

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**September 3, 2014**

**IN RE:**

**PETITION OF TENNESSEE WASTEWATER  
SYSTEMS, INC. TO AMEND ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO SERVICE A  
PORTION OF WILLIAMSON COUNTY IN  
TENNESSEE, CURRENTLY KNOWN AS THE  
SCALES PROJECT**

**DOCKET NO.  
14-00006**

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**ORDER APPROVING PETITION TO AMEND  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

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This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones, and Director James M. Allison of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, during a Hearing held on August 11, 2014, to consider the *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity* (“*Petition*”) requesting the Authority’s approval for an expansion of its service area to include a portion of Williamson County, Tennessee, known as The Scales Project.

On April 6, 1994, Tennessee Wastewater Systems, Inc. (“TWSI” or the “Utility”)<sup>1</sup> obtained a Certificate of Public Convenience and Necessity (“CCN”) to provide wastewater service to the Oakwood Subdivision in Maury County, Tennessee, from the TRA’s predecessor

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<sup>1</sup> Tennessee Wastewater Systems, Inc. was formerly known as On-Site Systems, Inc. This name change was effected by the TRA’s order of February 19, 2004, in Docket No. 03-00518.

agency, the Tennessee Public Service Commission.<sup>2</sup> Since that time, through various other dockets, TWSI has been granted approval to expand its service territory to include other designated areas in Tennessee. The Utility's principal office is located in Smyrna, Tennessee. On January 22, 2014, TWSI filed in this docket its *Petition* and Pre-filed Direct Testimony of Matt Pickney requesting further expansion of its CCN to include The Scales Project in Williamson County, Tennessee.

#### **LEGAL STANDARD FOR GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

No public utility is permitted to begin construction or operation of a new utility facility or service without first obtaining a CCN from the Authority, as set forth in Tenn. Code Ann. § 65-4-201(a), which states:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no 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, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate. . . .<sup>3</sup>

The Authority's permanent rules for public wastewater utilities became effective on June 12, 2006. In order to obtain a CCN to provide wastewater service, TRA Rule 1220-4-13-.04(1)(b) requires that a public wastewater utility satisfy the following requirements:

(b) Any public wastewater utility requesting a Certificate of Public Convenience and Necessity (CCN) authorizing such public utility to construct and/or operate a wastewater system or to expand the area in

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<sup>2</sup> See *In re: [Petition of Tennessee Wastewater Systems Inc.] to Operate as a Public Utility Providing Sewage Collection, Treatment, and Disposal for a Proposed Development in Maury County*, TRA Docket No. 93-09040. (TWSI was formerly known as On-Site Systems, Inc., as shown on the TDEC permit filed in the docket file.)

<sup>3</sup> Tenn. Code Ann. § 65-4-201(a) (Supp. 2013).

which such a system is operated, shall file an application in compliance with Rule 1220-1-1-.03 and this rule. All applicants shall demonstrate to the Authority that they are registered with the Secretary of State, have obtained the financial security required under 1220-4-13-.07, and possess sufficient managerial, financial, and technical abilities to provide the wastewater services for which they have applied. Each application shall justify existing public need and include the required financial security consistent with Tenn. Code Ann. § 65-4-201 and these rules.<sup>4</sup>

### **THE PETITION AND SUPPORTING DOCUMENTATION**

In its *Petition*, TWSI seeks to provide wastewater service to approximately 80 residential lots situated on a parcel of land encompassing approximately 171 acres.<sup>5</sup> TWSI describes the proposed wastewater system, which will take approximately 60 days to construct, as being composed of a watertight effluent collection, fixed film treatment, and subsurface drip dispersal system with an estimated 24,000 gallon capacity.<sup>6</sup> TWSI asserts that while no contracts have yet been executed, it is the intention of the developer, Turnberry Homes, to transfer ownership of the wastewater collection, treatment, and dispersal system, along with a permanent easement to the property that the system occupies, to TWSI.<sup>7</sup> In support, TWSI filed a sample draft contract with exhibits showing the terms and conditions that would be contained in any contract executed between it and a developer, such as Turnberry Homes.<sup>8</sup>

As evidence of the public need for wastewater service in the requested service area, TWSI included with its *Petition* a letter from Nicky Wells, President of Land Development for Turnberry Homes, LLC, which requests that TWSI provide service to The Scales Project, identified as Map 059, parcel 092.00, in the Williamson County Tax Maps.<sup>9</sup> TWSI also attached letters from other area wastewater service providers, Charles Strasser, General Manager of the

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<sup>4</sup> TRA Rule 1220-4-13-.04(1)(b).

<sup>5</sup> *Petition*, p. 1 (January 22, 2014); *see also* Transcript of Proceedings, p. 6 (August 11, 2014).

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

<sup>7</sup> *Petition*, p. 1 (January 22, 2014); *and see TWSI Response to Data Request*, Response No. 8 (April 21, 2014).

<sup>8</sup> *TWSI Response to Data Request*, Response No. 7 and Attachment “B” (April 21, 2014).

<sup>9</sup> *Petition* (unnumbered attachments), Undated Letter of Nicky Wells to Charles Hyatt, President TWSI (January 22, 2014).

Nolensville/College Grove Utility District, and Rogers Anderson, Mayor of Williamson County, Tennessee, in which those entities decline to serve and do not intend in the foreseeable future to provide wastewater/sewer service to The Scales Project development.<sup>10</sup>

On April 21, 2014, TWSI filed a copy of its Tennessee Department of Environment and Conservation (“TDEC”) Application for State Operation Permit (“SOP”) dated April 11, 2014.<sup>11</sup> With that filing, TWSI indicated that TDEC will issue a SOP only after all of its conditions have been satisfied and, among those conditions, the Utility must first obtain a CCN from the TRA for the service territory.<sup>12</sup> TWSI further asserted that until it received TRA approval and obtained a CCN for The Scales Project, binding contracts between the developer, Turnberry Homes, and TWSI and any company that would be retained to construct the wastewater system would not be finalized or executed.<sup>13</sup> Further, until the contracts are executed, making TWSI the designated sewer utility for the subdivision, a plat would not be recorded or approved by Williamson County, Tennessee.<sup>14</sup> In addition, TWSI noted that its estimated value of the wastewater system materials, components, and related property easement for The Scales Project is \$450,000, but that finalization of the design plan is needed before a detailed cost breakdown of the contribution in aid of construction could be provided.<sup>15</sup>

### **PUBLIC HEARING**

A hearing on the *Petition* was held during the regularly scheduled Authority Conference on August 11, 2014, for which public notice had been issued on August 1, 2014. No person sought intervention in these proceedings either before or during the hearing. Mr. Matt Pickney,

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<sup>10</sup> *Petition* (unnumbered attachments), Letter of Charles Strasser, Nolensville/College Grove Utility District dated January 15, 2014 and Letter of Rogers Anderson dated January 8, 2014.

<sup>11</sup> *TWSI Response to Data Request*, Response No. 1 and Attachment “A” (April 21, 2014).

<sup>12</sup> *TWSI Response to Data Request*, Response No. 1 (April 21, 2014).

<sup>13</sup> *Petition*, p. 1 (January 22, 2014); and see *TWSI Response to Data Request*, Response No. 10 (April 21, 2014).

<sup>14</sup> *Id.*

<sup>15</sup> *TWSI Response to Data Request*, Response Nos. 5 and 6 (April 21, 2014).

Operations Manager of TWSI, testified and was subject to examination by the panel, and his Pre-filed Direct Testimony was entered into the record without objection. During his testimony, Mr. Pickney stated that TDEC had scheduled a public hearing on August 18, 2014, to consider the status of TWSI's SOP Application.<sup>16</sup> Mr. Pickney's testimony, along with the Utility's supplemental filings made in response to the Authority's requests for information, asserted and was provided to show that TWSI possesses the managerial, technical and financial ability to provide wastewater services to The Scales Project.

### **FINDINGS AND CONCLUSIONS**

Upon completion of the hearing and after due consideration, the panel found that, contingent upon TWSI filing of certain supplemental documents, TWSI has sufficiently demonstrated that it possesses the managerial, financial, and technical abilities necessary to operate and provide wastewater service, and that a public need exists for such service in the designated area, as required under Tenn. Code Ann. § 65-4-201(a) and TRA Rule 1220-4-13-.04(1)(b). In order to satisfy the contingent approval given, TWSI must file the following supplemental documents: the deed and/or easement to the wastewater system and the land upon which it sits; the final copy of the SOP issued by TDEC; all final and properly executed contracts between TWSI, the builder of the wastewater system, and Turnberry Homes; a copy of the final plat recorded and approved by Williamson County; and, a detailed cost itemization of the wastewater system, land, and property, transferred to TWSI as Contribution in Aid of Construction.

Further, while TWSI appears qualified to provide service at The Scales Project, in light of the TDEC enforcement actions instituted against TWSI as a result of deficient conditions, maintenance problems, and major repairs required at its Maple Green and Cedar Hill wastewater

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<sup>16</sup> Transcript of Proceedings, p. 6 (August 11, 2014).

facilities located in Robertson County, Tennessee, the panel noted its concern in further expanding TWSI's CCN at this time.<sup>17</sup> As such, the panel directed TRA Staff to continue working with TWSI and TDEC to closely monitor these situations and any others that might arise. In addition, the panel further found it appropriate that TWSI file detailed monthly reports that describe and explain all repairs and improvements made at its Maple Green and Cedar Hill wastewater facilities, the monetary amounts expended, and the manner in which those repairs are to be funded. Further, in the event other compliance issues arise concerning these or any other TWSI facilities, the panel further determined that the Utility should timely notify the Authority and provide similar information concerning all repairs and improvements to those facilities. In conclusion, the panel strongly encouraged TWSI to prioritize its available resources to repair these troubled systems as quickly and efficiently as possible.

Therefore, consistent with its findings noted above, the panel voted unanimously to grant the *Petition*, contingent upon satisfactory receipt of the documents described, and further to require TWSI to file detailed monthly reports concerning its Maple Green and Cedar Hill facilities and any other facilities found by TDEC to be in violation of or non-compliance with its standards and requirements.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity* to expand its service area to include The Scales Project in Williamson County, Tennessee, as shown in the maps filed with the *Petition*, is approved contingent upon the satisfactory filing of the following documents by Tennessee Wastewater Systems, Inc.:

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<sup>17</sup> See *TWSI Responses to Data Requests* (April 29, 2014, July 31, 2014, and August 1, 2014).

- a) Deed and/or easements for the wastewater system and all of the land occupied by the wastewater system;
- b) Final copy of the State Operating Permit issued by the Tennessee Department of Environment and Conservation to Tennessee Wastewater Systems, Inc. for The Scales Project;
- c) All final and properly executed contract(s) between Tennessee Wastewater Systems, Inc., the builder of the wastewater system, and Turnberry Homes;
- d) Copy of the final signed plat recorded and approved by Williamson County; and,
- e) A detailed cost itemization of the complete wastewater system, materials, components, and associated land and easements, transferred from the builder and Turnberry Homes to Tennessee Wastewater Systems, Inc.

2. Beginning September 1, 2014, Tennessee Wastewater Systems, Inc. shall file on the 1<sup>st</sup> of each month until completion and full compliance have been achieved, detailed monthly reports that describe and explain all repairs and improvements that are (1) planned, (2) in progress, and (3) completed at its Maple Green and Cedar Hill wastewater facilities, the monetary amounts expended, and the manner in which those repairs are to be funded.

- a) For repairs that are planned or in progress, Tennessee Wastewater Systems, Inc. shall include a projected completion date and an estimated cost to complete the repairs.

- b) For repairs and improvements that have been completed, Tennessee Wastewater Systems, Inc. shall include the completion date and actual cost of the project.
- c) In the event that other compliance issues arise, whether cited by the Tennessee Department of Environment and Conservation or any other regulatory entity or agency, concerning any of its wastewater systems, Tennessee Wastewater Systems, Inc. shall provide the Authority, on a timely basis, similar information concerning its plans for repairing those systems.


3) The rates for wastewater service shall be as listed in the Tariff and rate schedules filed in this docket on January 22, 2014.

4) Any party aggrieved by the decision of the Authority may file a petition for reconsideration with the Authority within fifteen (15) days from the date of this Order.

5) Any party aggrieved by the decision of the Authority may file a petition for review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

**Chairman Herbert H. Hilliard, Vice Chairman David F. Jones, and Director James M. Allison concur.**

**ATTEST:**

  
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**Earl R. Taylor, Executive Director**