

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF)
TIDEWATER ENVIRONMENTAL SERVICES, INC.)
FOR APPROVAL OF A WASTEWATER TARIFF)
RATE FOR WASTEWATER SERVICES TO BE) PSC DOCKET NO. 11-274WW
PROVIDED TO "THE RIDINGS" DEVELOPMENT) ("THE RIDINGS")
LOCATED ON THE WEST SIDE OF BEAVER)
DAM ROAD, SUSSEX COUNTY, DELAWARE)
(FILED JUNE 9, 2011))

ORDER NO. 8045

AND NOW, this 20th day of September, 2011, the Delaware Public Service Commission (the "Commission") hereby determines and orders the following:

BACKGROUND

1. On June 7, 2011, Tidewater Environmental Services, Inc. ("TESI") purchased a wastewater treatment and disposal system from The Ridings Development LLC that served a development in Lewes, Delaware formerly known as "Ritter Farm" and now called "The Ridings." On June 9, 2011, TESI filed with the Delaware Public Service Commission (the "Commission") an application seeking the Commission's approval to increase its fees for wastewater services to residents in The Ridings from \$1,060.00 per year to \$1,245.00 per year. TESI also requested that the Commission permit it to implement an interim rate increase while the Commission conducted its investigation of TESI's application. As is apparent from the dates set forth above, this is TESI's first request to implement Commission-authorized rates for The Ridings since the acquisition.

2. By Order No. 8005 dated July 12, 2011, the Commission granted TESI's request to allow the requested rate increase to become

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effective on a temporary basis. However, the Commission ordered TESI to provide public notice of the proposed rate increase and to cause a copy of such public notice to be sent by first-class mail to each customer presently connected to its wastewater system in The Ridings on or before July 29, 2011. The Commission further ordered TESI to file with the Commission a certification of such mailing on or before August 19, 2011. Order No. 8005 further provided that the public notice should solicit comments and/or objections from interested persons or entities. If no significant comments or objections were submitted and if no further information was discovered, the Commission could choose to finally approve the requested rate without further hearings or protracted proceedings. If, however, the Commission received significant comments or objections, or discovered additional information, the Commission could then determine what (if any) further process might be appropriate under the circumstances.

3. TESI published the required notice in The News Journal and the Delaware State News on July 14, 2011, and filed the required affidavits of publication with the Commission on July 20, 2011. In addition, TESI mailed the public notices to the residents of The Ridings on July 13, 2011, and filed the required certification of mailing on July 20, 2011.

OBJECTIONS FROM CUSTOMERS

4. The Commission received three written objections to TESI's requested rate increase. By letter dated August 15, 2011, Mr. and Mrs.

Robert Vaccaro stated that when they purchased their home in December 2009 the Sales Manager of Beazer Homes told them that wastewater fees would be \$265.15 per quarter, and that when 75 homes were built and occupied TESI would take over the provision of wastewater services and the fees would decrease by \$100 per quarter. The Vaccaros further stated that surrounding communities were paying quarterly wastewater fees ranging from \$65.00-\$306.00 (the latter amount also including water service).

5. By letter dated August 19, 2011, Mr. and Mrs. Walter Meketen objected to the proposed rate increase. They stated that they were both senior citizens on fixed incomes; that they had been told that the community had public (not private) water and sewage treatment; and that since they were not full-time residents they believed their rate should be based on their usage.

6. By letter dated August 25, 2011, Mr. Stanley Stoklosa objected to TESI's application and to the Commission's approval of the interim rate request. Mr. Stoklosa also asked to intervene in the docket.

7. On August 25, 2011, Staff analyst Heidi Wagner received an e-mail message from Mr. and Mrs. Gennaro Bruno alleging that their wastewater rate was already too high and that they felt that the developer and TESI had misled them.

8. Finally, on September 1, 2011, Staff received a letter from James M. Duffy objecting to the proposed rate increase. Mr. Duffy

stated that his home was a second home and that he felt he was penalized by paying the same amount as a full-time resident. Mr. Duffy further pointed to the national recession and the economic pain Americans were experiencing as a justification for denying TESI's requested rate increase.

9. In addition to these written objections, Mr. Stoklosa and Mr. George O'Brien, another resident of The Ridings, met with members of the Commission Staff and the Public Advocate at the Commission's Dover office to review TESI's supporting documents and discuss TESI's application.

STAFF'S INVESTIGATION

10. Commission Staff retained Howard Woods, P.E. to review TESI's filing and to advise Staff regarding TESI's application. Staff also conducted discovery on the information submitted with TESI's application.

11. Staff observes that TESI did not file a traditional request for a rate increase, with an historic test year and proposed test period revenues and expenses; rather, it filed a business model that attempted to identify specific costs associated with the system as if it were a stand-alone entity. After Staff's review and investigation of TESI's business model and TESI's discovery responses, Staff concludes that TESI's estimated revenues and expenses are generally reasonable, but states that it cannot support the requested rate increase for several reasons.

12. First, Staff believes that TESI's filing optimistically forecasts more customers than the number now being served or likely to be served during the rate effective period. Furthermore, Staff observes that the developer of The Ridings community is under an obligation to provide annual operating subsidies during the development's build-out period, and although TESI's revenue projections should have reflected the near-term subsidies being provided by the developer, they did not. Staff included those subsidies in its calculation of revenues. The net result of these two changes reduces TESI's present rate revenues by \$7,000.00.

13. Second, Staff notes that a number of operating expenses in TESI's business model relate to the number of customers and the volume of wastewater collected and treated. A downward adjustment in the number of customers also results in a reduction of these variable costs, which Staff calculated as approximately \$600.00 (not including purchased power, which is addressed *infra*).

14. Third, Staff observes that TESI used a per-project (development) allocation method to allocate overhead and shared labor expenses. Staff believes it is more equitable to allocate such costs on a per-customer basis. This reduces TESI's annual revenue requirement for The Ridings by approximately \$13,000 annually.

15. Fourth, TESI attempted to estimate purchased power costs by estimating the unit cost for power as though full build-out had been achieved and then adjusting this cost to reflect a projected number of

customers smaller than that expected at full build-out but greater than the number of customers likely to be served during the rate effective period. As noted earlier, Staff believes TESI's estimate of the number of customers during the rate effective period is too optimistic. Furthermore, Staff notes that TESI inflated the unit rate to reflect an estimate of future electric rates that is not currently known and measureable. Staff adjusted this cost by determining the median monthly cost of purchased power over twenty months, during which it found little variation even dating back to the first few months when the developer was operating the system. Staff believes that the median monthly cost for purchased power properly reflects month-to-month and seasonal variations in power consumption, and provides a reasonable way to anticipate near-term purchased power costs. This adjustment reduces TESI's annual revenue requirement for The Ridings by approximately \$11,000.00.

16. Next, TESI used a capital structure and cost rates that differed from those that it used in its base rate case filing in Docket No. 11-329WW. Staff uses the same capital structure and cost rates that TESI used in Docket No. 11-329WW.

17. Additionally, TESI proposed to amortize and recover its actual rate case expense (or, alternatively, to request regulatory asset treatment for that expense). In light of the Commission's longstanding policy of normalizing rate case expense, Staff does not support amortization or the creation of a regulatory asset for rate

case expense.

18. Finally, TESI included in rate base amounts for plant that was not used and useful despite the provisions of 26 Del. C. §102(3) a. Staff excludes the non-used and useful plant from rate base.

19. After making these adjustments to TESI's business model, Staff concludes that TESI's current annual rate of \$1,060.00 is just and reasonable and is in the public interest. Staff states that this annual rate will produce a revenue level (i.e., prior to the temporary rate increase) is sufficient to allow it to recover its operating expenses and to permit it the opportunity to earn its authorized rate of return.

THE PUBLIC ADVOCATE'S COMMENTS

20. By letter dated August 31, 2011, the Division of the Public Advocate advised the Commission that it had reviewed Staff's consultant's analysis. The Public Advocate agreed with Staff's conclusions that TESI had not supported its requested rate increase, and that the \$1,060.00 annual rate in effect prior to the Commission's approval of the temporary increased rate would allow TESI "to provide safe, adequate and reliable wastewater services and also earn a rate of return of 9.0% (using a presumed cost of debt of 8.0% and a cost of equity of 10.0%)." The Public Advocate therefore recommended in the absence of a revised tariff filing, the Commission either reject TESI's application with prejudice or refer the case to a Hearing Examiner to develop a full evidentiary record upon which the

Commission can base a decision.

TESI'S RESPONSE

21. TESI disagrees with the conclusion that its current revenues are sufficient to permit it to recover its operating costs and allow it the opportunity to earn its authorized rate of return. It states, however, that any further effort on its part to substantiate the need for recovery of costs that will not be recovered in those rates will only serve to further deteriorate its operating results. Consequently, TESI does not contest Staff's recommendation that the current \$1,060.00 annual rate for The Ridings remain in place.

REFUND

22. As discussed *supra*, the Commission permitted TESI's proposed rate increase to be placed in effect on a temporary basis and subject to refund effective as of July 12, 2011, the date of Commission Order No. 8005. A refund is necessary because TESI has been charging The Ridings customers the increased temporary rate since that time. TESI proposes to refund the amounts collected from The Ridings customers over and above the \$1,060.00 annual rate through a credit to the customers' bills, which will include interest at the rate authorized by 26 *Del. Admin. Code* ch. 1003 (PSC Regulation Docket No. 11).

23. Staff has reviewed TESI's refund proposal and reports that it complies with 26 *Del. Admin. Code* ch. 1003.

DISCUSSION

13. We have reviewed the application, the record and Staff's memorandum reporting its investigation and conclusions, and agree with the adjustments that Staff makes to TESI's revenues, expense and rate base. We understand the difficulty involved in setting rates for utilities that lack sufficient data to permit an analysis of test year and test period revenues, expenses and rate base, and commend Staff for its thorough investigation. While we are sympathetic to TESI's disagreement with Staff's conclusion, we note that the utility has the burden of proving that its requested rate is just and reasonable. 26 *Del. C.* §307(a). TESI has not carried that burden here.

NOW, THEREFORE, BY THE AFFIRMATIVE VOTE OF NO FEWER THAN THREE COMMISSIONERS, IT IS HEREBY ORDERED:

1. That the application of Tidewater Environmental Services, Inc. for an increase in wastewater rates from \$1,060 per quarter to \$1,245 per quarter for customers in The Ridings development is DENIED.

2. That the Commission approves as just and reasonable an annual rate of \$1,060.00 for The Ridings customers.

3. That the temporary increase placed into effect by Tidewater Environmental Services, Inc. on July 12, 2011, shall be refunded to customers, with interest at the rate set forth in 26 *Del. Admin. Code* ch. 1003, in the form of a credit on customers' September 2011 bills.

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4. That the Commission reserves the jurisdiction and authority to enter such further orders in this docket as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae _____
Chair

/s/ Joann T. Conaway _____
Commissioner

/s/ Jaymes B. Lester _____
Commissioner

/s/ Dallas Winslow _____
Commissioner

/s/ Jeffrey J. Clark _____
Commissioner

ATTEST:

/s/ Alisa Carrow Bentley _____
Secretary