

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

November 1, 2021

IN RE:

**PETITION OF TENNESSEE WASTEWATER
SYSTEMS, INC. TO AMEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY TO INCLUDE THE
OAK PLAINS SUBDIVISION**

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**DOCKET NO.
21-00075**

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

This matter came before Chairman Kenneth C. Hill, Vice Chairman Herbert H. Hilliard, Commissioner 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, during a regularly scheduled Commission Conference held on September 20, 2021, for consideration of the *Petition to Amend Its Certificate of Convenience and Necessity to Include the Oak Plains Subdivision* (“*Petition*”) filed by Tennessee Wastewater Systems, Inc. (“TWSI,” “Company,” or “Petitioner”) on June 24, 2021. In its *Petition*, TWSI requests the Commission’s approval of an amendment to the Company’s Certificate of Public Convenience and Necessity (“CCN”) in order to provide wastewater service to an additional parcel of property located in Montgomery County.

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.¹ The Company holds a CCN to provide wastewater services within the State of Tennessee. In its *Petition*, TWSI seeks to expand its service area to provide wastewater services to the Oak Plains Subdivision in Montgomery County.²

In support of its *Petition*, the Company filed maps showing the location of the Oak Plains Subdivision, documents demonstrating the corporate structure and management experience of the Company, and letters from local governments and utility systems indicating that the area is not served by or in the service territory of another wastewater service provider.³ Upon completion of construction of the system, it will serve thirty-eight residential lots.⁴

The Company also filed the testimony of Matthew Nicks, President of TWSI.⁵ Mr. Nicks testifies that TWSI received its initial CCN in 1994, has been granted over 100 CCNs, and provides wastewater services to over 4,250 customers in twenty-three Tennessee counties.⁶ Mr. Nicks states that the proposed Oak Plains Subdivision is located in Montgomery County, Tennessee and is planned for thirty-eight residential lots. Mr. Nicks also states that the collection system will be a septic tank effluent pump system; with septic tanks and pumps at each home. The tanks will discharge to collection lines that will connect the wastewater to the central treatment system (a Recirculating Media Filter type system). The treated effluent will be disinfected and applied to land through drip irrigation which is similar to the majority of systems owned and operated by

¹ *Petition*, p. 1 (June 24, 2021).

² *Id.* at 2-3.

³ *Id.* at Exhs. 4, 7A, 7B, 12A, 12B, and 15.

⁴ *Id.* at 2.

⁵ Matthew Nicks, Pre-Filed Direct Testimony (June 24, 2021).

⁶ *Id.* at 1.

TWSI. The treatment system will be constructed to provide service to thirty-eight residences with 11,400 gpd and will be completed in one phase.⁷

The Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) filed a letter on August 5, 2021 requesting clarification of certain information and additional information that the Consumer Advocate determined was required to meet the Commission’s minimum filing requirements. In response, TWSI filed the requested information on August 6, 2021. The Consumer Advocate filed a letter on August 6, 2021 indicating that the “requests for further information or clarification have been addressed.”⁸ No party sought intervention in this matter.

THE HEARING

A Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on September 20, 2021, as noticed by the Commission on September 10, 2021. Participating in the Hearing were:

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

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

⁷ *Id.* at 1-2.

⁸ *Consumer Advocate’s Follow-Up Letter to Tennessee Wastewater Systems, Inc., Re: Minimum Filing Requirements* (August 6, 2021).

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 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.⁹

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.¹⁰

The rule further establishes minimum information filing guidelines for applications for new or expanded CCNs.¹¹

⁹ Tenn. Code Ann. § 65-4-109 (Supp. 2019).

¹⁰ Tenn. Comp. R. & Regs. 1220-04-13-.17.

¹¹ *Id.*

FINDINGS AND CONCLUSIONS

In its *Petition*, TWSI has asked the Commission to amend its CCN to include the Oak Plains Subdivision in Montgomery County, Tennessee, asserting that the Company possesses the managerial, technical, and financial capability to provide service to the subdivision. Based on a review and consideration of the pleadings, the Pre-Filed Testimony, and the entire administrative record, the voting panel made the following findings and conclusions:

The panel found that the Oak Plains Subdivision requires wastewater service to move forward with the proposed development and that the proposed subdivision is not currently connected to a wastewater treatment facility operated by any other municipal utility, utility district, or other private wastewater utility. No other utility is seeking to serve the parcel. Therefore, the panel voted unanimously that there exists a public need to provide wastewater service to the Oak Plains Subdivision as required by Tenn. Code Ann. § 65-4-201(a) and Commission Rule 1220-04-13-.17(1).

The panel found that TWSI has demonstrated that it possesses the requisite managerial, financial, and technical capabilities to provide wastewater service to the Oak Plains Subdivision. In addition, TWSI is in good standing with the Commission and is in compliance with all Commission rules. Based upon these findings, the panel voted unanimously to grant the Company's *Petition*, contingent upon the filing of the following documents:

1. A copy of the deed and/or easements 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 the copy of the title insurance policy. The title policy should include that the Sewage Treatment Facility Land is free and clear of all material or interfering encumbrances, including, but not limited to any 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 the Company 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 the as-built plans with certification from TWSI indicating inspection and approval to begin operation;

4. A copy of the signed plat, once the area of development is approved by the City and/or County government within fifteen (15) days of being issued and before the first customer is connected to the wastewater system;

5. The 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 Company; and

6. Evidence that TWSI has received the amount of required federal income taxes owed by the developer on the Contributions in Aid of Construction.

The panel also directed the Company to file a report in this docket demonstrating its compliance with the filing requirements prior to providing wastewater service to the Oak Plains Subdivision. In the event the compliance report is not filed, the panel directed TWSI to file within six (6) months from the date of this order, and every three (3) months thereafter until the installation is complete, a report on the status of providing wastewater service to the Oak Plains Subdivision, as well as the status of its compliance with each of the aforementioned filing requirements.

IT IS THEREFORE ORDERED THAT:

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

a. A copy of the deed and/or easements 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 the copy of the title insurance policy. The title policy should include that the Sewage Treatment Facility Land is free and clear of all material or interfering encumbrances, including, but not limited to any 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 the Company to the Commission;

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 the as-built plans with certification from TWSI indicating inspection and approval to begin operation;

d. A copy of the signed plat, once the area of development is approved by the City and/or County government within fifteen (15) days of being issued and before the first customer is connected to the wastewater system;

e. The 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 Company; and

f. Evidence that TWSI 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. is directed to file a report in this docket demonstrating its compliance with the filing of the above referenced documents. If the required documentation is not filed within six (6) months of this order, then Tennessee Wastewater Systems, Inc. is directed to file a report on the status of the provision of wastewater service to the Oak Plains Subdivision as well the status of the filing of required documentation. The compliance report shall be updated every three (3) months until installation of the wastewater system is complete.

3. 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.

4. 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.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Chairman Kenneth C. Hill
Vice Chairman Herbert H. Hilliard,
Commissioner Robin L. Morrison,
Commissioner John Hie, and
Commissioner David F. Jones concurring.**

None dissenting.

ATTEST:



Earl R. Taylor, Executive Director