

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

IN RE:

**PETITION OF TENNESSEE WASTEWATER
SYSTEMS, INC. FOR APPROVAL OF CAPITAL
IMPROVEMENT SURCHARGES AND FINANCING
ARRANGEMENTS FOR WASTEWATER SYSTEMS
LOCATED AT MAPLE GREEN AND CEDAR HILL
IN ROBERTSON COUNTY AND SMOKY VILLAGE
SUBDIVISION IN SEVIER COUNTY, TENNESSEE**

**DOCKET NO.
16-00096**

ORDER APPROVING STIPULATION AND SETTLEMENT AGREEMENT

This matter came before Vice Chair Kenneth C. Hill, Commissioner Herbert H. Hilliard, and Commissioner David F. Jones of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, at the regularly scheduled Commission Conference held on July 23, 2018, for consideration of the *Stipulation and Settlement Agreement* (“*Settlement Agreement*”) filed on July 25, 2017 by Tennessee Wastewater Systems, Inc. (“TWSI” or the “Company”) and the Consumer Protection and Advocate Division of the Office of the Tennessee Attorney General and Reporter (“CPAD” or “Consumer Advocate”) (collectively the “Parties”).

RELEVANT BACKGROUND

On November 18, 2014, TWSI filed a petition in TPUC Docket 14-00136 seeking approval of a capital improvement surcharge to allow the Company to make TDEC-ordered repairs and improvements to its treatment facilities at four sites: Maple Green, Cedar Hill, Smoky Village, and

Summit View.¹ Both the Consumer Advocate and the Summit View Homeowners' Association ("SVHOA") petitioned to intervene. However, on July 13, 2016, the Consumer Advocate and TWSI filed a *Joint Motion to Open a New Docket Regarding Maple Green, Cedar Hill, and Smoky Village* to sever the requests with respect to Maple Green, Cedar Hill, and Smoky Village and place them in a new docket. The *Joint Motion* was not opposed by SVHOA and was granted by the Commission hearing panel assigned to TPUC Docket 14-00136.²

According to TWSI's *Petition*, funds are required for repairs and improvements mandated by the Tennessee Department of Environment and Conservation ("TDEC") for the Maple Green, Cedar Hill and Smoky Village Systems. For Maple Green, TWSI estimated that \$250,000 is needed to construct a new wetlands treatment system in order to address a sinkhole that opened underneath the existing treatment lagoon, which caused the release of wastewater into the groundwater and a nearby creek.³ At Cedar Hill, TWSI estimated \$300,000 is needed to construct a new treatment facility, again to address sinkholes that have caused wastewater to leak from the treatment lagoon.⁴ Finally, TWSI requested \$175,000 to build a new drip field at Smoky Village in order to correct drainage problems at the site.⁵

TWSI states that all of the systems have been stabilized at the present time.⁶ TDEC, however, has ordered that each of the systems be permanently repaired.⁷ Accordingly, TWSI solicited bids for the construction projects at the three wastewater systems. Adenus Solutions Group, with a bid of \$843,759.92, was the lowest bidder.⁸ Further, TWSI has negotiated a ten-year

¹ *In re: Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements*, Docket 14-00136, *Petition*, pp. 1-2 (November 18, 2014).

² *Id.* *Order Approving Joint Motion to Open a New Docket Regarding Maple Green, Cedar Hill, and Smoky Village*, (August 17, 2016).

³ *Id.* *Petition*, at 3-4.

⁴ *Id.* at 4.

⁵ *Id.* at 5.

⁶ *Id.* Roy Denny, Pre-Filed Rebuttal Testimony, p.7 (August 19, 2015).

⁷ *Id.* Charles Hyatt, Pre-Filed Direct Testimony, p. 1 (March 13, 2015).

⁸ *Stipulation and Settlement Agreement*, p. 5 (July 25, 2017).

loan of up to \$725,000 from FirstBank to fund the Maple Green, Cedar Hill and Smoky Village projects.⁹

PROPOSED STIPULATION AND SETTLEMENT AGREEMENT

Upon completion of negotiations, TWSI and the Consumer Advocate filed a Stipulation and Settlement Agreement (“*Settlement Agreement*”) on July 25, 2017. This agreement contains the following:

1. TWSI and the Consumer Advocate agree \$78,750.00 is an appropriate legal expense due to the extraordinary nature of the proceedings. The *Settlement Agreement* authorizes a temporary charge of \$0.45 per month for each customer entitled Legal Expense Rider. This rider shall terminate upon completion of the earliest of: 1) the 60th month; 2) the collection of \$78,750; or 3) termination by the TPUC;
2. TWSI utilized an open bidding process for the proposed repairs. TWSI and the Consumer Advocate agree with the implementation of an Environmental Tariff Rider of \$3.76 per month for all customers for the sole purpose of establishing an environmental repairs account. This rider shall terminate upon the earlier of: 1) the 120th month of collection; or 2) the collection of \$1,301,726.58; or completion of the construction projects at Maple Green, Cedar Hill, and Smoky Village and sufficient funds have been collected to pay for those repairs (not to exceed \$201,294.46 (includes property acquisition expense of \$42,000 plus 8% annual interest for Smoky Village, \$364,462.66 for Maple Green and \$278,002.66 for Cedar Hill as outlined in Exhibit B of the *Settlement Agreement*)¹⁰;

⁹ *In re: Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements*, Docket 14-00136, *Petition*, p. 5 (November 18, 2014); Fred Howell, Pre-Filed Rebuttal Testimony, (August 19, 2015).

¹⁰ *Settlement Agreement*, p. 5, FN 2 (July 25, 2017).

3. All funds collected from the Environmental Tariff Rider shall be held in a separate interest bearing account with the same bank providing the loan. Funds from this account will only be dispersed upon producing verifiable legitimate invoices for repairs at Maple Green, Cedar Hill or Smoky Village. All interest received on this account shall go towards the total amount to be recovered. CPAD and TPUC shall receive a copy of each monthly statement upon 10 days from issuance;
4. TWSI shall maintain four separate ledgers. A master ledger to track deposits and disbursements from the Environmental Tariff account; and a separate ledger for each location that reflects the recorded expenditures against each respective project budget. These ledgers shall be filed with TPUC and placed in the docket file by the fifth day of every month;
5. Upon completion of the construction projects, any surplus in the Environmental Tariff account shall be refunded to customers; and
6. TWSI may not collect more than \$1,301,726.56 from customers and TWSI must notify TPUC and CPAD within three business days of when it spends 80% of the budgeted amount for each system.

HEARING AND APPEARANCES

A Hearing in this matter was held before the voting panel on July 23, 2018, as noticed by the Commission on July 16, 2018. Participating in the hearing were the following parties and their respective counsel:

TWSI - Jeff Riden, Esq. General Counsel, Tennessee Wastewater Systems Inc.; Henry Walker, Esq., Bradley Arrant Boulton Cummings, LLP, 1600 Division Street, Suite 700, Nashville, Tennessee, 37203.

Consumer Advocate – Karen Stachowski, Esq., and Vance Broemel, Esq., Office of the Attorney General, 425 Fifth Avenue North, Fourth Floor, John Sevier Building, P.O. Box 20207, Nashville, Tennessee 37202.

The voting panel heard testimony of Mr. Charles Hyatt, president of the Company. The parties waived cross-examination and Mr. Hyatt answered questions put forth by the voting panel. The Consumer Advocate expressed support for approval of the settlement. During the hearing, the public was given an opportunity to offer comment, but no member of the public sought recognition.

FINDINGS AND CONCLUSIONS

The Parties have asked the Authority to approve the *Settlement Agreement* to resolve the funding of reasonably unforeseeable repairs and improvements. The need for the repairs and improvements are mandated by the TDEC. Based on a review and consideration of the entire administrative record and the unique circumstances of this docket, the panel voted unanimously to adopt the *Settlement Agreement*.

IT IS THEREFORE ORDERED THAT:

1. The *Stipulation and Settlement Agreement* filed on July 25, 2017 by Tennessee Wastewater Systems, Inc. and the Consumer Protection and Advocate Division of the Office of the Tennessee Attorney General and Reporter is approved and adopted.
2. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen days from the date of this Order.
3. Any person who is aggrieved by the Commission'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 Chair Kenneth C. Hill, Commissioner Herbert H. Hilliard, and Commissioner David F. Jones concur.

ATTEST: Earl R. Taylor
Earl R. Taylor, Executive Director