

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

April 8, 2020

IN RE:

PETITION OF TENNESSEE WASTEWATER  
SYSTEMS, INC. TO AMEND ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO EXPAND ITS  
SERVICE AREA TO INCLUDE CHELSEA’S WAY  
SUBDIVISION IN ROBERTSON COUNTY

DOCKET NO.  
19-00030

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ORDER

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This matter came before Vice Chair Kenneth C. Hill, Commissioner John Hie, and Commissioner David F. Jones of the Tennessee Public Utility Commission, (“TPUC” or “Commission”), the voting panel assigned to this docket, at a regularly scheduled Commission Conference held on March 9, 2020, for consideration of the *Petition to Amend Certificate of Convenience and Necessity* (“*Petition*”) filed by Tennessee Wastewater Systems, Inc. (“TWSI,” “Company,” or “Petitioner”) on March 4, 2019. In its *Petition*, TWSI requests the Commission’s approval of an amendment to its Certificate of Convenience and Necessity (“CCN”) which would expand the Company’s service territory to include the Chelsea’s Way Subdivision in Robertson County, Tennessee.

**BACKGROUND AND PETITION**

TWSI is a corporation organized under the laws of the State of Tennessee with a principal place of business located at 851 Aviation Parkway, Smyrna, Tennessee.<sup>1</sup> TWSI was first granted a CCN for the operation of a wastewater system in TPUC Docket No. 93-09040 on

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<sup>1</sup> *Petition*, p. 2 (March 4, 2019).

April 6, 1994.<sup>2</sup> TWSI has been a wastewater service provider in Robertson County since 2000, and has expanded service to areas within Robertson County, including Sunnybrook, Cedar Hill, Cross Plains, and Cedar Hill Baptist Church.<sup>3</sup>

The Company expects to serve one hundred seventeen (117) residential lots in the Chelsea's Way Subdivision. In its *Petition*, TWSI provides information required by Commission Rules relevant to obtaining or amending a CCN for wastewater services, including documentation indicating it is registered and in good standing with the Tennessee Secretary of State.<sup>4</sup> TWSI alleges that a public need exists for the provision of wastewater services in the Chelsea's Way Subdivision and that the Company possesses the requisite managerial, technical, and financial capabilities to provide service to the Chelsea's Way Subdivision.<sup>5</sup>

In support of its *Petition*, the Company filed a map showing the location of the Chelsea's Way Subdivision with Map 90, Parcel 79 in Robertson County, Tennessee.<sup>6</sup> In addition, the Company filed the testimony of Matthew Nicks, president of TWSI.<sup>7</sup> In his Pre-Filed Testimony, Mr. Nicks states that neither Robertson County nor the local utility district provides wastewater service to the area and that the developer has requested that TWSI provide such service.<sup>8</sup> Mr. Nicks further testified that the collection system will be a septic tank effluent pump system, with septic tanks and pumps at each home. Through discharge from the tanks to collection lines, wastewater will transfer to a central treatment system where the effluent will be treated,

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<sup>2</sup> *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).

<sup>3</sup> *Petition*, p. 1 (March 4, 2019).

<sup>4</sup> *Id.* at 2-5 and Exhs. 5 and 6.

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

<sup>6</sup> *Response to TPUC Staff's Data Requests*, Exhs. 1A, 1B, and 1C (February 14, 2020).

<sup>7</sup> Matthew Nicks, Pre-Filed Direct Testimony (March 6, 2019).

<sup>8</sup> *Id.* at 1.

disinfected, and land applied through drip irrigation. Such a system is similar to other systems operated by TWSI.<sup>9</sup>

The Company provided responses to data requests submitted by TPUC Staff to provide additional information necessary to comply with Commission Rule 1220-04-13-.17 concerning minimum filing requirements.<sup>10</sup> No party sought intervention in this docket.

### **THE HEARING**

A Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on March 9, 2020, as noticed by the Commission on February 28, 2020. Participating in the Hearing were:

Tennessee Wastewater Systems, Inc. – Jeff Riden, Esq., General Counsel;  
Matthew Nicks, President; 851 Aviation Parkway, Smyrna, Tennessee.

During the Hearing, Matthew Nicks, President of TWSI, presented testimony on behalf of the Company and adopted his Pre-Filed Direct Testimony. He offered no corrections or amendments to his Pre-Filed Testimony or the Company's filings. Mr. Nicks was subject to questions from the voting panel of Commissioners. Members of the public were given an opportunity to offer comments, at which time, no comments were submitted.

### **STANDARD FOR COMMISSION APPROVAL**

A public utility is not permitted to begin construction or operation of a new utility 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

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<sup>9</sup> *Id.*

<sup>10</sup> *Response to TPUC Staff's Data Requests* (February 14, 2020); *Response to TPUC Staff's Data Requests* (February 26, 2020).

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.<sup>11</sup>

Additionally, in order to obtain 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 that complies 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.<sup>12</sup>

The rule further establishes minimum information filing guidelines for applications for new or expanded CCNs.<sup>13</sup>

## **FINDINGS AND CONCLUSIONS**

In its *Petition*, TWSI has asked the Commission to amend its CCN to include the Chelsea’s Way Subdivision in Robertson County, Tennessee, alleging that a public need for the proposed wastewater utility service exists and that the Company possesses the managerial, technical, and financial capability to provide service to the subdivision. Based upon a review and consideration of the pleadings, Pre-Filed Testimony, and the entire administrative record, the voting panel made the following additional findings and conclusions:

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<sup>11</sup> Tenn. Code Ann. § 65-4-109 (Supp. 2019).

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

<sup>13</sup> *Id.*

The panel found that the Chelsea's Way Subdivision requires wastewater service to move forward with proposed development and that the parcels do not receive wastewater service from TWSI nor any other municipal utility, utility district, or other private wastewater utility. No other utility is seeking to serve the parcels. Therefore, the panel voted unanimously that there exists a public need to provide wastewater service to the Chelsea's Way Subdivision as required by Tenn. Code Ann. § 65-4-201(a) and Commission Rule 1220-04-13-.17(1).

TWSI has demonstrated that it possesses the requisite managerial, financial, and technical capabilities to provide wastewater service to the Chelsea's Way Subdivision. In addition, TWSI is in good standing with the Commission and is in compliance with all Commission rules. Further, the voting panel found that, as TWSI has proposed to charge its existing Commission approved residential service rates in the Chelsea's Way Subdivision, the Company's proposed rates are reasonable.

Based upon these findings, the panel voted unanimously to grant TWSI's *Petition*, contingent upon the filing of the following documents:

1. A copy of registered deed(s) and/or registered easement(s) for all the land and ownership rights to the wastewater system within fifteen (15) days of being issued and before the first customer is connected to the wastewater system, along with a copy of the title insurance policy on such land(s) indicating that the sewage facility land is free and clear of all material or interfering incumbrances, including, but not limited to, monetary liens in the name of TWSI for the full amount of the construction of the sewage facility and the value of the sewage facility land as set forth in contracts submitted by TWSI to the Commission;
2. A copy of the final State Operating Permit issued by the Tennessee Department of Environment and Conservation within fifteen (15) days of issuance;
3. A copy of "as-built" plans for the Sewer System and the Collection System with

signed certification by both TWSI and the Tennessee Department of Environment and Conservation indication that the wastewater system has been inspected and is approved to begin operation;

4. A copy of the signed plat of the development, within fifteen (15) days of approval and issuance by the City and/or County government and before the first customer is connected to the wastewater system

5. A final detailed amount of collection costs and the cost of the land being transferred to TWSI no later than fifteen (15) days after the final plat is signed by the Utility; and,

6. A copy of documentation evidencing that TWSI has received the amount of required federal income taxes owed by the developer on the Contributions In Aid of Construction.

Further, the voting panel directed TWSI to file a report in this docket demonstrating its compliance with the above filing requirements prior to providing wastewater service to the Chelsea's Way Subdivision. In the event the compliance report is not filed within six (6) months of the date of this *Order*, the voting panel directed TWSI to file a report on the status of providing wastewater service to the Chelsea's Way Subdivision and the status of compliance with each of the above filing requirements.

**IT IS THEREFORE ORDERED THAT:**

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

(a) A copy of registered deed(s) and/or registered easement(s) for all the land and ownership rights to the wastewater system within fifteen (15) days of being issued and before the first customer is connected to the wastewater system, along with a copy of

the title insurance policy on such land(s) indicating that the sewage facility land is free and clear of all material or interfering incumbrances, including, but not limited to, monetary liens in the name of Tennessee Wastewater Systems, Inc. for the full amount of the construction of the sewage facility and the value of the sewage facility land as set forth in contracts submitted by Tennessee Wastewater Systems, Inc. to this agency;

(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 “as-built” plans for the Sewer System and the Collection System with signed certification by both Tennessee Wastewater Systems, Inc. and the Tennessee Department of Environment and Conservation indication that the wastewater system has been inspected and is approved to begin operation;

(d) A copy of the signed plat of the development, within fifteen (15) days of approval and issuance by the City and/or County government and before the first customer is connected to the wastewater system;

(e) A final detailed amount of collection costs and the cost of the land being transferred to Tennessee Wastewater Systems, Inc. no later than fifteen (15) days after the final plat is signed; and,

(f) A copy of documentation evidencing that Tennessee Wastewater Systems, Inc. has received the amount of required federal income taxes owed by the developer on the Contributions In Aid of Construction.

2. Tennessee Wastewater Systems, Inc. shall file a report in this docket demonstrating its compliance with the above listed filing requirements prior to providing wastewater service to the Chelsea’s Way Subdivision.

3. In the event that Tennessee Wastewater Systems, Inc. has not filed a compliance report within six (6) months of the date of this *Order*, then Tennessee Wastewater Systems, Inc. is directed to file, no later than six (6) months of the date of this *Order*, a report providing the status of compliance with each of the above listed filing requirements and the status of the provision of wastewater service to the Chelsea's Way Subdivision.

4. 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.

5. 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.

**Vice Chair Kenneth C. Hill, Commissioner John Hie, and Commissioner David F. Jones concur. None dissent.**

**ATTEST:**



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**Earl R. Taylor, Executive Director**