

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

April 8, 2020

IN RE:

PETITION OF TENNESSEE WASTEWATER  
SYSTEMS, INC. FOR APPROVAL TO USE ITS  
ESCROW AND RESERVE FUNDS FOR CAPITAL  
IMPROVEMENTS AT HIDDEN SPRINGS RESORT

DOCKET NO.  
19-00085

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ORDER

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This matter came before Chair Robin L. Morrison, 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 of Tennessee Wastewater Systems, Inc. for Approval to Use Its Escrow & Reserve Funds for Capital Improvements at Hidden Springs Resort* (“*Petition*”) filed by Tennessee Wastewater Systems, Inc. (“TWSI,” “Company,” or “Petitioner”) on September 16, 2019. In its *Petition*, TWSI requests the Commission’s approval for use of its escrow and Contribution In Aid of Construction (“CIAC”) reserve funds for needed capital improvements on its facility at Hidden Springs Resort (“Hidden Springs”) in Sevierville, 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> Hidden

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

Springs is a commercial cabin resort comprised of one hundred forty-four (144) cabins, of which, one hundred fourteen (114) have wastewater service provided by TWSI.<sup>2</sup>

In its *Petition*, TWSI states that the developer of Hidden Springs was responsible for constructing the wastewater system and subsequently conveying it to TWSI to own and operate. The treatment plant was to be built as development required, in three (3) phases “utilizing a sand filter, an Advantex pod, and finally a rotating biological contractor (RBC) that would serve up to 400 cabins.”<sup>3</sup> Subsequent to the sand filter construction, the developer went bankrupt. Therefore, the additional phases of the treatment system were not constructed. While the sand filter was designed to serve fifty-six (56) cabins, one hundred fourteen (114) were connected to the system. The additional load on the sand filter resulted in its failure. A temporary package system consisting of two (2) FAST system units were installed in 2017, but this temporary system is no longer viable.<sup>4</sup>

The Tennessee Department of Environment and Conservation (“TDEC”) conducted an investigation and issued an order concluding that the overall condition of the wastewater system at Hidden Springs had resulted in numerous violations of TWSI’s operating permit. In addition, TWSI did not obtain TDEC approval for installation and use of the temporary FAST system, also placing TWSI in violation of its operating permit.<sup>5</sup>

TWSI states that “the only remedy to ensure the facility operates correctly is to build a new treatment plant.”<sup>6</sup> Specifically, TWSI proposes to build a new 45,000 gallon per day plant consisting of three (3) Bio-Clere pods to accommodate the wastewater treatment requirements

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<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at 1-2.

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

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

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

necessary to serve the one hundred fourteen (114) cabins that are currently connected to the system.<sup>7</sup>

Along with its *Petition*, the Company submitted the testimony of Company President, Matthew Nicks. In his Pre-Filed Testimony, Mr. Nicks reiterated the system problems and the need to make repairs to the system outlined in the Company's *Petition*. In addition, Mr. Nicks testified that an expansion of the drip disposal area is required to achieve necessary disposal capacity and that the Hidden Springs Resort Owners Association has granted TWSI a permanent easement for the land identified for the necessary plant and drip field expansions.<sup>8</sup> Mr. Nicks stated that TWSI proposes to fund the new system using funds from the Company's escrow and CIAC reserve funds, which are sufficient to cover the costs of the repairs. The project will take approximately ten (10) months to complete and much of the work will be performed by TWSI affiliate, Adenus Solutions Group, LLC ("Adenus") in order to keep costs low and reduce delay in commencement of the repairs.<sup>9</sup>

On September 26, 2019, the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General ("Consumer Advocate") filed correspondence in this docket indicating that it had no opposition to TWSI's proposed use of escrow and reserve funds for the construction of a long-term solution to the failed Hidden Springs system.<sup>10</sup> No party sought intervention in this docket.

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

<sup>8</sup> Matthew Nicks, Pre-Filed Direct Testimony, p. 2 (September 16, 2019).

<sup>9</sup> *Id.* at 2-4.

<sup>10</sup> *Letter to Chairperson Morrison from Karen H. Stachowski, Consumer Advocate* (September 26, 2019).

## **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 wastewater utility must obtain Commission approval for extraordinary expenditures from reserve or escrow funds, as set forth in Commission Rule 1220-04-13-.07(7) which states, in relevant part:

Reserve/escrow accounts established by a public wastewater utility shall be limited to paying for or reimbursing the utility for extraordinary expenses of the utility or for necessary capital projects, unless otherwise permitted by the Commission. Extraordinary expenses are those resulting from events which are infrequent and unusual in nature, and unrelated to the utilities' routine service or business activities. The utility must first receive authorization from the Commission via approved petition or, in emergency situations, authorization in writing from the Chairman of the Commission upon written request by a representative of the utility to use such funds.<sup>11</sup>

Additionally, because TWSI proposes to use its affiliate construction company, Adenus, to perform most of the system construction, Commission Rules concerning affiliate transactions establish specific requirements concerning accounting, record keeping, annual reporting, and

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<sup>11</sup> Tenn. Comp. R. & Regs. 1220-04-13-07(7).

Commission access to books and records with regard to such transactions. These requirements may be waived for good cause. However, the burden of proof is upon the wastewater utility to demonstrate good cause for such waivers.<sup>12</sup> The requirements set forth in this Commission Rule serve to protect public wastewater utility ratepayers from unauthorized or unwarranted cross-subsidies.<sup>13</sup>

### **FINDINGS AND CONCLUSIONS**

In its *Petition*, TWSI has asked the Commission for approval of extraordinary expenditure of escrow and reserve funds to make repairs necessary to remedy a system failure at Hidden Springs. As an Exhibit to its *Petition*, TWSI provided a copy of an order that the TDEC has issued identifying necessary repairs to be completed and civil penalties that will be levied if repairs to the failed system are not completed.<sup>14</sup> By utilizing existing escrow funds and CIAC reserves to fund the new system, TWSI will not request additional funding from its customers through an increase in rates. Though use of the existing escrow and CIAC reserve funds for the system replacement will substantially reduce amounts available to fund future system repairs that may become necessary, the panel found that the Company's proposed use of the existing escrow and CIAC reserve funds for the Hidden Springs treatment system replacement is consistent with the Commission's intended use of these funds and Commission rules. Therefore, the panel voted unanimously to approve TWSI's proposed funding plan for the Hidden Springs treatment system repairs.

TWSI did not request a waiver of the affiliate transaction requirements. In addition, TWSI indicated its awareness of the affiliate transaction rules and its intent to continue

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<sup>12</sup> Tenn. Comp. R. & Regs. 1220-04-13-.16.

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

<sup>14</sup> *Petition* at Exh. 1 (September 16, 2019).

compliance with these rules.<sup>15</sup> Therefore, the panel voted unanimously to require compliance with the specific reporting requirements concerning affiliate transactions in order to ensure that utility funds are spent prudently and in accordance with Commission Rules. Specifically, the panel directed the Company to file quarterly reports beginning June 30, 2020 with detailed construction cost information, including labor rates, materials, supplies, equipment costs, and any other costs billed by Adenus to TWSI. The panel further directed TWSI to, upon completion of construction, file all information required by Commission Rule 1220-04-13-.16(4) concerning the recordation of affiliate transactions in the Company's accounts and Commission Rule 1220-04-13-.16(5) concerning required records information for each affiliate transaction.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition of Tennessee Wastewater Systems, Inc. for Approval to Use Its Escrow & Reserve Funds for Capital Improvements at Hidden Springs Resort* is approved.
2. Tennessee Wastewater Systems, Inc. shall file quarterly reports, beginning June 30, 2020, with detailed construction cost information including labor rates, materials, supplies, equipment costs, and any other costs billed by Adenus Solutions Group, LLC to Tennessee Wastewater Systems, Inc.
3. Upon the completion of construction, Tennessee Wastewater Systems, Inc. shall file all information required by Tennessee Rules and Regulations 1220-04-13-.16(4) and (5).
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.

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<sup>15</sup> *Tennessee Wastewater Systems, Inc. Data Response To Staff Data Request Issued on January 27, 2020* (January 30, 2020).

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.

**Chair Robin L. Morrison, Commissioner John Hie, and Commissioner David F. Jones concur. None dissent.**

**ATTEST:**



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**Earl R. Taylor, Executive Director**