

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

November 22, 2019

IN RE:	)	
	)	
PETITION OF TENNESSEE	)	
WASTEWATER SYSTEMS, INC. TO	)	
AMEND ITS CERTIFICATE OF	)	DOCKET NO.
CONVENIENCE AND NECESSITY TO	)	18-00107
INCLUDE WARRIOTO HILLS	)	
SUBDIVISION IN MONTGOMERY	)	
COUNTY, TENNESSEE	)	

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ORDER AMENDING CERTIFICATE OF CONVENIENCE AND NECESSITY

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This matter came before the Chair Robin L. Morrison, Commissioner John Hie, and Commissioner David F. Jones, of the Tennessee Public Utility Commission (“Commission” or “TPUC”) at the Commission Conference on September 9, 2019, to consider the *Petition to Amend Certificate of Convenience and Necessity* (“*Petition*”) filed by Tennessee Wastewater Systems, Inc. (“TWSI,” “Petitioner,” or “Company”) on October 16, 2018.

**BACKGROUND AND PETITION**

TWSI is a public utility, subject to the jurisdiction of the TPUC, providing wastewater service to over 3,000 customers in Middle and East Tennessee.<sup>1</sup> TWSI filed its *Petition* on October 16, 2018 seeking to expand its existing service territory<sup>2</sup> to a residential subdivision

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<sup>1</sup> *Petition*, pp. 1-2 (October 16, 2018).

<sup>2</sup> TWSI currently holds several CCNs to operate wastewater treatment systems within designated territories within the State of Tennessee. The Company was first granted a CCN on April 6, 1994. *See In re: To Operate as a Public Utility Providing Sewage Collection, Treatment and Disposal for a Proposed Development in Maury County*, Docket No. 93-09040, *Order* (April 6, 1994).

known as Warrioto Hills (“WHS”) in Montgomery County, Tennessee, as identified on Montgomery County Map 90, Parcel 54.00.<sup>3</sup>

Along with its *Petition*, TWSI filed the Direct Testimony of Matthew Nicks, Project Manager for TWSI.<sup>4</sup> Mr. Nicks’s testimony indicates that the proposed WHS is planned for 57 single family residences in the Clarksville area of Montgomery County, Tennessee.<sup>5</sup> He states that the collection system will be a septic tank effluent pump (STEP) system, which will include septic tanks and pumps at each residence. Tanks will discharge to collection lines that transport the wastewater to a Recirculating Media Filter type central treatment system. Treated effluent will be disinfected and land applied through drip irrigation, similar to most TWSI operated systems.<sup>6</sup>

According to the *Petition*, TWSI had applied for a State Operating Permit (“SOP”) from the Tennessee Department of Environment and Conservation (“TDEC”), which was pending approval at the time of the *Petition*’s filing.<sup>7</sup> The Draft SOP was granted, contingent upon certain conditions to be satisfied by TWSI. Subsequently, TWSI filed a copy of the Draft SOP in this docket.<sup>8</sup> In addition, TWSI provided copies of letters from the Cunningham Utility District and the Montgomery County Mayor indicating that neither provides, or will provide, sanitary sewer or wastewater service to WHS.<sup>9</sup> TWSI also provided correspondence from the WHS developer requesting that TWSI provide sewer service for WHS and an executed Letter of Understanding concerning the provision of service to WHS.<sup>10</sup>

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<sup>3</sup> *Id.* at 2.

<sup>4</sup> Matthew Nicks, Pre-Filed Direct Testimony, p. 1 (October 16, 2018).

<sup>5</sup> *Id.* at 1.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Petition*, p. 2 (October 16, 2018).

<sup>8</sup> *Draft of Tennessee Wastewater Systems, Inc. ’s State Operating Permit No. 18024 for Warrioto Hills* (February 28, 2019).

<sup>9</sup> *Petition* at Exhs. G and H (October 16, 2018).

<sup>10</sup> *Id.* at Exhs. I and J.

The Company proposes to charge WHS residential customers according to Rate Class I of TWSI's tariff. Said rate, as of the date of filing of the *Petition*, is \$48.25 monthly.<sup>11</sup> Commission Staff submitted data requests to the Company, to which TWSI provided responses and supplemental responses. Through these responses, TWSI provided the information, not provided in the *Petition*, necessary to satisfy the Commission Rule, 1220-04-13-.17, *Minimum Requirements for New and Amendments to Certificate of Convenience and Necessity*.<sup>12</sup>

The Consumer Advocate Unit in the Financial Division of the Tennessee Attorney General's Office ("Consumer Advocate") filed a *Petition to Intervene* in this docket on December 7, 2018. The Hearing Officer granted the Consumer Advocate's intervention by Order entered on January 8, 2019. On April 15, 2019, the Consumer Advocate submitted the Direct Testimony of Alex L. Bradley concerning the reasons for the Consumer Advocate's intervention and findings on the Company's responses to the discovery requests submitted by the Consumer Advocate.<sup>13</sup> Mr. Bradley testified that the Consumer Advocate's concerns with regard to TWSI *Petition* were: (1) the discrepancy between the daily design flow indicated in the TDEC SOP filing, 43,000 gpd and the engineering report, 17,100 gpd; (2) the method by which the Company intended to book revenue associated with fees charged to the developer and lot owners; and, (3) uncertainty whether TWSI requires the developer to gross up the contributed assets and land for the Federal Income Taxes, as calculated under the Tax Cuts and Jobs Act.<sup>14</sup> Mr. Bradley states that, upon review of the responses provided to the Consumer Advocate's discovery requests, the Company's responses are logical and reasonable.<sup>15</sup>

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<sup>11</sup> *Id.* at 4.

<sup>12</sup> Tenn. Comp. R. & Regs. 1220-04-13-.17 (2018).

<sup>13</sup> Alex L. Bradley, Pre-Filed Direct Testimony (April 15, 2019).

<sup>14</sup> *Id.* at 2-3.

<sup>15</sup> *Id.* at 7.

## **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 or amend a CCN to provide wastewater service, TPUC Rule 1220-04-13-.17(1) provides:

Any public wastewater utility requesting a Certificate of Public Convenience and Necessity ("CCN") in accordance with Tenn. Code Ann. §§ 65-4-201, *et seq.*, shall file an application in compliance with Rule 1220-01-01-.03 and this rule. Each applicant shall demonstrate to the Commission that it possesses sufficient managerial, financial, and technical capabilities to provide the wastewater services for which it has applied. Each application shall demonstrate that there exists a public need for wastewater service 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 assigned to this docket during the regularly scheduled Commission Conference on September 9, 2019, as noticed by the Commission on August 30, 2019. Participating in the Hearing were:

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

Consumer Advocate – Karen Stachowski, Esq., Office of the Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee 37202-0207.

During the Hearing, Matthew Nicks, the Company's President, provided a summary of his Pre-Filed Testimony. The Commission invited members of the public to make public comment concerning the *Petition*. However, no member of the public sought recognition to comment.

## **FINDINGS AND CONCLUSIONS**

Based on the evidentiary record in this matter, the Hearing panel found that TWSI possesses the requisite managerial, financial, and technical capabilities to provide wastewater services to WHS in Montgomery County, Tennessee. The panel further found that TWSI is in good standing with the Commission and is in compliance with all Commission Rules. Thereafter, 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 for all the land and assets of the wastewater system within fifteen (15) days of issuance and before the first customer is connected to the wastewater system; (2) a copy of the final SOP issued by TDEC within fifteen (15) days of issuance; (3) a copy of the signed plat, upon approval of the area of development by the city and/or county government to be developed by the Developers, Riverland Partners and Power and Atkins, LLC, within fifteen (15) days of issuance and before the first customer is connected to the wastewater system; and, (4) evidence that TWSI has received the amount of required federal income taxes owed by the developer on the

Contributions in Aid of Construction. Further, because the wastewater treatment system is being specifically constructed for 57 homes or 17,100 gpd, the panel ordered that the CCN is limited to the 57 homes as platted and approved by TDEC for 17,100 gpd and that any additions to the 57 homes or treatment facility daily design flow will require further amendment to the CCN.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition to Amend Certificate of Convenience and Necessity* filed by Tennessee Wastewater Systems, Inc. in this docket is approved contingent upon the submission of the following in this docket:

(a) the deed(s) and/or easements for all the land and assets of the wastewater system within fifteen (15) days of issuance and before the first customer is connected to the wastewater system;

(b) a copy of the final State Operating Permit issued by the Tennessee Department of Environment and Conservation within fifteen (15) days of issuance;

(c) a copy of the signed plat, upon approval of the area of development by the city and/or county government to be developed by Riverland Partners and Power and Atkins, LLC, within fifteen (15) days of issuance and before the first customer is connected to the wastewater system; and,

(d) evidence that TWSI has received the amount of required federal income taxes owed by the developer on the Contributions in Aid of Construction.

2. The Certificate of Convenience and Necessity granted in this docket is limited to the 57 homes as platted and approved by the Tennessee Department of Environment and

Conservation for 17,100 gpd. Any additions to the 57 homes or treatment facility daily design flow will require further amendment to the Certificate of Convenience and Necessity.

3. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order.

4. 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 (60) days from the date of this Order.

**Chair Robin L. Morrison, Commissioner John Hie, and Commissioner David F. Jones concur.**

**ATTEST:**



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**Earl R. Taylor, Executive Director**