

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

IN RE:)	
)	
PETITION OF TENNESSEE)	
WASTEWATER SYSTEMS, INC., TO)	DOCKET NO. 20-00108
AMEND ITS CERTIFICATE OF)	
CONVENIENCE AND NECESSITY)	

DIRECT TESTIMONY OF MATTHEW NICKS

Q1. What is your name and business address?

A. My name is Matthew Nicks and my business address is 849 Aviation Parkway, Smyrna TN, 37167.

Q2. By whom are you employed and in what capacity?

A. I am the President of Tennessee Wastewater Systems, Inc.

Q6. What is the purpose of your testimony in this proceeding?

A. The purpose of my testimony is to support and provide details regarding Tennessee Wastewater Systems, Inc.'s petition to use its escrow and reserve funds to bring the Cross Plains Treatment Facility into compliance with the approved plans, State Operating Permit, and TDEC rules and regulations.

Q. Please describe Cross Plains Treatment Facility.

A. The Cross Plains Treatment Facility was constructed in 2005/2006. The facility consists of a 74,000 gpd lagoon. Plans call for drip disposal, but that has not yet been installed. The control building for the facility is constructed however, because there is no drip installed, the control panel and other equipment required to pump the treated wastewater to the drip field have not been installed.

Q. How did the Cross Plains Treatment Facility come to be constructed?

A. The facility came as a result of the town of Cross Plains and a developer, B&P Investments, requesting service for the area. Based on our records, B&P planned to develop around 150 lots on its property adjacent to the treatment facility. The City of Cross Plains asked TWSI to generally provide service to the area around the treatment facility.

TWSI does not make capital investments to build systems. A TWSI affiliate, Adenus Capacity, LLC did that sort of work and made an agreement with a group called Mar-Car, LLC to build the system. Under the terms of the agreement, Adenus designed, engineered, and constructed the facility and Mar-Car put up the land, 60 acres, upon which the facility was built. In exchange for their respective investments in the facility, each party was given an allotment of tap or capacity credits. These credits entitled the companies to payment whenever TWSI sold taps or capacity at the treatment facility. Adenus received 1000 credits with the right to sell the first 200 taps and Mar-Car received 450.

Q7. Why does the treatment facility need to be brought into compliance?

A. In the fall of 2019 TDEC inspected the facility and based on their observations believe the lagoon was not lined properly and as a result, is not holding water – discharging water through the bottom of the lagoon to ground water. They also noted the absence of installed drip fields, though they are part of the approved plans for the facility and TDEC has been aware since the construction of the facility the drip field was not yet installed.

Upon receiving the Notice of Violation for the facility, TWSI took several steps to address TDEC's concerns. The first of which was to determine whether a liner was present in the lagoon. Though this was not requested by TDEC, we thought it prudent to determine through a third-party contractor to determine whether a liner was installed or not. The contractor's report states that a 2-3-foot clay liner is present, consistent with the plans for the facility. But even with that information, we thought it best to look into alternative forms of wastewater treatment for the facility as TDEC was adamant the liner did not exist or was not sufficient and that the lagoon leaked. TWSI worked on evaluating treatment system options, making plans to have the drip installed on the approved land area, and engaged a soil scientist to assist the utility in locating additional drip areas to install drip on the facility property. A few months into this process, TDEC issued a Commissioner's Order requiring certain corrective action be taken and assessing fines and penalties. TWSI appealed the Order.

Q8. Has the Order and Appeal been resolved?

A. Yes. We believe the more prudent course of action in this case was to address TDEC's concerns rather than engage in protracted litigation. Among other things, TWSI agreed to take certain corrective action regarding the facility to bring it into acceptable compliance to TDEC.

Q9. What does the corrective action entail?

A. The required corrective action requires that:

1. Within 30 days of August 13, 2020 (by September 12) TWSI must submit a corrective action plan (CAP1) for temporary treatment consisting of installing a FAST system that will treat wastewater to permit limits and discharge into the lagoon. Upon approval of CAP1 TWSI has 30 days to install the FAST system.

2. Discharge into the lagoon from the FAST system is permitted for no more than 120 days while drip is installed on the land which TDEC has already approved for drip. The 120 days will run from the date of TPUC's authorization of funds from TWSI's existing escrow/reserve fund. The discharge to the lagoon will last no longer than 6 months from August 13, 2020.

3. 90 days after the FAST system and drip system are online, TWSI will submit a plan (CAP2) for permanent treatment and installation of drip on additional soils.

4. Construction shall be complete on the permanent treatment within 10 months of the later of TDEC approval of CAP2 or TPUC authorization of funding.

Q10. How much of its escrow and reserve funds is TWSI requesting to use for these necessary capital improvements?

A. The petition requests for approval for use of up to \$400,000. The corrective action as explained in the previous answer, is broken up into two parts, CAP1 and CAP2. The CAP1 improvements must be handled immediately and total \$186,216 based on our estimates. CAP2 involves constructing a new sand filter which is estimated at \$67,500 and an unknown amount for drip installation. This figure is unknown because the soils evaluation work is ongoing. We likely will not know how much land is available or the location of the land relative to the treatment facility and other drip field until later in the Fall. These are the primary factors in determining what the ultimate cost for the drip field will be.

Q11. How many connections will the sand filter be able to handle?

A. The plan is to construct a 19,200 gpd sand filter. This will allow up to 64 connections at a design flow of 300 gpd per lot. Currently there are 19 connections to the system, 16 residences and 3 commercial properties. We have a request from a developer to add up to another 42 lots in the Stony Brook subdivision – 19 of which we have provided notice to the Commission of our intent to serve and another 23 that have recently requested service. We will provide notice on these lots once the issues with the treatment facility have been addressed.

Q12. What are the current balances in TWSI's escrow and reserve accounts?

A. Currently TWSI has \$1,162,662.66 in its escrow account and \$164,750.57 in its CIAC account.

Q13. Are any of these funds currently authorized by the Commission for other work?

Yes. The Commission in Docket 19-00085 authorized the use of \$808,000 to upgrade the facility at Hidden Springs Resort.

Q14. Does the Company have any concerns about depleting its escrow and reserve accounts?

A. Absolutely, however, escrow and reserve accounts were addressed in TWSI's recent rate review. As a result, TWSI receives as a portion of each monthly sewer bill roughly \$37,500 monthly or \$450,000 in annual escrow revenue. TWSI is also constantly adding customers

so this amount will only go up over the course of the next year. The total project cost for Cross Plains will be covered through the escrow revenues over the next year.

Also, developer payments to the Company are now treated as a form of escrow or CIAC which is also set aside for capital needs such as this. Developer revenue is a bit harder to pin down, but the utility has not seen a slowdown in development nor requests for service in the last twelve months, so we expect to see a somewhat consistent flow of developer income over the next twelve months barring something catastrophic happening to the development business.

Lastly, there 23 new lots in the Stony Brook subdivision that wish to tie on to the system. The new treatment plant design and additional drip fields take these lots into consideration. These lots will be paying fees, roughly \$110,000 to connect to the system. Those fees will be directly attributed to the project cost.

Q15. How will construction of the improvements be managed?

A. TWSI will oversee all aspects of the work. Some of the work will be conducted by TWSI with other goods and services provided by affiliates of TWSI, namely Adenus Solutions Group (construction) and Adenus Tech (materials, parts, and supplies).

Q16. Will TWSI abide by the Commission affiliate rule when dealing with its affiliates on this project?

A. Yes.

Q17. What does the Company know about the arrangement between Adenus Capacity, LLC and Mar-Car, LLC regarding tap or capacity credits?

A. Not much, other than the limited information we have in our files. None of the current management for the utility was around in 2005 when the discussions and agreement between Adenus Capacity and Mar-Car were had. Based on our information, Adenus agreed to design, engineer and construct the treatment facility using 60 acres of land that was provided by Mar-Car. In exchange for their respective investments in the facility, each party received a certain number of tap or capacity credits entitling them to receive payment whenever TWSI sold a tap at the Cross Plains facility. Adenus received 1000 credits and the right to sell the first 200 taps. Mar-Car received 450 credits.

Q16. Does this complete your testimony?

A. Yes.

AFFIDAVIT


My name is Matthew Nicks and the attached direct testimony is true and correct to the best of my knowledge.


Matthew Nicks

County of Rutherford)
State of Tennessee)

On this 2nd day of September 2020, personally appeared before me, Suzanne Christman, a notary public, the above-named Matthew Nicks known to me personally who was duly sworn and on oath executed the above Affidavit.




Notary

My commission expires: 12/1/2020