Comes Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), and hereby responds in opposition to Tennessee Wastewater Systems, Inc.'s ("TWSI") *Motion to Continue Hearing*.

TWSI has failed to provide or even begin construction of facilities to provide wastewater service to the Villages at Norris Lake since April 17, 2007, when its Certificate of Convenience and Necessity ("CCN") was amended to include this area in TRA Docket No. 06-00277. *Order Initiating Show Cause Proceeding Against Tennessee Wastewater Systems, Inc.* ("Order Initiating Show Cause") (March 25, 2014) at 9. After having had a full hearing to determine whether its CCN should be revoked, TWSI now apparently wants a replay of the same issues. The TRA should deny this request.

In its *Motion to Continue*, TWSI claims that it has only had since March 25, 2014, to prepare for a show cause hearing. *Motion to Continue* at 1. However, the

TRA's decision to open a show cause was made orally on January 13, 2014. *Order Initiating Show Cause* at 1. Just as utilities base their decisions to raise rates on oral decisions of the TRA, TWSI knew as of January 13, 2014, of a show cause proceeding. If TWSI wanted depositions and a procedural schedule it could have requested it long ago.

Furthermore, TWSI's attack on the TRA's *Order Initiating Show Cause* as defective is without merit. TWSI argues that "[t]he 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." *Motion to Continue* at 2. The *Order Initiating Show Cause* at 9-11, however, provides ample factual findings to support the revocation of the CCN and the statutory authority for such action. While it may be correct to assert each finding is not tied directly to a citation to the record, the *Order Initiating Show Cause* sets forth seven factual findings that clearly meet the requirements of Tenn. Code Ann. § 65-2-106 for the "grounds and bases" of a show cause order; furthermore, these findings do have support in the record:

1. Tennessee Wastewater's CCN was amended to include the Villages at Norris Lake in an Order issued in TRA Docket No. 06-00277 on April 11, 2007. However, to date, TWSI has not provided wastewater service to the Villages.¹ TWSI does not have a contract for service with Emerson, nor does Emerson intend to enter into a contractual relationship with TWSI.²

¹ See, e.g., *Transcript of Proceedings*, Docket No. 13-00017(Nov. 25, 2013), at 33 (provided no services).

² Tr. at 37 (TWSI stating contract set aside during bankruptcy); 73 (Emerson has no intention of contracting with TWSI).

2. TWSI has not been deeded any land at the Villages, nor does it have an easement. Emerson has no intention of giving TWSI a deed to property or an easement.³
3. TWSI does not own a wastewater system or pipes at the Villages. Emerson will not give its system or pipes to TWSI.⁴
4. TWSI's business model is that the developer builds the system and then deeds it to TWSI. TWSI's tariff does not include capital costs for it to build a system.⁵
5. TWSI is not willing to provide service to the Villages if the wastewater system is not given to TWSI.⁶
6. Since TWSI does not and cannot own the system, it is not in a position to comply with TRA Rule 1220-04-13-.10(1), which prohibits the title of the physical assets of a wastewater system from being subject to any liens or judgments.
7. TWSI has failed to file a petition requesting approval of its alternative proof of financial security by May 1st of 2012 and 2013 and has failed to file a bond until alternative financial security is approved in violation of TRA Rule 1220-4-13-.07(5).

Order Initiating Show Cause at 9-10.

In its *Motion to Continue*, TWSI has not indicated that it intends to challenge any of these findings. Thus, one can assume that all of the discovery TWSI claims it needs has nothing to do with the “grounds and bases” of the *Order Initiating Show Cause*. Accordingly, additional discovery appears to be solely intended for purpose of further delaying resolution of the issue of revoking TWSI's CCN.

³ Tr. at 45, 85-86, 96 (stating TWSI has no easement); Tr. at 73 (stating Emerson has no intention of giving TWSI any easements); Tr. at 131 (stating TWSI does not have property listed on its balance sheet for the Villages of Norris Lake).

⁴ Tr. at 41 (Emerson is owner); Tr. at 45 (TWSI does not own land); Tr. at 130-31 (TWSI does not have property at Villages of Norris Lake recorded in its financial records); Tr. at 96 (TWSI testifying it does not own the system); Tr. at 73 (Emerson has no intention of giving TWSI the system).

⁵ Tr. at 106, 130.

⁶ Tr. at 120 (“We are not interested in operating a facility that somebody else owns or has rights to.”).

TWSI sets forth only two specific areas for which it wants discovery: (1) the ability or intention of Caryville-Jacksboro Utility Commission to operate a wastewater system at the Villages; and (2) whether Emerson Properties should have used bond money to build a system to be given at no cost to TWSI. Thus, TWSI wants to turn the show cause proceeding on its head and “blame the victim” by making the hearing about why Emerson Properties should have built a facility and given it, at no cost, to TWSI, and why Emerson Properties cannot get service from Caryville-Jacksboro Utility Commission. However, the show cause proceeding is about TWSI’s actions or failures to act, not these extraneous issues.

To continue delaying service to the Villages at Norris Lake would result in continuing harm to the ratepayers and should not be permitted. TWSI’s *Motion to Continue* claims that TWSI will not receive due process if the Show Cause hearing occurs on April 14, 2014, and instead asks the TRA to hold the Show Cause hearing in June—six months after the hearing for a Show Cause was ordered, over a year and a half since this proceeding has started, and over five years since the dispute began. TWSI has had its due process. Emerson’s petition in this docket clearly alleged TWSI’s violations of many of the TRA rules that are at issue in this Show Cause (*e.g.*, TWSI’s failure to provide service within two years, TWSI’s inability to prohibit encumbrances). Compelling other parties and persons to testify in depositions under subpoena, as TWSI indicated it would do if it had a continuance as requested in its *Motion to Continue* (page 2), not only allows TWSI to use this docket to continue to delay service to the property owners, but is also unnecessary

to provide due process for the Show Cause hearing. The findings to be examined during the Show Cause hearing refer to the existing CCN held by TWSI and can only be answered by TWSI; after all, TWSI is the only entity responsible to the TRA for the CCN at this time. If TWSI has failed to manage its relationship with non-utilities and other third parties, it is still only TWSI that must be held accountable to the TRA regarding the use or non-use of its CCN—not the non-utilities and other third parties.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via

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This the 9th day of April, 2014.


Vance L. Broemel