

5501 Bellview Ave.  
New Port Richey, FL 34652  
January 20, 2023

Delivered Via E-Mail & U.S. Mail

Electronically Filed in TPUC Docket Room  
on January 20, 2023 at 1:57 p.m.

Hon. Herbert Hilliard, Chairman  
Tennessee Public Utility Commission  
c/o Ms. Ectory Lawless, Docket Room Manager  
502 Dreaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243  
[TPUC.DocketRoom@tn.gov](mailto:TPUC.DocketRoom@tn.gov)

Re: First Discovery Request of Ronald C. McCabe in the Complaints and Petitions of Ronald C. McCabe vs. Tennessee Wastewater Systems, Inc. Docket No. 22-00105

Dear Chairman Hilliard,

Enclosed for filing is the First Discovery Request of Ronald C. McCabe in the Complaints and Petitions of Ronald C. McCabe vs. Tennessee Wastewater Systems, Inc. An original executed notarized copy of this filing along with four (4) copies of it will be mailed to you at the above address.

If you have any questions on this filing, please e-mail me at [rcmbizz@hotmail.com](mailto:rcmbizz@hotmail.com) or call me at 727-842-4407.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ronald C. McCabe", with a long horizontal flourish extending to the right.

Ronald C. McCabe

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

<b>IN RE:</b>	)	
	)	
<b>COMPLAINTS AND PETITIONS OF</b>	)	<b>DOCKET NO. 22-00105</b>
<b>RONALD C. McCABE vs. TENNESSEE</b>	)	
<b>WASTEWATER SYSTEMS, INC.</b>	)	

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**FIRST DISCOVERY REQUEST OF RONALD C. McCABE**

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The following information and/or document(s) are respectfully requested from Tennessee Wastewater Systems, Inc. in the above referenced Complaints and Petitions of Ronald C. McCabe vs. Tennessee Wastewater Systems, Inc. (herein incorporated in its entirety into this First Discovery Request including the defined capitalized terms contained therein) as follows:

1. The General Filing Requirements of TPUC Rules 1220-01-01-.03 requires all documents filed in a formal proceeding to contain a caption stating the style of the proceeding, the docket number, if assigned at the time of filing, and the date and title of the document being filed. Please confirm or deny whether the Sewer Subscription Contract of TWS and the documents thereafter (“Trailing Pages”) included behind the Official Tariff filed in Docket No. 20-00009 complies in its entirety to the General Filing Requirements of the TPUC Rules referenced in the first sentence above. In the event TWS confirms the Trailing Pages comply entirely with such TPUC Rules, please specifically state and identify where on each Trailing Pages document is there printed evidence on such documents that these documents comply with all the General Filing Requirements of the above rule.
2. In the event TWS confirms these Trailing Pages are a part of the tariff filed by TWS, please specifically state, identify and justify the rationale and reason resulting in TWS’s failure to reference and/or identify any of the Trailing Pages documents including the Contract in the CHECK LIST or TABLE OF CONTENTS to the Official Tariff filing in the Docket No. 20-00009 tariff.
3. TWS admits in paragraph 14 of the Answer to using the easement language in their Sewer Subscription Contract for over 15 years. Please confirm or deny whether the Sewer Subscription Contract, including the easement language and various other provisions of TWS, has continuously been a part of the several TWS tariffs filed with the TPUC over such 15 year period of time. In the event TWS confirms such Contract was a part of the TWS tariffs filed over the years as described above, please specifically state, identify and list each TPUC Docket Number and the dates the Contract and its terms, along with the easement language in the Contract, were included with the TWS tariff filing(s) and disclosed to the TPUC over such 15 year period.

4. TWS discloses it serves over 5000 customers which would amount to numerous separate subdivision communities. Therefore, it follows, TWS, most likely, would have signed the Sewer Disposal Certification on the recorded plats for the development and construction of the vast majority of these subdivisions. Although the Final Plat for Starr Crest was recorded in 2003 and such plat does not have the easement language depicted on it that TWS requires the Petitioner to acknowledge in the Contract, TWS states the easement language in the Contract has been used for over 15 years (i.e. 2007 to 2022). In order to prove the easement language in the Contract actually is depicted on plats of subdivisions serviced by TWS over that period of time, please randomly select 5 of those subdivisions serviced by TWS spread evenly over the years 2007 (beginning of 15 year period) thru 2011. Please provide a copy of the final recorded plat, along with its specific book/page/date/Tennessee county name/other recording information, for those selected subdivisions in which such copy of the recorded plat clearly shows and depicts the same easement language and restrictions as TWS requires Ratepayers to acknowledge are recorded in the public records for their properties.

5. TWS references in paragraph #12 of the Answer and in answer #17 of the Mr. Nick testimony that the TDEC easement requirements [more specifically TDEC Rule 0400-40-06-.02(h) which is a new rule effective May 15, 2022] as TWS's justification for an easement giving TWS "unfettered" (term used by TWS in paragraph #15 of Answer) access to my property. This TDEC Rule states the easement required by this rule is to be a recorded perpetual easement in a form approved by the Commissioner and such presentation and approval must be prior to commencement of operation. Please specifically state, identify, explain and provide a copy of authoritative TDEC rules and official TDEC guidance publications describing how this new TDEC Rule, effective in May, 2022, (which is after Starr Crest was plated in 2003 and after this whole dispute over the Contract easement began in 2011 and reemerged in February, 2022) applies to my property in Starr Crest or any other subdivision plated before this easement rule became effective on May 15, 2022.

6. TWS states in paragraph #27 of the Answer and answer #32 of Mr. Nick's testimony that I would be charged the lower residential sewer rate if only I would check the box on the Contract that (de)notes the cabin is for residential use and return a signed Contract to TWS indicating such use. I have complied with each of these required acts as evidenced by the copies of the Clarified Contract attached as Exhibit "VI" to both the Complaints and Petitions and my Direct Testimony. Therefore, please state TWS's interpretation and understanding of the typed X in the box next to the term "Residence" in the top right-hand corner of the Clarified Contract and my signature on the line directly above the term "Subscriber's Signature" in the bottom right-hand corner of such Clarified Contract.

7. TWS's operates a monopoly business with Ratepayers locked-in and forced to use the sewer disposal services of TWS since these captive Ratepayers typically, at least in Starr Crest at this time, have no other choice but to use TWS sewer disposal services. TWS has attempted to justify their requirement for Ratepayers to agree to Forever Use their sewer services as long as the Ratepayer owns their property by stating in paragraph #21 of the Answer that TWS has been granted a CCN to serve Starr Crest 2 in perpetuity. However, no such grant of perpetuity exists in the Order approving such CCN filed in TPUC Docket No. 01-00755 or the statute (Ten. Code Ann 65-4-201) cited in the Order authorizing its issuance. Therefore, in light of the monopoly status and powers TWS holds over its Ratepayers, please specifically state and explain TWS's legal right and justify TWS's requirement for Ratepayers to Forever Use the sewer services of TWS for as long as the Ratepayer owns their property

and, thereby, forego any other options for such services that may become available to them in the future. In addition, please explain and justify how this Forever Use policy/practice of TWS is reasonable, just and fair to the public Ratepayers and not in violation of Tenn. Code Ann. 65-4-115.

8. Please provide the Petitioner with a copy of any and all agreements/contracts/memorandums/letters of understanding/easements/right-of-ways TWS (and its predecessor in name On-site Systems, Inc.) entered into with the developer/builder of Starr Crest.

9. It appears TWS's general practice is to enter into upfront agreements/contracts having easement provisions for sewer service, among other things, with developer/builders of proposed subdivisions before construction begins. Based on a review of several of these developer/builder agreements on file at the TPUC, these agreements grant TWS a perpetual easement of 10 feet in width with 5 feet on either side and parallel to the wastewater lines. The easement requirements in these developer/builder agreements/contracts are reasonable and much less intrusive than the easement in the Contract and specifically track where sewer lines/components are installed and located by developers/builder on the various lot configurations. Apparently, these developer/builder easements accomplish the same purpose with the developer/builder as the easement in the Contract does with the Ratepayers. If these developer/builder easements are good enough and acceptable to TWS, then, please state, explain and justify why such similar easement language is not used in the Contract with the Ratepayers and/or denoted on the recorded plats for their subdivisions.

10. Please confirm or deny whether the Pay For Services Not Used billing policy/practice to charge the property owner whether the property is occupied or not as stated on the second page of the TWS Billing Statement is disclosed in the tariff filing of TWS to the TPUC. In the event TWS confirms such Pay For Services Not Used billing policy is disclosed to the TPUC as described above, please state and identify the specific Section number and Page number of such disclosure in the TWS tariff along with the TPUC Docket Number for such filing.

11. The statement in paragraphs 24 of the Answer (i.e. "Should a customer have no need for current or future sewer service, sewer service may be discontinued, and the monthly sewer rate is not charged." and a somewhat similar statement in paragraph 25 of the Answer (i.e. "customers may request that their services be disconnected if sewer services is not needed for an extended period of time. Such requests are considered on a case-by-case basis." appear, at first glance, to be at the arbitrary sole discretion of TWS and, therefore, fraught with potential discrimination. Therefore, please state and identify the specific section and page number in the TWS tariff filing and Docket Number for such filing in which this billing practice/policy (including the specific criteria under which it is applied by TWS) is disclosed in the tariff filing of TWS to the TPUC .

12. In connection with this Pay For Services Not Used billing policy/practice, please specifically state, explain and justify such billing policy/practice of TWS that subjects captive Ratepayers to pay for sewer services not needed and/or used by them. In addition, please explain and justify how this Pay For Services Not Used billing policy/practice of TWS is reasonable, just and fair to the public Ratepayers and not a violation of Tenn. Code Ann. 65-4-115.

13. Other than the excuse the TPUC rules do not object to and/or prohibit the intermingling and inclusion of other extraneous unrelated TWS requirements (such as the over-board and intrusive easement and Forever Use policy) along side the TPUC water cut-off requirements in the same contract agreement required from the Ratepayers, please specifically state, identify and justify the TWS insistence on having additional TWS provisions and the TPUC water cut-off requirements contractually grouped together in one document required to be agreed to in whole by the Ratepayers.

14. TWS states in paragraph # 15 of the Answer that TWS has defined service hours of 7:30am to 4:30pm as specified in its tariff and rules. Please state and identify the specific Section Number and Page Number in the TWS tariff referred to above and the TPUC Docket Number in which this tariff is filed which discloses these defined service hours of TWS.

15. In paragraph #15 of the Answer, TWS denies the term “property” used in the fictitious easement described in the Contract includes the cabin. The only identifier information on the Contract for the “property” is the address inserted on the line directly above the form typed caption “ADDRESS OF PROPERTY” which, in my case, is 1811 Starr Street, Sevierville, TN 37876. The last time I was at that address there was a cabin built on, permanently affixed and located there. Therefore, please specifically state, identify and explain the TWS rational, evidence and any qualifier exclusion language in the four corners of the Contract to support the TWS denial that the term “property” referenced in the easement provisions of the Contract does not include the cabin located on the identified property.

16. Also, in paragraph #15 of the Answer, TWS denies the easement terms in the Contract gives TWS the right to enter my cabin at any time to perform undefined by TWS “sewer service”. The last sentence of Paragraph #6 easement terms in the Contract requires me to “....grant TWS permission to enter upon my property for any reason connected with the provision or removal of sewer service or collection thereof.” The reference to my property in this sentence of the easement includes the whole property and any improvements to it since there is no exclusion of the cabin from the easement described within the four corners of the Contract. Accordingly, these easement provisions in the Contract give TWS unfettered, unrestricted, unannounced and anytime access to my property without any exceptions for the cabin which is built on and a part of the property. Therefore, please specifically state, identify, justify and provide the evidence and any qualifier exclusion language within the four corners of the Contract supporting the TWS denial that the easement terms in the Contract gives TWS the right to enter my cabin located on the property to perform undefined by TWS “sewer services”.

17. TPUC Rules 1220-04-13-.14(4) requires public wastewater utility’s tariff to define all terms and conditions that relate to denying or discontinuing wastewater service. In Section 2, Original Page 2 of of the TWS tariff under the caption Discontinuance of Service, TWS lists 4 reasons to discontinue sewer service to a Ratepayer. One of these 4 reasons is a “violation of any rules of the Company” making such violation of these unspecified company rules grounds for TWS to terminate a Ratepayers’ sewer service. What are these rules of the Company and where does the public find them? These company rules should be listed and individually disclosed in the TWS tariff but they are not. Therefore, please specifically state, identify and justify (a) the failure of TWS to specifically list and disclose these TWS company rules in the tariff which can trigger discontinuance of sewer service and (b) how this catch-all phrase of a “violation of any rules of the Company”, complies with the TPUC rule requirement to define all terms and conditions in the tariff for discontinuance of sewer service.

# AFFIDAVIT

I, Ronald C. McCabe , Petitioner, affirm the statements and requests given in this First Discovery Request are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Ronald C. McCabe  
Petitioner

STATE OF FLORIDA )  
County OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this 20<sup>th</sup> day of January, 2023, by Ronald C. McCabe by means of ( ) physical presence or ( ) online notarization, who ( ) is personally known to me or ( ) has produced \_\_\_\_\_ as identification.

SEAL

\_\_\_\_\_  
Notary Signature

Notary Printed Name &amp; Title

## CERTIFICATE OF SERVICE

I, Ronald C. McCabe, Petitioner, certify a true and correct copy of this First Discovery Request has been served via postage prepaid U.S. Mail to the following:


Jeff Ridsen  
Tennessee Wastewater Systems, Inc.  
851 Aviation Parkway  
Smyrna, TN 37167-2582

Karen Stachowski  
Consumer Protection and Advocate Division  
Office of the Tennessee Attorney General  
P.O. Box 20207  
Nashville, TN 37202

**AFFIDAVIT**

I, Ronald C. McCabe , Petitioner, affirm the statements and requests given in this First Discovery Request are true and correct to the best of my knowledge and belief.

Respectfully submitted,

  
Ronald C. McCabe  
Petitioner

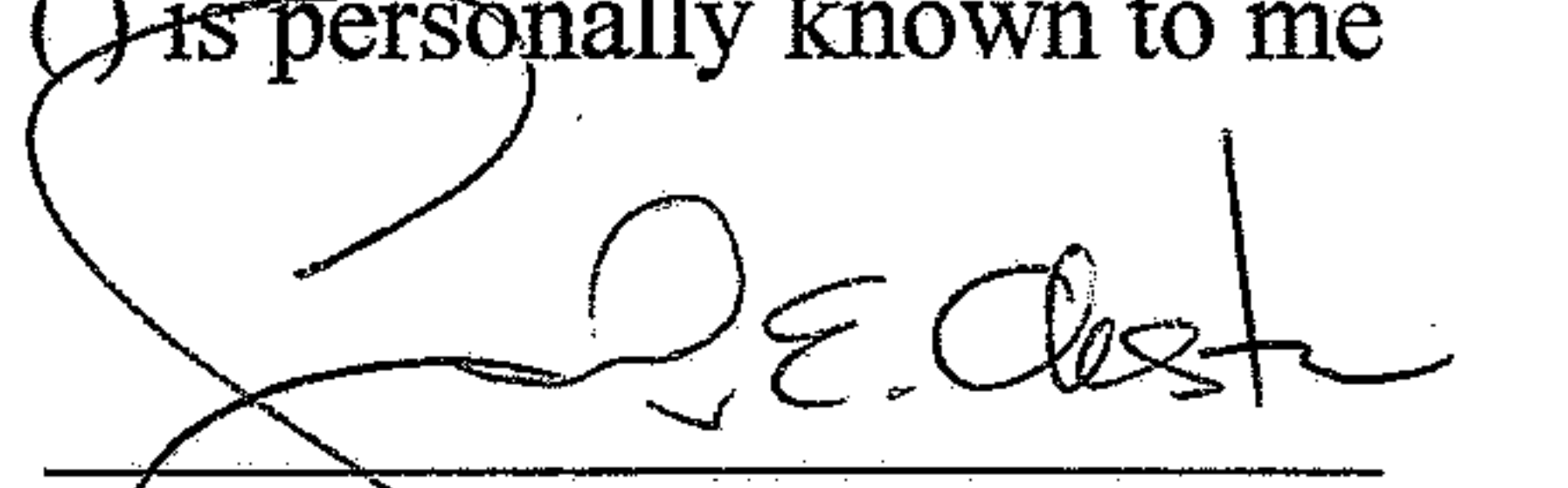
STATE OF FLORIDA )  
County OF PASCO )

The foregoing instrument was acknowledged before me on this 20<sup>th</sup> day of January, 2023, by Ronald C. McCabe by means of ( ) physical presence or ( ) online notarization, who ( ) is personally known to me or ( ) has produced DL FL M210 723 49 as identification.  
457 0

SEAL



LINDA E. CHESTER  
Notary Public  
State of Florida  
Comm# HH004468  
Expires 5/28/2024

  
Notary Signature  
Linda E. Chester  
Notary Printed Name & Title

**CERTIFICATE OF SERVICE**

I, Ronald C. McCabe, Petitioner, certify a true and correct copy of this First Discovery Request has been served via postage prepaid U.S. Mail to the following:

Jeff Riden  
Tennessee Wastewater Systems, Inc.  
851 Aviation Parkway  
Smyrna, TN 37167-2582

Karen Stachowski  
Consumer Protection and Advocate Division  
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P.O. Box 20207  
Nashville, TN 37202