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October 25, 2013

T.R.A. DOCKET ROOM

Ms. Sharla Dillon
Dockets and Records Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

RE: Emerson Properties, LLC v. Tennessee Wastewater Systems, Inc.
Docket No. 13-00017 – Rebuttal Testimony of Charles Hyatt

Dear Sharla:

In accordance with the procedural schedule issued September 16, 2013, Tennessee Wastewater files the attached, rebuttal testimony of Charles Hyatt and one exhibit.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS LLP

By:

Henry Walker

HW/mkc
Enclosure

cc: Shiva Bozarth
Charlena Autmiller

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

EMERSON PROPERTIES, LLC,)	
)	
Petitioner)	
)	
)	
v.)	DOCKET NO. 13-00017
)	
)	
TENNESSEE WASTEWATER SYSTEMS, INC.,)	
)	
)	
Respondent)	
)	

REBUTTAL TESTIMONY OF CHARLES HYATT

Q. Please state your name and occupation.

A. Charles Hyatt, and I am the president of Tennessee Wastewater Systems, Inc. ("TWSI").

Q. Are you the same Charles Hyatt who has previously filed testimony in this case?

A. Yes, I am.

Q. What is the purpose of this additional testimony?

A. I am responding to the pre-filed direct testimony of George Potter, chief manager of Emerson Properties, LLC, the complainant in this case.

Q. Mr. Potter states that TWSI is not providing any wastewater service to customers at Villages of Norris Lake and has not provided any service since obtaining a certificate from the TRA. Is that correct?

A. Yes. We have not provided service because Emerson Properties has not asked for it. The previous owner of the development requested service and, pursuant to a contract between the developer and TWSI, began construction of a wastewater collection and treatment system. The developer went bankrupt before the system was completed and, as normally occurs in a bankruptcy proceeding, the court set aside the contract between the former developer and TWSI. Emerson Properties purchased the property through the bankruptcy court. When Mr. Potter is ready to start work, we will be happy to negotiate a service contract with him just as we have done with the more than seventy other developments we serve in Tennessee.

Q. Who will pay for the construction of the system?

A. The developer will pay for construction of the system and recover his costs through the sale of lots. Once the system is completed and passes our inspection, the developer will turn over ownership of the system to TWSI, free and clear of all encumbrances, as required by both the TRA and TDEC. TWSI does not raise capital to pay for construction of the system nor do we charge customers for the cost of that construction. This is the business model we have used since the beginning of our regulated operations in Tennessee nearly twenty years ago, and it is the business model used by all of the stand-alone wastewater systems regulated by the TRA.

Q. What is the advantage of this business model to customers?

A. Unlike traditional utilities, we do not have large amounts of capital investment and therefore do not have to earn a return on that investment. In other words, TWSI has no

"rate base" which customers would have to finance. More importantly, if a development fails, as many did during the recession, TWSI is not at risk and does not have to increase rates to other customers to pay for a failed development.

Q. Mr. Potter describes in his testimony a conversation with Mr. Mike Hines, a former vice president of TWSI, in which Mr. Hines said that Emerson Properties would have to pay Mr. Hines \$100,000 before Mr. Hines would resume work on the wastewater system. Do you have any direct knowledge of that conversation?

A. No. As Mr. Potter is aware, Mike Hines no longer works for TWSI. Mr. Hines owns a company called Utility Capacity Corporation ("UCC") which designs and builds wastewater systems. UCC is not affiliated in any way with TWSI. Apparently there is a dispute between Mr. Hines and Emerson Properties over money allegedly owed to UCC. Whatever that dispute is about has nothing to do with TWSI.

Q. Has this information been conveyed to Mr. Potter?

A. Yes. As I said in my direct testimony, Mr. Bob Pickney of TWSI met with Mr. Potter and told him that we would work with Emerson Properties to complete the wastewater system and that TWSI had no relationship with UCC and no longer employed Mr. Hines.

Q. Mr. Potter states that after talking with Mr. Mike Hines, he had no communications with TWSI "prior to the institution of these proceedings." Is that accurate?

A. No. Mr. Pickney talked to Mr. Potter on December 14, 2012, right after the Davidson County Chancery Court ruled that TWSI "has the legal and exclusive right, status and

privilege" to provide service at Villages of Norris Lake pursuant to our TRA certificate. We never heard again from Mr. Potter until he filed this complaint.

Q. Mr. Potter states that he intends to change the location of the drip field and treatment facilities. Will TWSI be able to use the new location?

A. We won't know if the new location is suitable until we visit the site and determine whether the site is appropriate for a treatment facility and drip field. We will work with Emerson Properties to the extent we can, but any construction work that is not consistent with our specifications and with the treatment technologies used by TWSI will have to be redone. Our attorneys sent a letter to Emerson Properties more than a year ago advising Emerson not to proceed with any construction of a wastewater system and warning that if they did so, it would be at their risk. A copy of that letter is attached.

Q. After reading Mr. Potter's testimony, do you have any further insight into why he has not requested a service contract from TWSI?

A. It appears that Mr. Potter still believes the bankruptcy proceedings nullified TWSI's certificate and that TWSI no longer has any legal right to provide service at this site. He apparently has not accepted the fact that the court ruled against him on that issue, nor does he seem to understand how the TRA's regulatory process works.

Q. Why do you think he does not understand the regulatory process?

A. At the end of his testimony, he asks the TRA to cancel our certificate so that Emerson Properties can contact another provider "and not be in an unfair bargaining position." He

does not realize that Emerson Properties can ask the TRA to intervene if Mr. Potter believes he is being treated unfairly by TWSI. He seems to be asking the TRA to cancel our certificate simply because he thinks that will improve his bargaining position with TWSI.

Q. If Emerson Properties requests service from TWSI, is the utility able to provide it?

A. Yes. We stand ready to provide service to meet the reasonable needs of the customers at Villages of Norris Lake in a manner consistent with our tariffs and the requirements of our TDEC operating permit.

Q. Does that conclude your testimony?

A. Yes.



FILE COPY
Patricia Head Moskal
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May 25, 2012

Via Electronic Mail and United States Mail

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Re: *Tennessee Wastewater Systems, Inc. v. Tennessee Regulatory Authority, et al.*,
Davidson County, TN, Chancery Court No. 12-0143-II

Dear Messrs. Troutman and Scholes:

As you know, we are counsel of record for Tennessee Wastewater Systems, Inc. ("TWSI") in the referenced declaratory judgment action. We are writing to you as counsel of record for Defendants Emerson Properties, LLC and Caryville-Jacksboro Utilities Commission ("CJUC"), respectively.

We are informed by our client that Mr. Tim Slone, P.E., with IRTEC, Inc. in Caryville, Tennessee, has obtained a letter dated May 22, 2012 from the Tennessee Department of Environment and Conservation, Division of Water Pollution Control ("TDEC"), for Caryville-Jacksboro Utility District – The Villages at Norris Lake (SOP-10051) regarding approval of construction drawings for Phase I wastewater services at Villages at Norris Lake. TDEC's May 22, 2012 letter notes that its approval of the construction drawings is contingent upon compliance with TDEC's previously issued State Operating Permit 10051 to CJUC for the project. In issuing State Operating Permit 10051, TDEC previously advised CJUC by letter dated August 1, 2011 (a copy of which was attached as Exhibit C to the complaint in the referenced action), that TDEC had already issued a State Operating Permit to TWSI for wastewater services at the project and that TWSI holds a Certificate of Convenience and Necessity from the Tennessee Regulatory Authority for the service area associated with the project. TDEC cautioned CJUC that the issuance of a State Operating Permit to CJUC did not convey any property rights or exclusive privileges to provide services, and further cautioned that TDEC is not in a position to regulate service area regarding this project.

TWSI filed the referenced declaratory judgment action for the very purpose of resolving the wastewater service area issue regarding Villages at Norris Lake. TWSI is requesting the chancery court to declare that TWSI has the exclusive right to provide wastewater services at the

C. Mark Troutman, Esq.
Donald L. Scholes, Esq.
May 24, 2012
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Villages of Norris Lake pursuant to its Certificate of Convenience and Necessity issued by the Tennessee Regulatory Authority.

Until the service area issued presented in the complaint is resolved by the chancery court, you are advised that it is TWSI's position that Emerson Properties, LLC, Caryville-Jacksboro Utility Commission and any other person or entity acting for them, do not have the legal right or authority to proceed with providing wastewater services in TWSI's certified service area at the Villages of Norris Lake. You are further advised that if Emerson Properties and/or Caryville-Jacksboro Utility Commission were to proceed with constructing, installing and operating a wastewater service system at Villages of Norris Lake in contravention of TWSI's asserted rights before the service area issue is resolved by the chancery court, your clients would do so at their peril, and TWSI stands ready to pursue all available legal remedies to halt such construction and installation activities in its service area, including but not limited to, seeking injunctive relief from the chancery court during the pendency of the case.

Thank you for your attention to this matter. We remain available to discuss these issues with you at your convenience.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS LLP

By:


Patricia Head Moskal

PHM/

cc: Jean Stone, Esq., Tennessee Regulatory Authority
Henry Walker, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of October, 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:

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