

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 4, 2016

IN RE:

**JOINT PETITION OF CUMBERLAND BASIN
WASTEWATER SYSTEMS, LLC AND INTEGRATED
RESOURCE MANAGEMENT, INC. D/B/A IRM UTILITY,
INC. TO TRANSFER CERTIFICATE**

DOCKET NO.
16-00069

ORDER GRANTING TRANSFER OF CERTIFICATE

This matter came before Chairman David F. Jones, Vice Chairman Robin L. Morrison and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, during a regularly scheduled Authority Conference held on October 10, 2016, to hear and consider the *Joint Petition of Cumberland Basin Wastewater Systems, LLC and Integrated Resource Management, Inc. d/b/a IRM Utility, Inc. to Transfer Certificate (“Joint Petition”)* which was filed on June 7, 2016.

BACKGROUND AND *PETITION*

In the *Joint Petition*, Cumberland Basin Wastewater Systems, LLC (“Cumberland Basin” or the “Company”) and Integrated Resource Management, Inc. d/b/a IRM Utility, Inc. (“IRM”) have asked the Authority to approve a transfer of the right to provide wastewater service to a portion of Cumberland County, Tennessee, known as Genesis Village Estates Subdivision (“Genesis Village”) from IRM to Cumberland Basin.

IRM was granted a Certificate of Public Convenience and Necessity (“CCN”) to provide service to Genesis Village in an Authority Order issued December 4, 2012, in Authority Docket No.

11- 00081. According to the *Joint Petition*, however, IRM is not currently serving any customers.¹ The *Joint Petition* also states that Cumberland Basin is currently a TRA regulated wastewater services provider to another development in Tennessee, is current on all filings required by the TRA and the Tennessee Department of Environment & Conservation (“TDEC”), and has never been the subject of an enforcement proceeding by either agency.² Finally, the *Joint Petition* states that Cumberland Basin will apply to TDEC for a transfer of the State Operating Permit held by IRM to operate a wastewater treatment system at Genesis Village and that upon completion of the transfer, it will file the State Operating Permit with the Authority.³

On July 22, 2016, TRA Staff issued a Data Request, to which the Company filed its reply on September 20, 2016. On September 29, 2016, the Company further filed an updated easement document and proposed tariffs.⁴ The Company states that the proposed rates were identical to those approved in TRA Docket No. 11-00081, with the exception of the annual access fee being reduced from \$300.00 per unsold lot to \$100.00 per unsold lot.⁵ There were no intervening parties to the docket.

THE HEARING

On October 10, 2016, the Hearing on the *Joint Petition* was held before the voting panel assigned to this docket as noticed by the Authority on September 30, 2016. Participating in the Hearing were:

Cumberland Basin Wastewater Systems, LLC – Henry M. Walker, Esq., Bradley Arant Boult Cummings LLP, 1600 Division Street, Suite 700, Nashville, Tennessee 37203; and Tim Huddleston, President, 150 Construction Drive, Post Office Box 239, Livingston, Tennessee 38570.

¹ See *In re: Petition of Integrated Resource Management, Inc. d/b/a IRM Utility, Inc. to Amend its CCN to Serve an Area in Cumberland County, Tennessee Known as Genesis Village Estates Subdivision*, Docket No. 11-00081, Order Approving Amended Certificate of Public Convenience and Necessity (December 4, 2012); and *Joint Petition*, p. 1 (June 7, 2016).

² *Joint Petition*, p. 2 (June 7, 2016).

³ *Id.*

⁴ *Easement Document to Replace Earlier Filing and Data Response*, p. 1 (September 29, 2016).

⁵ *Data Response*, at Exhibit CBWS-E Schedule 1 (September 29, 2016).

Integrated Resource Management, Inc. – Charles B. Welch, Jr., Esq., Farris Bobango, PLC, Bank of America Plaza, 414 Union Street, Suite 1105, Nashville, Tennessee 37219.

During the Hearing, Mr. Huddleston ratified, then summarized, his pre-filed testimony and was 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.

STANDARD FOR AUTHORITY APPROVAL

Tenn. Code Ann. § 65-4-112 applies to this transaction because it is a transaction between two certificated utilities. Tenn. Code Ann. § 65-4-112 provides:

(a) No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character shall be valid until approved by the authority, even though power to take such action has been conferred on such public utility by the state or by any political subdivision of the state.

Further, in accordance with Tenn. Code Ann. § 65-4-201(a) and the TRA's rules for wastewater companies, TRA Rules 1220-04-13 *et seq.*, the Authority analyzes the managerial, financial, and technical abilities of the utility and determines whether a public necessity exists for service in the requested area. Tenn. Code Ann. § 65-4-201 provides as follows:

(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; provided, however, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it.

TRA Rule 1220-4-13-.04(1)(b) states:

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 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.

FINDINGS AND CONCLUSIONS

After the hearing and upon consideration of the pleadings, pre-filed testimony, and the entire administrative record, the panel found:

The President of Cumberland Basin, Tim Huddleston, has an extensive background in constructing water and wastewater collection, treatment and disposal systems.⁶ In addition, the Company has contracted with an experienced Certified Class IV Wastewater Operator who will provide the maintenance and operating capabilities in order for Cumberland Basin to carry out its technical duties.⁷ Finally, Cumberland Basin has held a CCN for the Bluffs at Cumberland Cove in Putnam County, Tennessee, since 2007.⁸ For these reasons, Cumberland Basin has demonstrated that it has the requisite financial, managerial, and technical capabilities required by Tenn. Code Ann. § 65-4-201(a) to operate the wastewater system at Genesis Village in Cumberland County, Tennessee.

In addition, a public need for the service exists, as Genesis Village does not currently have public sewer service nor has it applied for a subsurface sewage disposal system.⁹ Further, the proposed customer rates should be approved. These rates are identical to those currently tariffed by IRM, with the exception of the annual access fee being reduced from \$300.00 per unsold lot to

⁶ *Pre-Filed Testimony*, p. 1 (September 20, 2016).

⁷ *Data Response*, Response #12 and Attachment G (September 20, 2016).

⁸ *See In re: Petition of Cumberland Basin Wastewater Systems, LLC for CCN to Operate a Wastewater Treatment System in Putnam County, Tennessee*, Docket No. 07-00079, *Order Approving Application for a Certificate of Public Convenience and Necessity and Tariff* (November 28, 2007).

⁹ *Letter to Mayor Kenneth Carey of Cumberland County*, p. 1 (September 29, 2016).

\$100.00 per unsold lot. Finally, approval of the *Joint Petition* is contingent upon the Tennessee Department of Environment and Conservation's approval of Cumberland Basin's State Operating Permit and engineering plans.

IT IS THEREFORE ORDERED THAT:

1. The *Joint Petition of Cumberland Basin Wastewater Systems, LLC and Integrated Resource Management, Inc. d/b/a IRM Utility, Inc. to Transfer Certificate*, filed on June 7, 2016, is granted, contingent upon the Tennessee Department of Environment and Conservation's approval of Cumberland Basin's State Operating Permit and engineering plans.

2. The rates proposed by Cumberland Basin Wastewater Systems, LLC for the Genesis Village Estates Subdivision are approved.

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.

Chairman David F. Jones, Vice Chairman Robin L. Morrison and Director Kenneth C. Hill concur.

ATTEST:



Earl R. Taylor, Executive Director