

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

EMERSON PROPERTIES, LLC,

Petitioner

v.

**TENNESSEE WASTEWATER
SYSTEMS, INC.,**

Respondent

DOCKET NO. 13-00017

ANSWER TO THE PETITION

MOTION TO DISMISS THE PETITION

**COUNTERCLAIM BY TENNESSEE WASTEWATER SYSTEMS, INC.
AGAINST EMERSON PROPERTIES, LLC**

On March 1, 2013, Emerson Properties, LLC ("Emerson") filed an "Amended Petition"¹ asking the Tennessee Regulatory Authority ("TRA" or the "Authority") to terminate the certificate of convenience and necessity ("CCN") held by Tennessee Wastewater Systems, Inc. ("TWSI") to provide wastewater services at a development called "Villages at Norris Lake" in Campbell County, Tennessee. See TRA Docket 06-00277 (order granting certificate issued April 11, 2007).

In response, TWSI submits the following: an "Answer" to the Petition (paragraphs 1 through 13); a "Motion to Dismiss" the Petition for failure to state a claim (paragraphs 14-19);

¹ Although styled as a "petition," the filing would more accurately be described as a complaint by Emerson against Tennessee Wastewater Systems.

and a "Counterclaim" against Emerson for constructing a wastewater system and collecting tap fees from lot owners without a CCN from the Authority (paragraphs 20 through 22).

Answer to the Petition

Pursuant to TRA Rule 1220-1-2-.03, TWSI submits the following Answer to the above-captioned Petition.

1. This paragraph states Petitioner's name and address and requires no response.
2. Respondent's name and address are correctly noted. Although the Petition does not address the Authority's jurisdiction, Respondent admits that the TRA has jurisdiction over the parties and over this dispute. See T.C.A. §§ 65-4-104 and 105.
3. Respondent admits that Emerson is the owner of the property known as Villages at Norris Lake ("Villages") located in Campbell County, Tennessee and that Emerson purchased the property from the former owner through a bankruptcy proceeding in the United States Bankruptcy Court for the Middle District of Florida.
4. Respondent admits that on April 11, 2007, Respondent was granted a certificate of convenience and necessity by the TRA to provide wastewater service to future homeowners in the Villages development. Respondent further admits that it has a State Operating Permit (SOP No. 07001) issued by the Tennessee Department of Environment and Conservation ("TDEC") to build and operate a wastewater system at that location. The Respondent admits that at the time the CCN was granted, Respondent had a contract with the owner of Villages to provide wastewater service at that location but denies that the TRA certificate was obtained as a result of that contractual relationship.
5. Respondent admits that Respondent and Petitioner have previously appeared before the Authority (Docket No. 11-00144) and before the Davidson County Chancery Court (Chancery Court Docket No. 12-0143-II) concerning Respondent's right to provide wastewater

service at Villages. In the Chancery Court proceeding, the Court held, inter alia, that the Respondent "has the legal and exclusive right, status and privilege to provide public wastewater services to the service area known as Villages at Norris Lake." Opinion at 4-5. A copy of the Court's ruling is attached and labeled "Exhibit 1." The ruling is now final and binding on the parties.

6. Respondent admits that Petitioner became the owner of the Villages development following the bankruptcy of the property's former owner and that, in the course of the bankruptcy proceedings, the contract between Respondent and the former owner was set aside. Respondent denies that the change in ownership or the abrogation of the contract affected Respondent's right to serve this location under its CCN because, as the Chancery Court held (Opinion, at 4):

While the bankruptcy court set aside an executory contract for wastewater service between Plaintiff and the previous owner of the property, the bankruptcy proceeding did not affect Plaintiff's service area rights under the CCN. Plaintiff's service area rights are granted by statute and regulations of the TRA, not by contract with the property owner.

7. Respondent denies that it has designed or installed a wastewater system or any portion of a system at Villages at Norris Lake. Respondent believes that Utility Capacity Corporation, Inc. ("UCC") designed a wastewater collection and treatment system at that location, purchased a treatment unit, and installed approximately 17,000 feet of sewer lines. Respondent does not have any direct knowledge as to whether or not UCC has been paid for that work or for those materials.

8. Respondent admits that, at this time, Respondent owns no facilities or property at the Villages development nor does Respondent have a contract with Emerson, the owner of the property, to provide wastewater service.

9. Respondent denies that it has had any communications with Emerson of the type described in this paragraph. Respondent believes that such communications were probably

between Emerson and UCC. Respondent has no direct knowledge of the substance of those communications.

10. Respondent admits it is not presently providing wastewater services at Villages and that it has been more than two years since the TRA granted Respondent a CCN to serve that location. Respondent denies that TRA Rule 1220-04-13-.06 requires Respondent to install facilities or provide service within two years from the date the Authority issued a CCN to Respondent to serve Villages at Norris Lake. To the contrary, as the Chancery Court held, Respondent's certificate "remains valid" (Opinion, at 4) and will continue in effect indefinitely unless and until the Authority finds that the Respondent's existing facilities "are inadequate to meet the reasonable needs of the public" or that Respondent has "refused, neglected, or is unable to make necessary additions and extensions" to provide service at that location. Opinion, at 2.

11. Respondent denies that it is unable to comply with TRA Rule 1220-04-13-.10 which states that the "physical assets" of a wastewater system may not be made "subject to any liens, judgments, or encumbrances" except as approved by the Authority pursuant to T.C.A. § 65-4-109. Since Respondent does not currently own any facilities or property at that location, the rule is irrelevant. Once Respondent acquires facilities and property at the Villages development, Respondent will comply with the rule.

12. Respondent denies that its State Operating Permit ("SOP") has expired or will expire in the near future. Respondent's SOP was renewed in 2012. Respondent believes, upon information and belief, that an SOP issued to Caryville-Jacksboro Utility Commission ("CJUC") to provide wastewater service at Villages at Norris Lake is no longer effective as a result of the decision of the Davidson County Chancery Court. Attached to this Answer and labeled as

"Exhibit 2" is a letter from TDEC to CJUC instructing the utility to cease constructing a wastewater system at Villages at Norris Lake.

13. Respondent denies that good cause exists under any TRA rule or statute to terminate Respondent's certificate to provide wastewater service at Villages at Norris Lake. Respondent is willing and able to provide wastewater service to meet the reasonable needs of the public at that location pursuant to the terms and conditions of the Respondent's tariffs. See Affidavit of TWSI President Charles Hyatt, attached and labeled as "Exhibit 3."

Respondent further denies each allegation in the Petition except those expressly admitted or otherwise addressed in this Answer.

Motion to Dismiss

Respondent asks that the Authority dismiss the Petition for failure to state a claim upon which relief can be granted. See TRA Rule 1220-1-2-.03(2)(e).

14. Respondent incorporates in this Motion paragraphs 1 through 13 of Emerson's Petition and paragraphs 1 through 13 of the Answer.

15. As stated in paragraph 13 of Emerson's Petition, Emerson seeks termination of TWSI's certificate because (1) TWSI has no contract with the current owner, Emerson, to provide wastewater services at Villages at Norris Lake and (2) TWSI owns no facilities or property at the development and therefore cannot comply with TRA Rule 1220-4-13-.10 which prohibits a utility from mortgaging its property without approval of the Authority. Neither argument has merit.

16. As discussed in paragraph 6, the Davidson County Chancery Court ruled that the bankruptcy of the former owner and the abrogation of the contract between Respondent 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." The Court's ruling on that issue is final and binding on the parties. Emerson is barred from litigating the issue a second time.²

17. As discussed in paragraph 11, TRA Rule 1220-04-13-.10 prohibits a utility from mortgaging its property without the approval of the Authority. The rule states:

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.

As admitted in paragraph 8 of the Answer, TWSI currently owns no property or facilities at Villages. Since 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 with the Authority's rules. The rule concerning the mortgaging of utility property is irrelevant to this dispute over TWSI's service area rights.³

18. As explained by the Davidson County Chancery Court, Respondent's certificate prohibits other utilities from serving this location unless the Authority first determines that Respondent is unwilling or unable to provide wastewater service at Villages at Norris Lake. Opinion, at 2. 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 certificate.

² The doctrine of collateral estoppel precludes Emerson from litigating a second time the issue of whether the bankruptcy of the former developer and the setting aside of the contract between Respondent and the former owner also cancels Respondent's CCN. The Chancery Court ruled that the bankruptcy proceeding and the abrogation of the contract with the former owner "did not affect [Respondent's] service area rights under the CCN." Because this issue was fully litigated by Emerson and rejected by the Court in a decision which is now final, Emerson cannot raise it again. See Mullins v. State, 294 S.W.3d 529, 534 (Tenn. 2009).

³ The parties also raised this issue in Chancery Court, but the Court did not address it.

19. For these reasons, the Petition filed by Emerson asking the Authority to terminate Respondent's certificate should be dismissed.

Counterclaim by Tennessee Wastewater Services, Inc. against Emerson Properties, LLC

20. TWSI incorporates in this Counterclaim paragraphs 1 through 13 of Emerson's Petition and paragraphs 1 through 19 of the Answer and Motion to Dismiss. Those paragraphs establish the identity of the parties, the jurisdiction of the Authority, and the factual background of this Counterclaim.

21. Upon information and belief, TWSI submits that Emerson is constructing, or causing to be constructed, a wastewater system at Villages at Norris Lake without a certificate of convenience and necessity from the Authority in violation of T.C.A. § 65-4-201⁴. Attached to this Counterclaim and labeled as "Exhibit 4" is a "TN811 Locate Report" from a contractor requesting permission to work on a wastewater system at Villages at Norris Lake. The application states that the contractor is acting on behalf of Emerson Properties, LLC.

22. Upon information and belief, TWSI submits that Emerson is selling lots in Villages at Norris Lake and, in connection with those sales, may be collecting, or planning to collect, tap fees from the lot buyers for access to wastewater services. If Emerson is collecting such fees, Emerson is operating as a utility without a certificate of convenience and necessity from the Authority in violation of T.C.A. § 65-4-201.


WHEREFORE, TWSI asks that the Authority take appropriate enforcement action to prevent Emerson from constructing a wastewater system at Villages at Norris Lake and from collecting sewer access fees from purchasers of lots at that location. TWSI further asks that

⁴ T.C.A. § 65-4-201 states, "[N]o 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 . . . without having first obtained a . . . certificate."

Emerson be ordered to account to the Authority for any such fees it has already collected and to place any such fees in an escrow account subject to the further orders of the Authority.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

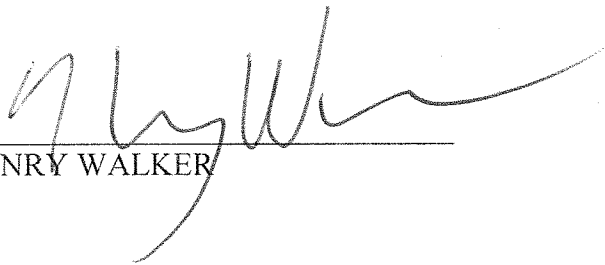
By: 
Henry Walker (B.P.R. No. 000272)
Bradley Arant Boult Cummings, LLP
1600 Division Street, Suite 700
Nashville, TN 37203
Phone: 615-252-2363
Email: hwalker@babco.com

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of March, 2013, 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:

C. Mark Troutman, Esq.
Troutman & Troutman, P.C.
P.O. Box 757
LaFollette, TN 37766
423-566-6001

Charlena Aumiller
Assistant Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202-0207
615-741-8733



HENRY WALKER

EXHIBIT 1

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY

TENNESSEE WASTEWATER SYSTEMS,
INC.,

Plaintiff,

v.

TENNESSEE REGULATORY AUTHORITY,
CARYVILLE-JACKSBORO UTILITY
COMMISSION, and
EMERSON PROPERTIES, LLC

Defendants.

No. 12-0143-II

RECEIVED

DEC 27 2012

Dev. Co. Chancery Court

FILED
2013 JAN - 7 PM 3:06
CLERK & MASTER
DAVIDSON CO. CHANCERY CT.
D C & M

FINAL JUDGMENT ORDER

This matter came to be heard before the Court on December 11, 2012 on Plaintiff Tennessee Wastewater Systems, Inc.'s Motion for Summary Judgment, pursuant to Rules 56 and 57 of the Tennessee Rules of Civil Procedure. Plaintiff moved for summary judgment requesting a declaration under the Tennessee Declaratory Judgment Act, Tenn. Code Ann. § 29-14-101, *et seq.*, and the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-225, that Plaintiff has the exclusive legal right, status and privilege to provide public wastewater services to the service area known as Villages at Norris Lake in Campbell County, Tennessee pursuant to the "Order Approving Petition to Amend Certificate of Public Convenience and Necessity" (CCN) issued to Plaintiff by Defendant Tennessee Regulatory Authority (TRA) on April 11, 2007. Plaintiff moved for a further declaration that, pursuant to Tenn. Code Ann. § 6-5-301(a), Plaintiff's certificated service area rights under the CCN are superior to the rights of Defendant Caryville-Jacksboro Utility Commission (CJUC), a municipal utility, in any attempt by CJUC to provide public wastewater services to the same area. Plaintiff also moved for

summary judgment dismissing the counterclaim filed by Defendant Emerson Properties, LLC to invalidate the CCN on the grounds that Emerson Properties failed to exhaust its administrative remedies before the TRA and that this Court, therefore, lacks subject matter jurisdiction under Rule 12.02(1) of the Tennessee Rules of Civil Procedure and/or Emerson Properties LLC has failed to state a claim upon which relief can be granted under Rule 12.02(6) of the Tennessee Rules of Civil Procedure.

Defendant Tennessee Regulatory Authority filed a response to Plaintiff's Motion and, while taking no position, advised the Court of its primary regulatory jurisdiction over public utilities and their certificated service areas and admitted to certain material facts. The TRA further advised the Court that the holder of a CCN has the protection afforded by Tenn. Code Ann. § 65-4-201 (2004) and § 65-4-203 (2004), which exclude other applicants from providing public utility services to the same service areas already subject to a CCN unless the TRA first determines that the present or future public convenience and necessity require or will require granting the applicant's petition for such a CCN and that the existing facilities of the holder of the CCN are inadequate to meet the reasonable needs of the public or that the holder of the CCN has refused, neglected, or is unable to make necessary additions and extensions.

Defendant CJUC did not file any response to Plaintiff's Motion and, therefore, is deemed to have no opposition to the relief Plaintiff seeks under Rule 56.

Defendant Emerson Properties, LLC filed a response in opposition to Plaintiff's Motion.

Based upon Plaintiff's Motion, Statement of Undisputed Material Facts, and Memorandum in Support, the Responses filed by the TRA and Emerson Properties to Plaintiff's Motion, the arguments of counsel, and the entire record in this cause, the Court finds that there are no genuine issues of disputed material facts and this case is appropriate for disposition on

summary judgment under Rule 56. The Court further finds that Plaintiff's motion is well-taken and should be granted as a matter of law as to each issue presented.

The Court finds that Plaintiff's complaint for declaratory relief is properly before this Court. Prior to filing its Complaint and as alleged in the Complaint and admitted in the Answers to the Complaint, Plaintiff exhausted its administrative remedies as required by the Tennessee Regulatory Act, Tenn. Code Ann. § 65-1-101, *et seq.*, by filing a petition for declaratory ruling before the TRA, which the TRA declined to issue.

On the merits of Plaintiff's Motion for Summary Judgment, the Court concludes that a declaratory judgment should be entered declaring that Plaintiff has the legal and exclusive right, status and privilege to provide public wastewater services to Villages at Norris Lake in Campbell County, Tennessee pursuant to the CCN issued by the TRA to Plaintiff on April 11, 2007. The Court further concludes that based on the provisions of the TRA Act and the TRA Wastewater Regulations, there is no expiration of Plaintiff's CCN in the absence of any action having been taken by the TRA to invalidate or change the CCN. It is undisputed and the Court finds that no action has been taken by the TRA in this case to invalidate or change the CCN issued to Plaintiff and, accordingly, Plaintiff's CCN remains valid.

Next, the Court concludes that a declaratory judgment should be entered declaring that CJUC has no authority to interfere with Plaintiff's certificated service area under the CCN, pursuant to Tenn. Code Ann. § 6-5-301(a). As provided in that statute, the Tennessee legislature has granted superior rights to the holder of a CCN that is regulated by the TRA over the competing rights of a municipal utility, such as CJUC, to provide wastewater services to the same area where that area lies outside the municipal boundaries of the municipal utility and within the service area of the CCN as granted by the TRA.

Finally, Plaintiff's Motion for Summary Judgment also should be granted dismissing Defendant Emerson Properties LLC's counterclaim, in which Emerson Properties, LLC seeks to invalidate Plaintiff's CCN. The Court finds that Emerson Properties, LLC is required to exhaust its administrative remedies before the TRA, which has primary jurisdiction over Plaintiff, as a regulated public utility, and the CCN issued by the TRA, but that Emerson Properties, LLC did not do so. Because Emerson Properties, LLC failed to exhaust its administrative remedies before the TRA, Emerson Properties LLC's counterclaim should be dismissed for lack of subject matter jurisdiction and/or that Emerson Properties has failed to state a claim upon which relief can be granted, pursuant to Rule 12.02(1) and (6), respectively.

This Final Judgment Order is entered with prejudice in this proceeding, but without prejudice to the rights of Emerson Properties, LLC to proceed before the TRA. Emerson Properties, LLC acquired Villages at Norris Lake out of bankruptcy proceedings. While the bankruptcy court set aside an executory contract for wastewater service between Plaintiff and the previous owner of the property, the bankruptcy proceeding did not affect Plaintiff's service area rights under the CCN. Plaintiff's service area rights are granted by statute and regulations of the TRA, not by contract with the property owner. The Tennessee legislature has granted the TRA primary jurisdiction over the regulation of public utilities and only the TRA has the power to award, amend, or revoke a utility's CCN, subject to judicial review.

It is, accordingly, ORDERED, ADJUDGED AND DECREED as follows:

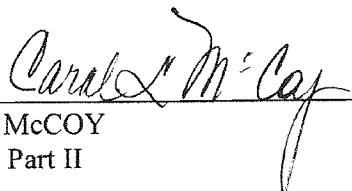
A. Plaintiff's Motion for Summary Judgment be and hereby is **GRANTED**, in all respects;

B. A declaratory judgment be and hereby is **ENTERED**, declaring the following: (i) Plaintiff has the legal and exclusive right, status and privilege to provide public wastewater

services to the service area known as Villages at Norris Lake in Campbell County, Tennessee pursuant to the CCN issued to Plaintiff by the Tennessee Regulatory Authority on April 11, 2007, which CCN remains valid; and (ii) the Tennessee legislature has determined, pursuant to Tenn. Code Ann. § 6-51-301(a) that Plaintiff's certificated service area rights under the CCN issued by the Tennessee Regulatory Authority are superior to the rights of Defendant CJUC, as a municipal utility, to provide wastewater services to the same service area;

C. The Counterclaim of Defendant Emerson Properties, LLC seeking to invalidate Plaintiff's CCN be and hereby is **DISMISSED, with prejudice**; and

D. Court costs of this action be and hereby are taxed to Defendant Emerson Properties, LLC, for which execution may issue, if necessary.



CAROL L. McCOY
Chancellor, Part II

Submitted for Entry by:

BRADLEY ARANT BOULT CUMMINGS LLP

By: 

Patricia Head Moskal (BPR #11621)

Henry Walker (BPR #00272)

1600 Division Street, Suite 700

P.O. Box 340025

Nashville, TN 37203

Telephone: (615) 252-2369

Attorneys for Plaintiff

EXHIBIT 2



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

OFFICE OF GENERAL COUNSEL
401 Church Street
20th Floor, L & C Tower
Nashville, Tennessee 37243-1548
Telephone: (615) 532-0131

March 6, 2013

Mr. Frank D. Wallace
Executive Secretary
Caryville-Jacksboro Utilities Commission
P.O. Box 121
Jacksboro, TN 37757

Re: The Villages At Norris Lake-Campbell County

Dear Mr. Wallace:

The Department is in receipt of a Chancery Court decision dated January 7, 2013 rendered in favor of Tennessee Wastewater Systems Inc. We are also in receipt of a Petition for Declaratory Order filed January 16, 2013 on behalf of Emerson Properties, LLC. Clearly, both of these actions affect Caryville-Jacksboro Utilities Commission ability to provide wastewater treatment service to the Villages at Norris Lake under State Operating Permit (SOP) No. Sop-10051. The Department is not a party to these actions and it intends to remain neutral as to how those actions are ultimately resolved.

When the Department issued the above referenced SOP to Caryville Jackson Utilities Commission on August 1, 2011 the Caryville Jackson Utilities Commission was informed of the previous issuance of SOP-07001 to Tennessee Wastewater Systems, Inc. Specifically the Caryville Jackson Utilities Commission was told:

The division has already issued a sewer system permit (SOP-07-001) for the general scope of this activity to Tennessee Wastewater Systems, Inc. This company holds a Certificate of Convenience and Necessity (CCN) from the Tennessee Regulatory Authority for some, or all, of the service area associated with a sewerage system proposed by a former developer. Note that Part II. A.5 of both SOPs provide as follows: The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any property rights in either real or personal property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

Further, Part II.D.2 of both SOPS state, "Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any application of state law." The division is not in a position to regulate service area. Please consult with your legal staff regarding your service area issue(s).

On May 22, 2012, the Department issued an approval of construction plans and specifications for the Caryville Jackson Utilities Commission wastewater treatment system under tracking #WPC 12-0102 pursuant to Rule 1200-4-2-.05. That Rule provides, in part:

Construction work shall not be commenced on any new construction or major change of existing facilities or for any activity outlined in Section 69-3-108 of the Act until complete and final plans and specifications for such activities have been submitted to and approved in writing by an authorized representative of the Commissioner.

The final plans and specifications shall be prepared in accordance with generally accepted wastewater engineering practices. The Design Criteria published from time to time are used internally by the Division as a compilation of such practices and are available to the public. Other designs may also be used if adequately supported by calculations and actual testing data.

The May approval acknowledges that the submitted plans and specifications meet the minimum design criteria. However, Caryville Jackson Utilities Commission is not currently authorized to construct *or* operate. Caryville Jackson Utilities Commission's permit contains the following provision:

Evidence of ownership of the treatment facility land application site(s) and /or a copy of the perpetual easement(s) must be furnished to the division for approval prior to construction of the wastewater collection and treatment system."(SOP-10051Sec. G paragraph a. Page 13).

The Department has not received the above referenced evidence.

The Department has been informed that construction of a wastewater treatment facility is underway in the Villages at Norris Lake. If that is true, such construction is in violation of your permit and Department rules and should cease. Further, it appears to the Department that the January 7, 2013 Chancery Court decision prohibits operation pending the outcome of the Petition for Declaratory Order before the Tennessee Regulatory Authority.

Please contact me if you would like to discuss or if I can be of further assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Devin M. Wells". The signature is fluid and cursive, with the first name "Devin" being more prominent.

Devin M. Wells
Environmental Legal Counsel
Tennessee Department Of
Environment and Conservation

CC: Wade Murphy-TDEC Division Of Water Resources
C. Mark Troutman-Attorney for Emerson Properties, LLC.
Christopher A. Bowles-Attorney For Tennessee Wastewater Systems, Inc.

EXHIBIT 3

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

EMERSON PROPERTIES, LLC,

Petitioner

v.

**TENNESSEE WASTEWATER
SYSTEMS, INC.,**

Respondent

DOCKET NO. 13-00017

AFFIDAVIT OF CHARLES HYATT

STATE OF TENNESSEE)

COUNTY OF RUTHERFORD)

I, CHARLES HYATT, after first being duly sworn, depose and state as follows:

1. I am a citizen and resident of Lewisburg, Tennessee, and I am over 18 years of age.

2. I am President of Tennessee Wastewater Systems, Inc. ("TWSI") and have held that position with TWSI from 2007 to the present.

3. TWSI is a privately-owned utility that provides public wastewater services in Tennessee pursuant to several Certificates of Public Convenience and Necessity ("Certificates") issued to TWSI by the Tennessee Regulatory Authority "TRA").

4. TWSI is considered to be a "public utility" and is regulated by the TRA with respect to services provided pursuant to the TRA Certificates.

5. In my capacity as President of TWSI, I am familiar with and oversee TWSI's activities in Tennessee, including its provision of public wastewater services in Tennessee to service areas approved by the TRA and all regulatory activities before the TRA.

6. The facts stated in this affidavit are based upon my personal knowledge and my review of the business records of TWSI, including its filings with the TRA.

7. TWSI's business records are made by persons with knowledge of the facts or information contained in those records at or near the time of the acts or events reflected in the records. TWSI's business records are made as part of its regular business practice and kept in the course of its regularly conducted business activity.

8. In 2006, TWSI filed a Petition before the TRA, requesting approval to expand its service area in Tennessee to provide public wastewater services to a portion of Campbell County, Tennessee for a residential development known as Villages at Norris Lake. On April 11, 2007, the TRA entered an Order approving TWSI's Petition.

9. Villages at Norris Lake is located within the service area authorized by the TRA Order Certificate issued to TWSI on April 11, 2007.

10. TWSI is willing and able to provide wastewater services to meet the reasonable needs of customers located in Villages at Norris Lake in accordance with the rates, terms and conditions of TWSI's tariffs on file at the TRA.

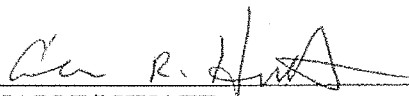
11. As set forth in TWSI's tariffs, TWSI will accept ownership of and responsibility for a wastewater system constructed by a developer if the system meets the requirements of TWSI and the Tennessee Department of Conservation and Environment. As stated in the tariffs, bedding conditions, material specifications, sealing requirements and installation methods must be approved by a TWSI engineer.

12. Based on a "TN811 Locate Request" dated February 5, 2013, it appears that Emerson Properties, LLC has hired a contractor to install a wastewater system at Villages at Norris Lake on Rainbow View Road in Campbell County, Tennessee. See Exhibit 4, attached.

13. TWSI does not have a contract with Emerson to provide wastewater services at Villages at Norris Lake nor has TWSI been asked by Emerson to approve the design or installation of a wastewater system at that location.

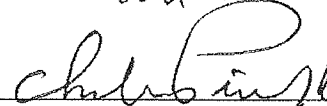
14. TWSI agrees to enter into a contract with Emerson Properties LLC to provide wastewater services at Villages at Norris Lake under terms and conditions that are just and reasonable and consistent with TWSI's tariffs. If the parties are unable to agree on a contract, TWSI agrees that either TWSI or Emerson may ask the Authority to resolve the matter.

FURTHER THE AFFIANT SAITH NOT.



CHARLES HYATT
President, Tennessee Wastewater Services, Inc.

SWORN TO AND SUBSCRIBED
BEFORE ME, this the 26th day
of March, 2013.



NOTARY PUBLIC

My Commission Expires: 3-7-2017

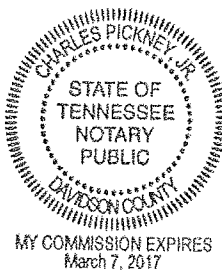


EXHIBIT 4

Walker, Henry

To: Walker, Henry
Subject: FW: Tennessee One Call Ticket Information

TN811 LOCATE REQUEST

TICKET NUMBER:	130460295	OLD TICKET NUM:	
Message Type:	Normal	For Code:	ONSITEEAST
Hours Notice:	71	Seq Num:	3
Prepared By:	Johnham	Taken Date:	02/15/13 15:53

Excavator Information

Excavator:	BRAEBURN UTILITY CONSTRUCTION SERVICES	Excavator Phone:	(423) 781-6066
Address:	4072 HIDDEN VALLEY RD	Caller:	JEFF BROWNFIELD
City, St, Zip:	CLEVELAND, TN 37312	Caller Phone:	(423) 781-6066
Contact Fax:		Contact:	JEFF BROWNFIELD
Contact Email:		Contact Phone:	(423) 781-6066

Call Back: 423-331-2036

Work Information

State:	TN	Work To Begin:	02/21/13 AT 16:00
County:	CAMPBELL	Update Date:	
Place:	LA FOLLETTE	Expire Date:	
Address:	RAINBOW VIEW RD		
Intersection:	RAINBOW CIR		
Latitude:	36.3103705271281	Longitude:	-84.055861716545
Secondary Lat:	36.302579189503	Secondary Long:	-84.047704588421

Work Type:	SEWER MAIN, INSTL AND/OR REPL	Explosives:	No	WhitePaint:	Yes
------------	-------------------------------	-------------	----	-------------	-----

Done For:	EMERSON PROPERTIES LLC	Directional Boring:	No
Extent:		Add'l Addr In Remarks:	No

Location Information (DIRECTION)

Location Information (REMARKS)

MARK EXISTING SEWER PIPE CROSSING RD. FROM THE MAIN ENTRANCE INTO VILLAGES ON NORRIS LAKE SUBDIVISION, MARK APPROXIMATELY 400' WEST ON NORTH AND SOUTH SIDE OF RD (GOING TOWARD RAINBOW LN). SEWER PIPE IS ESTIMATED TO BE APPROXIMATELY 5-10FT OF EDGE OF NORTH OR SOUTH SIDE OF RD. 201321427.XML

GRIDS: [113M] [114P] [123D] [124A]

Utilities Notified:

<u>Code</u>	<u>Name</u>	<u>Manually Added</u>
B03	ATT/D-Knox (502)499-6429 - B03	False
LAFOL	Lafollette Water & Sewer	False
ONSITEEAST	Tennessee Wastewater Systems (East) - ONSITEEAS...	False

Warning: Being Edited: This document is a live document and may be performed by the user and not be a permanent record. It is not a permanent record and may be changed at any time. It is not a permanent record and may be changed at any time. It is not a permanent record and may be changed at any time.