

STATE OF TENNESSEE

Office of the Attorney General



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January 4, 2023

Jeff Risen
TWSI – General Counsel
851 Aviation Parkway
Smyrna, TN 37167

Re: Tennessee Public Utility Commission, Docket No. 22-000133, *Petition of Tennessee Wastewater Systems, Inc. to Amend its Certificate of Convenience and Necessity to Include Hilltop Ridge Subdivision*

Dear Mr. Risen:

The Consumer Advocate has reviewed the Petition filed by Tennessee Wastewater Systems, Inc. in the above-referenced Docket for compliance with the minimum filing requirements for an amendment to a Certificate of Convenience and Necessity, which requirements are set out in TPUC Rule 1220-04-13-.17. The Consumer Advocate's comments concerning the Company's filing are set out in Attachment A.

Thank you in advance for your attention to this request. If you have questions, please contact me at (615) 741-2370.

Respectfully,

A handwritten signature in blue ink that reads "Karen H Stachowski".

Karen H. Stachowski
Senior Assistant Attorney General

cc: Patsy Fulton, TPUC
Kelly Cashman-Grams, TPUC

Rule 1220-04-13-.17(2)(a) General Information

1. *Rule 1220-04-13-.17(2)(a)7(i-v).* In its Exhibit 7, Tennessee Wastewater provided multiple maps regarding this development and its system. However, the maps are a bit blurry. The Consumer Advocate contacted Tennessee Wastewater and the Company agreed it would provide a clearer copy of Exhibit 7.

Rule 1220-04-13-.17(2)(d) Sufficient Technical Ability

1. *Rule 1220-04-13-.17(2)(d)2.* Tennessee Wastewater provided a copy of the license of its Certified Operator (Exhibit 20); however, the Consumer Advocate notes that the license is set to expire by the end of December 2022. The Consumer Advocate contacted Tennessee Wastewater and the Company agreed to file a copy of the renewed license of its Certified Operator once it is issued.
2. *Rule 1220-04-13-.17(2)(d)4.* It appears Tennessee Wastewater did not address this part of the rule. The Consumer Advocate reviewed the Division of Water Resources (“DWR”) Dataviewer of the Tennessee Department of Environment and Conservation (“TDEC”) and found one customer complaint and one customer comment to a TDEC permit regarding two different systems involving Tennessee Wastewater:
 - i. Trillium Cove Development, SOP-04065. Mr. Day filed a complaint, in May 2022, with TDEC regarding a portion of the subsurface drip lines staying wet with wastewater pooling over the top at times. These drip lines are located behind his house. The Consumer Advocate contacted Tennessee Wastewater about this complaint. The Company explained that it had not received any contact from TDEC on this issue; however, it was contacted by Mr. Day. Tennessee Wastewater stated it has addressed Mr. Day’s complaint. However, the complaint remains “Open” in the DWR Dataviewer. The complaint can be accessed at https://dataviewers.tdec.tn.gov/dataviewers/f?p=2005:34251:5633429583399:::34251:P34251_ROW_ID:122543.
 - ii. Starr Crest II Resort, SOP-01033. Ronald McCabe filed comments with TDEC regarding its public notice of the permit renewal for this system. In his comments to TDEC, Mr. McCabe referenced his complaint with the Commission, TPUC Docket No. 22-00105. Mr. McCabe requested TDEC respond to a list of questions when responding to comments on the permit. A copy of the TDEC Comment is attached as CAD MFR Letter Exhibit 1.

Rule 1220-04-13-.17(2)(e) Sufficient Financial Ability

3. *Rule 1220-04-13-.17(2)(e)2.* The Consumer Advocate could not locate the rate for the assumption of the Service Revenues in CONFIDENTIAL Exhibit 23. The Consumer Advocate contacted Tennessee Wastewater. The Company agreed to discuss the

assumptions with its accounting department and provide clarification to the Consumer Advocate.

4. *Rule 1220-04-13-.17(2)(e)8.* The proposed tariff provided in Exhibit 30 still shows the Environmental Rider. However, in its filing on December 3, 2022, in TPUC Docket No. 16-00096, Tennessee Wastewater explained that this rider will terminate effective with the December's filing. The Consumer Advocate contacted Tennessee Wastewater and the Company agreed to file an updated tariff page.

5501 Bellview Ave.
New Port Richey, FL 34652
December 6, 2022
727-842-4407
rcmbizz@hotmail.com

Delivered Via E-mail at Anastasia.Sharp@tn.gov

Ms. Anastasia Sharp
Tennessee Department of Environment and Conservation
Division of Water Resources
312 Rosa L. Parks Ave., 11th Floor
Nashville, TN 37243-1102

Dear Ms. Sharp,

It is my understanding you are the primary contact representative at the Tennessee Department of Environment and Conservation ("TDEC") for the upcoming renewal of Permit No. 01033 ("Permit") for the Operation of Wastewater Treatment Facilities by Tennessee Wastewater Systems, Inc. (formerly known as On-Site Systems, Inc.) (collectively referred to as "TWS") for the Starr Crest II Resort subdivision ("Starr Crest") located in Sevier County.

I, Ronald C. McCabe who resides at 5501 Bellview Ave., New Port Richey FL 34652, hereby submit these comments to the TDEC as an aggrieved person during the public comment period for the renewal of the Permit which has a Public Notice Date published on the TDEC website of November 8, 2022.

I own a cabin in Starr Crest located at 1811 Starr St., Sevierville, TN ("Property") and purchase sewer wastewater disposal services covered by the Permit from TWS. There is a five (5) feet Utility & Drainage Easements for the Side & Rear Lot Lines recorded in the public land records of Sevier County for my Property and, based on copies of the recorded plats in my possession, the entire Starr Crest II subdivision. However, TWS requires its customers to sign and agree to a Sewer Subscription Contract["Contract"(copy attached hereto as EXHIBIT "I")]] which forces the customer, among other things, to acknowledge and, thereby, agree to an expanded and, in my opinion, unnecessary and overboard utility easement for TWS to have unfettered, unrestricted and unannounced access to my entire Property including the cabin..

TWS has threatened to discontinue sewer service to my Property and now charges me a higher commercial rate instead of the rightfully due lower residential rate unless and until a signed Contract is sent to TWS. Although a completed and signed Contract changed and edited for errors, ambiguities and clarification of terms and conditions was provided to TWS ["Clarified Contract"(copy attached hereto as EXHIBIT "II")], TWS rejected such Clarified Contract stating the Contract form had been filed and approved by the Tennessee Public Utility Commission ("TPUC") and could not be changed for any reason. I have raised questions as to (i) whether the Contract was officially filed with the TPUC making it legally binding upon the ratepayers and (ii) whether a separate utility easement is necessary in light of the 5 feet utility easement already recorded in the public land records.

In order to resolve these disputes and other issues with TWS, a Complaints and Petitions of Ronald C. McCabe vs. Tennessee Wastewater Systems, Inc. was filed with the TPUC under Docket No. 22-00105

on October 21, 2022 ["Complaints and Petitions" (incorporated herein by reference)] Note: The TPUC Rules and Regulations do not have any specific separate easement requirements for wastewater utility providers. As part of the Answer TWS filed to the Complaints and Petitions, TWS argues both (i) sewer components are not typically located within defined utility easements identified on the plat resulting in the need for a broader easement and (ii) unless TWS owns the sewer components, TDEC rules [subsequently identified as TDEC Rule 0400-40-06-.05(h) (hereinafter referred to as "TDEC Rule")] require a permanent easement access to the components. Sewer components on my property are owned by me. I agree TWS should have access to such components installed on the grounds of my property.

After reading this TDEC Rule, I am not certain and convinced if and how this rule applies to my dispute with the TWS easement requirement in the Contract. For example: The 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. The TDEC Rule clearly requires the easement obligations including access to the sewer system to be in place and of record before sewer service begins and not created after the fact. However, the easements required by TWS in the Contract are obtained by TWS on an ongoing basis as property ownership changes and, to the best of my knowledge, are not recorded at anytime. Therefore, it appears, the TDEC Rule requirement for easement access to the sewer system is not satisfied and does not apply to the easements created by the Contract.


There were several plats recorded in the public records for Starr Crest II but the first appears to be recorded on 9/17/2003. TWS signed a Sewage Disposal Certification on all of these plats in my possession (and, I believe, all that were recorded) stating the sewage disposal system for such recording complies with TDEC requirements. In order for TWS to make such certifications, the easement requirements of TDEC Rule would have to be met and that information along with answers to several questions is hereby requested from the TDEC.

As part of the Permit renewal, I respectfully request TDEC to respond in writing to the following:

- (i) identify, explain and/or provide a copy, if other than a recorded plat, of the means used and documents provided by TWS to comply with the recorded easement and prior Commissioner approval requirements of TDEC Rule 0400-40-06-.05(h),
- (ii) does acquiring access by easement to the sewer systems on private property on an ongoing basis as property ownership changes satisfy the easement requirements of TDEC Rule 0400-40-06-.02(h)?,
- (iii) if the form of the Contract is on file with the TDEC, can it be changed now for errors and clarity?,
- (iv) are the sewer plumbing pipes constructed inside structures built on real estate and connected to its outside sewer disposal system included in the definition of "Sewage System" defined in TDEC Rule 0400-40-06-.02 and, thereby, covered by the perpetual easement requirement in TDEC Rule 0400-40-06-.05(h)?,
- (v) does a recorded in the public records five feet utility easement on side and rear property boundary lines, as is recorded for Starr Crest and is normal/customary in the real estate business, generally comply with the recorded easement requirement in TDEC Rule 0400-40-06-.05(h)?; and
- (vi) please provide any comments or other information TDEC may have in regard to this matter.

Thank you for your cooperation and consideration. Please call me with any questions at 727-842-4407.

Very truly yours,


Ronald C. McCabe

SEWER SUBSCRIPTION CONTRACT

DATE: _____ PROPERTY CLOSING DATE: _____

PRINTED NAME _____

SUBDIVISION _____

☐ VACANT LOT
☐ RESIDENCE

ADDRESS OF PROPERTY _____

LOT # _____

MAILING ADDRESS _____

TELEPHONE NUMBER _____

EMAIL ADDRESS _____

I hereby make application to Tennessee Wastewater Systems, Inc. ("TWS") for sewer service at the address of property stated above. In consideration of the undertaking on the part of TWS to furnish sewer service, I understand, covenant and agree as follows:

1. I certify that I am the legal owner or occupier of the above referenced property and have the authority to enter into this agreement with TWS for the provision of sewer service.
2. If this property is a vacant lot as checked above, I understand I will be billed an annual Capacity Reservation Fee to reserve capacity in the sewer treatment system. I agree to pay the annual Capacity Reservation Fee until such time a residence is built on the lot and the residence is connected to the sewer system and sewer service begins. I understand payment of the annual Capacity Reservation Fee on a vacant lot is not the same as paying for monthly sewer service to a residence connected to and receiving sewer services.
3. I understand that certain components necessary to the operation of the sewer system have been installed on the above referenced property.
4. I warrant that any connection to and/or subsequent use of the system components on my property shall be in accordance with TWS's Rules, Regulations and Plans.
5. I agree that my use of the system components on my property shall conform to the guidelines set forth in the USER MANUAL (Do's and Don'ts for an Effluent Collection System). I understand that should I violate these Rules or abuse or damage the system components, that I will bear the expense to repair and/or replace the components in accordance with TWS's Plans.
6. I acknowledge that TWS, its successors, and assigns have a perpetual easement in, over, under, and upon the above referenced property as specified on the property plat filed with the register of deeds. This easement provides TWS the right to operate, maintain, construct, install, and repair all components of the sewer system the property, including but not limited to the Interceptor tank and the Interceptor Pump or Interceptor Gravity Tank systems. I further grant TWS permission to enter upon my property for any reason connected with the provision or removal of sewer service or collection therefore.

EXHIBIT "I"

Page 2 of 2

7. I understand that I am responsible for the operation and repair of all other plumbing and related structures on the property, including the outfall line to the Interceptor tank.
8. I authorize TWS to install a cutoff valve on my side of my water meter and grant TWS exclusive right to use such valve in accordance with its Rules and Regulations. I understand the use of this valve does not in any way relieve me of my obligation to pay for water service to the water service provider.
9. I authorize TWS to purchase and install a water meter for purposes of measuring water usage. If a water meter is already installed on the premises, I hereby grant TWS the authority to read the water meter to obtain the water usage data or obtain the water usage records from the water utility servicing this address.
10. I agree to abide by TWS's Rules and Regulations, and the Rates and Fees Schedule as established in its tariff as approved by the Tennessee Public Utility Commission as well as with any amendments to or changes in such rules, regulations, and rates.
11. I agree to promptly pay for sewer service at the current billing rate as set forth in the Company's tariff as approved by the Tennessee Public Utility Commission. I understand that should I not pay my bill, I will be subject to having my sewer service disconnected in accordance with TWS's cutoff procedures and further understand I will be responsible for the payment of any and all costs associated with collecting any delinquent or unpaid amounts owed on my account, including attorney fees.
12. This Agreement shall remain in effect for as long as I own, reside upon or rent the above referenced property. I agree to provide notice to TWS at least thirty (30) days in advance of vacating the property and terminating service.

SUBSCRIBER'S SIGNATURE



SEWER SUBSCRIPTION CONTRACT

DATE: FEBRUARY 28, 2022

PROPERTY CLOSING DATE: _____

Ronald C. McCabe

PRINTED NAME

Starr Crest Resort

SUBDIVISION

1811 Starr Street, Sevierville, TN 37876

ADDRESS OF PROPERTY

5501 Bellview Ave. , New Port Richey, FL 34652

MAILING ADDRESS

727-842-4407

TELEPHONE NUMBER

rcmbizz@hotmail.com

EMAIL ADDRESS

☐ VACANT LOT
☒ RESIDENCE

110R1
LOT #

I hereby make application to Tennessee Wastewater Systems, Inc. ("TWS") for sewer service at the address of property stated above. In consideration of the undertaking on the part of TWS to furnish sewer service, I understand, covenant and agree as follows:

1. I certify that I am the legal owner or occupier of the above referenced property and have the authority to enter into this agreement with TWS for the provision of sewer service.
2. If this property is a vacant lot as checked above, I understand I will be billed a monthly Capacity Reservation Fee to reserve capacity in the sewer treatment system. I agree to pay the monthly Capacity Reservation Fee until such time a residence is built on the lot and the residence is connected to the sewer system and sewer system begins. I understand payment of the monthly Capacity Reservation Fee on a vacant lot is not the same as paying for monthly sewer service to a residence connected to and receiving sewer services.
3. I understand that certain components necessary to the operation of the sewer system have been installed on the above referenced property.
4. I warrant that any connection to and/or subsequent use of the system components on my property shall be in accordance with TWS's Rules, Regulations and Plans, ("Rules") filed with the Tennessee Public Utility Commission ("TPUC").
5. I agree that my use of the system components on my property shall conform to the guidelines set forth in the USER MANUAL (Do's and Don'ts for an Effluent Collection System). I understand that should I violate these Rules or abuse or damage the system components, that I will bear the expense to repair and/or replace the components in accordance with TWS's Rules. (a)
6. I ~~acknowledge that~~ TWS, its successors, and assigns ~~have a perpetual easement in, over, under, and upon the above referenced property as specified on the property plat filed with the register of deeds. This easement provides TWS the right to operate, maintain, construct, install, and repair all components of the sewer system the property, including but not limited to the Interceptor tank and the Interceptor Pump or Interceptor Gravity Tank systems. I further grant TWS permission to enter upon my property for any reason connected with the provision or removal of sewer service or collection therefore.~~ (b) (c)
7. I understand that I am responsible for the operation and repair of all other plumbing and related structures on the property, including the outfall line to the Interceptor tank, and service line to the sewer connection valve.
8. I authorize TWS to install a cutoff valve on my side of my water meter and grant TWS exclusive right to use such valve in accordance with its Rules and Regulations. I understand the use of this valve does not in any way relieve me of my obligation to pay for water service to the water service provider.
9. I authorize TWS to purchase and install a water meter for purposes of measuring water usage. If a water meter is already installed on the premises, I hereby grant TWS the authority to read the water meter to obtain the water usage data or obtain the water usage records from the water utility servicing this address.
10. I agree to abide by TWS's Rules and Regulations, and the Rates and Fees Schedule as established in its tariff as approved by the Tennessee Public Utility Commission as well as with any amendments to or changes in such rules, regulations, and rates. filed with TPUC.
11. I agree to promptly pay for sewer service at the current billing rate as set forth in the Company's tariff as approved by the Tennessee Public Utility Commission. I understand that should I not pay my bill; I will be subject to having my sewer service disconnected in accordance with TWS's cutoff procedures and further understand I will be responsible for the payment of any and all costs associated with collecting any delinquent or unpaid amounts owed on my account, including attorney fees, reasonable and use sewer services above from TWS.
12. This Agreement shall remain in effect for as long as I own, reside upon or rent the above referenced property. I agree to provide notice to TWS at least thirty (30) days in advance of vacating the property and terminating service.
13. This Sewer Subscription and Contract becomes void upon its recording in the Public Land Records of Sevier County, Tennessee.

Inserts above:

(a) for the maintenance of the outside sewer Service Components located on

(b) on the outside grounds of

(c) the immediate grounds adjacent to the sewer components outside and on

Ronald C. McCabe
SUBSCRIBER'S SIGNATURE