

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 23, 2015

IN RE:

**PETITION OF TENNESSEE WASTEWATER SYSTEMS,
INC. TO AMEND ITS CCN TO EXPAND ITS SERVICE
AREA TO INCLUDE A PORTION OF WILLIAMSON
COUNTY IN TENNESSEE, KNOWN AS THE ENCLAVE
AT DOVE LAKE**

**DOCKET NO.
15-00025**

**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 (“Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on August 17, 2015, for consideration of the *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity* (“*Petition*”) requesting Authority approval for an expansion of Tennessee Wastewater Systems, Inc.’s service area to include a portion of Williamson County, Tennessee known as The Enclave at Dove Lake.

BACKGROUND AND PETITION

On April 6, 1994, Tennessee Wastewater Systems, Inc. (“TWSI” or the “Company”)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 February 20, 2015, TWSI filed in this docket its *Petition* and Pre-filed Direct Testimony of Matt Pickney, requesting further expansion of its CCN to include The Enclave at Dove Lake (“Dove Lake”) subdivision in Williamson County, Tennessee. The system is located near Nolensville Road and Big Oak Road in Williamson County, servicing 165 residential units at Dove Lake.³ TWSI is proposing a watertight effluent collection, fixed film treatment and subsurface drip dispersal system that has a projected capacity of 49,500 gallons per day.⁴

Along with its *Petition*, TWSI filed letters from the Nolensville/College Grove Utility District and the Williamson County Mayor stating that neither of these entities will provide sewer for Dove Lake.⁵ TWSI states that construction of the system will take approximately 10 to 16 weeks to complete, plus phased collection system installations.⁶ The Company also submitted the Pre-filed Direct Testimony of Matt Pickney, Operations Manager of TWSI, to support its *Petition*.

On March 18, 2015 the Consumer Advocate and Protection Division of the Office of the Attorney General (“CAPD” or “Consumer Advocate”) filed a *Petition to Intervene*, which was granted by the Hearing Officer in an order issued June 2, 2015. Pursuant to the Procedural Schedule issued by the Hearing Officer on May 28, 2015, the parties filed Direct Testimony and Rebuttal Testimony on July 6, 2015.

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, Order (April, 6, 1994).

³ *Petition*, p. 1 (February 20, 2015).

⁴ *Id.*

⁵ *Id.* TWSI notes that when the letters were issued the Dove Lake community was to be called Walnut Grove Farms.

⁶ *Id.*

LEGAL STANDARD

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. . . .⁷

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 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.⁸

JULY 20, 2015 HEARING

A Hearing in this matter was held before the voting panel on July 20, 2015, as noticed by the Authority on July 10, 2015.

⁷ Tenn. Code Ann. § 65-4-201(a).

⁸ TRA Rule 1220-4-13-.04(1)(b).

Participating in the hearing were the following parties and their respective counsel:

Tennessee Wastewater Systems Inc. – Henry W. Walker, Esq., Bradley Arant Boulton Cummings LLP, 1600 Division Street, Suite 700, Nashville, TN 37203.

Consumer Advocate – Erin Merrick, Esq., Vance Broemel, Esq., and Wayne Irvin, Esq., Office of the Attorney General, 425 Fifth Avenue North, Fourth Floor, John Sevier Building, P.O. Box 20207, Nashville, TN 37202.

Matt Pickney, Operations Manager for TWSI; Roy T. Denny, Chief Technical Officer for the Adenus Companies; Mark Lee, Principal of the engineering firm, SEC, Inc.; Charles Pickney, Jr., Chairman of the Board of Adenus Group, LLC; and Robert T. Buckner, CPA, appeared as witnesses for TWSI. The witnesses were subject to cross-examination by the other parties and questions from the panel. The CAPD did not present any witnesses.

In addition, at the end of the Hearing, members of the public were given an opportunity to present comments to the panel. Mr. Chad White, Esq., attorney for the developer of Dove Lake and three of the owners of the property, came forward and presented comments. Mr. White stated TWSI is the only option to provide wastewater services at Dove Lake. Mr. White also stressed that his clients have a \$5 million contract at stake and asked that the TRA make a decision on TWSI's *Petition* as quickly as possible so the property can be developed.⁹ Following the Hearing, the panel took the matter under advisement.

POSITIONS OF PARTIES

The Consumer Advocate filed *The Consumer Advocate's Statement in Opposition to the Proposed Amendment of the CCN ("CAPD Opposition")* on June 25, 2015 in which it argues that: (1) TWSI has failed to meet the statutory requirements demonstrating it possesses the requisite managerial, financial and technical abilities to provide the necessary services;¹⁰ (2) Financial resources and support for the continued operation of the utility are diverted to

⁹ Transcript of Proceedings, Docket 15-00025, p. 143-146 (July 20, 2015).

¹⁰ Tenn. Code Ann. § 65-4-201(c)(2) requires that "the applicant possess[] sufficient managerial, financial and technical abilities to provide the applied for services."

unregulated affiliates; and (3) TWSI's affiliates should apply for this CCN and become regulated utilities.¹¹

TWSI states that it has over 100 CCNs in Tennessee and has the technical, managerial and financial ability to provide wastewater service to Dove Lake.¹² In addition, TWSI states there is a public need for wastewater service in this area.¹³

Managerial and Technical Qualifications

CAPD

The Consumer Advocate asserts that TWSI is merely a shell company applying for a CCN while its unregulated affiliates will actually perform the required services of the CCN, without a contract between the entities.¹⁴ According to the CAPD, TWSI has not provided evidence that the Company has the expertise to perform the managerial and technical functions required to operate the utility pursuant to a CCN and doesn't meet the statutory requirement to amend its CCN.¹⁵ The CAPD points out that the manager and directors of TWSI receive no salary from TWSI and are also managers and directors of its unregulated affiliates. Therefore, the CAPD contends, it is actually the affiliate providing the necessary services.¹⁶ Also, the CAPD states TWSI has failed to demonstrate it has the necessary expertise to provide the needed services or how the provision of services from an unregulated affiliate fulfills the statutory requirements.¹⁷ The CAPD argues "[i]t is unclear how TWSI can adequately provide wastewater services or strengthen its financial position without support from unregulated affiliate."¹⁸

¹¹ *CAPD Opposition*, p. 1 (June 25, 2015).

¹² Matt Pickney, Pre-filed Direct Testimony, pp. 1-2 (February 20, 2015).

¹³ *Id.* at 2.

¹⁴ *CAPD Opposition*, p. 2 (June 25, 2015).

¹⁵ *Id.* at 2-3.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 2-3.

The Consumer Advocate argues that the relationship between TWSI and its affiliates lacks the transparency demonstrated by other utilities and their affiliates.¹⁹ The CAPD asserts that TWSI has failed to present contracts between TWSI and its affiliate demonstrating that the operational services necessary for the provision of wastewater service will be provided.²⁰ Further, even if contracts existed between the entities, the CAPD maintains that such contracts would not be entered on a competitive independent basis similar to other regulated utilities that are required to solicit competitive bids and have the contracts approved by the Authority.²¹

According to the CAPD, the TWSI's organizational structure lends itself to the evasion of regulation by the Authority.²² For this reason, the CAPD maintains that the Adenus Companies should be the entities petitioning for a CCN, not TWSI.²³

TWSI

Matt Pickney testifies that TWSI has the managerial, technical and financial ability to provide wastewater service in the area in Williamson County sought in this *Petition*.²⁴ Mr. Pickney states that there are shared employees with the Adenus Companies, and this arrangement reduces TWSI's payroll expenses because TWSI only pays the individual for work actually performed for TWSI.²⁵ According to Mr. Pickney, TWSI's standards exceed any state and local requirements and that TWSI is the flagship utility for its industry.²⁶

At the hearing, to demonstrate TWSI's technical ability, Mr. Pickney gave a presentation of the HAWK Monitoring System ("HAWKMS"), which is the primary platform that TWSI uses to remotely monitor and control all of the TWSI systems.²⁷ Mr. Pickney states the HAWKMS

¹⁹ *Id.* at 3.

²⁰ *Id.* at 5-6.

²¹ *Id.* at 3.

²² *Id.* at 14-15.

²³ *Id.*

²⁴ Matt Pickney, Pre-filed Reply Testimony, pp. 1-2 (July 6, 2015).

²⁵ *Id.* at 3.

²⁶ *Id.* at 4-5.

²⁷ Transcript of Proceedings, Docket No. 15-00025, p. 23 (July 20, 2015).

captures a plant's daily performance statistics and that the TWSI managers and operators each have the ability to log in and monitor any of the systems in real-time.²⁸

TWSI witness, Roy Denney, Chief Technical Officer for the Adenus Companies and a licensed engineer, disagrees with the arguments presented by the CAPD regarding the managerial and technical qualifications of TWSI. Mr. Denney testifies he is "personally involved in making sure TWSI will provide the managerial and technical expertise that is needed to serve this site."²⁹ Mr. Denney states that he oversees technical decisions ranging from selection of a new pump to designing a treatment plant for TWSI, and he also provides technical assistance to Adenus Tech and Adenus Solutions Group with product selection, construction and technical designs.³⁰ Denney concludes that "[t]here is no question that TWSI has the managerial and technical abilities to provide excellent service at this site."³¹

Mark Lee, principal of the engineering firm, SEC, Inc., testifies that TWSI is "a leading provider of decentralized wastewater treatment systems in this part of the country."³² Because of his long-standing work history with Bob Pickney, Adenus, and TWSI, Mr. Lee testifies that TWSI is one of the best providers and possesses the managerial and technical qualifications to provide wastewater service.³³ Lee states that "[b]ecause of Bob Pickney and others at Adenus, TWSI is, in my opinion, a leading provider of decentralized wastewater treatment systems in this part of the country."³⁴

Mr. Lee also explains that the developer of Dove Lake is not required to use a TWSI affiliate but is free to select any qualified company to construct the wastewater system.³⁵ Mr. Lee states he will make a few suggestions to the developer, who will then solicit bids, but the

²⁸ *Id.*

²⁹ Roy Denney, Pre-filed Direct Testimony, p. 2 (July 6, 2015).

³⁰ *Id.* at 2.

³¹ *Id.* at 3.

³² Mark Lee, Pre-filed Direct Testimony, p. 3 (July 6, 2015).

³³ *Id.* at 4.

³⁴ *Id.* at 3.

³⁵ *Id.* at 5.

ultimate decision on the construction company will be left to the developer.³⁶ Mr. Lee points out, however, that the system must be built to meet TWSI's standards, regardless of who is selected to construct the system and "TWSI will inspect the system every step of the way as it is built."³⁷

Financial Qualifications

CAPD

In addition to arguing that TWSI lacks the technical and managerial expertise to provide service to Dove Lake, the Consumer Advocate also asserts that TWSI has provided no evidence demonstrating it is financially capable to provide the services.³⁸ The CAPD refers to TWSI's 2013 Annual Report to the Tennessee Regulatory Authority, attached to the Company's *Petition*, as demonstrating TWSI's financial impairment.³⁹ The Consumer Advocate maintains that if the affiliate is in the position to financially assist TWSI, there is no documentation in this proceeding to confirm such support.⁴⁰ The CAPD asserts the operating loss indicated in the 2013 Annual Report of TWSI demonstrates its "...financial *inability* at a fundamental level."⁴¹ According to the CAPD, TWSI is diverting financial resources away from the regulated utility to the unregulated affiliates.⁴² The CAPD's assertion is based on the fact that the affiliates are generating significant income through payments from TWSI "absent a showing of value received for services performed."⁴³

TWSI

According to TWSI witness, Matt Pickney, TWSI's 2013 Annual Report to the TRA shows a net operating loss of \$200,000 due to "unusually large legal and regulatory expenses in

³⁶ *Id.*

³⁷ *Id.*

³⁸ *CAPD Opposition*, p. 10 (June 25, 2015).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* Emphasis in original.

⁴² *Id.* at 11.

⁴³ *Id.* at 12.

that year.”⁴⁴ However, Mr. Pickney testifies that TWSI’s 2014 Annual Report shows a net operating profit of \$18,473. Mr. Pickney states the CAPD relies only on the 2013 Annual Report and “did not mention the 2014 Annual Report which is readily available.”⁴⁵ According to Mr. Pickney, TWSI is not merely a shell company as the CAPD states in its *Opposition*; but rather, it has twelve (12) full-time employees with over \$16,000,000 in assets, Revenue of \$1,647,942, a Net Operating Profit of \$18,473 and Retained Earnings of \$374,649 at year-end 2014.⁴⁶ In addition, Mr. Pickney testifies that TWSI has filed a \$1,248,882 bond with the TRA, which is 76% of TWSI’s annual income and provides additional assurance that TWSI is financially sound.⁴⁷

TWSI witness, Robert (“Terry”) Buckner, testifies that he worked on behalf of the CAPD in TRA Docket No. 08-00202, the docket in which TWSI’s current rates were established.⁴⁸ Mr. Buckner states that the issue of unregulated affiliates is not a new issue and in fact the issue was reviewed in TRA Docket No. 08-00202.⁴⁹ Mr. Buckner testifies that the rates set in TRA Docket No. 08-00202 considered the appropriate allocation of expenses between regulated and unregulated operations and were based on his recommended adjustments.⁵⁰ Mr. Buckner testifies that although he has not examined the financial records of TWSI since 2009 and is not aware of how the Company operates today, “[b]ased on my investigations in the last rate case, there is no reason that [*sic*] to believe that the Company’s rates established in that case would be any lower if the costs and revenues associated with the development of excess capacity had been considered part of the Company’s regulated operations.”⁵¹

⁴⁴ Matt Pickney, Pre-filed Reply Testimony, p. 4 (July 6, 2015).

⁴⁵ *Id.*

⁴⁶ *Id.* at 2- 4.

⁴⁷ *Id.* at 4.

⁴⁸ *Id.* at 3-4. See *In re: Petition of Tennessee Wastewater Systems, Inc. for Approval to Amend Its Rates and Charges*, Docket No. 08-00202 (October 20, 2008).

⁴⁹ *Id.* at 6.

⁵⁰ *Id.*

⁵¹ *Id.*

Charles Pickney Jr., Chairman of the Board of Adenus Group, LLC, testifies that in the past, the owners of Adenus Capacity would raise the capital to build a community sewer system; however, after investing in a few systems, TWSI determined that it was not viable to continue to create new systems.⁵² Mr. Pickney states that “[n]o new ‘capacity’ systems have been created in the last five years and no new ones are likely.”⁵³ Mr. Pickney also testifies that TWSI is not funneling away revenues from capacity sales to recover higher rates as alleged in the pre-filed testimony filed by Hal Novak, CAPD’s witness in Docket No. 14-00136.⁵⁴ Mr. Pickney states “[r]ate payers would be hurt if the costs and revenues from these systems were the responsibility of rate payers.”⁵⁵ Further, Mr. Pickney states that TWSI has consistently provided the books and financial records of all affiliated companies to the TRA over the years and that the financial records support the facts as he has presented them.⁵⁶

FINDINGS AND CONCLUSIONS

Based on the administrative record as a whole, pleadings and argument of counsel, and applicable law, the panel found that there are legitimate questions concerning TWSI’s operation and maintenance of nine (9) of its wastewater systems, as well as the Company’s business relationships and dealings with its affiliates that have been raised in this docket. Some of these same questions have also been raised in TRA Docket Numbers 14-00006 and 14-00136, both of which have been officially noticed in this docket. At this point in time, however, the panel did not find sufficient proof in the record of this docket to conclude that these questions indicate a systemic, Company-wide problem bearing on the Company’s capabilities to properly operate compliant wastewater facilities, nor did the panel find sufficient proof in this docket to conclude

⁵² Charles Pickney, Jr., Pre-filed Testimony, p. 3 (July 6, 2015).

⁵³ *Id.*

⁵⁴ *Id.* See *In re: Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements*, Docket No. 14-00136, *Supplemental Testimony of William H. Novak*, p. 7 (June 15, 2015).

⁵⁵ *Id.*

⁵⁶ *Id.* at 3.

that the Company's business relationships and dealings with affiliates violate the Authority's rules and regulations.

Therefore, the panel concluded that TWSI has demonstrated the requisite managerial, financial and technical capabilities to provide wastewater services at Dove Lake, and that a public need exists for such service as required under Tenn. Code Ann. § 65-4-201(a) and TRA Rule 1220-4-13-.04(1)(b). Accordingly, the panel voted unanimously to approve the Company's *Petition* to amend its CCN to expand its service area to include Dove Lake.⁵⁷ However, while the panel concluded that the proposed wastewater system at Dove Lake should proceed, the panel found that concerns regarding the Company's maintenance of facilities and dealings with affiliates should continue to be monitored and addressed in this docket and other applicable dockets pending before the Authority. To facilitate this continuing review, as well as to monitor compliance with the Authority's rules and regulations, the panel also voted unanimously that the Company comply with the following requirements:

1. Any expansion of the proposed system at The Enclave at Dove Lake beyond the 49,500 gallons-per-day designed for the planned 165 customers shall require a petition for an amendment to the CCN seeking Authority approval for such expansion.
2. All preliminary and/or final plats or site plans for The Enclave at Dove Lake approved by the Williamson County Planning Commission shall be filed with the Authority in this docket within fifteen (15) days of such approval.
3. The provision of wastewater service to any customer by the wastewater facilities at The Enclave at Dove Lake other than the planned customers on the plat or site plan approved by the Williamson County Planning Commission shall first require a petition for an amendment to the CCN seeking Authority approval to deviate from the approved plat or site plan.

⁵⁷ Along with its *Petition*, TWSI filed a tariff that did not contain an effective date. A tariff with an effective date must be filed with the TRA before implementing rates contained in the tariff.

4. A copy of any deed conveying to the Company any real or personal property consisting of the treatment, disposal and collection system at The Enclave at Dove Lake, including any real property held for future use, shall be filed with the Authority in this docket within fifteen (15) days of the recording of such deed.

5. A detailed description of each component of the treatment, disposal and collection system at The Enclave at Dove Lake conveyed to TWSI shall be filed with the Authority in this docket within fifteen (15) days of such conveyance. The system components requiring a detailed description shall include, but are not confined to: any land upon which any treatment facility, storage lagoon, drip field, or collection system is located; any land held for future or backup use; and any buildings/sheds, pumps, pipes, lines, tubes, valves, meters, electrical service, fencing, monitoring equipment, or other component necessary to operate the system. The detailed description of each component shall include the quantity and the cost or value the Company will use to record such component in its general ledger as Contributions in Aid of Construction. A copy of the journal entry recording The Enclave at Dove Lake in the Company's general ledger, including all related documentation supporting such entry, shall be filed with the Authority in this docket within fifteen (15) days of such entry.

6. A copy of the final State Operating Permit approved by the Tennessee Department of Environment and Conservation ("TDEC") for the treatment, disposal and collection system at Dove Lake shall be filed with the Authority in this docket within (15) days of such approval.

7. Within fifteen (15) days of the Company assuming ownership of the treatment, disposal and collection system at Dove Lake, an officer of the Company or an authorized Company representative shall file an affidavit certifying whether the Company has inspected the system, whether each component of the system has been completed to the specifications of the

Company, whether the system complies with the specifications set forth in the approved State Operating Permit, and whether the Company has approved and accepted the system.

8. By the fifth (5th) day of each month, the Company shall file monthly reports regarding the status of any existing wastewater facility that has been issued a notice of violation by TDEC, as well as monthly reports regarding the status of any new wastewater facility that may receive such a notice in the future. It is imperative that these reports include sufficient detail for the Authority to monitor the status of each system that is not in compliance with TDEC's requirements. At a minimum, the monthly reports must include the following information for each system receiving a notice of violation: (a) a description of the repairs, projects, or other action either planned, in progress, or completed by the Company to address the notice of violation for that system; (b) for repairs, projects or actions that are in progress, a description and update of the work completed during the month previous to the reporting month; (c) for repairs, projects, or actions that have been completed, the actual cost, the completion date and final description of the completed repairs, projects or actions. In addition, the Company shall attach to each monthly report for each system: (a) a copy of all written correspondence (including letters, memorandums, electronic mail, notices, orders, and reports inclusive of all Monthly Operating Reports and Re-inspection Reports) between the Company and TDEC regarding the wastewater facility that is the subject of the report exchanged during the month previous to the reporting month; and (b) a copy of the telemetry reports from the TWSI HAWK Monitoring System relating to the system that is the subject of the report for the month previous to the reporting month. Effective September 2015, the monthly reports, including all required attachments, shall be filed in this docket in accordance with TRA Rule 1220-1-1-.03(4).

These reporting requirements augment those ordered in TRA Docket No. 14-00006, but to the extent they conflict with the reporting requirements ordered in TRA Docket No. 14-00006,

the reporting requirements ordered in this docket shall control.⁵⁸ TRA Staff is directed to work with the Company to address any issues regarding its reporting requirements. Further, TRA Staff is directed to continue working with the Company and TDEC to closely monitor situations involving facilities with extraordinary maintenance issues.

9. Any real or personal property constituting the treatment, disposal and collection system at Dove Lake, including any real property held for future use, conveyed from the Developer to the Company, shall not be subsequently sold, transferred, exchanged or otherwise conveyed to any other person or entity, including affiliates, without first filing a petition seeking Authority approval for such conveyance.

10. Subsequent to assuming ownership of the treatment, disposal and collection system at Dove Lake, the Company shall not cause or permit any mortgages, liens, or other encumbrances against any real or personal property constituting such treatment, disposal and collection system, including any real property held for future use, without first filing a petition seeking Authority approval for such encumbrance.

11. A copy of all written contracts involving Dove Lake between the Company and any other party, including but not confined to, the developer, the builder of the wastewater system, and any affiliate, shall be filed with the Authority in this docket within fifteen (15) days of execution of such contract.

12. The Sewer Service Agreement between the Company and the developer provided for in paragraph 8 of the parties' Letter of Understanding dated February 2, 2015, regarding Dove Lake shall be filed with the Authority in this docket within fifteen (15) days of execution and shall be subject to Authority approval.

⁵⁸ See *In re: Petition of Tennessee Wastewater Systems, Inc. to Amend Their Certificate of Convenience and Necessity to Service a Portion of Williamson County in Tennessee, Currently Known as the Scales Project*, Docket No. 14-00006, *Order Approving Petition to Amend Certificate of Convenience and Necessity* (September 3, 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 The Enclave at Dove Lake in Williamson County, Tennessee, as shown in the maps filed with the *Petition*, is approved.
2. Tennessee Wastewater Systems, Inc. further is ordered to comply with the following requirements:
 - a. Any expansion of the proposed system at The Enclave at Dove Lake beyond the 49,500 gallons-per-day designed for the planned 165 customers shall require a petition for an amendment to the Certificate of Public Convenience and Necessity seeking Authority approval for such expansion.
 - b. All preliminary and/or final plats or site plans for The Enclave at Dove Lake approved by the Williamson County Planning Commission shall be filed with the Authority in this docket within fifteen (15) days of such approval.
 - c. The provision of wastewater service to any customer by the wastewater facilities at The Enclave at Dove Lake other than the planned customers on the plat or site plan approved by the Williamson County Planning Commission shall first require a petition for an amendment to the Certificate of Public Convenience and Necessity seeking Authority approval to deviate from the approved plat or site plan.
 - d. A copy of any deed conveying to Tennessee Wastewater Systems, Inc. any real or personal property consisting of the treatment, disposal and collection system at The Enclave at Dove Lake, including any real property held for future use, shall be filed with the Authority in this docket within fifteen (15) days of the recording of such deed.
 - e. A detailed description of each component of the treatment, disposal and collection system at The Enclave at Dove Lake conveyed to Tennessee Wastewater Systems,

Inc. shall be filed with the Authority in this docket within fifteen (15) days of such conveyance. The system components requiring a detailed description shall include, but are not confined to: any land upon which any treatment facility, storage lagoon, drip field, or collection system is located; any land held for future or backup use; and any buildings/sheds, pumps, pipes, lines, tubes, valves, meters, electrical service, fencing, monitoring equipment, or other component necessary to operate the system. The detailed description of each component shall include the quantity and the cost or value the Tennessee Wastewater Systems, Inc. will use to record such component in its general ledger as Contributions in Aid of Construction. A copy of the journal entry recording The Enclave at Dove Lake in Tennessee Wastewater Systems, Inc.'s general ledger, including all related documentation supporting such entry, shall be filed with the Authority in this docket within fifteen (15) days of such entry.

- f. A copy of the final State Operating Permit approved by the Tennessee Department of Environment and Conservation for the treatment, disposal and collection system at The Enclave at Dove Lake shall be filed with the Authority in this docket within (15) days of such approval.
- g. Within fifteen (15) days of Tennessee Wastewater Systems, Inc. assuming ownership of the treatment, disposal and collection system at The Enclave at Dove Lake, an officer of Tennessee Wastewater Systems, Inc. or an authorized company representative shall file an affidavit certifying whether Tennessee Wastewater Systems, Inc. has inspected the system, whether each component of the system has been completed to the specifications of Tennessee Wastewater Systems, Inc., whether the system complies with the specifications set forth in the approved State Operating Permit, and whether Tennessee Wastewater Systems, Inc. has approved and accepted the system.

- h. By the 5th day of each month, Tennessee Wastewater Systems, Inc. shall file monthly reports regarding the status of any existing wastewater facility that has been issued a notice of violation by the Tennessee Department of Environment and Conservation, as well as monthly reports regarding the status of any new wastewater facility that may receive such a notice in the future. It is imperative that these reports include sufficient detail for the Tennessee Regulatory Authority to monitor the status of each system that is not in compliance with Tennessee Department of Environment and Conservation's requirements. At a minimum, the monthly reports must include the following information for each system receiving a notice of violation: (a) a description of the repairs, projects, or other action either planned, in progress, or completed by Tennessee Wastewater Systems, Inc. to address the notice of violation for that system; (b) for repairs, projects or actions that are in progress, a description and update of the work completed during the month previous to the reporting month; (c) for repairs, projects, or actions that have been completed, the actual cost, the completion date and final description of the completed repairs, projects or actions. In addition, Tennessee Wastewater Systems, Inc. shall attach to each monthly report for each system: (a) a copy of all written correspondence (including letters, memorandums, electronic mail, notices, orders, and reports inclusive of all Monthly Operating Reports and Re-inspection Reports) between Tennessee Wastewater Systems, Inc. and the Tennessee Department of Environment and Conservation regarding the wastewater facility that is the subject of the report exchanged during the month previous to the reporting month; and (b) a copy of the telemetry reports from the Tennessee Wastewater Systems, Inc. HAWK Monitoring System relating to the system that is the subject of the report for the month previous to the reporting month.

Effective September 2015, the monthly reports, including all required attachments, shall be filed in this docket in accordance with TRA Rule 1220-1-1-.03(4).

- i. These reporting requirements augment those ordered in TRA Docket No. 14-00006, but to the extent they conflict with the reporting requirements ordered in TRA Docket No. 14-00006, the reporting requirements ordered in this docket shall control. TRA Staff is directed to work with Tennessee Wastewater Systems, Inc. to address any issues regarding its reporting requirements. Further, TRA Staff is directed to continue working with Tennessee Wastewater Systems, Inc. and the Tennessee Department of Environment and Conservation to closely monitor situations involving facilities with extraordinary maintenance issues.
- j. Any real or personal property constituting the treatment, disposal and collection system at The Enclave at Dove Lake, including any real property held for future use, conveyed from the developer to Tennessee Wastewater Systems, Inc., shall not be subsequently sold, transferred, exchanged or otherwise conveyed to any other person or entity, including affiliates, without first filing a petition seeking Authority approval for such conveyance.
- k. Subsequent to assuming ownership of the treatment, disposal and collection system at The Enclave at Dove Lake, Tennessee Wastewater Systems, Inc. shall not cause or permit any mortgages, liens, or other encumbrances against any real or personal property constituting such treatment, disposal and collection system, including any real property held for future use, without first filing a petition seeking Authority approval for such encumbrance.
- l. A copy of all written contracts involving The Enclave at Dove Lake between Tennessee Wastewater Systems, Inc. and any other party, including but not confined to, the developer, the builder of the wastewater system, and any affiliate, shall be filed

with the Authority in this docket within fifteen (15) days of execution of such contract.

m. The Sewer Service Agreement between Tennessee Wastewater Systems, Inc. and the developer provided for in paragraph 8 of the parties' Letter of Understanding dated February 2, 2015, regarding The Enclave at Dove Lake shall be filed with the Authority in this docket within fifteen (15) days of execution and shall be subject to Authority approval.

3. The rates for wastewater service shall be as listed in the Tariff and rate schedules filed in this docket on February 20, 2015.

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.⁵⁹

ATTEST:



Earl R. Taylor, Executive Director

⁵⁹ Prior to deliberating, Director Hill stated that although he was unable to attend the hearing in this matter, he had read the transcript of the hearing and was familiar with the record in this docket.