

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

November 30, 2022

IN RE:

PETITION OF TENNESSEE WASTEWATER
SYSTEMS, INC. TO AMEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY TO INCLUDE
DERBY MEADOWS SUBDIVISION

)

)

)

)

)

)

DOCKET NO.
22-00074

ORDER APPROVING PETITION TO AMEND
CERTIFICATE OF CONVENIENCE AND NECESSITY

This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones, Commissioner Robin L. Morrison, Commissioner Clay R. Good, and Commissioner John Hie of the Tennessee Public Utility Commission, (“TPUC” or “Commission”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on November 7, 2022, for consideration of the *Petition to Amend Its Certificate of Convenience and Necessity to Include Derby Meadows Subdivision* (“*Petition*”) filed by Tennessee Wastewater Systems, Inc. (“TWSI,” “Company,” “Petitioner” or “Utility”) on July 22, 2022. 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 a residential subdivision and a refueling and convenience store located 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.¹ The Company holds a

¹ *Petition*, p. 1 (July 22, 2022).

CCN to provide wastewater services within designated service areas in the State of Tennessee. In its *Petition*, TWSI seeks to expand its service area to provide wastewater services to a subdivision known as Derby Meadows (“Derby Meadows”) and a commercial parcel for a refueling station and convenience store (“Thornton’s”) in Robertson County (collectively “Derby Meadows Subdivision”).²

In support of its *Petition*, the Company filed maps showing the location of Derby Meadows and Thornton’s, documents demonstrating the corporate structure and management experience of the Company, and a letter from the Town of Coopertown indicating that Coopertown does not operate a wastewater facility.³ Upon completion of construction of the system, it will serve 309 planned residential lots and will be completed in five (5) phases of approximately sixty (60) houses per phase. Thornton’s will be constructed along with either the second or third phase.⁴ TWSI also provided a letter from the Town of Coopertown indicating that the town government approved fencing for the drip fields.⁵

The Company also filed the testimony of Matthew Nicks, President of TWSI.⁶ Mr. Nicks testifies that TWSI received its initial CCN in 1994, has been granted over 100 CCNs, and provides wastewater services to customers in twenty-three (23) Tennessee counties.⁷ Mr. Nicks states that Derby Meadows Subdivision is located in Robertson County, Tennessee and is planned for 309 residential units and amenities.⁸ Mr. Nicks also states that the collection system will consist of grinder pumps at each home and a low-pressure sewer system to route sewage to a set of

² *Id.* at 1-2.

³ *Id.* at Exhs. 4, 7, 12, and 15.

⁴ *Id.* at 2-3 and Exh. 7.

⁵ Letter to Tennessee Public Utility Commission from Becca J. Werner, Mayor, Town of Coopertown re: Derby Meadows Subdivision (with Attachments) (September 26, 2022).

⁶ Matthew Nicks, Pre-Filed Direct Testimony, p.1 (July 22, 2022).

⁷ *Id.* at 2.

⁸ *Id.* See also *Petition*, Exh. B (February 12, 2021) (indicating which lots will be served by TWSI).

dosing/flow equalization tanks to remove trash and normalize flow to avoid peak surges. The proposed wastewater treatment facility design is an Extended Aeration treatment system including air diffusion, clarification chambers, and chlorine disinfection.⁹ Mr. Nicks also testified that TWSI will abide by the orders and rules of the Commission, including the affiliate transaction rule and the rule requiring completion of the construction of the wastewater system within three (3) years of approval of the CCN.¹⁰ 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 November 7, 2022, as noticed by the Commission on October 28, 2022. Participating in the Hearing were:

Tennessee Wastewater Systems – Jeff Risdien, 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.

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

⁹ *Id.*

¹⁰ *Id.* at 3.

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.¹¹

Additionally, 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.¹²

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

FINDINGS AND CONCLUSIONS

In its *Petition*, TWSI has asked the Commission to amend its CCN to include the Derby Meadows Subdivision in Robertson County, Tennessee, asserting that the Company possesses the managerial, technical, and financial capability to provide service to the subdivision and store. 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:

¹¹ Tenn. Code Ann. § 65-4-109 (2022).

¹² Tenn. Comp. R. & Regs. 1220-04-13-.17.

¹³ *Id.*

The panel found that the Derby Meadows 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 Derby Meadows 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 Derby Meadows 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. 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 a copy of the title insurance policy. The title policy should include that the Sewage 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 TWSI with the Commission;
2. A final copy of the State Operating Permit issued by the Tennessee Department of Environment and Conservation ("TDEC") within fifteen (15) days of issuance;
3. A copy of the as-built plans with signed certification by TWSI indicating the wastewater system has been inspected and is approved 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. A copy of the performance bond from the developer or builder of the wastewater system made payable to the Utility to ensure the construction of the wastewater system. The performance bond should be for an amount equal to or greater than the cost of the system as provided in contracts between builder, developer and/or utility; and

6. The final amount of contributed capital being transferred to TWSI no later than fifteen (15) days after the final plat is signed by the Utility.

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 Derby Meadows 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 Derby Meadows Subdivision, as well as the status of its compliance with each of the filing requirements.

IT IS THEREFORE ORDERED THAT:

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

a. 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 a copy of the title insurance policy. The title policy should include that the Sewage Facility Land is free and clear of all material or interfering encumbrances, including, but not limited to any 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 Company with 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 signed certification from Tennessee Wastewater Systems, Inc. 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. A copy of the performance bond from the developer or builder of the wastewater system made payable to Tennessee Wastewater Systems, Inc. to ensure the construction of the wastewater system. The performance bond should be for an amount equal to or greater than the cost of the system as provided in contracts between builder, developer and/or utility; and

f. The final amount of contributed capital being transferred Tennessee Wastewater Systems, Inc. no later than fifteen (15) days after the final plat is signed by the Utility.

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 Derby Meadows 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 Herbert H. Hilliard,
Vice Chairman David F. Jones,
Commissioner Robin L. Morrison,
Commissioner Clay R. Good, and
Commissioner John Hie, concurring.**

None dissenting.

ATTEST:



Earl R. Taylor, Executive Director