

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 10, 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, KNOWN AS CLOVERCROFT ACRES**

**DOCKET NO.
14-00062**

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

This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones, and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, during a Hearing held on October 10, 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 Tennessee Wastewater Systems, Inc.’s service area to include a portion of Williamson County, Tennessee, known as Clovercroft Acres.

On April 6, 1994, Tennessee Wastewater Systems, Inc. (“TWSI” or the “Utility”)¹ 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

¹ 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. The Utility’s principal office is located in Smyrna, Tennessee.

agency, the Tennessee Public Service Commission.² Since that time, through various other dockets, TWSI has been granted approval to expand its service territory to include other designated areas in Tennessee. On June 5, 2014, TWSI filed in this docket its *Petition* and Pre-filed Direct Testimony of Matt Pickney, requesting further expansion of its CCN to include Clovercroft Acres in Williamson County, Tennessee.³

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. . . .⁴

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 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

² 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.

³ TWSI filed amendments to the *Petition* on June 6, 2014 and August 27, 2014.

⁴ Tenn. Code Ann. § 65-4-201(a) (Supp. 2014).

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.⁵

THE PETITION AND SUPPORTING DOCUMENTATION

In its *Petition*, TWSI seeks to provide wastewater service to approximately 120 residential lots situated on a parcel of land encompassing approximately 190 acres.⁶ TWSI describes the proposed wastewater system as being composed of a watertight effluent collection, fixed film treatment, and subsurface drip dispersal system with an estimated 36,000 gallon per day capacity, which can be expanded if needed.⁷ TWSI states that construction of the system will take approximately 60 days to complete, with the system expected to be operational approximately 120 to 180 days after all approvals are received.⁸ TWSI asserts that it is the intention of the parties that TWSI will own the collection, treatment, and dispersal system and will own the property that the treatment and dispersal systems occupy.⁹

As evidence of the public need for wastewater service in the requested service area, TWSI included with its *Petition* a letter from Ardavan Afrakhteh, President of LandDevelopment.com, which requests that TWSI provide service to Clovercroft Acres, identified as Map 81, parcel 5, in the Williamson County Tax Maps.¹⁰ TWSI also attached letters from other area wastewater service providers, Rogers C. Anderson, Mayor of Williamson County, Tennessee, and Charles Strasser, General Manager of the Nolensville/College Grove

⁵ TRA Rule 1220-4-13-.04(1)(b).

⁶ *Amended Page to Petition*, p. 1 (June 6, 2014); *see also* Transcript of Proceedings, p.16 (October 10, 2014).

⁷ *Id.*

⁸ *Amended Page to Petition*, p. 1 (June 6, 2014) and *Data Response*, p. 1 (September 26, 2014).

⁹ *Amended Page to Petition*, p. 1 (June 6, 2014).

¹⁰ *Petition* (unnumbered attachments), Letter from Ardavan Afrakhteh dated June 4, 2014 (June 5, 2014).

Utility District, in which those entities decline to serve and indicate they do not intend in the foreseeable future to provide wastewater/sewer service to Clovercroft Acres.¹¹

With its *Petition*, TWSI filed a copy of its Tennessee Department of Environment and Conservation (“TDEC”) Application for State Operation Permit (“SOP”), filed with TDEC on August 9, 2013.¹² TWSI amended certain pages of its SOP Application to correct the number of residential lots to be served, treatment system capacity and developer information.¹³

PUBLIC HEARING

A Hearing on the *Petition* was held during the regularly scheduled Authority Conference on October 10, 2014, for which public notice had been issued on October 1, 2014. No person sought intervention in these proceedings either before or during the Hearing. Mr. Matt Pickney, Operations Manager of TWSI, testified and was subject to examination by the panel. Mr. Pickney’s pre-filed Direct Testimony and the Utility’s supplemental filings made in response to the Authority’s requests for information were entered into the record without objection.

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

¹¹ *Petition* (unnumbered attachments), Letter from Rogers C. Anderson dated May 20, 2014 and Letter from Charles Strasser, Nolensville/College Grove Utility District dated August 14, 2014 (June 5, 2014).

¹² See *Petition*, Attachment “B” (June 5, 2014).

¹³ See *Amendment to Petition* (August 27, 2014).

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 the developer; a copy of the final plat recorded and approved by Williamson County; and a final detailed cost itemization of the wastewater system, land, and property, transferred to TWSI as Contribution in Aid of Construction.

Further, the panel noted and reemphasized its concern in expanding TWSI's CCN in light of 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 facilities located in Robertson County, Tennessee. In Docket No. 14-00006, the TRA directed TWSI to 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 TRA directed the Utility to timely notify the Authority and provide similar information concerning all repairs and improvements to those facilities. The Authority strongly encouraged TWSI to prioritize its available resources to repair these troubled systems as quickly and efficiently as possible.¹⁴

In this docket, the panel noted that another TWSI wastewater system, Summit View,¹⁵ is in need of repairs. Therefore, the panel directed TWSI to include detailed information on Summit View in the monthly reports being filed with the Authority, beginning with the report due on November 1, 2014, consistent with the previous Order entered in Docket No. 14-00006.

¹⁴ See *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*, TRA Docket No. 14-00006, *Order Approving Petition to Amend Certificate of Public Convenience and Necessity*, pp. 7-8 (September 3, 2014).

¹⁵ See *In re: Petition for Approval of Tennessee Wastewater Systems, Inc. to Expand Its Service Area to Include a Portion of Sevier County in Tennessee, Known as Summit View*, Docket No. 06-00078, *Order Approving Petition to Amend Certificate of Public Convenience and Necessity* (August 24, 2006).

The panel also directed TRA Staff to continue working with TWSI and TDEC to closely monitor these situations and any others that might arise.

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 Summit View wastewater system, beginning with the report due on November 1, 2014.

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 Clovercroft Acres 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.:

- 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 Clovercroft Acres;
- c) All final and properly executed contract(s) between Tennessee Wastewater Systems, Inc., the builder of the wastewater system, and the developer;
- 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 developer to Tennessee Wastewater Systems, Inc.

2. Beginning November 1, 2014, Tennessee Wastewater Systems, Inc. shall file on the 1st 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 Summit View wastewater facility, 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.

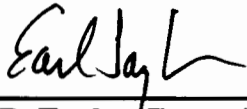
3. The rates for wastewater service shall be as listed in the Tariff and rate schedules filed in this docket on June 5, 2014.

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 Kenneth C. Hill concur.

ATTEST:

A handwritten signature in cursive script, appearing to read "Earl Taylor", written over a horizontal line.

Earl R. Taylor, Executive Director