

IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:)	
)	
PETITION OF TENNESSEE)	
WASTEWATER SYSTEMS, INC.,)	DOCKET NO. 16-00139
FOR APPROVAL OF ADJUSTMENT)	
OF ITS RATES AND NEW TARIFF)	

POST-HEARING BRIEF OF THE CONSUMER ADVOCATE

Herbert H. Slatery III, Attorney General and Reporter for the State of Tennessee, through the Consumer Protection and Advocate Division (Consumer Advocate), respectfully submits this Post-Hearing Brief in Tennessee Public Utility Commission (TPUC) Docket No. 16-00139, *Petition of Tennessee Wastewater Systems, Inc., For Approval of Adjustment of Its Rates and New Tariff* (Petition). For the reasons set forth below, TPUC should deny the *Petition*.

I. INTRODUCTION

Tennessee Wastewater Systems, Inc. (TWSI) is a public utility regulated by TPUC and provides wastewater service to over 2800 customers in Tennessee.¹ On November 29, 2016, TWSI filed the *Petition*, in which TWSI requests a rate increase because it claims its current and projected rates are insufficient for recovery of its operating costs and insufficient to provide a net operating income.² TWSI contends its net operating loss will be \$305,216 in 2015.³ It also contends the requested rate increase will produce additional revenues of \$492,815.18 or 24%.⁴ In its *Petition*, TWSI proposes other adjustments such as a new rate category for cabins⁵; an Escrow Recovery

¹ Hyatt Pre-filed Direct Testimony, page 2. TWSI received its first CCN in 1999, and it is “today by far the largest provider of stand-alone wastewater treatment in the state.” See also Transcript, page 10: 9-12.

² *Petition*, page 2, ¶ 6.

³ *Id.* at page 2, ¶ 7.

⁴ Hyatt Pre-filed Direct Testimony, page 2.

⁵ *Id.* at page 4.

Rider⁶; a Capacity Fee for Williamson County⁷; and changes to its tariff.⁸

TPUC should deny the *Petition* because the TWSI's books and records and the materials filed in this Docket simply do not provide sufficient and reliable support to set rates. The *Petition* itself is "extremely paltry" with only six pages of exhibits and no supporting workpapers attached to its testimony for an increase in rates of approximately half a million dollars.⁹ In addition, the Consumer Advocate's investigation uncovered deficiencies in recording revenues and expenses by TWSI of such a significance that it is impossible to ascertain a clear, complete, and confident understanding of TWSI's financial condition.¹⁰ These deficiencies include the lack of data detailing expenses of TWSI's purported efforts towards being a stand-alone company as well as incidents of TWSI's billing of commercial customers that do not directly tie back to its tariff.¹¹ Furthermore, TWSI fails to include the Developer Operating Subsidies paid to TWSI as part of its revenues.¹² When this revenue for developers is included in TWSI's operating revenues, the alleged revenue deficiency disappears.¹³

Finally, when TWSI had the opportunity in its rebuttal testimony to provide clarification and reliable support of its request for a rate increase, TWSI provided only a one page summary

⁶ *Id.* at page 5.

⁷ *Id.*

⁸ *Id.* Mr. Hyatt identifies four additional changes to the TWSI tariff "(1) Addition of newly defined terms, (2) Capacity revocation, (3) Addition of the credit card convenience fee (3%) and (4) Addition of the charges for returned or declined ACH payments."

⁹ Transcript, page 108: 19-24. Mr. Novak expressed optimism that "the company has learned that the burden of proof for a rate case rest with the company, and this burden can't be accomplished with just a six-page exhibit to increase rates half a million dollars." *Id.* at 111: 7-11.

¹⁰ Novak Pre-filed Direct Testimony, page 3: 12-28 and page 12: 4-20; *see also* Transcript, page 110: 19-23.

¹¹ Transcript, page 109: 2-22 and page 110: 6-18.; *see also* Novak Pre-filed Direct Testimony, page 8: 19-23, page 9: 1-7, and page 11: 7-22.

¹² Novak Pre-filed Direct Testimony, page 7: 18-19. Mr. Novak explained that "Access fees, Developer Operating Subsidies, Late Payment fees and Miscellaneous Revues" where items "included in the revenue calculations consistent with past Commission practice in other rate cases." *Id.* at page 7: 18-21.

¹³ Buckner Rebuttal Exhibit 1 shows a net loss of \$149,739 for Test Year 2016, and TWSI's developer revenue is \$151,030 for 2016 per Mr. Novak's Direct Testimony, WP-1, Workpaper Support for Schedule 3, Line 10.

with no supporting exhibits, workpapers, or documentation.¹⁴ Thus after having six months to prove its case, TWSI has entirely failed to do so.

Furthermore, TPUC should find that TWSI failed to obtain proper authorization for its credit card convenience fee.¹⁵ Accordingly, TPUC should order TWSI to obtain such authorization and to provide refunds to any improperly charged customers.

Although the analysis by the Consumer Advocate supports a reduction in TWSI's rates by approximately \$254,000.00¹⁶, the Consumer Advocate recommends TWSI's rates remain unchanged and that a compliance audit be performed on TWSI's books and records due to the deficiencies and issues identified above and described in further detail below.¹⁷

II. STANDARD FOR TPUC APPROVAL

Under Tennessee law, TPUC has the power to fix just and reasonable rates.¹⁸ When any public utility seeks to increase an existing rate, the utility has the burden of proof to show such an increase is just and reasonable.¹⁹

The only limit placed on a ratemaking body is the statutory requirement that rates be just and reasonable. No "precise formula or yardstick" has been identified by the legislature or the

¹⁴ Transcript, page 95: 314.

¹⁵ Novak Pre-filed Direct Testimony, page 3: 23-24; *see also* Transcript, page 109: 23-5 and page 110: 1. Mr. Novak explain that "admittedly, this is not a lot of money about \$6,000 per year for this credit card convenience fee. But we feel this goes to a deficiency in the company's understanding of what process it takes to get a new rate in place." Transcript, page 110: 1-5.

¹⁶ Novak Direct Testimony, page 3: 17-19; *see also* Transcript, page 110: 19-23. Mr. Novak explained in his testimony that "We're saying based on what's available, the expenses that are available, based on the customer growth that's available, based on a price-out of the company's salary and wages, based on the best information that we've got in front of us, we don't think the company is going to lose money." Emphasis added. Transcript, page 143: 20-25 and page 144: 1.

¹⁷ In response to Chairman Jones inquiry on whether his impression that Mr. Novak doesn't trust TWSI's books, Mr. Novak responded "Yes. I think you're hearing over and over and over again the company did not record amounts that should be on the books. You're hearing over and over and over again the company recast their books in the middle of 2014. That certainly changed how you can forecast amounts going forward, if it was zero in 2013 and then it's 100,000 in 2015. So, yes, I do not trust the company's books. That is one reason I made a recommendation that they need to have a compliance audit done on." Transcript, page 144: 9-21.

¹⁸ Tenn. Code Ann. § 65-5-101(a).

¹⁹ Tenn. Code Ann. § 65-5-103(a).

courts for TPUC to use in determining rates.²⁰ In fact, it is expected that TPUC and its supporting staff will draw on its knowledge and expertise in the field of utilities regulation in determining just and reasonable rates.²¹ TPUC itself recognizes that “rate-making is an extremely complex process” which requires more than mathematical formulas and data input.²² Accordingly, TPUC is not bound by any specific means by which rates are set so long as the end result produces just and reasonable rates.

III. TEST YEAR AND ATTRITION PERIOD

In setting rates, TPUC has unfettered discretion to select the test year.²³ A “test year” is a measure of a utility’s financial operations and investment over a specific twelve-month period. It provides the baseline or “raw material” for developing an “attrition year” measure of the utility’s financial operations and investment (that is, the utility’s Rate Base, Operations and Maintenance Expense, Depreciation Expense, and Taxes). An “attrition year,” also known as a forecast period, is the “finished product” and is the chief determinant in whether a utility is operating with a revenue deficiency or surplus.

The Consumer Advocate recommends “that the Commission adopt the twelve months ended December 31, 2016, as the appropriate test period since this reflects the most recent fiscal year close for the Company.”²⁴ Although in its *Petition* TWSI proposed 2015 as the test year²⁵, TWSI later proposed 2016 as a test year and provided Buckner Rebuttal Exhibit 1 to support

²⁰ *CF Indus. v. Tenn. Pub. Serv. Comm’n*, 599 S.W.2d 536, 538 (Tenn. 1980) (citing *Allied Chemical Corp. v. Georgia Power Co.*, 224 S.E.2d 396 (Ga. 1976)).

²¹ *Id.* (citing *St. Paul Area Chamber of Commerce v. Minnesota Public Service Comm’n*, 251 N.W.2d 350 (Minn. 1977)).

²² *Id.* (where the Court upheld the holding of the Tennessee Public Service Commission.)

²³ See *Order*, Docket 06-00187 (November 27, 2008), pp. 5-6 (where the Authority noted its discretion in selecting a test year period.) See also *Powell Tel. v. Tenn. Pub. Serv. Comm’n*, 660 S.W.2d 44, 46 (Tenn. 1983) (citing *CF Industries v. Tenn. Pub. Serv. Comm’n*, 599 S.W.2d 536, 542 (Tenn.1980)).

²⁴ Novak Pre-filed Direct Testimony, page 5: 11-14.

²⁵ Hyatt Pre-filed Direct Testimony, page 3.

TWSI's forecast.²⁶ In fact this change in test year in its pre-filed rebuttal testimony prompted Mr. Foster of the TPUC staff to question Mr. Buckner, an expert witness testifying for TWSI, at the Hearing regarding the Company's position on whether its rate case is based on 2015 or 2016 numbers.²⁷ Mr. Buckner responded that 2016 should be the test year used.²⁸ The result is both Parties agree to the 2016 Test Year.

Although it is unclear the attrition period TWSI proposes²⁹, the Consumer Advocate recommends "the Commission adopt the twelve months ending December 31, 2018." An attrition period of 2018 is appropriate due to the fact it would be "the first full year that any new rates will be in effect."³⁰

IV. TWSI FAILED TO MEET ITS BURDEN OF PROOF TO RAISE RATES AND CHARGES

TWSI has the burden of proof to show that its proposed increase and changes in its tariff are just and reasonable.³¹ The mere passage of time since the utility's last rate case is not enough to support a rate increase.³² The utility must supply the necessary rate schedule with supporting exhibits, documentation and explanations in order to justify any increase. TWSI, however, fails to meet its burden due to the deficiencies in TWSI's books and records regarding its expenses and revenue, issues regarding compliance with its tariff and the lack of sufficient supporting documentation, exhibits or explanations for its request for a rate increase. Although TPUC has

²⁶ Buckner Pre-filed Rebuttal Testimony, page 11: 16-17; and Buckner Rebuttal Exhibit 1.

²⁷ Transcript, page 94: 2-6.

²⁸ *Id.*, page 94: 7-8.

²⁹ Mr. Buckner does not clearly identify an attrition year in his pre-filed Rebuttal Testimony or his Rebuttal Exhibit 1. During question by Mr. Foster at the Hearing, Mr. Buckner states "It was my understanding that the Commission can use a historical test period for setting rates or they can use a forecasted attrition year which grows revenues and expenses in the attrition year. But at this point in time I think the 2016 – normalized 2016 is a fair picture of the financial position of the company's earnings at this time and – and prospectively. They have incurred a loss through the first five months of 2017." Transcript, page 94: 10-19.

³⁰ Novak Pre-filed Direct Testimony, page 5: 14-17.

³¹ Tenn. Code Ann. § 65-5-103(a).

³² Transcript, page 11: 9-10. Mr. Walker stated: "After nine years, I think 20 percent is a – is a reasonable return."

great latitude in the methodology it employs to set rates, its analysis must start with confidence in the data and information supplied to it by the utility. Unfortunately, in this Docket, TPUC cannot have such confidence.

A. Missing or Limited Data: Misapplication of Commercial Tariffs

During its review of TWSI records regarding its revenue, the Consumer Advocate identified 65 commercial accounts in which billing rates did not consistently tie to TWSI's tariff.³³ Understanding how TWSI customers are billed under its current tariff is vitally important to setting new rates.³⁴ Accordingly, the Consumer Advocate made numerous attempts during discovery seeking the reconciliation of these 65 accounts.³⁵ During the Consumer Advocate's discovery process, TWSI failed "to provide such a reconciliation or even an adequate explanation as to why the billing rates for these accounts do not tie back to the tariff rates."³⁶

Mr. Buckner, himself, did not review the specified 65 commercial accounts.³⁷ Instead in his Rebuttal Testimony³⁸, he attempted to utilize a CPA report to address the Consumer Advocate's evidence about TWSI billing multiple commercial customer rates which do not tie back to TWSI's current tariff and the resulting deficiencies in record-keeping and accounting practices.³⁹ However, the CPA report is not what TWSI claims it to be.

³³ Novak Pre-filed Direct Testimony, page 8: 22-23 and page 9: 1. Mr. Novak testified that "our investigation included a review of each and every commercial account – not a sampling, but each and every one – about 800 by month for the last two years. We discovered that the company wasn't applying their tariff under the same terms to all their customers." Transcript, page 109: 5-10. Mr. Novak explained that the attrition year revenue was "obtained through a price-out of customers for each particular tariff rate." The residential and commercial revenue price-outs are shown on Schedule 3 and detailed support provided on Workpapers 1, 8, 9 and 10. Novak Pre-filed Direct Testimony, page 7: 9-13.

³⁴ Mr. Novak explained the importance of this issue in his testimony by explaining "the end purpose of this rate case and every rate case is to set new rates. Well, that's impossible if you don't know how customers are being billed under the current tariff." Transcript, page 109: 9-22.

³⁵ Novak Pre-filed Direct Testimony, page 9: 10-11.

³⁶ *Id.*, page 9: 11-13.

³⁷ Transcript, page 74: 19-22. Nor did Mr. Buckner review any of the workpapers of the CPA's review of the billing records (Transcript, page 78: 4-6).

³⁸ *Id.*, page 13: 20-25.

³⁹ Novak Pre-filed Direct Testimony, page 3: 21-23; page 8: 11-14; page 19-23; page 9: 1-6; and page 10: 1-4.

Mr. Buckner was unable to state whether or not the CPA firm made any determination on the issue of customers being billed under the correct class per TWSI's current tariff.⁴⁰ Mr. Buckner stated that TWSI hired the CPA firm to review the 65 accounts identified by the Consumer Advocate.⁴¹ However, the report itself does not identify the specific accounts reviewed in its analysis.⁴² Also, TWSI provides no workpapers or other supporting documentation for this report by the CPA firm to the Consumer Advocate and TPUC confirming the 65 commercial accounts identified by the Consumer Advocate were analyzed by the CPA firm. When asked at the Hearing, Mr. Buckner admitted he has no knowledge of whether TWSI had provided reconciliations of the 65 accounts requested by the Consumer Advocate.⁴³ Therefore, TWSI fails to provide documentation and support for its basis for current customer charges.⁴⁴

In failing to address the misapplication of its tariff to the 65 commercial accounts identified by the Consumer Advocate, TWSI also fails to address the associated deficiencies in its record-keeping and accounting practices of such revenues. TWSI attempts to use the CPA report to also claim "there are no material deficiencies in the Company's recording of revenues and expenses."⁴⁵ However, Mr. Buckner admitted the CPA report is not an audit but only a "billing analysis based on the procedures they developed."⁴⁶

⁴⁰ Transcript, page 93: 11-20.

⁴¹ *Id.* at 74: 22-25.

⁴² Although Mr. Buckner claims the CPA firm reviewed the 65 commercial accounts, he admitted that the CPA Report does not confirm the review of the 65 accounts. Transcript, page 79: 8-17.

⁴³ Transcript, page 75: 7-12; *see also* Novak Pre-filed Direct Testimony, page 9: 11-13. Mr. Novak testified that the "Consumer Advocate issued a number of data requests on this issue as well as a separate letter asking for the reconciliation of these 65 accounts." Novak Direct Testimony, page 9: 8-11 (where TWSI failed to ever provide such reconciliations or explanations.)

⁴⁴ Novak Pre-filed Direct Testimony, page 9: 13-15 and page 10: 1. Mr. Novak explained the importance of this issue in his testimony by explaining "the end purpose of this rate case and every rate case is to set new rates. Well, that's impossible if you don't know how customers are being billed under the current tariff." Transcript, page 9: 9-22.

⁴⁵ Buckner Pre-filed Rebuttal Testimony, page 12: 15-17.

⁴⁶ Transcript, page 92: 20-25 and page 93: 1. Specifically, Mr. Foster asked "What the CPA firm engaged in was an agreed-upon procedures engagement, and it was not an audit. And with agreed-upon procedures, they develop procedures, they test those procedures and they report the results. Is that your understanding?" *Id.* at pages 91: 23-

Initially Mr. Buckner attempted to deflect questions by Mr. Foster of the TPUC staff regarding the absence of the CPA firm's attestation on TWSI's accounting records.⁴⁷ However, Mr. Foster persisted in this line of inquiry:

Question by Mr. Foster:

Well, if I can, I can read from page 1, describing their procedures and findings that are summarized in Attachment Schedules A through C. They say, "We were not engaged to, and did not, conduct an audit, the objective of which would be the expression of an opinion on the accounting records. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you."

I mean, wouldn't that suggest that it's just basically a billing analysis based on the procedures they developed?⁴⁸

Answer by Mr. Buckner:

I would agree that the accounting records were not examined by the auditor in this particular function performed by the auditor they tested the billing functions. And so they were quite separate from the global audit of the financial statements.⁴⁹

Question by Mr. Foster:

Okay. And you would agree that Tennessee Wastewater has several different customer classes in their tariff?⁵⁰

Answer by Mr. Buckner:

Indeed.⁵¹

Question by Mr. Foster:

And when a customer signs up for service or maybe there is a change in their service, they are billed under a certain customer class. That's correct?⁵²

Answer by Mr. Buckner:

Yes, sir.⁵³

Question by Mr. Foster:

25; 92: 1-3.

⁴⁷ Transcript, page 92: 6-10. Mr. Foster's asked "So there would be no – no attestation by the firm on the reliability of accuracy of the billing records? No formal opinion." Mr. Buckner responded "I think that would be best answered by the CPA firm as to that question, David." *Id.*

⁴⁸ Transcript, page 92: 11-22.

⁴⁹ *Id.* at page 92: 23-25 and page 93: 1-2.

⁵⁰ *Id.* at page 93: 3-5.

⁵¹ *Id.* at page 93: 6.

⁵² *Id.* at page 93: 7-9.

⁵³ *Id.* at page 93: 10.

Do you -- do you have any knowledge if the CPA firm underwent any, I guess, determination as to whether those customers were being billed in the correct class, not necessarily that a tariff rate couldn't be matched to the customer's bill, but was the customer being billed correctly as an overnight rental customer or under a residential class? Was there any determination made, to your knowledge?⁵⁴

Answer by Mr. Buckner

Mr. Foster, that question should be answered by the CPA firm.⁵⁵

Thus, the questions by the TPUC staff established that the CPA firm's analysis did nothing more than attempt to compare what TWSI's billing records indicated should be billed against the amount actually billed.⁵⁶ The CPA firm did not perform the crucial analysis of whether the amount that TWSI billed was tied to or supported by the tariff. Without this crucial analysis, the CPA firm's billing variance analysis misses incidents of customers over-paying or underpaying. For example, three customers should have been billed \$50 per the tariff for a total of \$150 were billed as follows: Customer #1 was billed \$40, Customer #2 was billed \$60 and Customer #3 was billed \$50 which totals \$150. Under the CPA firm's billing variance analysis, the utility's billing would have zero variance since the utility received the total \$150. However in this example, two of the three customers were billed incorrectly per the tariff rate. As such, the CPA's variance analysis does not address the Consumer Advocate's concerns of TWSI's misapplication of the tariff. Once again, TWSI fails to provide documentation and support for its basis for current customer charges.⁵⁷

Despite its very limited review of TWSI's billing procedures, the CPA firm identified six

⁵⁴ *Id.* at page 93: 11-18.

⁵⁵ *Id.* at page 93: 19-20. TWSI failed to provide any response to Mr. Foster's inquiry regarding whether the CPA firm made a determination as to whether a customer was being billed in the correct class.

⁵⁶ The CPA firm reviewed only a subset of the commercial customer billing for 2016. Buckner Rebuttal Exhibit 2, Schedule B. However, the Consumer Advocate reviewed "each and every commercial account -- not a sampling, but each and every one -- about 800 by month for the last two years." *Id.* at page 109: 5-10.

⁵⁷ Novak Pre-filed Direct Testimony, page 9: 13-15 and page 10: 1. Mr. Novak explained the importance of this issue in his testimony by explaining "the end purpose of this rate case and every rate case is to set new rates. Well, that's impossible if you don't know how customers are being billed under the current tariff." Transcript, page 9: 9-22.

deficiencies and two best practices for TWSI to review and address.⁵⁸ These “Findings and Recommendations” further support the Consumer Advocate’s concerns regarding TWSI’s books and records. Accordingly, TWSI fails to address the Consumer Advocate’s position that TWSI’s books cannot be relied upon as a basis for setting rates.⁵⁹

B. Missing or Limited Data: Expenses

During its review of TWSI records regarding its expenses, the Consumer Advocate discovered TWSI had a very limited history for certain expenses due to a “realignment” or “recasting” of its books.⁶⁰ This “realignment” of its books was due to TWSI’s transition to “a stand-alone company that pays for the actual cost and expense of operation with allocation to other affiliates” beginning in July 2014.⁶¹ For a rate case analysis, having several years of historical expenses is important to determining consistent going-level amounts, and the lack of such information “makes it difficult to gauge the proper going-level of expenses for setting rates.”⁶²

Mr. Buckner’s criticism of the varying average periods used by the Consumer Advocate in its methodology of calculating expenses fails to take into account the “recasting” on TWSI’s booking of its expenses.⁶³ Because of this “recasting”, data does not exist prior to 2014 for multiple expense categories,⁶⁴ resulting in data from 2015 forward being the only data available

⁵⁸ Buckner Pre-filed Rebuttal Testimony, Revised Exhibit 2: “Management Comments from Agreed-Upon Procedures-Findings and Recommendations.

⁵⁹ Transcript, page 146: 18-20. Novak Direct Testimony, page 3: 18.

⁶⁰ *Id.* at page 110: 6-10.

⁶¹ Novak Pre-filed Direct Testimony, page 11: 8-13. “The decision was made in 2014 that TWSI could support itself and in July of that year the utility redirected its business to being a self-supporting, standalone company with its own employees and fleet of vehicles.” TWSI Response to CPAD 2-15.

⁶² *Id.* at page 11: 15-22; *see also* Transcript, page 139: 1-25 and page 140: 1-20.

⁶³ Buckner Pre-filed Rebuttal Testimony, page 6: 9-15.

⁶⁴ Mr. Hyatt testified at the Hearing that expenses such as employee salary and wages, website and internet hosting (CPAD 2-48), equipment maintenance (CPAD 2-49), equipment rental (CPAD 2-50) and software licenses (CPAD 2-56) had \$0 expenses prior to TWSI’s recasting. Transcript, page 34: 20-21; page 35:15-18; and page 36: 12-25; 37:1-6. Other examples of categories of expenses of missing or limited data can be found in TWSI Responses to CPAD 2-15 to 2-19, 2-39, 2-42, 2-43, and 2-51.

for determining going-level calculations.⁶⁵ Simply put, the Consumer Advocate cannot average seven years for all expenses categories if there are not seven years of data.

Additionally, Mr. Buckner criticized the Consumer Advocate's lack of "incremental increases" in certain expense categories such as salaries and wages and purchased water treatment.⁶⁶ Mr. Buckner is incorrect in this assertion. The Consumer Advocate's attrition amount for Salary and Wages for Employees is \$573,169⁶⁷ and TWSI's attrition amount is \$556,473.⁶⁸ As for Purchased Wastewater Treatment, the Consumer Advocate's attrition amount is \$112,862⁶⁹ and TWSI's attrition amount is \$107,924.⁷⁰ So the Consumer Advocate's methodology provides "incremental increases" beyond TWSI's projections where the Consumer Advocate's methodology supports such an increase.⁷¹

As explained earlier in Section IV.A. regarding the misapplication of commercial tariffs, TWSI attempts to use the CPA report to claim "there are no material deficiencies in the Company's recording of revenues and expenses."⁷² However, the CPA firm was hired to assist TWSI on an analysis of its billing system.⁷³ There is no mention of a review of TWSI accounting for expenses. Accordingly, TWSI fails to address the Consumer Advocate's position that TWSI's books cannot

⁶⁵ Novak Pre-filed Direct Testimony, page 11: 18-20. Commissioner Hill questioned Mr. Novak regarding his methodology in reviewing expenses impacted by the "recasting." Transcript, page 144: 23-25; 145: 4-25; 146: 1-3.

⁶⁶ Buckner Pre-filed Rebuttal Testimony, page 6: 18-21.

⁶⁷ Novak Pre-filed Direct Testimony, CAPD Exhibit, Schedule 1, Line 1.

⁶⁸ Buckner Pre-filed Rebuttal Testimony, Rebuttal Exhibit 1.

⁶⁹ Novak Pre-filed Direct Testimony, CAPD Exhibit, Schedule 1, Line 6.

⁷⁰ Buckner Pre-filed Rebuttal Testimony, Rebuttal Exhibit 1.

⁷¹ In addition to Salary and Wages for Employees and Purchased Power already discussed, the Consumer Advocate has 16 other categories of expenses in which its attrition period had increases greater than what was proposed by TWSI: 704.1 Worker's Compensation; 705-Simple IRA; 731. Contractual Svc-Professional; 735. Contractual Svc-Testing; 736.12 AUG-MGMT Fees; 780.3 Registration Renewal; 770. Bad Debt; 775.21 Website & Internet Hosting; 775.20 Software Licenses; 775.3 Licenses & Permits; 775.9 Billing Costs; 775. Miscellaneous Expenses; 408.1 Property Taxes; 408.12 Payroll Taxes; 425.9 Lodging; and 426.2 Bank & NSF Fees. Novak Pre-filed Direct Testimony, CAPD Exhibit, Schedules 4-9.

⁷² Buckner Pre-filed Rebuttal Testimony, page 12: 15-17.

⁷³ Buckner Pre-filed Rebuttal Exhibit 2, July 6, 2017 Letter and Schedule A.

be relied upon as a basis for setting rates.⁷⁴

C. Missing or Limited Data: One-Page Summary of Summary for 2016 Test Year

As discussed earlier, TWSI changed its test year from 2015 to 2016.⁷⁵ TWSI's adoption of the 2016 test year, however, is still inundated with problems. Foremost, TWSI's books still cannot be relied upon as a basis for setting rates for the reasons set forth above, so a change in the test year does not address the deficiencies of TWSI's books and records. Second, the one page summary provided by TWSI as part of Mr. Buckner's Rebuttal Testimony in support of the change in test year is woefully inadequate to support TWSI's request to increase rates.⁷⁶ In fact, Mr. Foster asked Mr. Buckner about the existence of any "supporting exhibits or documentation, explanations" beyond the one page summary comprising Rebuttal Exhibit 1 for Test Year 2016.⁷⁷ Mr. Buckner responded that "there is an Excel file with all the supporting documentation which can be forwarded to the Commission."⁷⁸ Mr. Foster sought confirmation that such supporting documentation was not "submitted prior to the hearing", and Mr. Buckner agreed.⁷⁹ However before the conclusion of the Hearing by Chairman Jones, TWSI's counsel took the extraordinary step of attempting to testify as to the evidence and requested to "clarify" a point regarding supporting documentation for Buckner's Rebuttal Exhibit 1.⁸⁰ TWSI's counsel stated that the supporting documentation to Mr. Buckner's Rebuttal Exhibit 1 for Test Year 2016 can be found in its "unverified" response to the Consumer Advocate's "Discovery Request No. 3, Question 1."⁸¹

⁷⁴ Transcript, page 146: 18-20; *see also* Novak Pre-filed Direct Testimony, page 3: 18.

⁷⁵ Buckner Pre-filed Rebuttal Testimony, page 11: 15-17.

⁷⁶ Buckner Pre-filed Rebuttal Testimony, Buckner Rebuttal Exhibit 1.

⁷⁷ Transcript, page 95: 3-7.

⁷⁸ *Id.* at page 95: 8-10.

⁷⁹ *Id.* at page 95: 11-14. Mr. Buckner confirmed his forecasting was based on data from the last seven years. However after reviewing Hearing Exhibit 16, Mr. Buckner admits TWSI did not provide the Consumer Advocate revenue history for the last seven years. Rather it only supplied data for 2015 and 2016. *Id.* at page 70: 8-24 and page 71: 1-18.

⁸⁰ *Id.* at page 150: 1-10.

⁸¹ *Id.* at page 150: 5-10. Per TWSI's filing on June 2, 2017 of TWSI's Informal Discovery Responses, these are

However, TWSI's response to "Discovery Request No. 3, Question 1" does not support Mr. Buckner's Rebuttal Exhibit 1. A review of the rate adjustments and attrition period rates of TWSI's Excel Workbook provided in Response to Discovery Request 3-1 conflicts with the rate adjustments and attrition period rates of Mr. Buckner's Rebuttal Exhibit 1. An example of these conflicts for revenue and income are shown in Figure 1 and Figure 2 below, which demonstrates the impact of these conflicts.

Figure 1: Excerpt from TWSI's Response to Consumer Advocates Request 3-1 – Excel Tab Exhibit 2-2016 related to TWSI Income

	Normalized Test Period from Exhibit 1-A	Adjustments	Attrition Period	Rate Adjustments	Attrition Period @ New Rates
Ordinary Income/Expense					
Income					
400 • Operating Revenues					
521 • Flat Rate Revenues					
521.1 • Residential-Flat Sewer	846,664.32	224,070.31	1,070,734.63	214,146.93	1,284,881.56
Residential Cabin	15,550.36	4,612.19	20,162.55	41,708.00	61,870.55
521.2 • Commercial Sewer	274,632.74	75,554.64	350,187.38	70,037.48	420,224.86
Commercial Cabin Sewer	490,444.78	147,117.41	637,562.19	217,533.66	855,095.85
Total Income	1,845,977.96	451,354.55	2,297,332.51	543,426.07	2,840,758.58

Figure 2: Excerpt from Mr. Buckner's Rebuttal Exhibit 1 related to TWSI Income

Tennessee Wastewater Systems, Inc.
TPUC Docket No. 16-00139

Rebuttal Exhibit 1

	(A) Test Period 2016	(B) Adjustments	(C) Attrition Period	(D) Rate Adjustments	(E) Attrition Period with New Rates
Operating Revenues					
521.1 • Residential-Flat Sewer	\$ 846,664	\$ 224,070	\$ 1,070,735	\$ 193,605	\$ 1,264,340
Residential Cabin	15,550	4,612	20,163	37,362	57,525
521.2 • Commercial Sewer	274,633	75,555	350,187	49,417	399,605
Commercial Cabin Sewer	490,445	147,117	637,562	212,531	850,093
	\$ 1,845,978	\$ 451,355	\$ 2,297,333	\$ 492,915	\$ 2,790,248

But the conflicts are not simply found in revenues, but also expenses. The most significant of these issues with expenses is located in 720. Materials and Supplies: \$776,049.04 in Response to Discovery Request 3-1 and \$567,970 in Mr. Buckner's Rebuttal Exhibit 1. This results in

"informal, unverified responses to CPAD Requests."

conflicting Total Expenses as well: \$1,179,817.12 in Response to Discovery Request 3-1 and \$1,099,619.00 in Mr. Buckner's Rebuttal Exhibit 1. As a result of such discrepancies in the expenses and revenue, there is a significant conflict between the Net Income amounts found in TWSI's Excel Workbook in Response to Discovery Request 3-1, which is \$176,089.31, and Mr. Buckner's Rebuttal Exhibit 1, which is \$205,777.

As noted earlier, TWSI's counsel at the end of the hearing attempted to offer "Discovery Request No. 3, Question 1" in support for Mr. Buckner's Rebuttal Exhibit 1.⁸² This discovery response is an unverified discovery response provided to the Consumer Advocate in April 2017 and filed with TPUC on June 2, 2017⁸³ to support pre-filed testimony by Mr. Buckner filed on June 28, 2017, even though Mr. Buckner never identified in his pre-filed direct testimony or during the Hearing that the supporting documentation for his Rebuttal Exhibit 1 could be found in a TWSI's unverified discovery response.⁸⁴ Since Mr. Buckner did not offer "Discovery Request No. 3, Question 1" as support for Rebuttal Exhibit 1, he could not be questioned regarding the documentation by the Consumer Advocate, TPUC or TPUC staff. Moreover, since this information was not referred to by Mr. Buckner in his Rebuttal Testimony, neither the TPUC staff nor the Consumer Advocate had the opportunity to ask discovery questions. Neither in Mr. Buckner's pre-filed testimony nor his verbal testimony at the Hearing does he mention these discrepancies in the adjustments between TWSI's Response to Discovery Request 3-1 and his Rebuttal Exhibit 1. Not only does Mr. Buckner fail to identify these discrepancies, he provides no supporting exhibits, documentation, or explanations for his changes to these adjustments, resulting in a different net income from TWSI's previous filing.

⁸² *Id.* at page 95: 11-14.

⁸³ TWSI's Informal Discovery Responses, filed June 2, 2017, page 2-27.

⁸⁴ Transcript, page 95: 11-14.

Due to these discrepancies described above and the lack of explanation from Mr. Buckner, TWSI's unverified response to "Discovery Request No. 3, Question 1" does not provide the support, explanation, or documentation requisite to support Mr. Buckner's Rebuttal Exhibit 1. As such, TWSI bases its request for a rate increase upon a meager one page document, containing no supporting workpapers, documentation, or other exhibits. This does not meet the statutory burden of proof to show that its proposed increase and changes in its tariff are just and reasonable.

D. Failure to Include Developer Operating Subsidies In Revenues

During its review of TWSI records regarding its revenue, the Consumer Advocate discovered that TWSI failed to include income for developers in its revenues. Therefore, the Consumer Advocate included developer income as a part of TWSI's revenues, which is consistent with TPUC practice.⁸⁵ Despite Mr. Buckner's testimony to the contrary, TPUC has addressed the issue of developer income and subsidies.⁸⁶ This issue is not new to TWSI. Specifically, in TPUC Docket No. 16-00015, TPUC directed TWSI to record its "\$1,200 per lot" as above-the-line regulated revenue and include it in calculating the Company's future revenue requirements.⁸⁷ TPUC clarified in a following Order that the "\$1,200 per lot fee" is to be recorded as "guaranteed revenues" pursuant to Account No. 530 of the Uniform System of Accounts for Class A Wastewater Utilities published by the National Association of Regulatory Commissioners.⁸⁸ Additionally, in a recent staff-assisted rate case approved by TPUC in Docket No. 16-00127, the utility's forecasted contract rate and agreement with its developer are included in its operating

⁸⁵ Novak Pre-filed Direct Testimony, page 7: 18-21.

⁸⁶ Buckner Pre-filed Direct Testimony, page 7: 23-24.

⁸⁷ Hearing Exhibit 20, *Order Approving Special Contract* TPUC Docket No. 16-00015, pages 4-5. Mr. Buckner admits that TPUC has gotten involved in the relationship between a utility and contractor. Transcript, page 88: 11-25; 89: 1-5.

⁸⁸ Hearing Exhibit 20. *Order Affirming and Clarifying Previous Order* TPUC Docket No. 16-00015, page 3; *see also* Transcript, page 89: 7-25.

revenues.⁸⁹

TWSI's argument that its developer revenue should not be included since "the Company does not identify these expenses with sufficient detail to assign an appropriate expense to a specific project"⁹⁰ is without merit. TWSI had the ability to identify and record these expenses just as the utility did in Docket No. 16-00127⁹¹, but TWSI simply elected not to do so.⁹²

E. Failure to Obtain TPUC Approval for Convenience Fee

Since 2011, TWSI has been assessing a fee to its ratepayers not authorized by TPUC under its current tariff.⁹³ TWSI now proposes to add this credit card convenience fee to its tariff,⁹⁴ arguing reliance on a discussion with TPUC staff prior to implementing the fee.⁹⁵ TWSI provided no written documentation directly from TPUC staff stating that such a fee would not need to be in TWSI's tariff.⁹⁶

TWSI further argued that according to this unwritten advice from TPUC staff, the fee is not required to be in the tariff since it is not "compulsory."⁹⁷ Of course, TWSI's reliance on

⁸⁹ Ray Pre-filed Direct Testimony, page 12: 13-20 (referencing Revenue Workpaper 2.04). This revenue is also reflected in Exhibit-Schedule 3 with \$38,737 recorded in the Test Year and \$154,461 projected for the Attrition Period.

⁹⁰ Buckner Pre-filed Rebuttal Testimony, page 9: 18-19.

⁹¹ Transcript, page 131: 14-22

⁹² TWSI explained it didn't track those expenses and was never asked to track those expenses by TPUC because it considers them below-the-line. TWSI Response to CPAD 3-7. Mr. Novak explained "The fact is that these developer contracts and this developer revenue and the developer expenses would not exist without the utility first being there. So the company is already recording the developer revenue on its books. And the company should have been recording the developer expenses on their books. They chose not to do so." Transcript, page 131: 4-11.

⁹³ Novak Pre-filed Direct Testimony, page 10: 8-13; *see also* Testimony, page 50: 6-22.

⁹⁴ Hyatt Pre-filed Direct Testimony, page 2.

⁹⁵ Pickney Pre-filed Rebuttal Testimony, page 4. Mr. Pickney points to an email, Pickney Rebuttal Exhibit B, with an Adenus employee regarding his conversation with Patsy Fulton on the topic of the credit card convenience fee. Mr. Pickney provided testimony at the Hearing on his interaction with TPUC Staff. Transcript, page 47: 21-25 and page 48: 1-2. However, Mr. Risdén admits that he did not make immediately make notes of his conversation with TPUC staff. Transcript, page 54: 11-14.

⁹⁶ Transcript, page 51: 14-17. In fact, Ms. Fulton's memory of the conversation was simply that a conversation happened. In this email, Ms. Fulton explains that she tells utilities "that all fees that are on a customer's utility bill should be tarified so that when a customer comes into the TRA with a complaint, they should be able to compare their bill to their Utility's tariff book and find everything they are being billed for in that book." Transcript 51: 18-24, Hearing Exhibit 9; *see also* Transcript, page 52: 1-19.


⁹⁷ Transcript, page 52: 20-25 and page 53: 1-20.

whether the fee is “compulsory” ignores Tenn. Comp. R. & Regs 1220-04-01-.03(1), which requires utilities to “explicitly state the rates and charges” to its ratepayers in its tariff.⁹⁸ Additionally, TWSI’s explanation ignores that it is TPUC, not TPUC staff, who is tasked with deciding whether an increase, change, or alteration in a tariff is just and reasonable.⁹⁹ TWSI’s argument that it relied on TPUC staff’s advice is further undercut by its continuing assessment of this fee even after TPUC staff informed it that such a fee needs to be in the tariff.¹⁰⁰

V. CONCLUSION

For the foregoing reasons, the Consumer Advocate recommends the requested rate increase and new tariff be denied. Further, a compliance audit should be performed on TWSI accounts and records, and TWSI should refund ratepayers the improperly charged credit card convenience fee which is not authorized by TWSI’s current tariff.

RESPECTFULLY SUBMITTED,


KAREN H. STACHOWSKI (BPR No. 019607)
Assistant Attorney General
Office of the Tennessee Attorney General
Public Protection Section
Consumer Protection and Advocate Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
Phone: (615) 741-2370
Fax: (615) 532-2910
Email: karen.stachowski@ag.tn.gov

⁹⁸ 1220-04-01-03 Tariff Contents.

- (1) Tariffs must explicitly state the rates and charges for each class of service rendered, designating the area or district to which they apply.
- (2) Rules and regulations of the utility that in any manner affects the rates charged or to be charged or that define the extent or character of the service to be given shall be included with each tariff.

⁹⁹ Tenn. Code Ann. § 65-5-103(a). Mr. Novak explained that the authority to approve fees, even fees that provide convenience to customers, lies with TPUC. Transcript, page 117: 14-25; page 118: 1-22.

¹⁰⁰ Transcript, page 32: 6-8; page 53: 7-20; *see also* Hearing Exhibit 9.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served via U.S. Mail or electronic mail upon:

Jeff Riden, Esq.
General Counsel
Tennessee Wastewater Systems, Inc.
851 Aviation Parkway
Smyrna, TN 37167
615-220-7171
615-346-9516 (fax)
Jeff.riden@adenus.com

Henry M. Walker, Esq.
Bradley, LLP
1600 Division St., Suite 700
Nashville, TN 37203
615-252-2363
615-252-6363 (fax)
hwalker@bradley.com

This the 26th day of July, 2017

Karen H Stachowski
KAREN H. STACHOWSKI