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August 19, 2015

Sharla Dillon
Tennessee Regulatory Authority
502 Deaderick Street
4th Floor
Nashville, TN 37243

Re: Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement
Surcharges and Financing Arrangements
Docket No. 14-00136

Dear Sharla:

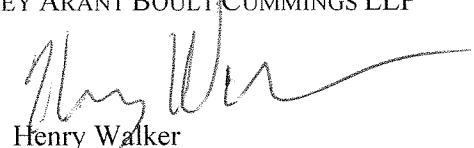
Attached for filing in the above-captioned docket is the rebuttal testimony of Charles Hyatt, Robert T. Buckner, Charles Pickney, Jr., Roy Denney, Fred Howell and John Rami Mishu.

Please call me if you have any questions.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS LLP

By:


Henry Walker

HW/mkc
Enclosure
cc: Rachel Newton
Chuck Welch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:)	
)	
PETITION OF TENNESSEE)	DOCKET NO. 14-00136
WASTEWATER SYSTEMS, INC.)	
FOR APPROVAL OF)	
CAPITAL IMPROVEMENT)	
SURCHARGES AND FINANCING)	
ARRANGEMENTS)	

REBUTTAL TESTIMONY
OF
ROBERT T. BUCKNER

ON BEHALF OF TENNESSEE WASTEWATER SYSTEMS, INC.

August 19, 2015

1 **Q. Please state your name, business name and address for the record.**

2 A. My name is Robert T. ("Terry") Buckner. I am operating as a sole proprietorship,
3 Robert T. Buckner CPA, 2783 Saundersville Ferry Road, Mount Juliet, Tennessee 37122.

4
5 **Q. On whose behalf are you testifying in this docket?**

6 A. I am submitting rebuttal testimony on behalf of Tennessee Wastewater Systems,
7 Inc. ("the Company").

8
9 **Q. Have you filed Direct Testimony on behalf of the Company in this docket?**

10 A. No.

11 **Q. How long have you been employed in conjunction with the public utility industry?**

12 A. I have been employed with the public utility industry for over thirty-five years.
13 Before my retirement from the Office of the Attorney General for the State of Tennessee
14 ("AG Office"}, I was employed by the Comptroller's Office for the State of Tennessee
15 for nearly two years as the Assistant Director responsible for public utility audits after
16 approximately eight years of prior employment with the AG Office. I was employed by
17 the Comptroller's Office for the State of Tennessee for nearly two years as the Assistant
18 Director responsible for public utility audits after approximately eight years of prior
19 employment with the AG Office. Formerly, I was employed with the Tennessee Public
20 Service Commission ("Commission") in the Utility Rates Division as a financial analyst
21 for approximately six years. My responsibilities included testifying before the
22 Commission as to the appropriate cost of service for public utilities operating in

1 Tennessee. Prior to my employment with the Commission, I was employed by TDS
2 Telecom for eight years and the First Utility District of Knox County for three years.

3
4 **Q. What is your educational background, and what degrees do you hold?**

5 A. I have a Bachelor's degree in Business Administration from the University of
6 Tennessee, Knoxville - with a major in Accounting.

7
8 **Q. What is the purpose of your rebuttal testimony?**

9 A. The purpose of my rebuttal testimony is to rebut the Consumer Advocate's
10 ("CAPD") supplemental testimony' as follows.¹ The Consumer Advocate's supplemental
11 testimony states,

12 "No. It appears that the Company has purposely removed
13 the revenue stream from capacity release and tap fee
14 revenues from the utility books and records. It is very likely
15 that this diversion has caused the current utility rates to be
16 higher than they otherwise would have been.... I would
17 also recommend that the TRA consider an adjustment to
18 utility rates if it is determined that the Company has
19 inappropriately excluded certain revenue from its books
20 during the consideration of TWSI's last rate case."

21
22 **Q. Mr. Novak states that the Company's current rates were set without consideration**
23 **of the revenues from the sale of capacity and taps and therefore that the current**
24 **rates are "very likely" higher than they would have been if that revenue had been**
25 **taken into account. Do you agree with that statement?**

¹ Supplemental Testimony of William H. Novak, Page 7-8.

1 A. No. The current rates were established in TRA Docket #08-00202. I personally
2 worked on that case on behalf of the CAPD and filed direct testimony and exhibits as the
3 accounting witness for the CAPD. During discovery, the Company made the books and
4 records of both its regulated and unregulated entities available to the CAPD and the TRA
5 staff. As I noted in my direct testimony (at page 15, lines 12-15), the Adenus companies
6 were engaged in both regulated and unregulated operations but, given the time limits of a
7 rate case, there was insufficient time to make a full investigation as to whether the
8 unregulated operations should be moved to the regulated books of the Company.
9 Nevertheless, we were all well aware of the issue. In fact, the TRA later opened a new
10 docket (09-00033) to investigate the operations of affiliates in the wastewater industry.
11 Unfortunately, the agency never moved forward in that docket and it was finally closed in
12 2013.

13
14 **Q. After examining those books, did you recommend any adjustments to the allocations**
15 **of costs and expenses among the regulated and unregulated affiliates?**

16 A. Yes. My goal was to make sure that all costs and expenses were allocated with a
17 just and reasonable methodology among the various regulated and unregulated entities.
18 As explained in my direct testimony, I recommended that the Company adopt allocation
19 procedures that the CAPD and the TRA had recently used in the regulation of a large gas
20 company that also had both regulated and unregulated operations. Using those
21 procedures, a number of changes were made to the Company's books, which resulted in
22 shifting costs to unregulated affiliates, thus reducing the Company's revenue
23 requirement. During settlement negotiations, the Company agreed to those changes and

1 settled the case with the CAPD. The TRA approved the settlement and the Order issued
2 in that case directed the Company to "directly allocate corporate costs" (Order at p. 5).

3
4 **Q. In making those adjustments, did you have access to all of the books and records of**
5 **the affiliated companies and did you incorporate that information into your**
6 **recommendation?**

7 A. Yes, I did. As my attorney, Mr. Broemel, told the Authority at the hearing, "We
8 asked many questions about affiliates and they—I should say they provided it. I mean,
9 they were good about that . . . We did ask for the raw information and they did provide
10 it and Mr. Buckner did incorporate it, yes." Transcript of Docket 8-00202, May 4, 2009,
11 pp. 14-15.

12
13 **Q. Mr. Novak states that the Consumer Advocate and the TRA may not have been**
14 **aware of the unregulated sales of capacity. Did your examination include the**
15 **books and records of Adenus Capacity?**

16 A. Yes. Although I do not have my work papers from the case, I specifically
17 mentioned the capacity company in my testimony. I explained that our goal in
18 reallocating the company's revenues and expenses was "to prevent cross-subsidization
19 between the construction company, the capacity company, the solutions company so that
20 the ratepayers don't—aren't unfairly burdened." Transcript, p. 135. In other words, I
21 was aware that TWSI had an affiliate that owned capacity and had looked at the books
22 and records of that affiliate. I have also reviewed the discovery requests made by our
23 office in that docket and noted that several of the questions asked for information about

1 "Adenus Capacity." Consumer Advocate's First Discovery Requests, Docket 08-00202,
2 Questions 39, 40, 41, 43 and 44. As I have already testified, the company answered all
3 of our discovery questions. Therefore, we were well aware of Adenus Capacity and
4 were provided with the financial records of Adenus Capacity as part of our investigation
5 of the rate case. Mr. Novak's implication that the Consumer Advocate and the TRA
6 were not aware of the Company's revenue from the sale of capacity is inaccurate.
7 Similarly, Mr. Novak's statement that the Company may have "inappropriately excluded
8 certain revenue from its books during the consideration of TWSI's last rate case" is
9 unfounded.

10
11 **Q. Are the rates established in TRA Docket #08-00202 still in effect today?**

12 A. Yes. Therefore, when Mr. Novak talks about the Company's rates, he is talking
13 about the rates that were set in TRA Docket #08-00202. Consequently, it is misleading
14 and perhaps inaccurate for him to say that these rates are "very likely" higher than they
15 would be if the revenue from capacity sales were taken into account. For example, what
16 about the direct costs associated with those sales? Mr. Novak apparently thinks that the
17 Company should benefit from the revenues from the sales of capacity, but he does not
18 mention who pays the costs of building and maintaining that excess capacity. He was not
19 involved in TRA Docket #08-00202 and is probably not aware of what occurred in that
20 docket. As previously stated, the current rates are based on a just and reasonable
21 allocation of expenses between the regulated and unregulated operations of the Adenus
22 entities. There is no reason to believe that the Company's current rates would be any
23 lower if all of the revenues and costs associated with the sales of capacity and taps were

1 moved from the unregulated books of Adenus Capacity to the books of the regulated
2 Company. To the contrary, if Adenus Capacity or another unregulated affiliate makes an
3 investment in excess capacity that is being held for future use, shifting the cost of that
4 investment from the books of the unregulated entity to the regulated operations of the
5 Company could well result in an increase in regulated rates, not a decrease.

6
7 **Q. Are you making any recommendation as to whether the investment in excess**
8 **capacity and the subsequent sale of that capacity should be considered part of the**
9 **Company's regulated operations?**

10 A. No. I have not examined the Company's books since 2009 and have no personal
11 knowledge concerning how the Company operates today. The question of whether an
12 investment in excess capacity that is not currently needed to serve customers should be a
13 regulated or unregulated transaction is a decision for the TRA to make at the time of the
14 Company's next rate case. It is a complicated issue and it is not at all clear which
15 decision would benefit customers. My purpose in testifying is simply to tell the Authority
16 that the unregulated operations of Adenus affiliates is not a new issue, that we looked at
17 this issue in TRA Docket #08-00202, and that the company's current rates, which are
18 based on the adjustments that I recommended, reflect what I believed at that time to be an
19 appropriate allocation of expenses between the regulated and unregulated operations of
20 the Adenus companies. Based on my investigations in the last rate case, there is no reason
21 that to believe that the Company's rates established in that case would be any lower if the
22 costs and revenues associated with the development of excess capacity had been
23 considered part of the Company's regulated operations.

1
2 **Q. Finally, do you have reason to believe that the regulated operations of TWSI have**
3 **been subsidized by the unregulated operations of TWSI's affiliates?**

4 A. As I said, I don't know about the company's operations today, but at the time of
5 the last rate case, I was asked that question by the Chairman of the Authority. Here is
6 his question, followed by my answer:

7 **CHAIRMAN ROBERSON:** I have just one last question. You heard
8 a couple of company witnesses talk about that they believe that Adenus
9 benefited as a result of Tennessee Wastewater's operations because of
10 construction and so forth.

11 Do you agree with that observation? I believe I'm quoting them
12 correctly that they benefited. And if they do, how should the Authority
13 address that or should it?

14 **THE WITNESS:** This business model is set up to make money on the
15 construction end. They build systems, sell them to developers. They
16 profit by that.

17 In my opinion, they have lived off of this construction model and
18 just tried to make ends meet with the public utilities side of the business.
19 As time has gone on, the costs have increased and therefore the rates are
20 insufficient to cover the costs that are being borne by the Tennessee
21 Wastewater utility.

1 So, I think, obviously, Adenus gains the revenue stream, but I
2 think Tennessee Wastewater has benefited more probably in the last ten
3 years from Adenus, in my opinion.

4 **CHAIRMAN ROBERSON:** Thank you.

5

6 **Q.** **Does this conclude your testimony?**

7 **A.** Yes.

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IN RE:

PETITION OF TENNESSEE
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FOR APPROVAL OF
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SURCHARGES AND FINANCING
ARRANGEMENTS

DOCKET NO. 14-00136

AFFIDAVIT

I, Robert T. Buckner, hereby certify that the attached testimony is true and correct to the best of my knowledge.

Robert T. Buckner

ROBERT T. BUCKNER

Sworn to and subscribed before me,
this 10 day of August, 2015.

Kaitlyn Fox
NOTARY PUBLIC

My Commission Expires: 04/24/2018

