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Electronically Filed in TPUC Docket
Room on October 11, 2023 at 5:17 p.m.

October 11, 2023

Todd Hancock
Ferraro, Hancock and Associates, PLLC
2209 Crestmoor Rd.
Suite 210
Nashville, Tennessee 37215

Re: Application of Superior Wastewater Systems Docket 23-00051

Dear Todd,

I am writing on behalf of my client, Tennessee Wastewater Systems, Inc. ("TWSI") in response to your letter of October 6, 2023 (attached). Your letter states that TWSI has breached a 2005 settlement agreement between TWSI and King's Chapel Capacity, LLC (now known as Superior Wastewater Systems) by intervening as an interested party in Docket 23-00051, an application by Superior Wastewater Systems to provide wastewater service in a portion of Williamson County, Tennessee that is within the service area of TWSI.

On behalf of TWSI, I respectfully disagree that TWSI's intervention in Docket 23-00051 is inconsistent with the "Settlement and Mutual Release Agreement" (the "Settlement") that was filed with the Commission in Docket 04-00335. Therefore, TWSI will not withdraw from the case.

Here is some background on the Settlement and what it did – and did not – do. In sum, the Settlement resolved a lawsuit between TWSI and King's Chapel over the ownership of a wastewater treatment system and also resolved a pending docket at the Commission, Docket 04-00335. In that proceeding, King's Chapel requested a certificate of convenience and necessity to provide wastewater service to a new development called the "Ashby Communities" in Williamson County. The developer of Ashby Communities was John Powell, who also owned King's Chapel. Although Ashby Communities was located within the service area of TWSI, TWSI eventually agreed, following an adverse court decision, to let King's Chapel serve the new development and to amend TWSI's territory to exclude Ashby Communities.¹

That agreement to let King's Chapel serve Ashby Communities has nothing to do with the pending application filed by Superior Wastewater. In Docket 23-00051, Superior Wastewater

¹ See TPUC Docket 05-00204 (Order issued January 19, 2006) in which TWSI amended its service area to exclude four parcels that comprised the newly created service territory of King's Chapel.

requests permission to build and operate a new wastewater treatment plant and collection system to serve “335 separate parcels in proximity to Triune in Williamson County.”² A portion of the requested service area is adjacent to Ashby Communities but the entire requested territory is considerably larger and extends east toward and beyond the Triune community. See Application at p. 48 (map of proposed service area). In other words, the new application is not, as you describe it, merely a request for “an extension” of the area served by the treatment facility at Ashby Communities but a request for a newer, much larger territory that will be served by a new treatment facility located approximately four miles to the east of Superior Wastewater’s current service area.

Moreover, even if a part of the new application were nothing more than “an extension” of the service area around Ashby Communities (which it is not, since it will be served by a new treatment system), the new application involves “a revision or change in the geographic area and number of customers to be served” that was agreed upon in Docket 04-00335. Therefore, the Settlement does not prohibit TWSI from opposing the new application.

It is unfortunate that Section 6 of the Settlement contains a typographical error. That Section states that TWSI agrees not to oppose the application of King’s Chapel to serve the Ashby Communities “or as such application may be amended provided such amendment does [*sic*.] involve a revision or change of the geographic area and number of customers to be served.” The sentence should say: “provided such amendment does not involve a revision or change of the geographic area and number of customers to be served.” Emphasis added. The omission of the word “not” is an obvious error. The sentence makes no sense without it, as the Commission understood at the time.³

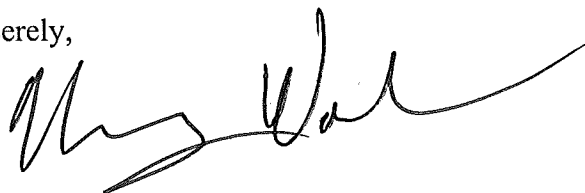
Finally, I would note that Superior Wastewater opposed TWSI’s petition to intervene in Docket 23-00051. Although Superior Wastewater did not argue in its written filing that TWSI’s request to intervene violates the parties’ 2005 Settlement, counsel for Superior Wastewater, Chuck Welch, raised the issue during oral argument to the Hearing Officer. The Hearing Officer orally granted TWSI’s petition to intervene but no written order has yet been issued. In my opinion, the Commission Staff, several of whom remember the Settlement, will confirm – as I believe Mr. Powell himself will also confirm – that the omission of the word “not” in Section 6 of the Settlement is obviously a typographical error. I am therefore filing a copy of this letter in Docket 23-00051.

Feel free to call me if you have any questions about this letter.

² Response of Superior Wastewater Systems, LLC to the Petition of Tennessee Wastewater Systems to Intervene, Docket 23-00051, filed Aug. 29, 2023, at 1.

³ The agency’s final order in Docket 04-00335 (issued January 3, 2006) correctly describes (at 4) the Settlement: “Pursuant to the settlement agreement, TWS [TWSI] no longer objected to the application filed by King’s Chapel as long as King’s Chapel does not seek ‘a revision or change in the geographic area and number of customers to be served’ as set forth in the initial application.” Emphasis added. Other filings in the docket also reflect the parties’ intent, despite the typographical error in the Settlement itself. See “Notice of Settlement and Withdrawal of Objections” filed July 25, 2005; “Notice of Withdrawal of Tennessee Wastewater Systems, Inc.” filed Aug. 19, 2005; “Order Granting Withdrawal of Intervention,” filed Aug. 25, 2005. Each of those filings and orders accurately describes the Settlement despite the typographical error in Section 6.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry Walker". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Henry Walker (No. 000272)
1600 Division Street, Suite 700
Nashville, Tennessee 37203

Attorney for Tennessee Wastewater Systems, Inc.

cc: Jeff Riden

Attachment



AND ASSOCIATES, PLLC

October 6, 2023

VIA ELECTRONIC AND US MAIL

Tennessee Wastewater Systems, Inc. c/o
Jeff Riden, General Counsel
851 Aviation Pkwy
Smyrna, Tennessee 37029
jeff.riden@adenus.com

Robert Pickney
1806 Sunnydale Drive
Sevierville, Tennessee 37862

Charles Pickney
14160 Old Hickory Blvd.
Antioch, Tennessee 37013

RE: Notice of Breach of Settlement Agreement

Mr. Riden, Mr. Pickney and Mr. Pickney,

Please be advised that this firm represents Superior Wastewater Systems, LLC ("Superior"), the successor-in-interest to Kings Chapel Capacity, LLC ("KCC"), with respect to that certain Settlement and Mutual Release Agreement (the "Settlement Agreement") you executed on or about July 25, 2005. Allow this correspondence to serve as formal notice that the filing the Petition to Intervene by Tennessee Wastewater Systems, Inc. ("TWS") in Docket No. 23-00051 pending before the Tennessee Public Utility Commission (the "TPUC Case") constitutes a breach and default upon the expressed terms of the Settlement Agreement. Accordingly, my client demands the immediate withdrawal of the Intervening Petition.

As you are aware, my client commenced the TPUC Case seeking an amendment to its existing service territory in Williamson County, Tennessee and requesting a change in the geographic area and number of customers to be served. The Petition filed by my client in the TPUC Case is undoubtedly governed by the agreed terms of the Settlement Agreement. With respect to such amendments, TWS agreed as follows:

6. Upon execution of this Settlement Agreement, TWS shall file a cancellation and/or transfer as appropriate, in a form and substance satisfactory to Parties of the First Part prior to submittal, of that portion of its certificated area which is described in the pending KCC petition for authority and shall withdraw any objection or opposition to the CCN Application before the Tennessee Regulatory Authority filed by KCC for the establishment of the wastewater treatment facility in the area set forth in the Application, or as such application

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may be amended provided such amendment does involve a revision or change of the geographic area and number of customers to be served. [Emphasis added.]
Settlement Agreement, Section 6, Page 3 of 7

Further, as the TPUC Case is simply an extension of the previous matters resolved by the parties through the Settlement Agreement, the below provision remains valid and in full force and effect.

***ANY COMPLAINT OR PROCEEDING** brought by a party hereto in any other forum shall be withdrawn by the party bringing such complaint or proceeding, if possible, subject to the faithful performance of the provisions herein by the parties hereto. [Emphasis added.]*

Settlement Agreement, Page 4 of 7

TWS is keenly aware of this provision as it successfully argued its enforcement in the proceedings before the TRA in Docket No. 05-00062. Hearing Officer Gary Hovtvedt concluded that “the express[ed] language of the Settlement Agreement, which is referenced in bold above, states that such agreement specifically encompasses any ‘complaint’ or any ‘proceeding,’ which clearly includes the instant docket.”

Accordingly, Mr. Powell and Superior herein demand that TWS abide by the Settlement Agreement and immediately withdraw the Intervening Petition. As a result of the breach, Superior has and continues to incur substantial costs and attorneys’ fees directly associated with TWS’s actions and herein reserves all rights and remedies under the Settlement Agreement, Tennessee statutory and common law to recover the same.

We ask that you contact the undersigned at (615) 242-0060 to discuss this matter as your immediate and prompt attention to this issue is requested.

Sincerely yours,

Ferraro Hancock & Associates, PLLC

By:


Todd H. Hancock