

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION  
AT NASHVILLE, TENNESSEE**

**IN RE:**

**PETITION OF TENNESSEE  
WASTEWATER SYSTEMS, INC., TO  
AMEND ITS CERTIFICATE OF  
CONVEIENIENCE AND NECESSITY**

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**DOCKET NO. 18-00107**

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**DIRECT TESTIMONY**

**OF**

**ALEX L. BRADLEY**

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**April 15 , 2019**

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AFFIDAVIT

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I, Alex Bradley, on behalf of the Consumer Advocate Unit of the Attorney General's Office, hereby certify that the attached Direct Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Unit.



Alex Bradley

ALEX L. BRADLEY

Sworn to and subscribed before me  
this 15<sup>th</sup> day of April, 2019.

Terra Allen

NOTARY PUBLIC

My commission expires: September 28, 2022.

1       **Q1.   PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION**  
2       **FOR THE RECORD.**

3       **A1.**   My name is Alex Bradley. My business address is Office of the Tennessee Attorney  
4           General, War Memorial Building, 301 6<sup>th</sup> Ave. North, Nashville, TN 37243. I am an  
5           Accounting & Tariff Specialist employed by the Consumer Advocate Unit in the  
6           Financial Division of the Tennessee Attorney General's Office.

7       **Q2.   PLEASE PROVIDE A SUMMARY OF YOUR BACKGROUND AND**  
8       **PROFESSIONAL EXPERIENCE.**

9       **A2.**   I received a Bachelor of Science in Business Administration with a major in  
10          Accountancy along with a Bachelor of Arts with a major in Political Science from  
11          Auburn University in 2012. I have been employed by the Consumer Advocate Unit in  
12          the Financial Division of the Tennessee Attorney General's Office (Consumer  
13          Advocate) since 2013. My duties include reviewing utility regulatory filings and  
14          preparing analysis used to support Consumer Advocate testimony and exhibits. I have  
15          completed multiple regulatory trainings sponsored by both the National Association of  
16          Regulatory Utility Commissions (NARUC) and Michigan State University.

17       **Q3.   HAVE YOU PREVIOUSLY PROVIDED TESTIMONY BEFORE THE**  
18       **TENNESSEE PUBLIC UTILITY COMMISSION (TPUC)?**

19       **A3.**   Yes. I have previously testified in TPUC Docket Nos. 17-00108 and 18-00009.

20       **Q4.   ON WHOSE BEHALF ARE YOU TESTIFYING?**

21       **A4.**   I am testifying on behalf of the Consumer Advocate Unit in the Financial Division  
22          of the Tennessee Attorney General's Office.

**Q5. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

**A4.** My Testimony will discuss the reasons for the Consumer Advocate's Intervention in this Docket along with the findings of the Consumer Advocate.

**Q6. WHY DID THE CONSUMER ADVOCATE INTERVENE IN THIS DOCKET?**

**A6.** The Consumer Advocate intervened in this Docket due to concerns regarding certain facts contained within the Company's Petition to Amend Certificate of Convenience and Necessity (Petition). As outlined in the Consumer Advocate's Petition to Intervene the Advocate was specifically concerned with questions raised by the Commission Staff's First Discovery Request:

- "Why the designs for the system provide for 60% more capacity than the stated size of the community;
- How the company plans to book revenue associated with fees charged to the developer and the lot owners;
- Whether the Company requires the developer to "gross up" the contributed assets and land for the Federal Incomes Taxes as calculated under the recently pass Tax Cut and Job Act (2018) [TCJA].<sup>1</sup>"

**Q7. DESCRIBE HOW THE CONCERNS OF THE CONSUMER ADVOCATE AROSE?**

**A7.** The concerns mentioned in the Consumer Advocate's Petition to Intervene arose from a variety of sources.

The Consumer Advocate's concern regarding the designs for the system having more wastewater capacity than the stated size of the community arose out of discrepancies included with the Petition. Specifically, the Petition included a request to the

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<sup>1</sup> Docket No. 18-00107, Consumer Protection and Advocate Division Petition to Intervene, page 2.

1 Tennessee Department of Environment and Conservation for a State Operating Permit  
2 with a daily design of 43,000 gpd<sup>2</sup> but it also included preliminary engineering report  
3 stating the system will be designed for a daily design of 17,100 gpd.<sup>3</sup>

4 The Consumer Advocate's concern regarding the recording of revenues received in  
5 fees charged to developers and lot owners arose out of the Company's last request for  
6 a general rate increase. In Tennessee Wastewater Systems Inc.'s (TWSI or Company)  
7 last application for a general rate increase, Docket No. 16-00139, the Commission's  
8 Order stated "TWSI's exclusion of developer income from its 2016 calculations is  
9 contrary to (prior) Commission decisions."<sup>4</sup>

10 The Consumer Advocate's concern regarding the "gross up" for Federal Income  
11 Taxes for property contributed by developers arose out of the Consumer Advocate's  
12 understanding of TWSI's business model and the impact of the TCJA<sup>5</sup>.

13 **Q8. WOULD YOU ELABORATE ON THE CONSUMER ADVOCATE'S**  
14 **CONCERN REGARDING THE EXCESS CAPACITY?**

15 **A8.** Yes. As a result of the Company's Petition for a general rate increase in Docket No.  
16 16-00139, the Commission ordered that Tennessee Public Utility Commission Staff  
17 (Commission Staff) "...to conduct a compliance review of the billing and accounting  
18 records and practices of Tennessee Wastewater Systems, Inc. and report the results of  
19 the examination to the Commission."<sup>6</sup> As reported by Commission Staff, in Docket

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<sup>2</sup> Docket No. 18-00107, Petition to Amend CCN, Exhibit C.

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

<sup>4</sup> Docket No. 16-00139, Final Order Denying Petition, page 11.

<sup>5</sup> Docket No. 18-00001, Order Approving Staff Report and Recommendations,(Exhibit 1) First Report and Recommendation Regarding Tax Impacts of the 2017 Tax Cut and Jobs Act, pages 5-6.

<sup>6</sup> Docket No. 16-00139, Final Order Denying Petition, ordering paragraph 11.

1 No. 18-00071, “most of the wastewater systems acquired by TWSI are contributed to  
2 it by developers, affiliates or other parties who either construct or fund the  
3 construction of the system. In some cases, the wastewater system conveyed to TWSI  
4 is designed and built larger than required to provide sewer service to regulated  
5 customers; consequently, such systems have sufficient fallow capacity to serve  
6 additional future customers. According to the Company, the parties investing in the  
7 construction of such contributed systems retain the right to sell any unused capacity  
8 to future customers as a means of recouping their investment.”<sup>7</sup> Commission Staff  
9 went on to recommend that “...the Company should be required to specifically  
10 identify such parties and their interests prior to the construction, expansion, or  
11 acceptance of the system.”<sup>8</sup>

12 With those statements in mind, the Consumer Advocate sought to confirm whether  
13 the system was being built with excess capacity and, if so, who would be holder of  
14 the excess capacity.

15 **Q9. WOULD YOU ELABORATE ON THE CONSUMER ADVOCATE’S**  
16 **CONCERN REGARDING THE IMPACT OF THE TCJA ON THE**  
17 **COMPANY’S OPERATIONS?**

18 **A9.** Yes. Prior to the passage of the TCJA, in late 2017, contributions in aid of  
19 construction were exempted from the calculation of Federal Income Tax expense.

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<sup>7</sup> Docket No. 18-00071, Notice of Filings by the Utilities Division of the Tennessee Public Utility Commission, page 15.

<sup>8</sup> Id., page 16.

1 With the passage of the TCJA, this exemption was eliminated and contributions in aid  
2 of construction are now treated as taxable income.

3 As stated in the Direct Testimony of Matthew Nicks in support for this Petition, he  
4 states that “[t]he wastewater treatment system and facility will be constructed by the  
5 developer and conveyed to TWSI as a contribution in aid of construction.”<sup>9</sup>

6 **Q10. WHAT ACTIONS DID THE CONSUMER ADVOCATE TAKE IN AN**  
7 **ATTEMPT TO ALLEVIATE THESE CONCERNS?**

8 **A11.** The Consumer Advocate intervened in this Docket and asked a series of Discovery  
9 Requests to confirm certain information and the Company’s business practices.

10 **Q12. CAN YOU ELABORATE ON THE CONSUMER ADVOCATE’S REVIEW**  
11 **AND LINK DISCOVERY REQUESTS TO THE AREAS OF CONCERN**  
12 **MENTIONED EARLIER?**

13 **A12.** Yes. A summary of the Consumer Advocate’s requests and the Company’s responses  
14 is shown below:

15 In regard to the issue of excess capacity, the Consumer Advocate asked the Company  
16 to confirm the size of the system in a series of discovery requests. In response to  
17 Discovery Request No. 1-4 the Company stated “...The capacity being considered for  
18 authorization is 17,100 GPD...”<sup>10</sup> The Company followed up with a response to  
19 Discovery Request No. 1-7 stating “...There is no unused capacity in the system. The

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<sup>9</sup> Docket No. 18-00107, Direct Testimony of Matthew Nicks, page 2.

<sup>10</sup> Docket No. 18-00107 Tennessee Wastewater System Inc.’s Response to the Consumer Advocates Discovery Request, Response 1-4.

1 development requires 17,100...Since no additional soils are available to the system,  
2 there is no additional capacity available.”<sup>11</sup>

3 Regarding the issue of the recording of revenues received in fees charged to  
4 developers and lot owners, the Consumer Advocate asked Discovery Request No. [2]-  
5 1<sup>12</sup> in which the Company was asked to provide its reasoning for its continued use of  
6 account 421.5 Non-Utility Income, Developer Income. In response to this request the  
7 Company stated “[t]he amounts booked prior to July 23, 2018 were done before the  
8 completion of the TPUC staff audit (Docket 18-00071) during which the Company  
9 and staff continued discussions as to how Developer Income was booked (see Finding  
10 No.5). The entries after July 23, 2018 are mistaken and should have been booked as  
11 regulated income. The Company experienced personnel changes in October (when  
12 the other revenues were booked) and the person who inherited the responsibility of  
13 booking revenues followed the procedure as to how the revenue was previously  
14 booked. The Company has since developed policies and procedures for booking  
15 Developer Income and allocating expenses consistent with the Audit findings.”<sup>13</sup>

16 Finally, regarding the issue of the implication of the TCJA on contributions in aid of  
17 construction, the Consumer Advocate reviewed the Letter of Understanding “LOU”  
18 between the Company and the developer of the subdivision. The LOU states that  
19 “[d]eveloper acknowledges, understands, and agrees that for all cash and property  
20 contributions provided to [Company], a gross up factor shall be applied in order to

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<sup>11</sup> Id., Response 1-7.

<sup>12</sup> The Consumer Advocate’s Second Discovery Request filed March 4<sup>th</sup>, 2019 was incorrectly labeled as the First Discovery Request.

<sup>13</sup> Docket No. 18-00107, Tennessee Wastewater System Inc.’s Response to the Consumer Advocates Discovery Request, Response 2-1.



1 recover the corporate federal income taxes associate with those contributions.”<sup>14</sup>

2 Additionally, the Consumer Advocate reviewed the Response to TPUC’s First  
3 Discovery Request No. 12 to confirm the Company’s requirement that the Developer  
4 gross up contributed property for federal income taxes.

5 **Q13. WHAT WERE THE RESULTS OF THE CONSUMER ADVOCATE’S**  
6 **REVIEW?**

7 **A13.** Overall, I found the Company’s responses logical and reasonable. The Company  
8 appears to have addressed the concerns mentioned earlier.

9 **Q14. DOES THIS COMPLETE YOUR TESTIMONY?**

10 **A14.** Yes, it does. However, I reserve the right to incorporate any new data that may  
11 subsequently become available and to correct any issues later identified.

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<sup>14</sup> Docket No. 18-00107, Petition to Amend CCN, Exhibit J, page 2.