

1 ***Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND***
2 ***OCCUPATION FOR THE RECORD.***

3 ***A1.*** My name is William H. Novak. My business address is 19 Morning Arbor Place,
4 The Woodlands, TX, 77381. I am the President of WHN Consulting, a utility
5 consulting and expert witness services company.
6

7 ***Q2. ARE YOU THE SAME WILLIAM H. NOVAK THAT PRESENTED PRE-***
8 ***FILED TESTIMONY IN THIS PROCEEDING?***

9 ***A2.*** Yes.
10

11 ***Q3. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY IN***
12 ***THIS PROCEEDING?***

13 ***A3.*** My supplemental testimony will address the outside bid proposals from
14 independent contractors that were received by Tennessee Wastewater Systems,
15 Inc. ("TWSI" or "the Company") and filed in this docket on May 27, 2015. These
16 bids contain proposals for capital projects at the Company's wastewater facilities
17 at Maple Green, Cedar Hill, Smoky Village and Summit View. My supplemental
18 testimony will also address particular concerns with the Company's responses to
19 the TRA Staff's 2nd data request regarding unrecorded revenue on the utility's
20 books.
21

22 **I. OUTSIDE BID RESPONSES**
23

1 **Q4. PLEASE DESCRIBE THE BIDS THAT WERE RECEIVED BY THE**
2 **COMPANY.**

3 **A4.** The Company received two separate bids for the capital projects at the wastewater
4 facilities described above. The first bid from W&O Construction Company
5 (“W&O”) is for a total price of \$2,347,665. The second bid from EcoStruct
6 Group (“EcoStruct”) is for a total price of \$1,006,701.¹ The detail of both bids by
7 project area, along with the Company’s initial cost estimates are presented below
8 in Table 1.²

Table 1 – Project Bid Comparison ³			
Site	Company Estimate	W&O Bid	EcoStruct Bid
Maple Green	\$250,000	\$818,012	\$390,826
Cedar Hill	300,000	767,770	440,342
Smoky Village	175,000	251,595	175,533
Subtotal	\$725,000	\$1,837,377	\$1,006,701
Summit View	330,000	510,288	⁴
Total	\$1,055,000	\$2,347,665	\$1,006,701

9
10 **Q5. DO YOU RECOMMEND THAT THE TRA APPROVE THE ISSUANCE**
11 **OF DEBT BASED ON THE INFORMATION PRESENTED IN EITHER**
12 **THE W&O OR THE ECOSTRUCT BIDS IN TOTAL?**

13 **A5.** No. Both bids exceed the \$725,000 debt petition requested by TWSI. Therefore,
14 the Company will either have to amend its Petition, or the TRA will need to
15 consider the bids on a project-by-project basis.

16

¹ EcoStruct Group did not present a bid for remediation of the Summit View project.

² As noted below in Q7, the bids received are based solely on the requirements contained in the RFP without consideration of any alternative construction scenarios that would be appropriate.

³ Company Petition and Third Supplemental Discovery Response to CAPD Data Request #20.

⁴ EcoStruct Group did not present a bid for remediation of the Summit View project.

1 **Q6. WHAT IS YOUR RECOMMENDATION IF THE TRA WERE TO**
2 **CONSIDER APPROVING THE ISSUANCE OF DEBT ON A PROJECT-**
3 **BY-PROJECT BASIS BASED ON THE BID PROPOSALS?**

4 **A6.** It will be difficult for the TRA to approve the issuance of debt on a project by
5 projects basis because not all of the projects have been approved by the Tennessee
6 Department of Environment & Conservation ("TDEC"). The specific issues
7 surrounding each area are presented below.

8 **Maple Green.** As shown in Table 1 above, the bids for the capital project cost
9 for Maple Green are \$818,012 from W&O and \$390,826 from EcoStruct.
10 Therefore, it would be possible to fully construct this project within the
11 Company's debt petition of \$725,000. However, the corrective action plan
12 ("CAP") originally approved by TDEC for the Maple Green site will expire on
13 July 24, 2015 unless construction is already underway.⁵ I would **not advise** the
14 TRA to approve the issuance of debt for the Maple Green project at this time due
15 to the issues presented in Section II of my testimony. However, if the TRA wants
16 to approve the issuance of debt for the construction of the Maple Green project, it
17 would need to act quickly before the CAP expires.

18 **Cedar Hill.** TDEC has specifically declined the Company's proposed CAP for
19 Cedar Hill.⁶ Therefore, it is not timely for the TRA to approve debt funds for the
20 Cedar Hill project at this time.

21 **Smoky Village.** The Company's proposal for the Smoky Village site involves the
22 purchase of land from one of the owners of TWSI to serve as an additional drip

⁵ Company Petition, Exhibit D.

⁶ Direct testimony of CAPD witness Harris, Page 5, Lines 17-18.

1 field. As shown in Table 1 above, it would be possible to fully construct this
2 project within the Company's debt petition of \$725,000. However, I am
3 concerned about the appropriateness of using debt proceeds for the purchase of
4 land from the owners of TWSI that could result in self-dealing for a possible
5 windfall profit. I therefore cannot recommend that the TRA approve debt funds
6 for this purpose.

7 **Summit View.** The Company is not asking for any debt proceeds for the Summit
8 View capital project. Instead, the Company intends to construct an additional drip
9 field and impose a surcharge of \$3.06 per square foot for the recovery of this
10 cost.⁷ TDEC has not approved a CAP for Summit View at this time. Therefore, it
11 is not timely for the TRA to consider approving debt funds for the Summit View
12 capital project.⁸

13
14 ***Q7. DO YOU HAVE ANY OTHER CONCERNS ABOUT THE PARTICULAR***
15 ***ASPECTS OF THE BIDS RECEIVED FOR EACH CAPITAL PROJECT?***

16 ***A7.*** Yes. The bids submitted by W&O and EcoStruct are based solely on the
17 requirements in the RFP that were submitted to them by TWSI. As such, there
18 has been no consideration of any alternative construction scenarios that would be
19 appropriate for these four wastewater facilities. For example, instead of the
20 construction of an additional drip field at Summit View, the Company could
21 instead consider the installation of storage facilities to offset the high usage that
22 appears to only occur during the weekends.

⁷ Company Petition, Page 3.

⁸ In addition, it may be ultimately more economical to address construction at this site through additional storage instead of additional drip fields. See direct testimony of CAPD witness Dotson, Pages 7- 8.

1

2 ***Q8. PLEASE SUMMARIZE YOUR RECOMMENDATIONS TO THE TRA***
3 ***REGARDING DEBT ISSUANCE.***

4 ***A8.*** At this time, it is premature for the TRA to consider any issuance of debt. I
5 would therefore recommend that the TRA hold this docket in abeyance until such
6 time that TDEC has approved a final CAP for each of these projects.

7

8 **II. DATA REQUEST RESPONSES ON UNRECORDED REVENUE**

9

10 ***Q9. HAVE YOU REVIEWED THE COMPANY'S RESPONSES TO THE TRA***
11 ***STAFF'S 2ND DATA REQUEST?***

12 ***A9.*** Yes. This data request was issued on May 15, 2015 after I submitted my pre-filed
13 testimony.

14

15 ***Q10. DO YOU HAVE ANY PARTICULAR CONCERNS WITH ANY ASPECT***
16 ***OF THE COMPANY'S RESPONSES?***

17 ***A10.*** Yes. While some of the Company's responses to the TRA Staff's 2nd data request
18 appear to be incomplete and need to be supplemented with additional information,
19 I am particularly troubled with the Company's response to Item #7 regarding
20 affiliate transactions for tap fee and capacity credits. Specifically, Item #7, along
21 with the Company's response, to the TRA Staff's 2nd data request reads as
22 follows:

23 7. Identify any item or dollar amount (since 1999) that any company or
24 individual (affiliated or non-affiliated) has collected for tap fee

credits/capacity to any On-Site TWSI utility system (inclusive of lagoon, sand filter treatment systems, any other utility owned system). Please include a spreadsheet in excel format with the following information: Please sort by Amended CCN location name.

- A. Amended CCN location name/Docket No. of TWSI system
- B. Name of company/individual that sold the capacity to the On-Site/TWSI system
- C. Date of sale
- D. Customer/Purchaser Name/Address
- E. Amount of capacity sold
- F. Price set for the tap credits
- G. Amount of sale
- H. Provide a copy of Associated contract for each sale
- I. Provide copy of invoice/bill/notice sent to customer for the tap fee credit/capacity

RESPONSE:

See attached. CONFIDENTIAL.

TWSI objects to this question on the grounds that the information is irrelevant and the gathering of information dating back to 1999 is burdensome. Without waiving these objections, TWSI has provided the requested information for the years 2009 through 2014.

This attachment is confidential.

First, the sale of wastewater capacity by a non-regulated entity to a developer is not now and has never been considered by the TRA to be a regulated transaction. Such information is therefore not relevant to this proceeding. Moreover, TWSI went through a general rate case in 2008 and 2009. Using transactions prior to that time as a basis for making a decision in this docket would be retroactive making. **(Emphasis added.)**

Second, TWSI is not required to keep TRA-related information for longer than three years. TRA Rule 1220-4-13.03(1) states that "records required by these rules shall be preserved for a minimum period of three (3) years." The process of locating and producing information older than three years is overly burdensome and expensive.

Q11. DO YOU AGREE WITH THE COMPANY'S ASSERTION THAT THE SALE OF WASTEWATER CAPACITY IS A NON-REGULATED TRANSACTION?

1 **A11.** I certainly do not. The NARUC Uniform System of Accounts adopted by the
2 TRA for wastewater utilities specifically requires revenues from sales to other
3 systems to be recorded on the utility books in Account 524 as shown below:

4 **524. Revenues from Other Systems**

5 This account shall be credited with all revenues derived from wastewater
6 services rendered to other wastewater system properties, whether operated
7 by a public authority or a private enterprise.⁹

8
9 ***Q12. DO YOU AGREE WITH THE COMPANY'S ASSERTION THAT THESE***
10 ***SALES ARE NOT RELEVANT TO THIS PROCEEDING?***

11 **A12.** No. It appears that the Company has purposely removed the revenue stream from
12 capacity release and tap fee revenues from the utility books and records. It is very
13 likely that this diversion has caused the current utility rates to be higher than they
14 otherwise would have been. As a result, it is inappropriate for the TRA to
15 consider increasing rates for any new debt cost in the current docket without first
16 determining the appropriate operating rates that consider all sources of revenues.

17
18 ***Q13. PLEASE SUMMARIZE YOUR RECOMMENDATIONS TO THE TRA***
19 ***REGARDING THE COMPANY'S UNREPORTED REVENUE FROM TAP***
20 ***FEEES AND CAPACITY RELEASE.***

21 **A13.** At this time, I recommend that the TRA conduct a compliance audit of the
22 Company's books and records to fully review the methods and procedures for
23 recording revenue from all sources on the utility books. Depending on the results
24 of this audit, I would also recommend that the TRA consider an adjustment to

⁹ National Association of Regulatory Utility Commissions, 1996 Uniform System of Accounts for Class C Wastewater Utilities, Page 55.

1 utility rates if it is determined that the Company has inappropriately excluded
2 certain revenue from its books during the consideration of TWSI's last rate case.
3 Also depending on the results of the audit, I would recommend that the TRA
4 consider ordering refunds to the customers, including statutory interest. The
5 appropriateness of these recommendations would be contingent on the findings of
6 the audit. Finally, I would recommend a suspension of this docket and all other
7 active TWSI dockets until this matter is fully resolved.¹⁰

8
9 ***Q14. DOES THIS COMPLETE YOUR TESTIMONY?***

10 ***A14.*** Yes it does. However, I reserve the right to incorporate any new data that may
11 subsequently become available.

¹⁰ Docket 15-00025, Petition of Tennessee Wastewater Systems, Inc. to amend their CCN to expand its service area to include a portion of Williamson County in Tennessee, known as The Enclave at Dove Lake.