

Monica Smith-Ashford

From: Jeff Riden <Jeff.Riden@Adenus.com>
Sent: Wednesday, May 08, 2019 10:47 AM
To: Patsy Fulton; Matthew Nicks
Cc: Monica Smith-Ashford
Subject: RE: Documents Required for 18-00107

Patsy –

I appreciate your response and comments. I understand where you're coming from as well as the job you have in compiling as complete a package as possible (and that it is to help us) so that legal and the Commissioners can make a decision. You have always told me that if we cannot satisfy a rule or requirement, we need to explain why that is (and how we will be able to comply) and I think we've done that, but if staff and legal feels otherwise, that's why I want to talk. TPUC is the only commission I work with where I do not know upfront (or have a chance to respond to) staff's recommendations on matters to their respective Commissions. So in light of how we've been surprised by some decisions in the past, and we seem to continually run up against the same issues on these types of petitions, I would like to actually discuss them (and not over email). I'll reach out to Kelly and Monica once their conference is over later this week.

One last thing regarding timing of filing – and perhaps in light of the concerns you've expressed below, this is an issue we should collectively discuss further – most if not all utilities have detailed guidelines and specifications for their systems (these are apart from TDEC guidelines). If a system is not built according to a utility's specs, the utility will not accept it or be able to operate it unless or until the system is brought in line with the utility's requirements. As this relates to the timing of a CCN petition, developers need to know who their utility is going to be before they construct the wastewater system so they know to what company's specs the system must be designed and constructed. Perhaps this is a risk the Commission is fine with a developer taking, but it certainly sets the table to complicate things quite a bit.

Thanks,

Jeff

From: Patsy Fulton <Patsy.Fulton@tn.gov>
Sent: Tuesday, May 7, 2019 5:17 PM
To: Jeff Riden <Jeff.Riden@Adenus.com>; Matthew Nicks <Matthew.Nicks@adenus.com>
Cc: Monica Smith-Ashford <Monica.Smith-Ashford@tn.gov>
Subject: RE: Documents Required for 18-00107

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Jeff,

I am so sorry, I just received this email. In fact, I just received about 10 emails that I had been expecting for a couple of days. I wondered why a response had not yet arrived. I knew that it was not like you to not respond, and I didn't think you would let it get by Matthew. LOL Since there is so much to respond to in this email, I will respond directly below each of yours and forward on to David. I am part of Staff so all of my requests are due to TPUC's Rules and Regulations as I interpret them. Some requests may be on a need to know basis to resolve other questions. From my observation, there are almost no concerns with the company having the technical and managerial ability to operate the utility and very few concerns at the present time with TWS having the financial ability to operate the utility and most items are covered in the Petition for technical, managerial and financial, other than the cost of building the system and solid

language about the tax issue. That issue seems to be skirted around without the developer's full understanding of how much he will have to pay. Most of the needed requirements in the CCN Petitions for public need are not included in the package.

I know you don't want to hear this; however, when all this first began with TWS, there was one request I had of Charles Pickney as I do of everyone processing a CCN : I didn't want to send out a data request for any information requested on the CCN Requirement Checklist. In other words, if it is required, then I got to have it or he had to call Darlene or David and find out what the alternative document/filing/information might be and file something with the Petition. Decentralized Systems, the need for them, requirements were all unknowns at the time. I explained that I might have extra questions each time because we were just realizing things we really needed to know, based on consumer and development questions and complaints; therefore, I might have to send a data request; however, next CCN, he should cover not only the checklist but any additional questions from the previous data request in the new CCN Petition. It became a challenge for Charles, Matt and me to be able to get a Petition filed and set for conference without a single data request, and we did it several times. I am not sure what happened in 2014; however, all of a sudden, we couldn't get all the information we needed from TWS, even with a data request. It sounded more and more like it was because TWS was building in Williamson County and the County had rules that TWS had to abide by and one was they had to get a CCN before any documents would be produced that the CCN rules/Staff required.

That being said, it is very frustrating to me as well that I can't get the information that the rules require me to have prior to processing a CCN Petition, and that I believe we need, in order to prepare a recommendation for Hearing. The Commissioners approved the rules and I believe that they expect us to abide by the rules when we process the CCN's. I guess I have seen too many issues and remember them all too well; therefore, I apply my knowledge of dockets past that created issues that didn't need to be, had we had all the information that we require in place in the beginning. The LOU is just that: two negotiators sitting down at a table and comparing notes for a first run at putting an agreement together. There are so many critical issues that are not in the LOU. Warranties, for instance are not even mentioned; however, the Sewer Service Agreement is very specific to warranty information and includes it in some of the Agreements in detail. Maintenance is always covered in other wastewater companies agreements for the first year and sometimes the second year by whoever built the system, pumps, etc. any equipment that goes out is also covered by the warranty. TWS should expect warranties from whoever builds the system and if TWS builds it, as they have as of recent, they should be prepared to cover with manufacturer warranties. Maintenance and repair is a big expense to the ratepayers. Performance bonds should be required---it is in our rules---if it is an Adenus company building the system, I would think that you could tell us that in the Petition and request for the performance bond to be waived for the obvious---I have seen in the Sewer Service Agreement where you ask for title insurance; however, we have not been privy to the Sewer Service Agreement so we wouldn't know that is in place. Good thing to have. It is all the information that isn't provided that is holding the CCN's up and if you really don't have it, the hold-up is only protecting the Utility and the ratepayers. The reason the TWS Petitions take so long is because they are filed before TWS has all the information that is required to be filed with the Petition. If all the information is filed with the Petition, these could really go thru very quickly. However, everything is not filed so our first data request is simply asking for all the information that has not been filed, along with a few clarity questions about information provided.

In addition there were typos in this LOU, even more reason to get the Sewer Service Agreement in place. TWS is not under the Williamson County Rules this time so I tend to believe that this Petition was filed prematurely. If the rules can't be met, then the Petition shouldn't be filed until all the information is available to file or until you have exhausted every avenue in order to provide the information, along with an explanation in each case as to attempts that have been made in order to secure the information. You can't file for a TDEC permit without the design or plans. Montgomery County doesn't require a CCN first. The permit has been issued from TDEC---so they didn't need a CCN. Wouldn't it be easier to put the contingency in the Sewer Service Agreement rather asking the Commissioners to approve the CCN contingent on the development happening and then having to go thru all that it will take to take it away? The Sewer Service Agreement would become null and void if it didn't get TPUC approval. The public need is established when there is going to be a development with public need. If there is nothing establishing that there is going to be a development -- no documentation -- not even a builder for the wastewater system--then why? There is a proposed development with several parties that first have to come together with a joint venture and the right pieces of land before the development

is going to need all of the above. I do understand why the soils might have to be tested/determined to insure there can be sewer---I made sure mine perked before I bought it.

From: Jeff Riden [mailto:Jeff.Riden@Adenus.com]

Sent: Friday, May 3, 2019 4:57 PM

To: Patsy Fulton; Matthew Nicks

Cc: Monica Smith-Ashford

Subject: RE: Documents Required for 18-00107

Patsy –

Matt is on vacation. I would like to get a call together next week with you, David, and Monica (if she's available – I think they have their conference next week) to discuss all this (I'm also happy to come down and meet with you all), especially if there is a legitimate concern over the information we have filed in this docket. Contrary to the feelings you expressed below, we take our adherence to TPUC's CCN rules quite seriously (look at the last two CCN filing which, unlike Warrioto, were filed after the effective date for the new rules). We don't want to waste your, our, or the developer's time by not providing what is absolutely necessary. For instance, we spent weeks working on 4 different revisions of the property maps to get them the way you want them. We are committed to getting you the information that is required. That said: Let me add since we are talking about use of time--that if the first set of map(s) provided in the response to data request 2 had been in accordance with the specific map rules (as requested) included with #5 of the data request, dated 2/21/2019 we could have alleviated the last 2-3 revisions. Not the way I wanted but a map that had all the rule specific requirements---granted color coding was not in the rules; however, I couldn't come up with any other way to help Matt identify the requested territorial border.

1. The petition was filed under the old rules (in October prior to the new rules going into effect in December). We have issued data requests that should have requested what was needed, no matter the effective date of the rule. There were not too many new rules and almost nothing that we had not already been requesting for a while.

2. Regardless of whether that matters or not, if you want to apply the new rules, Rule 1220-04-13-.17(b)(3) only requires that "any contracts or agreements..." be filed – not "Final Sewer Service Agreement" as you state in the email below. We have filed the only contract with the developer currently available. We explained the contracting process in our first data response filed in the docket back in December. I understand the process; however, I don't understand why a binding contract can't be in place before filing the Petition for a CCN. Jeff, it has not been long ago that a Developer of TWS called me and wanted to know what the hold-up was and what he could do to help. I explained that one of the things he could provide us would be a contract with the Utility. He said Oh I have that here and he sent me the "Sewer Service Agreement". Evidently TWS has changed that process now; however, I don't know why it can't be executed and filed with the CCN Petition.

3. I have requested for years that if someone at the Commission has concerns with our LOU to call me to discuss these concerns with me. No one has yet to contact me about it (other than you). We and the developer consider it to be binding and have operated accordingly. If the Commission prefers we handle business another way, again, happy to have that conversation with whoever has the concern. We want to work with you, not against you. The LOU doesn't have everything in it and areas that we prefer should be expanded, it simply says more specifics/detail will be in the "Sewer Service Agreement". There are rules and regulations that state what a contract should include

4. As stated in our data response, the final Sewer Agreement will have the correct access fee amount. We have dozens of sewer agreements filed with the Commission and all state the \$120 fee per the tariff. We will include this in Matt's amended testimony. Great Idea! I like solutions!

5. I believe the easement language is in the Sewer Agreement. Though it may not be applicable to a particular development, it may come into play later should neighboring subdivisions wish to obtain sewer service and we need to run pipes to make connections. It is easier (and better) to get the agreement on the easements up front than have to come back and request it later. This language has been part of our LOU's and agreements for quite some time.

Paragraph #17: Up front it states the Developer will pay; however, the next sentence which has not been included in previous LOU's appears to be where TWS will incur any costs in procuring easements or condemnation of easements, either with the Developer's approval or without it and it doesn't mention anything about future development. There is another one that was also questionable that you might be referring to – paragraph #6—I understand that one, after the previous explanation.

6. The additional terms and conditions you ask about are also standard in the agreements we have on file. Essentially they detail the how's and when's the land transfer will happen. That information isn't necessary for the LOU as long as the general understanding that the land will be transferred at some point is addressed. I believe this LOU failed to address that point and after discussion with you and Kelly, we were told to obtain affidavits from the land owner/developer that the land will be conveyed to the utility. We have provided 2 affidavits to that effect. I thought the first one was filed, but based on your email I will double check and file on Monday if not there. Both have been filed. However, if we had received more definitive information, maybe what is in the sewer service agreement, the affidavits might not have been necessary---I would have to see the language in the SSA. In addition, why didn't TWS get an affidavit for all the land ownership first off, once we requested, even before we requested for the benefit of the Utility. I know we probably only requested the one for Riverland Properties; however, if you know that some of the land is on a completely different piece of land, owned by a completely different company, and it up. I probably spent a whole day with Matthew, thinking his map was drawn wrong before I discovered the drip field was on someone else's property. I don't think I should have to figure that out. I think you guys should tell us that up front—in the Petition and if that ever happens again, I hope that you provide everything that we requested this time, now that you know we will need something, if it is not the Sewer Service Agreement and documents to land.

7. To your point about including conditions in our contracts, we have them in our LOU's. The contracts are issued once we have all necessary approvals, including the CCN. The Commission grants CCN's on a conditional basis. We have in the past but that is not the rule. TWSI has been granted, they're full of conditions that must be met in order to begin to provide service. And we still await some of that information on dockets from past years. This has been done to ensure the Commission receives the information it needs/requires and to work with the Utility to allow them the CCN in hopes that next time the Utility will have all the necessary documentation. And to let the Utility know that it needs to be provided next time with the CCN, not that it is to become a practice. Frankly, we like the conditions because it gives us a hammer to use with developers who otherwise may put providing us with that information lower down on their priority list – don't they need sewer for their development—I would think that would be a bigger hammer than the Commission---not to mention some information just isn't available until we close on a project. It doesn't seem logical to set a matter for Hearing so that you can tell the parties everything they should have already brought to the table.

8. The contractor for the system has not been determined yet. It may be Adenus, it may be someone else. As stated in the data response, that information will be provided once it is known. Would the Developer have made a decision already if he knew that it is in TPUC's CCN Requirements that the builder's information is to be provided with the CCN Petition?

9. The performance bond will be provided in the docket prior to the system being constructed (construction has not been scheduled), though if Adenus is going to construct it, we typically do not bond our affiliates. I understand---just include the information in the Petition—if the Developer is really ready to build, you would think with the Nashville market right now, he would have chosen a builder for the sewer that is required before he can start building. If he is not willing to submit the information, he may not really be ready to build. When these developers have everything ready to go, they start looking to solve issues; however, since he doesn't even have a builder for his sewer system yet, he may not be totally set on the development.

10. We will file amended testimony. Great!

Patsy, as I said, we're not trying to be difficult about these things. We want to work with the staff and get you what you need to evaluate the petition, but we have to get some clarity the clarity is the rules---on these things – especially with more and more CCN petitions coming. We have the clarity in the rules, clarity is not a question, leniency is. I think you

need to call someone in our legal area and find out how to do that. I am having a problem with understanding why you can't provide most of the documentation we are requesting with maybe the exception of the deed and easements in the TWS name; however, everything else is in TWS (as the only proposed Utility) control, so I can't see the issue. However, I do like assisting and "making things happen"; therefore, I look forward to you requesting and getting resolution from our legal department. I believe what we have filed shows the public need and I think we've established our managerial, technical, and financial abilities. But if there are concerns, then I would like to discuss them, so that I can better understand. I also believe the Commission as a matter of course issues conditional CCN's meaning they're not effective until certain conditions are met such as filing certain pieces of information, etc... and so much of these things can be addressed in conditions pertaining to the grant of the CCN. The same conditions should be able to be handled on TWS's end, providing the Commission with what their rules require.

Thanks,

Jeff

PS – I'll get the updated map filed in the docket as well as the Riverland affidavit if it's not already in there. All affidavits are filed. Thanks

Thanks, Patsy

From: Patsy Fulton <Patsy.Fulton@tn.gov>
Sent: Friday, May 3, 2019 4:13 PM
To: Matthew Nicks <Matthew.Nicks@adenus.com>
Cc: Monica Smith-Ashford <Monica.Smith-Ashford@tn.gov>; Jeff Riden <Jeff.Riden@Adenus.com>
Subject: RE: Documents Required for 18-00107

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Matthew,

If you would please reissue as a replacement for the previous one; however, not to me, please file in the docket file. Also, could you please file the affidavit from Mr. Powers for Riverland Partners in the docket file. If it has already been filed in the docket file, no worries, but I couldn't find it there. I think I just got an email on that one. The affidavit for CBP Properties is in the docket file. Also, I do need the other items as soon as possible to complete the package.

Thanks, Patsy

From: Matthew Nicks [mailto:Matthew.Nicks@adenus.com]
Sent: Wednesday, May 1, 2019 3:55 PM
To: Patsy Fulton
Cc: Jeff Riden
Subject: RE: Documents Required for 18-00107

Ms Fulton,

Thanks for the email.

Yes, the red boundary line marks the subdivision boundary and it also encompasses the coverage territory area that Tennessee Wastewater Systems Inc, is requesting to serve.

Do we need to revise the Map and re-issue to you?

Thanks.

M



Matthew Nicks

Adenus Group, LLC | 849 Aviation Pkwy, Smyrna, TN 37167

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From: Patsy Fulton <Patsy.Fulton@tn.gov>

Sent: Wednesday, May 1, 2019 3:15 PM

To: Matthew Nicks <Matthew.Nicks@adenus.com>

Cc: Jeff Riden <Jeff.Riden@Adenus.com>

Subject: Documents Required for 18-00107

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Matt,

On these maps, the boundary marked in red says it is the subdivision boundary. I have been told we also need the boundary for the area that TWS is requesting to be in their CCN coverage area. Is the boundary for the subdivision the actual boundary for the area that TWS is requesting? If it is, would you please note that it is the requested area for the CCN. If it is not, then also mark the boundary for the area that is being requested. Please let me know on Warriota Hills (Docket 18-00107) because outside of that I think we have a good map, with everything listed in the rules on the map and maybe a template going forward that we can use of the determinates that need to be on all future maps. I am now working on the other two---so if you know of anything more that needs to be included, please do so. Otherwise, wait until I review them, and if there needs to be a revision, I will let you know.

There are four (4) more requirement issues that must be resolved for Warriota Hills: These issues have been requirements for a CCN for a long time and now have been made a part of the Commission's Rules. I know how strongly the Williamson County Rules are followed by TWS; however, I am not sure why, when applying for a CCN the Commission's rules are taken so lightly. TWS should file all the documents required for filing a CCN with the Petition. 1.) Provide the contract ("Final Sewer Service Agreement") between the Utility and entity that can deed over the land, easements and entitlement to the wastewater system as well as negotiate any fees that will be paid to the Utility along with any other Utility pertinent issues. That is a contract between the Utility and the Developer that has been negotiated and is binding. There is no reason there can't be a contingency in place, that if for some reason the Utility does not get state approval, that the agreement will become null and void. Both parties already have a lot of time and money invested; therefore, I can't imagine that you both wouldn't want a signed contract (commitment) in place. If you are the only Utility that the Developer is talking to, then he should know that no one else would be able to apply for the CCN for his development, unless instigated by him; therefore, there should be no reason for the Developer to not negotiate and sign an agreement with TWS. The LOU that has been filed does not have the same rate as has been tariffed for sewer access fees, and it has been said that the "typo" will be corrected in the Sewer Service Agreement. We have been told also that the paragraph concerning the easement is not applicable to this development. Does that mean that the easement paragraph will be taken out of the final agreement? In addition, there is reference in the LOU that the Sewer Service Agreement will state terms and conditions more fully. What terms and conditions? Please file the Final Sewer Service Agreement.

2.) Provide the contractor's name that is going to build the system and a copy of their license to do business in Tennessee. 3.) Provide a copy of a performance bond from the developer or the builder of the wastewater system made payable to the Utility to ensure construction of the wastewater system and/or documentation describing bonding requirements imposed by municipal governments for the proposed wastewater system to ensure the system will be built. How many times have you had a CCN approved for a development and been ready to go and the Developer that solicited TWS is gone/missing just decided not to develop the area?

4.) Finally, we need the pre-filed testimony to be amended to add the statement as stated in Rule 1220-04-13-.17(2)(f)(5).

Thanks, Patsy

From: Matthew Nicks [<mailto:Matthew.Nicks@adenus.com>]

Sent: Wednesday, April 17, 2019 12:37 PM

To: Patsy Fulton

Cc: Jeff Risdien

Subject: RE: Maps for 18-00107, 19-00030, 19-00029 - Calista Road - Ozburn Property Subdivision in Williamson County

Ms Fulton,

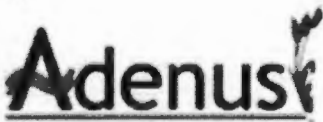
Attached are the revised drawings that are color coded, indicate the project boundaries, the treatment system area within the project boundaries, include a scale and a legend for reference.

These drawings are for the Ozburn Property Subdivision in Williamson County.

Please let me know if you have any questions.

Thanks.

M



Matthew Nicks

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From: Patsy Fulton <Patsy.Fulton@tn.gov>

Sent: Tuesday, April 16, 2019 4:47 PM

To: Matthew Nicks <Matthew.Nicks@adenus.com>

Subject: Maps for 18-00107, 19-00030, 19-00029

*** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Matthew,

It looks like almost everything is included on 7C (attached) that is required; however, it appears that if the area marked in orange is the boundary of the territory being requested, it does not include the treatment system---it has been carved out of the orange territorial boundary, if that is what the orange boundary represents. I didn't see a legend for territorial boundary. Also, there are areas within the orange boundary that are not part of the developers total area,

such as the cemetery and the Christopher Burns property. I don't believe they are included in what the Developer owns. If that is acceptable as to what you are requesting, then my suggestion would be to clearly mark in orange the area of the subdivision of 57 homes(as in the Developers letter of request), inclusive of the complete wastewater system. On the front of the map legend that the orange boundary represents the boundary of the area being requested, the green represents the sewage treatment plant and drip fields, I think the collection lines are on there and marked, and the subdivision lots were laid out.

Since TPUC's Rules and Regs also require you to identify any areas within the proposed area that will not be serviced when the system becomes operational, also note that the entire area with the orange boundary will be operational, meaning that there will be no other open space that will be available for future development within the orange boundary.

Finally, since the map has a scale on it I told someone the other day that it was to scale; however, if you would please confirm that on the map, that would be most appreciated. We need to present everything as streamlined as possible to alleviate any further questions.

I really need one Warriota map with all the specifics as above as soon as possible. 5A in 18-00107 can be used to identify everything that we need, according to the Rules and Regs. It is labeled "Boundary Map"; however, I don't see any definitive boundaries on that map. I also need everything just as above. One map with everything for each location— One for 19-00030 and one for 18-00107 and probably one 19-00029. I haven't got to 19-00029; however, if it has been presented the same, I will also need it showing the boundary of the requested territory and so noted.

Thanks, Patsy

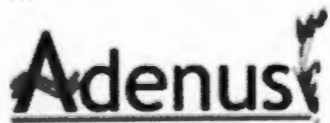
From: Matthew Nicks [<mailto:Matthew.Nicks@adenus.com>]
Sent: Thursday, April 11, 2019 3:25 PM
To: Patsy Fulton
Subject: RE: 19-00029 and 19-00030

Ms Fulton,

Attached are the color code maps for the Calista Road Project – Chelsea Way Subdivision – in Robertson County.

Please review the revised maps & plans and let me know if you have any questions or need additional clarification.

Thanks.
M



Matthew Nicks

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From: Patsy Fulton <Patsy.Fulton@tn.gov>
Sent: Tuesday, April 9, 2019 3:42 PM
To: Matthew Nicks <Matthew.Nicks@adenus.com>
Subject: 19-00029 and 19-00030

Matt,

FYI: The maps provided with 19-00029 and 19-00030 are not readable for us. Jeff previously re-sent me maps for 18-00107 via e-mail that I have been able to manipulate by increasing the size to make them readable. I will attach a copy of one that he sent me so you will know what I am referring to. I need to identify everything as stated in (listed out in 1220-04-13-.17(2) (a) (7) . Once I do receive ones that I can read, I may still need to give you a call and let you walk me through those steps in 7(i-v) so that I understand where each item is covered.

In addition, I noticed on the ones that Jeff sent me allowing me to enhance the size, there are identifiable labels (tremendously helpful) that are not on the ones filed with the Petition (Exhibits 5A-5D) . 5A is identified as "TPUC Property Boundary Sheet" (upper left corner) on the screen in the new one that Jeff sent. Since those can't be entered into the platform that appears on the Internet, the identity will need to be manually affixed to the map and refiled; however, let's make sure we have all the parts included with these maps prior to re-filing. We have got to get these maps right---we have got to know, without a doubt, the exact territory you are requesting and you need to know, without a doubt, the exact territory that will hopefully, be approved by the Commission.

Finally, will you please use the map that I am attaching from Exhibit 5A in 18-00107 and manually, clearly mark the boundaries of the territory being requested, wherever that boundary is. I want to make sure that I understand the exact territory being requested by Tennessee Wastewater and the Developer. Colored notation in RED would be preferred; however, black will suffice, as long as the boundary border is distinct from all other lines. FYI: Michelle color codes everything!! If the maps in 19-00029 and 19-00030 are similar, please also mark those boundary maps in the same manner.

Thanks, Patsy