

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

April 29, 2022

IN RE:

PETITION OF TENNESSEE WASTEWATER  
SYSTEMS, INC. FOR APPROVAL TO USE ITS  
ESCROW & RESERVE FUNDS FOR CAPITAL  
IMPROVEMENTS AT SUMMIT VIEW RESORT

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DOCKET NO.  
21-00087

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ORDER APPROVING PETITION TO USE ESCROW AND RESERVE FUNDS

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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 March 21, 2022, for consideration of the *Petition of Tennessee Wastewater Systems, Inc., for Approval to Use its Escrow & Reserve Funds for Capital Improvements at Summit View Resort* (“*Petition*”) filed by Tennessee Wastewater Systems, Inc. (“TWSI,” “Company,” or “Petitioner”) on August 2, 2021. In its *Petition*, TWSI requests the Commission’s approval for expenditure from its escrow and reserve funds for needed capital improvements on its Summit View Resort (“Summit View”) wastewater system in Sevierville, Tennessee.

**BACKGROUND AND PETITION**

TWSI is a public utility subject to the Commission’s jurisdiction, operating wastewater systems within designated service areas. On August 2, 2021, TWSI filed a *Petition* seeking the Commission’s approval of expenditure of \$83,500 from its escrow and contributions in aid of

construction (“CIAC”) reserve funds in order to pay for facility improvements at Summit View.<sup>1</sup> In its *Petition*, TWSI alleges that the original developer of Summit View represented that the resort would consist of thirty-seven (37) 2-3 bedroom cabins. Accordingly, the wastewater system was designed to treat up to 8,000 gallons per day. However, the cabins constructed were “significantly larger cabins, some capable of housing twenty or more people.”<sup>2</sup> As a result, the wastewater system is undersized for the service area, particularly during periods of high occupancy.<sup>3</sup>

In September 2014, the Tennessee Department of Environment and Conservation (“TDEC”) issued an Order regarding alleged permit violations at the Summit View treatment plant. TWSI and TDEC reached a settlement in August 2020 which requires TWSI to install a 10,000-gallon equalization tank. TDEC approved plans for the tank on June 4, 2021. The installation will be performed by TWSI and its affiliate Adenus Solutions Group, LLC (“Adenus”) and is estimated to cost \$83,500.<sup>4</sup>

TWSI states that it has the funds available to pay for this capital improvement through its escrow and CIAC reserves and requests approval from the Commission to utilize these funds for the project. TWSI states it will not be necessary to assess any additional charges to consumers. Further, consistent with previous Commission Orders for use of escrow funds,<sup>5</sup> the Company will file monthly reports detailing the overall progress and costs of construction. TWSI also states it

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<sup>1</sup> *Petition* (August 2, 2021).

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

<sup>3</sup> *Id.*

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

<sup>5</sup> See *In re: Petition for Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements for the Wastewater Systems Located at Maple Green and Cedar Hill, In Robertson County, and at Smoky Village Subdivision, in Sevier County, Tennessee*, Docket No. 16-00096, *Order Approving Stipulation and Settlement Agreement* (October 1, 2018); *In re: Petition of Tennessee Wastewater Systems, Inc. for Approval to Use its Escrow & Reserve Funds for Capital Improvements at the Cross Plains Treatment Facility*, Docket No. 20-00108, *Order Approving Use of Escrow and Reserve Funds* (November 30, 2020).

will file a notice with the Commission once spending reaches 80% of the estimated costs should the Company seek additional escrow or reserve funds.<sup>6</sup>

In support of its *Petition*, TWSI submitted the Pre-Filed Testimony of Matthew Nicks, President of TWSI. Mr. Nicks testifies that the developer built much larger cabins than originally planned which has resulted in a strain on the current wastewater system. He further states that while the system is currently operating within the facility's State Operating Permit, the primary concern is that the system struggles to handle large flows during high occupancy periods. The installation of an equalization tank is necessary to balance the flows and not overload the system.<sup>7</sup> Mr. Nicks further states that TDEC and TWSI reached an agreement wherein a 10,000-gallon equalization tank will be installed at Summit View. Mr. Nicks estimates the cost to be approximately \$85,000 and indicates the Company has sufficient funds in escrow and reserves to pay the installation costs. In addition, TWSI is not seeking additional funding from its customers. Mr. Nicks testifies that it is necessary for TWSI and its affiliate Adenus to perform the installation due to extremely long lead times for current construction projects, the need to satisfy timelines established in the agreement with TDEC, and the ability to perform the work at lower costs than other companies bid based upon experience with other projects. The construction is estimated to be completed within six (6) months of Commission approval. Mr. Nicks states that TWSI will comply with all Commission rules.<sup>8</sup>

No party sought intervention in this matter.

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<sup>6</sup> *Petition*, pp. 2-3 (August 2, 2021).

<sup>7</sup> Matthew Nicks, Pre-Filed Direct Testimony, p. 1 (August 2, 2021).

<sup>8</sup> *Id.* at 2-3.

## **THE HEARING**

A Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on March 21, 2022, as noticed by the Commission on March 11, 2022. Participating in the Hearing were:

Tennessee Wastewater Systems, Inc. – Jeff Risdien, Esq., General Counsel, and Matthew Nicks, President, 851 Aviation Parkway, Smyrna, TN 37167.

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 and provided a description of the capital improvements necessary for the Summit View wastewater system. 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 TPUC 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>9</sup>

When considering whether to permit a wastewater utility's expenditure from an escrow account, the Commission must therefore determine that the proposed expenditure is for an extraordinary

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<sup>9</sup> Tenn. Comp. R. & Regs. 1220-04-13-07(7).

expense, defined as an expense not related to the utilities' routine service or business activities, or for a necessary capital project.

### **FINDINGS AND CONCLUSIONS**

In its *Petition*, TWSI has asked the Commission for approval of extraordinary expenditure of escrow and reserve funds to make improvements necessary at the Summit View system that will allow TWSI to address the additional flow created by the construction of larger than planned cabins at the resort and in order to comply with the settlement agreement TWSI entered into with TDEC addressing this additional flow. TDEC has approved TWSI's plans for installation of a 10,000-gallon equalization tank. The Company represents that it has sufficient funds in its reserve and escrow accounts to fund the project without seeking additional money from customers and Commission Staff has confirmed the sufficiency of funds by review of the Company's annual report. For these reasons, the panel unanimously found that the proposed capital project is necessary and that it is reasonable and prudent to utilize TWSI's escrow and reserve funds to abate and permanently resolve the environmental concerns existing at Summit View.

TWSI proposes to perform the installation itself along with its affiliate, Adenus. Mr. Nicks testifies that extremely long lead times for current construction projects necessitate that TWSI and Adenus perform the installation in order to comply with timeline requirements established in the settlement agreement with TDEC. The Company estimates the construction to be completed within six (6) months of Commission approval and that TWSI will abide by all Commission rules. When utilizing an affiliate to perform work for such projects, Commission Rule 1220-04-13-.16, concerning wastewater utility transactions with affiliates, establishes specific requirements relative to: the recording of the affiliate transactions in the wastewater utility's accounts; the recording of certain additional information regarding each affiliate transaction; the preservation and maintenance of records of affiliate

transactions; annual reporting requirements; and the provision of full access to all relevant books and records to the Commission. Commission Staff will obtain information from TWSI concerning the project's final cost and relevant documentation in order ensure the Company's compliance with Commission rules for transactions with affiliates.

Consistent with previous Commission orders concerning TWSI's use of escrow funds, the Company has agreed to file monthly reports detailing the overall progress and costs of construction. In addition, TWSI states that it will file a notice with the Commission once spending reaches 80% of the estimated costs, should the company seek additional escrow or reserve funds. The panel found that this reporting is necessary to keep the Commission informed of the progress of the project and to determine whether additional funding may be necessary.

The panel found that this capital improvement project fits squarely within the defined purpose and use of the escrow funds. Further, the panel found that the Company's escrow account has sufficient funds to finance this project. Therefore, the panel voted unanimously to approve the *Petition*, as filed and allow expenditure of \$83,500 from escrow and reserve funds by TWSI for the Summit View equalization tank project.

**IT IS THEREFORE ORDERED THAT:**

1. *Petition of Tennessee Wastewater Systems, Inc., for Approval to Use its Escrow & Reserve Funds for Capital Improvements at Summit View Resort* is approved.
2. 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.

3. 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:**



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**Earl R. Taylor, Executive Director**