

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

October 1, 2018

IN RE:

PETITION OF TENNESSEE WASTEWATER
SYSTEMS, INC. TO AMEND ITS CERTIFICATE
OF CONVENIENCE AND NECESSITY TO
EXPAND ITS SERVICE TO INCLUDE A
DEVELOPMENT IN GRAINGER COUNTY
KNOWN AS LIGHTHOUSE POINTE FARMS

DOCKET NO.
17-00146

ORDER AMENDING CERTIFICATE OF CONVENIENCE AND NECESSITY

This matter came before the Chair Robin Morrison, Vice Chair Kenneth C. Hill, and Commissioner Herbert H. Hilliard, of the Tennessee Public Utility Commission (“Commission” or “TPUC”) at the Commission Conference on July 23, 2018, to consider the *Petition of Tennessee Wastewater Systems, Inc. to Amend Its Certificate of Convenience and Necessity to Expand Its Service To Include a Development in Grainger County Known as Lighthouse Pointe Farms* (“*Petition*”) filed by Tennessee Wastewater Systems, Inc. (“TWS”, “Tennessee Wastewater” or “Company”) on December 29, 2017.

BACKGROUND AND PETITION

In its *Petition* filed on December 29, 2017, the Company seeks to expand its existing service territory to include six homes in Grainger County, Tennessee, in an area known as

Lighthouse Pointe Farms (“LHPF”).¹ The proposed wastewater system will be located in LHPF, identified on Grainger County tax maps as Map 77-A, Parcels 1.00, 2.00, 3.00, 4.00, 5.00, 6.00 and 7.00.² There are seven lots, with parcel 1.00 being owned by the Lighthouse Pointe Homeowners Association (“HOA”) which has been designated as the lot for the wastewater system and drip fields.²

The LHPF community has faced challenges with obtaining the provision of a sewer system service, including litigation and service disconnection.³ According to the *Petition*, the community as planned was to have a central septic system on parcel 1.00 as mentioned above; however, the original developer bought three lots in the neighboring Mallard Baye community to be used as a drip field for a standard system.⁴ The Company claims the developer intended for the wastewater from all the lots in LHPF to be piped to those three lots through an easement running behind the Mallard Baye community. Lot #5 in LHPF was built and hooked into the system; however, a lawsuit in 2007 was filed by homeowners in Mallard Baye against the developer and LHPF to have the system removed.⁵ According to the *Petition*, a court determined that the developer fraudulently obtained approval for the Mallard Baye drip field from the Grainger County Planning Commission and rendered a judgment against the developer to disconnect the system and remove the tanks.⁶

At the time of the filing of the *Petition*, there was one completed home used primarily as a seasonal vacation home and five lots for which there are no plans to do anything until sewer

¹ TWS, with its principal office located in Smyrna, Tennessee, is certified to do business in the State of Tennessee and currently holds CCNs with the State of Tennessee to operate a wastewater treatment plant. The Company was first granted a Certificate of Public Convenience and Necessity on April 6, 1994, in Docket No. 93-09040.

² *Petition*, p.1 (December 29, 2017).

³ Fred Pickney, Pre-filed Direct Testimony, p. 2 (December 29, 2017).

⁴ *Petition*, at 2.

⁵ *Id.*

⁶ *Id.*

service becomes available.⁷ The Company's *Petition* and the accompanying attachments to the *Petition* represent to the Commission that HOA, with the support of the home and lot owners, desire to have a decentralized wastewater system.⁸ Bean Station Water Utility District and the Grainger County Mayor have indicated that no water or wastewater service was available to serve LHPF lots.⁹ The Company holds two CCNs in Grainger County serving Grainger Landing Condominiums, per TPUC Docket No. 05-00117, and German Creek Marina, per TPUC Docket No. 05-00138.¹⁰

The Company proposes to charge LHPF residential customers basic Rate Class I wastewater service for the tariffed rate of \$44.42 monthly.¹¹ After installation of the system is complete and transferred to TWS, the one existing residential customer on Lot #5 will hook to the wastewater system and begin paying a monthly sewer bill. The remaining five lots will pay a \$120 annual access fee until such time as they hook onto the system. As each lot owner connects to the wastewater system, they will no longer have to pay the \$120 annually; however, they will convert to wastewater service at \$44.42 monthly.¹²

TWS intends to service LHPF with a septic tank effluent pump ("step") system consisting of a watertight effluent collection, recirculating media treatment and subsurface drip dispersal that has a projected capacity of 1,800 gallons-per-day flow.¹³ The HOA will have the responsibility to fund and construct the collection system and the treatment system.¹⁴ The HOA has solicited Adenus Solutions as its contractor to build the treatment system. The collection

⁷ Fred Pickney, Pre-filed Direct Testimony, p. 2 (December 29, 2017).

⁸ *Petition*, p. 2; Exhibits B and C (December 29, 2017).

⁹ *Id.* at Exhibits G and H.

¹⁰ Fred Pickney, Pre-filed Direct Testimony, p. 2 (December 29, 2017).

¹¹ *Petition*, p. 4 (December 29, 2017).

¹² *Petition*, p. 3 (December 29, 2017).

¹³ *TDEC SOP Application*, p. 2 (February 6, 2018).

¹⁴ Fred Pickney, Pre-filed Direct Testimony, p. 3 (December 29, 2017).

system was installed by the previous developer and will continue to be utilized;¹⁵ however, the HOA and Adenus Solutions have made provisions and pricing for repairing or replacing parts of the collection system within the construction agreement if the need arises.¹⁶

On June 29, 2018, TWS provided a copy of the *Construction–Design/Build Agreement* between its affiliate Adenus Solutions and the HOA. In addition, on June 22, 2018, TWS provided a copy of the *Sanitary Sewer Service Agreement* (“SSA”) negotiated between TWS and the HOA. The SSA provides that the HOA: 1) will convey by quitclaim deed the Sewage Facility Land to TWS and provide a title insurance policy in the amount of \$30,000; 2) provide TWS with an owner’s policy of title insurance issued by a nationally recognized title company showing the status of title to the Sewage Facility Land as free and clear of all material or interfering encumbrances; 3) provide TWS with a survey of the Sewage Facility Land prepared by a surveyor or engineer licensed in the State of Tennessee sufficient to allow the title company to eliminate the standard printed exceptions in the owner’s title policy; 4) provide TWS with “as-built” plans for the Sewer System and the Collection System capable of providing wastewater service for a total of six Equivalent Dwelling Units; 5) grant TWS a non-exclusive sewer line easement across the portions of the property lying within five feet of either side of the sewer line within the property; and 6) pay TWS the federal corporate income tax associated with the amount of contribution of the wastewater system to TWS pursuant to the formula of $TR/(1-TR) * P$, where TR is the effective corporate tax rate of 21% and P is the amount of the property to be conveyed.¹⁷

¹⁵ Data Response, Response #1 (June 29, 2018).

¹⁶ Data Response, *Construction-Design/Build Agreement*, Exhibit C, p. 13 (June 29, 2018).

¹⁷ Data Request, Request #1 (June 25, 2018).

STANDARD FOR COMMISSION APPROVAL

No public utility is permitted to begin construction or operation of a new utility facility or service without first obtaining a CCN from the Commission, as set forth in Tenn. Code Ann. § 65-4-201(a), which states:

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 commission, 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.

Additionally, in order to obtain a CCN to provide wastewater service, TPUC Rule 1220-4-13-.04(1)(b) provides:

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 and/or expand the area in which such a system is operated, shall file an application in compliance with Rule 1220-1-1-1.03 and this rule. All applicants shall demonstrate to the Commission that they are registered with the Secretary of State, have obtained the financial security required under 1220-4-13-.07, 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.

THE HEARING

The Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on July 23, 2018, as noticed by the Commission on July 13, 2018. Participating in the Hearing were:

Tennessee Wastewater Systems, Inc. – Jeff Riden, Esq., General Counsel, 851 Aviation Parkway, Smyrna, Tennessee, 37167.

During the Hearing, Fred Pickney, the Company's Vice President of business development, provided a summary of his pre-filed testimony. Members of the public were invited to make public comments. None sought recognition.

FINDINGS AND CONCLUSIONS

Based on the evidentiary record in this matter, the hearing panel found that Tennessee Wastewater Systems, Inc. possesses the requisite managerial, financial and technical abilities to provide wastewater services to Lighthouse Pointe Farms in Grainger County, Tennessee. The panel voted unanimously to approve Tennessee Wastewater's *Petition* contingent upon the Company filing the following documents in the docket: (1) the deed(s) and/or easements and entitlement for all the land and assets of the wastewater system; (2) Copy of the final State Operating Permit issued by Tennessee Department of Environment and Conservation; (3) all final signed contract(s) between Tennessee Wastewater and the developer, Lighthouse Pointe Homeowners Association, Inc., and Land Development Company; (4) Copy of the final signed plat from Grainger County; (5) a Copy of "as-built" plans for the Sewer System and the Collection System capable of providing wastewater service for a total of six Equivalent Dwelling Units certified as being inspected by Tennessee Wastewater; (6) a final detailed cost itemization of the completed wastewater system transferred from the developer to Tennessee Wastewater;

and (7) a tariff filing adding Lighthouse Pointe Farms as a location under Rate Class 1 effective as of the date of this hearing.

IT IS THEREFORE ORDERED THAT:

1. The *Petition of Tennessee Wastewater Systems, Inc. to Amend Its Certificate of Convenience and Necessity to Expand Its Service To Include a Development in Grainger County Known as Lighthouse Pointe Farms* is approved contingent upon the submission of the following in this docket:

(a) the deed(s) and/or easements and entitlement for all the land and assets of the wastewater system;

(b) Copy of the final State Operating Permit issued by Tennessee Department of Environment and Conservation;

(c) all final signed contract(s) between Tennessee Wastewater Systems, Inc. and the developer, Lighthouse Pointe Homeowners Association, Inc., and Land Development Company;

(d) Copy of the final signed plat from Grainger County;

(e) a Copy of “as-built” plans for the Sewer System and the Collection System capable of providing wastewater service for a total of six Equivalent Dwelling Units certified as being inspected by Tennessee Wastewater Systems, Inc.;

(f) a final detailed cost itemization of the completed wastewater system transferred from the developer to Tennessee Wastewater Systems, Inc.; and

(g) a tariff filing adding Lighthouse Pointe Farms as a location under Rate Class 1 effective as of the date of this hearing.

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.

Chair Robin L. Morrison, Vice Chair Kenneth C. Hill, and Commissioner Herbert H. Hilliard concur.

ATTEST:



Earl R. Taylor, Executive Director