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November 30, 2010

**VIA HAND DELIVERY**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street – Second Floor  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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SECRETARY'S OFFICE

RE: Pennsylvania Public Utility Commission v. Total Environmental Solutions, Inc. –  
Treasure Lake Wastewater Division; Docket No. R-2010-2171924, et al.; **JOINT**  
**PETITION FOR SETTLEMENT OF RATE INVESTIGATION**

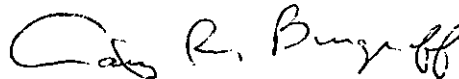
Dear Secretary Chiavetta:

Enclosed please find an original and three (3) copies of the Joint Petition for Settlement of Rate Investigation in the above-captioned proceeding.

Copies have been served pursuant to the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Respectfully,



Craig R. Burgraff  
*Counsel for Total Environmental Solutions, Inc.*

CRB/bks  
Enclosures

cc: The Honorable Katrina L. Dunderdale (Via Email & First Class Mail)  
Per Certificate of Service

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :  
 :  
 v. : Docket No. R-2010-2171924, *et al.*  
 :  
 Total Environmental Solutions, Inc. - :  
 Treasure Lake Wastewater Division :

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**JOINT PETITION FOR SETTLEMENT OF  
RATE INVESTIGATION**

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Total Environmental Solutions, Inc. – Treasure Lake Wastewater Division (“TESI” or “Company”), the Office of Trial Staff (“OTS”) and the Office of Consumer Advocate (“OCA”), all parties to the above-captioned proceeding (hereinafter referred to collectively as “Joint Petitioners”), hereby join in this Joint Petition for Settlement of Rate Investigation (“Petition” or “Settlement”). The Joint Petitioners respectfully request that Administrative Law Judge Katrina Dunderdale (“ALJ”) and the Pennsylvania Public Utility Commission (“Commission”):

- (a) Approve the Settlement as set forth below without modification;
- (b) Authorize TESI to file tariff supplements containing the rates set forth in Appendix A hereto, which are designed to produce an increase in annual operating revenues of approximately \$105,059 in lieu of the originally proposed increase of \$268,150, as more fully

explained below, effective upon the day after the Commission enters an order approving the Petition;

(c) Terminate and mark closed its inquiries and investigation at the above-captioned docket number; and

(d) Dismiss and mark closed all complaints filed against the instant rate increase.

## **I. BACKGROUND**

1. TESI is a public utility as defined in Section 102 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 102. It provides wastewater service to approximately 2,105 residential and commercial usage customers and 3,455 availability customers in portions of Sandy Township, Clearfield County, Pennsylvania.

2. On June 30, 2010, TESI filed Supplement No. 6 to Tariff Wastewater – Pa. P.U.C. No. 4 with a requested effective date of August 29, 2010, together with data required pursuant to 52 Pa. Code § 53.52(b) and (c) for the twelve months ended December 31, 2009 and December 31, 2010. The proposed tariffs were calculated to produce additional annual revenues of \$268,150, an average 25.6% increase in total revenues based upon its future test year level of operations for the twelve months ended December 31, 2010.

3. By Order entered August 18, 2010, the Commission suspended the filing until March 29, 2011, unless permitted by Commission order to become effective at an earlier date, initiated an investigation and assigned the matter to the Office of Administrative Law Judge. TESI filed its suspension tariff, Supplement No. 7 to Tariff Wastewater – Pa. P.U.C. No. 4, on August 26, 2010.

4. A formal complaint was filed by the OCA on July 30, 2010. The OTS filed a Notice of Appearance on August 19, 2010.

5. Complaints were also filed by 26 pro se complainants. These complainants were included on the Limited Service List with the right to appear and testify at the public input hearings, receive a copy from the Company of any settlement filed in the case, provide comments to any settlement in a time-frame to be determined by the ALJ, receive service of the ALJ's Recommended Decision, file exceptions and receive service of the Commission's final order.

6. A telephonic prehearing conference was held on September 13, 2010 at which counsel for TESI, OTS and OCA were present and at which a procedural schedule was set and public input hearings agreed to. ALJ Dunderdale issued a Preliminary Order on September 14, 2010. ALJ Dunderdale also issued a First Interim Prehearing Order outlining special instructions for briefs on September 27, 2010 and a Second Interim Prehearing Order concerning the addition of new complainants on October 15, 2010.

7. In developing their testimony and preparing for hearings, the OTS and OCA propounded extensive discovery on TESI in the form of interrogatories. The OTS issued ninety nine (99) interrogatories and the OCA issued fifteen (15) interrogatories. These interrogatories covered all areas of ratemaking as well as service. TESI filed no objections to the interrogatories and provided extensive answers to all but several of the interrogatories.

8. The Joint Petitioners presented direct testimony and exhibits on all traditional rate case issues, as well as service issues. Specifically, TESI provided the prepared testimony of two expert witnesses, the OTS provided the prepared testimony and exhibits of two expert witnesses, and the OCA provided the prepared testimony and exhibits of one expert witness.

9. On October 5, 2010, the Joint Petitioners filed with the Commission and served on ALJ Dunderdale a Stipulation Regarding Rate of Return. That stipulation established a cost

of capital or total rate of return of 8.23% for purposes of this proceeding. The OTS and OCA reserved the right to argue that, due to quality of service and other factors, the rate of return may be something other than the 8.23% cost of capital, and TESI reserved the right to respond to any adjustments proposed by the OTS or OCA for any reason other than the inappropriateness of the adjustment for any reason based upon the development of the actual cost of capital or rate of return.

10. Two Public Input Hearings were held in TESI's service territory. These hearings were held at 1:00 p.m. and 6:00 p.m. on November 9, 2010. Nine customers testified at the afternoon hearing. One customer was a pro se complainant in both rates cases. Sixteen customers testified at the evening hearing. Five of these customers were pro se complainants in the two rate cases.

11. The Joint Petitioner's held numerous conferences and discussions to pursue settlement of this proceeding, consistent with the Commission's policy to encourage settlements in its Rules of Practice and Procedure. 52 Pa. Code §§ 5.224 and 5.231. As explained more fully below, the result of these efforts is that the Joint Petitioners have reached a full, complete and comprehensive settlement of all issues.

12. At the day scheduled for evidentiary hearing, November 15, 2010, the Joint Petitioners advised ALJ Dunderdale that they had reached a consensus on the terms of a settlement. At that time, TESI, OTS and OCA entered their testimony and exhibits into the record. No pro se complainants appeared at the evidentiary hearing.

13. The settlement process, fostered and recognized by the Commission, is the art of compromise. Consequently, the Settlement reflects a review of all rate case issues, and is based upon compromises with regard to such issues in order to attain the agreements, designed to

produce an increase in operating revenues embodied within this Settlement. While the Joint Petitioners have not sought to identify, nor would they have been able to agree upon, all of the specific adjustments that support their respective conclusions, they do agree to, and request approval of, the Settlement as it is in the public interest and results in rates which are just and reasonable. The Joint Petitioners agree that the Settlement is in the best interests of TESI and its customers.

### III. SETTLEMENT

14. The Settlement consists of the following terms and conditions:

(a) TESI will be authorized to file tariff supplements containing the rates set forth in Appendix A hereto which are designed to produce additional operating revenues in the total approximate amount of \$105,059 (“Settlement Rates”). The Settlement Rates are in substitution of the originally proposed rates in Supplement No. 4 to Tariff Water – Pa. P.U.C. No. 4 which were designed to produce \$268,150 in increased annual operating revenues. The Settlement Rates are to become effective for service furnished upon the day after the Commission enters an Order approving the Petition.

The Settlement Rates include the following allocation of the increase in annual operating revenues among the rate classes:

#### TESI CLASS REVENUE SETTLEMENT

	<u>Increase (\$)</u>	<u>Increase (%)</u>
Residential	\$116,902	16.6%
Commercial	- \$ 14,987	- 15.0%
Availability	0	0.0%
Flat Rate	- \$ 1,073	- 6.1%
Miscellaneous Revenue	\$ 4,146	10.0%
Total Company	\$105,059	10.0%

Calculations demonstrating that the Settlement Rates are designed to produce the intended settlement levels of annual operating revenues are contained in Appendix B hereto.

As noted in Appendix A, the Company's monthly rates will be set at the following agreed upon levels.

**Metered Sales**

5/8"	\$20.61 month
5/8" w/Pump Credit	\$19.61 month
1"	\$38.93 month
1 1/2"	\$48.35 month
2"	\$64.45 month
3"	\$134.28 month
4"	\$268.56 month
6"	\$537.10 month
Availability	\$ 4.53 month/per tract

**Flat Rate Sales**

Flat	\$33.70 month
Flat w/Pump Credit	\$32.70 month

Additionally, the following agreed-upon usage blocks are as follows:

0 – 2.0 tg	\$ 3.75
over 2.0 tg	\$ 3.75

As noted, the monthly rate per tract for availability customers remains at the same level as current rates, or \$4.53 per month per tract.

(b) The Company shall not be permitted to request a further increase to its base rates prior to one year from the date of Commission approval of the Settlement. The Company may seek an exception to the base rate increase limitation set forth above under any of the following circumstances:

(i) TESI meets the requirements for extraordinary relief under Section 1308(e) of the Public Utility Code (relating to voluntary changes in rates).

(ii) TESI is subject to significant increases in the rate of federal taxes or other significant increase in costs resulting from changes in law or regulations that would not allow it to earn a fair rate of return.

The settlement reflects a carefully balanced compromise of all the Joint Petitioners in this proceeding. The Settlement is in the public interest.

15. If the ALJ recommends approval of this Petition without modification, the Joint Petitioners waive the filing of Exceptions provided, however, that should any non-signatory party file Exceptions, the Joint Petitioners reserve the right to file Reply Exceptions thereto.

16. This Settlement is proposed by the Joint Petitioners to resolve litigation of this proceeding. This Settlement is condition upon, and subject to, acceptance and adoption by the Commission. If this Settlement, or any part thereof, is for any reason modified in any respect by the Commission, any Joint Petitioner may withdraw from this Petition in which case the Settlement shall be of no force and effect. If any Joint Petitioner withdraws from the Petition, it must do so in a written document, filed with the Commission and served upon the Joint Petitioners within five (5) business days after the entry of the Order modifying the proposed Settlement. If the Petition is disapproved, or if any Joint Petitioner withdraws from the Petition following modification thereof by the Commission, the above-captioned proceeding will continue with litigation on the originally proposed increase in rates.

17. This Settlement is proposed by the Joint Petitioners to settle the litigation involved in the instant proceeding, and is made without any admission against or prejudice to any position which any Joint Petitioner might adopt during subsequent litigation, including further litigation in this case or in any other case, if the Settlement is rejected by the Commission or if any of the Joint Petitioners withdraw from the Settlement as provided herein above.

18. Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding. This Settlement may not be cited as precedent in any future proceeding, except to the extent required to implement this Settlement.

19. Attached as Appendices C, D and E are the Statements in Support of TESI, the OTS and the OCA, respectively, setting forth the basis upon which they believe that the Settlement is fair, just and reasonable and is, therefore, in the public interest.

WHEREFORE, the Joint Petitioners, by their respective counsel, respectively request that:

- (a) The Presiding Administrative Law Judge, the Honorable Katrina Dunderdale, and the Pennsylvania Public Utility Commission, respectively, recommend approval of, and approve, without modification, this Joint Petition for Settlement and the Settlement embodied herein, including all terms and conditions thereof;
- (b) The Commission grant the Company permission to file tariff supplements containing rates set forth in Appendix A hereto effective for service on the day following the Commission's Order; and
- (c) The Commission terminate and mark closed its inquiry and investigation, and dismiss and mark closed all complaints filed against the instant rate increase filing..

Respectfully submitted,

Allison C. Kaster

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*For Office of Trial Staff*

Christine M. Hoover (cat)

Christine Maloni Hoover, Esquire  
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*For Total Environmental Solutions, Inc. –  
Treasure Lake Wastewater Division*

**APPENDIX A**

**Total Environmental Solutions, Inc.**  
Treasure Lake Division

**Settlement  
Sewer Rates**

**Rate Comparison - Sewer System**

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	PRESENT		FINAL Settlement Rates	
	Monthly Rate		Monthly Rate	Percent Increase
<b>Metered Sales</b>				
5/8"	\$ 19.40		\$ 20.61	6.2%
5/8" w/Pump Credit	\$ 18.40		\$ 19.61	6.6%
1"	\$ 36.64		\$ 38.93	6.3%
1 1/2"	\$ 45.51		\$ 48.35	6.2%
2"	\$ 60.67		\$ 64.45	6.2%
3"	\$ 126.40		\$ 134.28	6.2%
4"	\$ 252.79		\$ 268.56	6.2%
6"	\$ 505.57		\$ 537.10	6.2%
Annual Revenue	\$ 508,247		\$ 540,198	6.3%
	Rate / tg		Rate / tg	
0-2.0 tg	\$ -		\$ 3.75	
over 2.0 tg	\$ 5.57		\$ 3.75	
Annual Revenue	\$ 293,806		\$ 363,841	23.8%
<b>Flat Rate Sales</b>				
	Monthly Rate		Monthly Rate	Percent Increase
Flat	\$ 35.88		\$ 33.70	-6.1%
Flat w/Pump Credit	\$ 34.88		\$ 32.70	-6.3%
Annual Revenue	\$ 17,461		\$ 16,388	-6.1%
<b>Availability</b>				
	Monthly Rate		Monthly Rate	Percent Increase
Per Tract	\$ 4.53		\$ 4.53	0.0%
Annual Revenue	\$ 187,814		\$ 187,814	0.0%
Total Rate Revenues	\$ 1,007,327		\$ 1,108,241	10.0%
Misc Revenue	\$ 41,455		\$ 45,601	
Total Operating Revenue	<u>\$ 1,048,782</u>		<u>\$ 1,153,842</u>	

**APPENDIX B**

**Total Environmental Solutions, Inc.**  
Treasure Lake Division

**Settlement**  
**Proof of Sewer Revenues**

**Billing Analysis - Sewer System**

**Metered Sales**

	Monthly Rate	Residential			Commercial			Developer			Total Annual	
		Bills	Customers	Revenue	Bills	Customers	Revenue	Bills	Customers	Revenue	Bills	Revenue
5/8"x3/4"	\$ 20.61	20,580	1,715.0	424,154	408	34.0	8,409	-	-	-	20,988	432,563
5/8" w/Pump Credit	\$ 19.61	4,032	336.0	79,068	-	-	-	-	-	-	4,032	79,068
1"	\$ 38.93	24	2.0	934	36	3.0	1,401	-	-	-	60	2,336
1 1/2"	\$ 48.35	-	-	-	-	-	-	-	-	-	-	-
2"	\$ 64.45	-	-	-	132	11.0	8,507	-	-	-	132	8,507
3"	\$ 134.28	-	-	-	12	1.0	1,611	-	-	-	12	1,611
4"	\$ 268.56	-	-	-	12	1.0	3,223	-	-	-	12	3,223
6"	\$ 537.10	-	-	-	24	2.0	12,890	-	-	-	24	12,890
		24,636	2,053.0	\$ 504,156	624	52.0	\$ 36,042	-	-	\$ -	25,260	\$ 540,198
	Rate / tg	Usage (tg)		Revenue	Usage (tg)		Revenue	Usage (tg)		Revenue	Usage (tg)	Revenue
0-2.0 tg	\$ 3.75	43,112.8		161,673	1,163.5		4,363	-		-	44,276	166,036
over 2.0 tg	\$ 3.75	40,992.4		153,721	11,755.5		44,083	-		-	52,748	197,805
		84,105.2		315,395	12,919.0		48,446	-		-	97,024.2	363,841

**Flat Rate Sales**

	Monthly Rate	Residential			Commercial			Developer			Total Annual	
		Bills	Customers	Revenue	Bills	Customers	Revenue	Bills	Customers	Revenue	Bills	Revenue
Flat	\$ 33.70	276	23.0	9,301	24	2.0	809	-	-	-	300	10,110
Flat w/Pump Credit	\$ 32.70	168	14.0	5,494	24	2.0	785	-	-	-	192	6,278
		444	37.0	14,795	48	4.0	1,594	-	-	-	492	16,388

**Availability Chg.**

	Rate	Residential			Commercial			Developer			Total Annual	
		Bills	Customers	Revenue	Bills	Customers	Revenue	Bills	Customers	Revenue	Bills	Revenue
Per Tract	\$ 4.53	360	30.0	1,631	12	1.0	54	-	-	-	372	1,685
Other	\$ 13.59	-	-	-	-	-	-	13,696	3,424.0	186,129	13,696	186,129
		360	30.0	\$ 1,631	12	1.0	\$ 54	13,696	3,424.0	\$ 186,129	14,068	187,814

**Misc. Service Revenue**

\$ 45,601

**Total Annual Operating Revenues**

\$ 1,153,842



tariffs were calculated to produce additional annual revenues of \$268,150, an average 25.6% increase in total revenues based upon its future test year level of operations for the twelve months ended December 31, 2010. Additionally, the Company presented the prepared direct testimony of two expert witnesses in support of the increase in rates.

By Order entered August 18, 2010, the Public Utility Commission (“Commission”) suspended the Company’s proposed increase in rates until March 29, 2011, unless permitted by Commission order to become effective at an earlier date, instituted an investigation and assigned the matter to the Office of Administrative Law Judge for hearing and the issuance of a recommended decision. TESI filed its suspension tariff, Supplement No. 7 to Tariff Wastewater – Pa. P.U.C. No. 4, on August 26, 2010.

A formal Complaint was filed by the Office of Consumer Advocate (“OCA”) on July 30, 2010. The Office of Trial Staff filed a Notice of Appearance on August 19, 2010. In addition, approximately 24 pro se complaints were filed throughout the pendency of the proceeding. These complainants were included on the Limited Service List with the right to appear and testify at the public input hearings.

A prehearing conference was held on September 13, 2010, at which counsel for TESI, the OTS and the OCA were present and a procedural schedule was established and public input hearings agreed to. Administrative Law Judge (“ALJ”) Katrina Dunderdale issued a Preliminary Order on September 14, 2010, ALJ Dunderdale also issued a First Interim Prehearing Order outlining special instructions for briefs on September 27, 2010, and a Second Interim Prehearing Order concerning the addition of new complainants on October 15, 2010. Two public input hearings were held on November 9, 2010, at the Lake View Lodge at Treasure Lake.

On October 5, 2010, the Joint Petitioners filed with the Commission and served on ALJ Dunderdale a Stipulation Regarding Rate of Return. That stipulation established a cost of capital or total rate of return of 8.23% for purposes of this proceeding.

The Joint Petitioners held numerous conferences and discussions to pursue settlement of this proceeding, consistent with the Commission's Rules of Practice and Procedure, 52 Pa. Code §§ 5.224 and 5.231. As explained more fully below, the result of these efforts is that the parties have reached a full, complete and comprehensive settlement of all of the issues.

At the day scheduled for evidentiary hearing, November 15, 2010, the Joint Petitioners advised ALJ Dunderdale that they had reached consensus on the terms of a settlement. At that time, TESI, the OTS and the OCA entered their testimony and exhibits into the record.

## **II. BASIS FOR THE COMPANY'S SUPPORT OF THE SETTLEMENT**

TESI's support for the settlement, as is more specifically set forth below, is based upon two primary considerations: (1) The settlement provides for adequate, fair and reasonable rate relief for the Company and (2) the Settlement serves the public interest.

Concerning rate relief, the Settlement allows TESI to increase its rates producing increased annual revenue of approximately \$105,059, which amounts to an average increase in rates of 10% over present pro forma revenues. In contrast, TESI had originally purposed a rate increase of \$268,150 for an overall average increase of 25.6% in rates.

This increase is just and reasonable for several reasons. First, it is justified based upon the record in this case. As noted in paragraph 9 of the Joint Petition, the Settlement includes a stipulated cost of capital or total rate of return of 8.23%, as agreed to by the Joint Petitioners. This rate of return is reasonable and is identical to the rate of return allowed in the wastewater division's last rate case. Second, the need for rate relief in this case has been driven to a large degree by the Commission's July 30, 2008 decision in the last wastewater division rate proceeding at Docket No.

R-00072495.<sup>1</sup> In that decision, the Commission allowed TESI a rate increase of \$73,318, out of a requested rate increase of \$286,615, that was below the individual ratemaking recommendations of both the OTS and the OCA.<sup>2</sup> Due to that insufficient increase, the wastewater division over the last three years has experienced declining net operating income or only a fraction of the rate of return allowed in the last rate case.<sup>3</sup> This resulted in a 2009 as adjusted test year rate of return of but .81%.<sup>4</sup> Third, while the Joint Petitioners have not sought to identify, nor would they have been able to agree upon, all of specific adjustments that support their respective conclusions, they do agree that the rates are just and reasonable given their respective positions. Clearly, the increased annual revenue requirement provided by the Settlement is the bare minimum necessary to enable the Company to maintain safe, adequate and reasonable service to its customers, a goal that is in the best interests of the Company, its customers and the public in general.

Second, TESI had proposed a reduction to availability rates since the availability class experienced a significant pattern of non-payment. The Settlement provides no reduction to availability customer rates, thereby reducing the rate responsibility of TESI's metered customers.

Third, pursuant to paragraph 14(b) of the Settlement, TESI has agreed to not request a further increase in base rates prior to one year from the date of Commission approval of the Settlement. This provision provides ratepayers with the minimum guarantee of no base rate increase for a period of almost two years (due to regulatory lag) from that date if a rate filing is made one year from the date of approval and the case goes to full term.

It should be noted that a contributor to the increase in residential rates versus commercial rates is the Commission's instruction in the last rate order to cease immediately the minimum water

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<sup>1</sup> *Pennsylvania Public Utility Commission v. Total Environmental Solutions, Inc. – Treasure Lake Wastewater Division*, Docket No. R-00072495, *et al.*, (July 30, 2008), (“July 30 Order”).

<sup>2</sup> July 30 Order, Slip op. at 124.

<sup>3</sup> TESI – Sewer Statement No. 1 at 8; TESI – Sewer Exhibit 1 at Schedule A-2.

<sup>4</sup> TESI - Sewer Exhibit 1 at Schedule C-1(s).

allowance.<sup>5</sup> This allowance for the wastewater division included 2,000 gallons of water as part of the customer base charge for each metered sales classification. TESI proposed in the last case that a more gradual removal of the minimum water allowance was appropriate since it would mitigate the customer impact of the removal, particularly for smaller customers. The Commission directed that the minimum water allowance be eliminated in this case in its entirety.

This removal has an immediate impact on lower use residential customers than commercial customers since a greater percentage of total usage represented by the minimum water allowance is now subject to commodity charges. Therefore, the average residential increase is larger than the average commercial increase.

### III. CONCLUSION

For the reasons enumerated above, the Settlement is reasonable, fair and serves the public interest. TESI supports the Settlement and requests that the Administrative Law Judge and the Commission approve the Settlement without modification at the earliest possible date.

Respectfully submitted,



Thomas J. Sniscak, Esquire  
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*Counsel for Total Environmental Solutions, Inc.*

Dated: November 30, 2010

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<sup>5</sup> July 30 Order, Slip op. at 113.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**PENNSYLVANIA PUBLIC UTILITY  
COMMISSION** :  
: :  
: :  
**v.** :  
: :  
**TOTAL ENVIRONMENTAL** :  
**SOULUTIONS, INC.- TREASURE** :  
**LAKE WASTEWATER DIVISION** :

**DOCKET NO. R-2010-21719**

**OFFICE OF TRIAL STAFF  
STATEMENT IN SUPPORT OF  
JOINT PETITION FOR SETTLEMENT  
OF RATE INVESTIGATION**

**TO THE HONORABLE KATRINA DUNDERDALE, ADMINISTRATIVE LAW  
JUDGE:**

**INTRODUCTION**

The Office of Trial Staff (“OTS”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutor, Allison C. Kaster, hereby respectfully submits that the terms and conditions of the foregoing Joint Petition for Settlement of Rate Investigation (“Joint Petition” or “Settlement”) are in the public interest and represent a fair and just balance of the interests of the Total Environmental Solutions, Inc.- Treasure Lake Wastewater Division (“TESI” or “Company”) and its customers.

**BACKGROUND**

1. OTS is charged with the representation of the public interest in proceedings relating to rates, rate-related services and application proceedings affecting the public interest held before the Commission. Consequently, in negotiated settlements, it is

incumbent upon OTS to ensure that the public interest is served and to quantify to what extent amicable resolution of any such proceeding will benefit the public interest. Based upon OTS' analysis of the Company's base rate filing, acceptance of this proposed Settlement is in the public interest and OTS recommends that Administrative Law Judge ("ALJ") Katrina Dunderdale and the Commission approve the Settlement in its entirety.

2. On June 30, 2010, TESI filed Supplement No. 6 to Tariff Wastewater- Pa. P.U.C. No. 4 to become effective August 29, 2010, containing proposed changes in rates, rules, and regulations calculated to produce \$268,150 (25.6%) in additional annual revenue.

3. By Order entered August 18, 2010, the Commission suspended the filing until March 29, 2011, unless permitted by Commission Order to become effective at an earlier date. The Commission assigned this matter to the Office of Administrative Law Judge for Alternative Dispute Resolution, if possible, or the prompt scheduling of such hearings as may be necessary culminating in the issuance of a Recommended Decision.

4. The OTS filed a Notice of Appearance on August 19, 2010. OCA filed a Formal Complaint on July 30, 2010. In addition, approximately twenty four (24) customers filed complaints. The complainants were included on a Limited Service List and had the right to testify at the Public Input Hearings.

5. A Prehearing Conference was held on September 13, 2010, during which a litigation schedule was established.

6. Public Input Hearings were held in Dubois, Pennsylvania at 1:00 p.m. and 6:00 p.m. on November 9, 2010.

7. OTS filed the Direct Testimony and accompanying exhibits of Debra Backer (OTS Statement No. 1 and OTS Exhibit No. 1) and Jeremy Hubert (OTS Statement No. 2 and OTS Exhibit No. 2) on October 25, 2010. The OTS testimony was entered into the evidentiary record by stipulation of the parties at hearings held on November 15, 2010.

8. The Joint Petitioners engaged in extensive formal and informal discovery throughout during the litigation process. OTS sent approximately ninety nine (99) interrogatories to assist in its review of the rate filing and to prepare testimony.

9. In accordance with Commission policy favoring settlements, 52 Pa. Code § 5.231, the parties to the instant proceeding achieved a full and complete settlement of all issues and are in full agreement that this Settlement is in the best interest of TESI and its customers.

#### TERMS AND CONDITIONS OF SETTLEMENT

10. For the reasons articulated below, OTS maintains that the proposed Settlement is in the public interest and requests that it be approved by the ALJ and the Commission without modification:

a. Rate Increase- The proposed settlement permits TESI to establish rates that produce an overall increase in annual operating revenues of approximately \$105,059 (10%). The settlement rates represent a \$163,091 decrease from the Company's filed request of \$268,150 (25.6%).

OTS analyzed TESI's ratemaking claims contained in its filing including, but not limited to, operating and maintenance expenses, rate base, capital structure and rate structure. Upon completion of this review, OTS maintains that the proposed \$105,059 increase will result in just and reasonable rates as mandated by the Public Utility Code. Accordingly, OTS maintains that the proposed rate increase is in the public interest because ratepayers will continue to receive safe and reliable service at reasonable rates while allowing sufficient additional revenues to meet the Company's operating expenses and provide a reasonable rate of return.

b. Rate Design- OTS maintains that the rate structure and rate design contained in the Settlement is in the public interest as the allocation of the proposed increase to the Company's customer classes is just, reasonable and non-discriminatory.

In particular, the agreed upon rate design keeps the availability charge at the current level of \$4.53 per month. The Company proposed to decrease the availability charge to \$2.51, which OTS objected to and contended that the rate should remain at its current level (OTS St. No. 2, pp. 11-15). OTS testified that the rationale for the availability charge includes the following: (1) utility systems are designed and constructed to serve developed and undeveloped lots within a given area; (2) the nature of a system's construction cannot readily be increased or decreased for customer fluctuation; (3) the cost incurred by the utility represents the potential service to all potential customers; (4) the availability of utility service enhances the value of the property; (5) the availability of utility service is an integral part of any future development of the property; (6) it is unfair and improper to charge only those customers

actually receiving service for the cost to serve the whole development. Moreover, TESI's proposed availability charge decrease was improper given that the recommended OTS adjustments to the Company's cost allocation study showed that the cost of providing availability service is more than the present availability rate (OTS Ex. No. 2, Sch. 6). Therefore, keeping the present rate of \$4.53 is a reasonable recommendation.

c. Stay out- With the exceptions noted in the Joint Petition, the Settlement provides that the Company will refrain from filing a general rate increase prior to one year from the effective date of a Commission Order in this proceeding. This stay out provision benefits TESI ratepayers because it provides for a period of rate stability.

11. OTS represents that all issues have been satisfactorily resolved through discovery and discussions with TESI and are incorporated in the Settlement. The very nature of a settlement requires compromise on the part of all parties. This particular agreement exemplifies this principle. The balance of the issues have been carefully discussed and negotiated in this agreement. Line by line identification of the ultimate resolution of disputed issues is not necessary as OTS represents that the Settlement maintains the proper balance of the interests of all parties.

12. Based upon OTS' analysis of the filing, acceptance of this proposed Settlement is in the public interest. Resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense.

13. OTS further submits that the acceptance of the foregoing settlement will negate the need for the preparation of Main and Reply Briefs, the preparation of Exceptions and Reply Exceptions and the filing of possible appeals.

14. The Settlement is conditioned upon the Commission's approval of all terms and conditions contained therein and should the Commission fail to grant such approval or otherwise modify the terms and conditions of the Settlement, it may be withdrawn by the Company or OTS as provided therein.

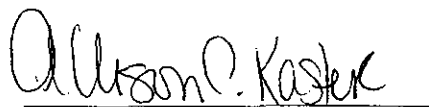
15. OTS' agreement to settle this case is made without any admission or prejudice to any position that OTS might adopt during subsequent litigation in the event that the Settlement is rejected by the Commission or otherwise properly withdrawn by any other parties to the instant proceeding.

16. If the ALJ recommends that the Commission adopt the Settlement as proposed, OTS agrees to waive the filing of Exceptions. However, OTS has not waived its right to file Reply Exceptions with respect to any modifications to the terms and conditions of the Settlement, or any additional matters, that may be proposed by the ALJ in the Recommended Decision. OTS also reserves the right to file Reply Exceptions to any Exceptions that may be filed by the Company.

CONCLUSION

The Commission's Office of Trial Staff represents that it has thoroughly analyzed the instant base rate filing and has actively participated in mediation and settlement discussions, which resulted in the foregoing Joint Petition for Settlement of Rate Investigation. OTS supports the Settlement as being in the public interest and respectfully requests that Administrative Law Judge Katrina Dunderdale recommend, and the Commission subsequently approve, the Joint Petition for Settlement of Rate Investigation, including all terms and conditions contained therein.

Respectfully submitted,

  
\_\_\_\_\_

Allison C. Kaster  
Prosecutor  
Attorney I.D. 93176

Pennsylvania Public Utility Commission  
Post Office Box 3265  
Harrisburg, Pennsylvania 17105-3265  
(717) 787-1976

Dated: November 30, 2010

APPENDIX E

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY :  
COMMISSION, et al. :  
 :  
v. :  
 :  
TOTAL ENVIRONMENTAL SOLUTIONS, INC. :  
- TREASURE LAKE WASTEWATER :  
DIVISION :

Docket No. R-2010-2171934  
C-2010-219142

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STATEMENT OF THE OFFICE OF CONSUMER ADVOCATE  
IN SUPPORT OF JOINT PETITION FOR SETTLEMENT

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The Office of Consumer Advocate of the Commonwealth of Pennsylvania (OCA), one of the signatory Parties to the Joint Petition for Settlement of Rate Investigation (Settlement), finds the terms and conditions of the Settlement to be in the public interest for the reasons discussed below. The OCA submits that the Settlement, taken as a whole, is in the public interest and satisfactorily addresses the issues raised in the OCA's complaint and analysis undertaken in this proceeding. While the Settlement does not reach all the recommendations the OCA may have proposed in its litigation position, the OCA recognizes that settlement is a product of compromise by all the Parties.

**I. INTRODUCTION**

On June 30, 2010, Total Environmental Solutions, Inc. – Treasure Lake Wastewater Division (TESI or Company) filed a request, to become effective August 29, 2010, containing proposed changes in wastewater rates designed to produce additional annual revenues of

\$268,150 or 25.61%. The OCA filed a formal complaint on July 30, 2010. Complaints also were filed by twenty-four complainants, including the Treasure Lake Property Owners Association, Inc. OTS filed a notice of appearance on August 19, 2010. By Order entered August 18, 2010 the Public Utility Commission (PUC or Commission) suspended the filing until March 29, 2011, and instituted an investigation into the reasonableness of the proposed rates. The Joint Petitioners filed direct testimony and exhibits.<sup>1</sup> The Joint Petitioners also stipulated to the overall cost of capital (8.23%), although OCA and OTS reserved the right to argue that the fair rate or return may be something lower due to quality of service and other factors. Public input hearings were held on November 9, 2010, at Treasure Lake at which time 25 customers testified. The Joint Petitioners, in accordance with the PUC's regulations, held a number of discussions and exchanged information to arrive at the Joint Petition presented today.

## **II. REVENUES and STAY OUT**

The proposed Settlement provides for additional annual wastewater revenues of \$105,059 or 10%. A typical residential customer using 3,500 gallons of water per month would see an increase from \$27.76 to \$33.74 (21.54%) per month, rather than to \$42.44 (52.88%) as originally proposed by the Company.

Based on the OCA's analysis of the Company's filing, the proposed revenues in the Settlement represent amounts which, in the OCA's view, would be within the range of the likely outcomes in the event of full litigation of the cases. Thus, the Settlement provides for additional annual revenues that are within a range of possible outcomes if the parties were to expend the additional resources to litigate the proceeding. The Settlement also provides more certainty in the outcome than litigation would provide to the Joint Petitioners.

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<sup>1</sup> The OCA filed the testimony of Marilyn J. Kraus, covering accounting, revenue requirement, and rate design issues.

The Company has agreed that it will not file another wastewater rate case any sooner than twelve months after the effective date of the rates in this case. The stay-out will provide some level of rate stability for the customers. If TESI files another case immediately after the twelve months expire, and if that case is fully litigated, then customers will have twenty-one months of rate stability after the PUC acts on this Joint Petition.

### **III. AVAILABILITY RATES**

The Joint Petitioners have agreed that the availability rates will stay at the current levels, rather than be reduced as proposed by the Company in its filing. This provisions means that the usage customers will not bear the additional burden of bearing the revenues currently collected from the availability customers.

### **IV. CONCLUSION**

The terms and conditions of the proposed Settlement of this rate proceeding represent a fair and reasonable resolution of the issues and claims arising in this proceeding. If approved, the proposed Settlement would produce revenues within a range of anticipated litigation outcomes, and under the Settlement, ratepayers will benefit from the stay out which prevents the Company from filing another rate case for twelve months. Finally, the Commission and all Parties would benefit by the reduction in rate case expense and the conservation of resources made possible by adoption of the Settlement in lieu of full litigation.

WHEREFORE, for the foregoing reasons, the Office of Consumer Advocate submits that the proposed Settlement is in the best interests of the Company of TESI's Treasure Lake Wastewater Division customers.

Respectfully submitted,

Christine Malori Hoover /ELH

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Date: November 30, 2010  
136258

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in the manner indicated below, and in accordance with the requirements of 52 P.A. Code §1.54 (relating to service by a party).

**VIA EMAIL & FIRST CLASS MAIL**

Honorable Katrina L. Dunderdale  
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Pennsylvania Public Utility Commission  
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Pennsylvania Public Utility Commission  
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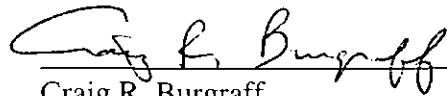
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Timothy Ruttinger  
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Dated this 30<sup>th</sup> day of November 2010

  
Craig R. Burgraff