

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:)
)
PETITION OF TENNESSEE) DOCKET NO. 15-00025
WASTEWATER SYSTEMS, INC.)
TO AMEND ITS CERTIFICATE)
OF CONVENIENCE AND NECESSITY)

RESPONSE TO MOTION OF CONSUMER ADVOCATE
TO FILE SECOND SUPPLEMENTAL DISCOVERY REQUEST

Pursuant to TRA Rule 1220-1-2-.06(2), Tennessee Wastewater Systems, Inc. ("TWSI") files this response to the Consumer Advocate's Motion, filed June 11, 2015, requesting permission to ask another, additional discovery question. The proposed question is:

If TWSI's proposed amendment to its CCN is granted for The Enclave at Dove Lake, will TWSI agree not to sell, market, or otherwise deal in capacity at The Enclave at Dove Lake—including all dealings directly or indirectly in capacity with affiliates—or allow or permit the sale, marketing or declining in capacity by an affiliate without TRA approval?

TWSI objects to the Motion because the proposed question is not a proper discovery request. The question does not seek the discovery of any fact but asks TWSI to make a promise regarding hypothetical, future conduct.

The purpose of discovery, as provided under Rule 26 of the Tennessee Rules of Civil Procedure, is to provide for the discovery of facts, documents and other tangible things. Tenn. R. Civ. P. 26.02(1). It permits the discovery of "information" that is relevant or is reasonably calculated to lead to the discovery of admissible evidence. Tenn. R. Civ. P. 26.02(1).

As explained by the Court of Appeals in Ingram v. Phillips, 684 S.W.2d 954, 958 (Tenn. Ct. App. 1984), *perm. app. denied* (Tenn. 1985), "[d]iscovery is allowed in an effort to do away

with trial by ambush. The purpose of discovery is to bring out the facts prior to trial so the parties will be better equipped to decide what is actually at issue." (Emphasis added.) Similarly, the Court explained, "Rule 26.02(1) is designed for the discovery of facts which will enable litigants to prepare for trial free from the element of surprise, which, prior to the adoption of the rules, frequently led to a result based more upon the legal maneuvering of counsel than the merits of the case." Strickland v. Strickland, 618 S.W.2d 496, 501 (Tenn. Ct. App.), *perm. app. denied* (Tenn. 1981). (Emphasis added.)

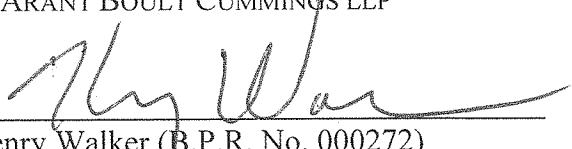
The proposed question asks whether TWSI will agree to seek TRA approval of capacity-related transactions which could only occur—if they ever occur—long after the CCN is granted and the wastewater treatment system is built. That is not a question "designed for the discovery of facts" relevant to this proceeding. It is not a question about a "fact" at all.

Since the proposed question is not a proper discovery question, TWSI objects to the Motion and asks that it be denied.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP


By: _____


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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of June, 2015, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

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HENRY WALKER