

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 3, 2016

IN RE:)	
)	
PETITION OF TENNESSEE WASTEWATER)	DOCKET NO. 16-00007
SYSTEMS, INC., FOR APPROVAL OF)	
CAPITAL IMPROVEMENT ASSESSMENT)	
FOR STARR CREST RESORTS)	

ORDER DENYING PETITION

This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on April 15, 2016, for hearing and consideration of the *Petition of Tennessee Wastewater Systems, Inc., for Approval of Capital Improvement Assessment for Starr Crest Resorts* (the “*Petition*”) filed on January 19, 2016.

BACKGROUND AND PETITION

Tennessee Wastewater Systems, Inc. (“TWSI” or “Company”) is a public utility that provides wastewater services in Tennessee and is subject to the regulatory jurisdiction of the TRA. On January 19, 2016, TWSI filed the *Petition*, pursuant to Tenn. Code Ann. § 65-5-101 and 103, requesting approval of a voluntary assessment on the homeowners of the Starr Crest Resort subdivision (“Starr Crest”) of approximately \$450,000 to allow the Company to make repairs and improvements to Starr Crest’s on-site wastewater treatment facilities.¹

¹*Petition*, p. 1 (January 19, 2016).

The *Petition* asserts that when Starr Crest was initially planned, the wastewater facilities were designed to treat up to 28,000 gallons per day.² The *Petition* states the cabins were built larger than as originally represented by the builder and their occupancy has steadily risen since the development was first built, largely due to short-term rentals.³ Accordingly, the *Petition* asserts that an expanded system is needed in the subdivision that will allow for treatment of up to 60,000 gallons per day.⁴ In addition to the increased treatment capacity, the *Petition* proposes to install a holding tank which will allow for greater storage capacity on peak flow days and to expand the drip field.⁵

The *Petition* further asserts that to finance these improvements to the wastewater system, the cabin and lot owners of Starr Crest voluntarily agreed to fund the costs of the improvements.⁶ This agreement was memorialized in a Memorandum of Understanding between the Company and Starr Crest, which was filed contemporaneously with the *Petition*. On February 10, 2016, the Consumer Protection and Advocate Division of the Office of the Attorney General filed a letter in the docket informing the parties and the Authority that it had reviewed the filings in the docket and had no opposition to the voluntary capital improvement assessment requested in the *Petition*.

THE HEARING

The Hearing in this matter was held before the voting panel on April 15, 2016, as noticed by the Authority on April 4, 2016. Participating in the Hearing were the following parties and their respective counsel:

Tennessee Wastewater Systems, Inc. – Jeff Ridsen, Esq., General Counsel and Charles Hyatt, President, Tennessee Wastewater Systems, Inc., 851 Aviation Parkway, Smyrna, Tennessee, 37169.

Deborah Mason – President, Starr Crest Resort Owners Association, Inc., 236 E. Main Street, #253, Sevierville, Tennessee 37862-3531.

² *Id.*

³ *Id.*

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.*

During the Hearing, Mr. Hyatt and Ms. Mason ratified, then summarized their pre-filed testimonies and were subject to questioning before the panel. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

FINDINGS AND CONCLUSIONS

Based on a review and consideration of the pleadings, pre-filed testimony and the entire administrative record, the Authority finds as follows:

In its *Petition*, the Company has stated that an expansion of Starr Crest's wastewater system is necessary due to the homes being built larger than originally represented and due to growing occupancy rates in the subdivision, and has asked for the Authority's approval of a voluntary customer assessment to cover the costs of the expanded system. The Authority finds that approval of this agreement is unnecessary and, therefore, not warranted. Approval of such an assessment could be construed as a mandatory charge, which is inconsistent with the terms set forth in the Memorandum of Understanding and the parties' pre-filed testimony, which indicate that the cost of expansion is to be voluntarily funded by property owners.

The Authority further finds that there are existing Authority rules, regulations and mechanisms which provide sufficient oversight and guidance for moving forward with the expansion of the Starr Crest Resort system as agreed to by Starr Crest and the Company. Specifically, the regulations regarding Advances for Construction and Contributions in Aid of Construction are the appropriate regulatory procedures governing the proposed expansion project.⁷ Additionally, the Company's own tariff, which was previously approved by the Authority, contains provisions governing Contributions in Aid of Construction,⁸ as well as provisions for extensions of wastewater

⁷ TRA Rule 1220-4-01-.11(1)(h) requires wastewater utilities to follow the Uniform System of Accounts as adopted and amended by the National Association of Railroad and Utilities Commissioners ("NARUC"). Because TWSI's annual wastewater operating revenues exceed \$1,000,000, it must adhere to NARUC's Uniform System of Accounts for Class A Wastewater Utilities ("USOA"). USOA Account 252 lists the requirements for Advances for Construction while USOA Account 271 lists the requirements for Contributions in Aid of Construction.

⁸ TWSI Tariff T.R.A. No. 1, Section 2, Original Page 8.

systems funded by property owners,⁹ which are applicable to this expansion project. Advances for Construction received by the Company pursuant to the Memorandum of Understanding are voluntary payments from property owners and are to be considered utility funds to either finance the proposed expansion or, if unused in whole or in part for that particular purpose, are to be refunded to the property owners who made the contributions.

IT IS THEREFORE ORDERED THAT:

The *Petition of Tennessee Wastewater Systems, Inc., for Approval of Capital Improvement Assessment for Starr Crest Resorts* filed on January 19, 2016 is denied. The Authority's denial of the Petition is not intended to prevent the expansion proposed in the *Petition* from going forward as the Authority's approval is not necessary for customers' voluntary provision of funds to the Company for this purpose. Any expansion of the Starr Crest Resort wastewater system shall proceed in accordance with established Authority rules and regulations and the Company's tariff, specifically the provisions governing Advances for Construction and Contributions in Aid of Construction. However, before any construction advances are recorded for the project, the Company is directed to report to Staff the proposed methodologies, including accounts and pro-forma journal entries, to be used to account for construction of the proposed expansion project.

Chairman Herbert H. Hilliard, Vice Chairman David F. Jones and Director Kenneth C. Hill concur.

ATTEST:



Earl R. Taylor, Executive Director

⁹ *Id.*