

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 19, 2016

IN RE:

**PETITION OF TENNESSEE WASTEWATER
SYSTEMS, INC., FOR APPROVAL OF
SPECIAL CONTRACT**

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**DOCKET NO.
16-00015**

ORDER APPROVING SPECIAL CONTRACT

This matter came before Vice Chairman Robin L. Morrison, Director Herbert H. Hilliard and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on July 11, 2016 for consideration of the *Petition of Tennessee Wastewater Systems Inc. for Approval of a Special Contract* (“*Petition*”) filed on February 4, 2016.

BACKGROUND AND PETITION

In its *Petition*, Tennessee Wastewater Systems, Inc. (“TWSI” or the “Company”) has asked the Authority to approve a Special Contract (“Contract”) between it and Signature Homes, LLC (“Signature” or the “Developer”) pursuant to TRA Rule 1220-4-.1-.07. Signature is a developer which desires to develop a residential subdivision within Williamson County, Tennessee, where TWSI currently holds a Certificate of Public Convenience and Necessity (“CCN”).¹

¹ *Petition*, p. 1 (February 4, 2016).

The Contract was originally filed under seal, and a Protective Order was entered on April 6, 2016.² By letter filed on June 27, 2016, the Company requested that the confidential designation be removed and the entire contract be made a part of the public record.³ Also on June 27, 2016, the Company filed the Direct Testimony of Charles Hyatt, president of TWSI, in support of the *Petition*.

Signature desires to develop a residential subdivision consisting of approximately 100 single family residential homes located on approximately 252 acres in Williamson County.⁴ According to the *Petition*, the planned subdivision is within TWSI's certificated service territory as granted in TRA Docket No. 97-01393.⁵ Signature desires TWSI to oversee and coordinate the engineering, design, construction and permitting of the wastewater system for the planned subdivision.⁶

Under the terms of the Contract, the Developer will pay TWSI a capacity development fee of \$6,000 per lot, with payment due when the final plat is presented to TWSI for signature.⁷ This fee includes TWSI's construction of treatment and disposal capacity for the project through expansion of the regional treatment facility, drip field disposal expansion, construction of a 40-day dry storage pond, fencing of the constructed components with four-rail wood fence, payment of engineering report fees up to \$15,000, payment of soil mapping report fees up to \$15,000, and payment of wastewater design fees up to \$350 per lot.⁸

² *Id.*; See also *Protective Order* (April 6, 2016).

³ *Letter Requesting the Removal of the Confidential Designation on the Contract Previously Filed*, p. 1 (June 27, 2016).

⁴ *Petition*, p. 1 (February 4, 2016).

⁵ *Id.*

⁶ *Id.*

⁷ *Letter of Understanding*, p. 3 (June 27, 2016).

⁸ *Id.* at 3-4.

The Contract further provides that TWSI will assume ownership of the treatment, disposal and collections system once inspected, approved and accepted by the Company.⁹ In addition to the \$6,000 per lot capacity development fee, the Developer has also agreed to pay TWSI an additional \$1,200 per lot fee for all lots presented to TWSI for final plat signing, with payment due at the signing.¹⁰ The \$1,200 per lot fee is to recover regulatory coordination, new customer accounts database setup, engineering review, and construction and tank inspections.¹¹

STANDARD FOR AUTHORITY APPROVAL

TRA Rule 1220-4-1-.07, states:

Special contracts between public utilities and certain customers prescribing and providing rates, services and practices not covered by or permitted in the general tariffs, schedules, or rules filed by such utilities are subject to supervision, regulation, and control by the Authority. A copy of such special agreements shall be filed, subject to review and approval.

Under this Rule, the Authority generally approves special contracts such as the one presented in this case if the contract rates and terms are reasonable, departure from the utility's tariff is justified, and the special contract arrangement is otherwise in the public interest.¹²

THE HEARING

The Hearing in this matter was held before the voting panel of Directors during the regularly scheduled Authority Conference on July 11, 2016, as noticed by the Authority on July 1, 2016. Participating in the Hearing was:

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

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² See, e.g., *Order Approving Special Contract*, TRA Docket No. 03-00452 (March 16, 2004).

During the Hearing, Mr. Hyatt ratified, then summarized his pre-filed testimony and was subject to questioning before the panel. There were no intervening parties to the Docket. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

FINDINGS AND CONCLUSIONS

In its *Petition*, TWSI has asked the Authority for approval of a special contract with Signature under TRA Rule 1220-4-1-.07. Based on a review and consideration of the pleadings, pre-filed testimony and the entire administrative record, the panel found:

The Contract at issue in this case provides for rates and terms of service not covered by the Company's tariff; namely, the coordination and provision of treatment and disposal capacity for the planned subdivision through expansion of the Company's regional treatment facility existing in TWSI's certificated service territory. The Contract provides for the Company to be compensated up to \$600,000 in capacity development fees and up to \$120,000 in fees to recover other costs associated with the project. The terms of the Contract are fair, reasonable and in the public interest. Accordingly, the panel voted unanimously to approve the Contract and granted the *Petition*.

Further, the panel voted unanimously that the Company must account for all contract revenues as "above-the-line" regulated revenues. Accordingly, funds in excess of contract obligations shall be held in the Company's reserves and will be available to fund other capital needs, such as construction, upgrades and expansion of Company-owned systems. Additionally, by designating the Contract revenues as "above-the-line," the panel found that the revenues must be used in calculating the Company's revenue requirements and resulting customer rates and charges.

IT IS THEREFORE ORDERED THAT:

1. The *Petition of Tennessee Wastewater Systems, Inc. for Approval of Special Contract* filed on February 4, 2016, is granted.

2. Tennessee Wastewater Systems, Inc. shall book the \$6,000 per lot capacity development fee and the \$1,200 per lot fee to recover certain costs incurred by the Company as above-the-line regulated revenues and include them in calculating the Company's future revenue requirements.

3. Any person who is aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

4. Any person who is aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Vice Chairman Robin L. Morrison, Director Herbert H. Hilliard and Director Kenneth C. Hill concur.

ATTEST:



Earl R. Taylor, Executive Director