

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**NASHVILLE, TENNESSEE**

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

**REBUTTAL TESTIMONY**  
**OF**  
**CHARLES HYATT**

**ON BEHALF OF TENNESSEE WASTEWATER SYSTEMS, INC.**

**August 19, 2015**

BEFORE THE TENNESSEE REGULATORY AUTHORITY

## NASHVILLE, TENNESSEE

IN RE:

# PETITION OF TENNESSEE

**WASTEWATER SYSTEMS, INC. FOR**

## APPROVAL OF CAPITAL

## IMPROVEMENT SURCHARGES AND

## FINANCING ARRANGEMENTS

DOCKET NO. 14-00136

## REBUTTAL TESTIMONY OF CHARLES HYATT

**Q. What is your name and occupation?**

A. I am Charles Hyatt, president of Tennessee Wastewater Systems, Inc. ("TWSI"). I have been president of TWSI since 2007.

**Q. What is the purpose of your testimony?**

A. The purpose of my testimony is to bring the TRA up to date on developments since I filed my Direct Testimony and to respond to the Direct and Supplemental Testimony of William H. Novak filed on behalf of the Consumer Advocate and Protection Division.

**Q. At this time, has TDEC approved construction plans for repairs at Maple Green, Cedar Hill, Summit View and Smoky Village?**

A. At this time, TDEC has approved construction plans for repairs at Smokey Village. Construction plans for the other three sites are under discussion with TDEC. We will not begin repairs at any site or borrow any money for repairs at any site until after TDEC has approved our construction plans. We anticipate that our construction plans for Summit View will be approved by the time this matter is set for hearing in September. It is also

1 possible that our plans for Maple Green and Cedar Hill may be approved by that time. In  
2 any event, we will inform the TRA and the Consumer Advocate as soon as TDEC  
3 approves our construction plans and ask that the TRA approve financing for those repairs  
4 subject to TDEC's approval of the construction plans.

5  
6 **Q. In your Direct Testimony, you said TWSI would solicit bids for the construction**  
7 **work at Maple Green, Cedar Hill, Summit View and Smoky Village. Has that been**  
8 **done?**

9 A. Yes. We solicited bids for those four projects based on the plans we had submitted to  
10 TDEC. We sent notice of the proposals to 19 potential bidders and kept the bidding  
11 window open for an additional three weeks in response to a request from one bidder. The  
12 results show that the other bids are higher than the costs estimated by TWSI in the  
13 Company's Petition.<sup>1</sup> TWSI is willing either to have its affiliate, Adenus Solutions  
14 Group, perform the work or award one or more jobs to one of the other bidders. It does  
15 not matter which company does the work as long as it is done in accordance with the  
16 construction plans approved by TDEC and meets TWSI's standards, as set forth in the  
17 requests for bids.

18  
19 **Q. Does the estimate for repairs at Smoky Village include the cost of purchasing land to**  
20 **enlarge the drip field?**

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<sup>1</sup> TWSI's estimates for repairs at Summit View and Smoky Village include the cost of purchasing additional land for drip fields (\$51,000 for Smoky Village and \$75,000 for Summit View). The bids submitted by W&O Construction and EcoStruct do not include the cost of the land.

1 A. Yes, it does. When the additional land became available, TWSI arranged for the land to  
2 be purchased by a related party. TWSI itself could not borrow money to purchase the  
3 land without prior approval from the TRA. Therefore, to insure that the land would be  
4 available when needed, a related party purchased the land. Once this request is approved,  
5 TWSI will purchase the land for the same price that the related party paid, plus expenses.  
6 This transaction is described in more detail in the "Second Supplemental Response" to  
7 Question 21 from the Consumer Advocate. Copies of these contracts have been provided  
8 to the TRA and the Consumer Advocate. Mr. Novak's speculation that this "self dealing"  
9 could result in a "possible windfall profit" to the affiliate is unfounded.  
10

11 **Q. Does the Summit View project also require the purchase of additional land to**  
12 **enlarge the drip field?**

13 A. Yes, and we followed the same procedures there that we did with Smoky Village. We  
14 arranged for a related party to buy the land and then sell it to TWSI, at cost plus  
15 expenses, once the TRA approves the Petition. All the relevant documents have been  
16 provided to the Consumer Advocate and the TRA. Both of these transactions are also  
17 described in the "Second Supplemental Response" to Question 21 from the Consumer  
18 Advocate.  
19

20 **Q. Did you seek the advice of counsel before making these arrangements?**

21 A. Yes, we did. Our regulatory attorney explained to us that since TWSI's Petition had not  
22 been approved and TWSI could not borrow money to buy the land without TRA  
23 approval, TWSI should go ahead and make arrangements with a related party to buy the

1 land now, before someone else did, and hold it until the TRA had acted on this Petition.  
2 Therefore, that is what we did.  
3

4 **Q. If the TRA approves the Petition, how can the TRA and the Consumer Advocate be**  
5 **assured that the money borrowed from FirstBank will only be used for repairs at**  
6 **these four sites?**

7 A. As explained in the testimony of Mr. Fred Howell from FirstBank, the bank will establish  
8 a line of credit equal to the total loan amount. No money will be borrowed until an  
9 invoice is submitted to the bank. The invoice will identify the work performed and the  
10 name of the project where the work is being done. Copies of all invoices will be  
11 provided to the Staff at the same time the invoices are given to FirstBank. At the end of  
12 each project, we will file a final report of all expenses on each project and make whatever  
13 other reports the TRA requires.  
14

15 **Q. Have you reviewed the Staff's "Data Request No. 3" filed August 17, 2015 and will**  
16 **you be available to respond to any questions the Staff may have regarding TWSI's**  
17 **responses to those questions?**

18 A. Yes, I have reviewed the questions and TWSI is working on the responses. I will be  
19 available at the hearing to respond to any follow-up questions concerning the Company's  
20 responses to the data requests. I will also be available to meet with the Staff and the  
21 Consumer Advocate to explain the Company's responses. Such a meeting would likely  
22 make the hearing on this matter more efficient.  
23

1   **Q.   Finally, have you examined TWSI's response to the Staff's question regarding the**  
2       **sales of capacity?**

3   A.   Yes, I have. As Charles Pickney states in his testimony, this issue was investigated by  
4       the Consumer Advocate and the TRA during the Company's last rate case. In that docket,  
5       TWSI provided the Advocate and the Staff with all of the information they requested  
6       about Adenus Capacity and the construction and sales of capacity at several sites owned  
7       by TWSI. At that time, everyone agreed that putting the expenses and revenues  
8       associated with these projects into the regulated operations of TWSI would significantly  
9       increase TWSI's revenue requirement. Since then, there have been no new TWSI sites  
10      built by Adenus Capacity or any other affiliated entity. There have been, however,  
11      continued sales of that excess capacity built prior to 2009. Consistent with the parties'  
12      agreement reflected in the settlement of Docket 08-00202, the revenues from those  
13      capacity sales goes to the unregulated operations of Adenus Capacity or whatever entity  
14      paid for the construction of the capacity. In our response to the Staff's Second Data  
15      Request, Question 7, we have listed each such sale since the last rate case. The  
16      suggestion that we have hidden that revenue from the TRA is inappropriate. Moreover,  
17      Mr. Novak's assumption that, had all the revenue and all the associated expenses related  
18      to the construction and sales of capacity been included in TWSI's regulated operations,  
19      TWSI's rates would today be lower than the rates set in Docket 08-00202 is incorrect and  
20      based on an incomplete understanding of the history of this issue.

21  
22   **Q.   Have you read the pre-filed testimony of Mr. Rick Tucker, the president of the**  
23       **Summit View Homeowners Association?**

1 A. Yes.

2  
3 **Q. Do you have a response to his testimony?**

4 A. The purpose of Mr. Tucker's testimony is "to submit for consideration" complaint letters  
5 and occupancy reports from owners of lodges and cabins at Summit View. The  
6 complaints themselves are not evidence in this case since the complainants are not  
7 testifying. I would also note that many of the complaints use similar language and appear  
8 to be copied from the same source. Nevertheless, I will respond to the issues raised in  
9 Mr. Tucker's summary of the complaints with the caveat that I am not an engineer and  
10 would refer technical questions to Mr. Roy Denney, an engineer with Adenus, who has  
11 also submitted testimony on the problem at Summit View.

12  
13 First, he states that residents are complaining that "sewage runoff" is causing "massive  
14 algae blooms" in a community fishing pond and rendered it "unusable." He also says that  
15 there is "a foul odor that lingers in the air."

16  
17 Mr. Tucker is referring to a drip field where treated water drips into the soil. Because the  
18 lodges at Summit View are generating substantially more wastewater than the system was  
19 designed to handle, the drip field becomes saturated and this creates wet spots. Some of  
20 the excess water likely ends up in the "fishing pond."

21  
22 Mr. Tucker and the other residents may not realize that the water in the drip field is not  
23 "sewage runoff." It is clean water that has been repeatedly treated in a recirculating sand

1 filter. That process removes anything that would be hazardous to humans or the  
2 environment. To confirm that, we have tested the water in the community "fishing pond"  
3 and found no contaminants from wastewater. The "algae blooms" are the result of having  
4 a closed pond where the water is deprived of oxygen. Furthermore, the water in the drip  
5 field has no odor that we have ever noticed during our regular monthly inspections and  
6 the TDEC inspection reports do not mention any odor, only the ponding caused by  
7 oversaturation of the soil. If there is an odor, it is likely coming from the stagnant pond,  
8 not the water in the drip field.

9  
10 **Q. Do you have any other response to Mr. Tucker?**

11 A. Yes. It is unfortunate that Mr. Tucker and the other owners who have filed complaints do  
12 not acknowledge that the problem at Summit View is caused by the fact that the  
13 developer of Summit View contracted with TWSI to build a wastewater treatment system  
14 to handle a maximum flow of 8,000 gallons per day and that this limit is now being  
15 exceeded nearly every day. The contract between TWSI and the developer of Summit  
16 View states that "once actual maximum daily flows as measured at the discharge to the  
17 drip dispersal field equal or exceed 8,000 gallons per day, no additional cabins may be  
18 connected until the treatment and effluent dispersal facilities are expanded to handle the  
19 planned additional flow." In other words, it was well understood when the TWSI  
20 contract was signed that if the flow exceeded 8,000 gallons per day, either the flow would  
21 be capped or the system enlarged.



1 **Q. Does TWSI have any other way to address the problem of overuse other than by**  
2 **expanding the system?**

3 A. Yes. Each property owner receiving service has signed a "sewer service agreement."  
4 Examples of those agreements are attached to the Petition. Each contract states the  
5 maximum number of people allowed to stay in the lodge. The contract states that the  
6 customer "agrees not to exceed the maximum number of persons the rental property will  
7 sleep listed above." If the customer allows more people in the lodge than the maximum  
8 number of people listed in the contract, the "customer agrees that TWSI may cut off  
9 water and sewer service at said commercial rental property." Cutting off water and sewer  
10 service is not something we want to do but unless we are able to enlarge the system, we  
11 would have no other choice but to enforce the contract terms.

12  
13 **Q. Mr. Tucker also states that TWSI's allocation of costs according to the square**  
14 **footage of each lodge is based on inaccurate information about the square footage of**  
15 **some units. What is your response?**

16 A. As we have told Mr. Tucker, TWSI is happy to work with the HOA to allocate the costs  
17 of this project in any manner the HOA or the TRA believes is fair. If the square footage  
18 numbers we are using are inaccurate, we would be glad to use numbers provided by the  
19 HOA.

20  
21 **Q. Does this complete your testimony?**

22 A. Yes.

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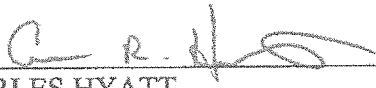
DOCKET NO. 14-00136

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AFFIDAVIT

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I, Charles Hyatt, hereby certify that the attached testimony is true and correct to the best of my knowledge.

  
\_\_\_\_\_  
CHARLES HYATT

Sworn to and subscribed before me,  
this 18 day of August, 2015.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 2/20/2018

