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June 25, 2013

VIA ELECTRONIC MAIL & U.S. REGULAR MAIL

To: Parties in PSC Docket Nos. 12-497 & 12-498WW (YMG/TESI/Plantations)

Re: Hearing Examiner's Findings & Recommendations

Dear Parties:

I attach the Findings and Recommendations of the Hearing Examiner and a proposed PSC Commission Order for each of the above-referenced Dockets.

Pursuant to Rule 31 of the PSC Rules of Practice and Procedure et al., each party has twenty (20) days from today to file exceptions to the Hearing Examiner's Report. Thus, all exceptions are due on or before **4:30 p.m. on Monday, July 15, 2013.**

Your exceptions or waiver of exceptions must also be filed with the Commission, and transmitted to all parties via email and regular U.S. Mail. Thereafter, this matter will be set on the Commission's calendar for consideration.

Finally, I attach the current Service List. If you have any questions, please feel free to contact me.

Very truly yours,

Mark Lawrence
Hearing Examiner

Enclosures
(HE's Report, proposed Orders & Service List)

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

JOINT APPLICATION OF YMG CORPORATION AND TIDEWATER ENVIRONMENTAL SERVICES, INC. FOR APPROVAL OF THE SALE OF ASSETS AND TRANSFER OF CPCN FROM YMG CORPORATION TO TIDEWATER ENVIRONMENTAL SERVICES, INC. (FILED NOVEMBER 7, 2012)	)	PSC DOCKET NO. 12-497
IN THE MATTER OF THE APPLICATION OF TIDEWATER ENVIRONMENTAL SERVICES, INC. FOR A GENERAL RATE INCREASE FOR WASTEWATER SERVICES FOR THE CUSTOMERS OF THE PLANTATIONS RESIDENTIAL COMMUNITY WASTEWATER SYSTEM (FILED NOVEMBER 7, 2012)	)	PSC DOCKET NO. 12-498WW

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATE: June 25, 2013

MARK LAWRENCE
HEARING EXAMINER

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BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

JOINT APPLICATION OF YMG CORPORATION AND TIDEWATER ENVIRONMENTAL SERVICES, INC. FOR APPROVAL OF THE SALE OF ASSETS AND TRANSFER OF CPCN FROM YMG CORPORATION TO TIDEWATER ENVIRONMENTAL SERVICES, INC. (FILED NOVEMBER 7, 2012)	)	**PSC DOCKET NO. 12-497**
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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Mark Lawrence, duly appointed Hearing Examiner in this Docket pursuant to 26 *Del. C.* §502 and 29 *Del. C.* Ch. 101, by Commission Order Nos. 8249 and 8250 dated November 29, 2012 reports to the Commission as follows:

I. APPEARANCES

On Behalf of the Applicant, Tidewater Environmental Services, Inc.:
Parkowski, Guerke & Swayze, P.A.,
BY: WILLIAM A. DENMAN, ESQUIRE

On behalf of the Applicant YMG Corporation:
Wilson, Holbrook and Bayard, P.A.
BY: ROBERT G. GIBBS, ESQUIRE

On behalf of the Delaware Public Service Commission Staff:
BY: JAMES McC. GEDDES, ESQUIRE, Rate Counsel

On behalf of Delaware Department of Justice f/b/o the Division the Public Advocate:
BY: REGINA A. IORII, ESQUIRE, Deputy Attorney General

On behalf of the Joint Wastewater Committee of The Plantations and The Plantations East Communities:
BY: ROBERT DICKEY, CHAIRMAN

II. APPLICATION & PROCEDURAL HISTORY

A. Application

1. On November 7, 2012, YMG Corporation, ("YMG") a Delaware corporation and Delaware regulated public utility, and Tidewater Environmental Services, Inc., ("TESI") a Delaware corporation, filed Applications with the Delaware Public Service Commission. ("the Commission") The Applications request that the Commission approve the transfer and assignment by YMG to TESI of substantially all of its assets and regulatory authorizations, including its Certificate of Public Convenience and Necessity ("CPCN") authorizing YMG to provide wastewater treatment services to the residents of the residential development known as "the Plantations" located in Rehoboth Beach, Delaware.[1] (Application Dkt. 12-497, Exh. 4, pp. 2-3.)

2. If approved to serve the Plantations' residents, TESI, an affiliate of Tidewater Utilities, Inc., would thereafter be regulated by the Commission regarding the Plantations' development. If approved, TESI would be authorized to provide wastewater treatment services to Plantations residents pursuant to the authority in the CPCN granted to TESI by the Commission. (*Id.*)

[1] Exhibits entered into the evidentiary record will be cited as "Exh.__". References to the transcript from the evidentiary hearing will be cited as "TR. - __ pg #." Schedules from the parties' filings which were entered into the record will be cited as "Sch."

3. TESI's proposed purchase of YMG's assets is contingent upon the resolution to TESI's satisfaction of an aggregate administrative penalty in the amount of $233,818 assessed by the Department of Natural Resources and Environmental Control ("DNREC") against YMG in February, 2011 for failing to operate the Plantations' wastewater system in compliance with Delaware law. (*See* DNREC Order No. 2011, Exh. 4, Exhibit 1 thereto.) DNREC has agreed to eliminate this penalty if YMG's assets and CPCN are transferred to TESI, except that DNREC is requiring reimbursement of $16,000 of costs incurred in the enforcement action which determined the administrative penalty. (Exh. 10, Exhibit "A"-DNREC's May 15, 2012 letter to TESI's attorney.)

4. If TESI acquires YMG's assets, TESI has also agreed to accept the responsibility of resolving the $16,000 DNREC penalty rather than YMG. Upon acquiring YMG's assets, TESI has agreed to assume full responsibility and cost for resolving any other compliance issues associated with the DNREC's administrative costs and the operation of the acquired assets, including any required system upgrades. (Exh.4, ¶11.)

5. TESI's purchase of YMG's assets would include, for example, the wastewater treatment plant, sewer lines, and permits/licenses relating to the Plantations' development. TESI's obligation to purchase YMG's assets is contingent upon the Commission approving a rate increase for The Plantations residents; the last rate increase occurred in October 2005. (*Id*. at Exhibit A.)

6. TESI is seeking an increase in annual operating revenues in the amount of $89,720 over current revenues of approximately $235,008,

or a 37.01% increase. (Applic.,Dkt. 12-498WW, Exh. 5, ¶2.) If the rate request is approved by the Commission, a resident's current annual wastewater rate of $384 (or $96 per quarter) would increase to $529.88 (or $132.47 per quarter). (*Id.* at Esposito, p.6, LL 11-14; TR. 67-68; PSC Order No. 6755 (October 25, 2005).)

7. In its Application, TESI requests that the 37.01% rate increase be phased-in, with 15% becoming effective after YMG transfers the system to TESI, an additional 13% would take effect six (6) months after the initial increase, and the remaining 9.01% would take effect twelve (12) months after the initial increase. (Exh. 5, ¶6.)

B. Procedural History

8. On November 29, 2012, after reviewing the Company's Application, the Commission initiated this docket pursuant to 26 *Del. C*. §306(a)(1). By Order Nos. 8248 and 8249 dated November 29, 2012, the Commission determined that the Application shall be the subject of further investigation and full and complete evidentiary hearings into the justness and reasonableness of the proposed rates and tariffs.

9. By Order No. 8249, the Commission designated me as the Hearing Examiner to conduct the evidentiary hearings and, thereafter, to report my proposed findings and recommendations to the Commission. Pursuant to Order No. 8248, notice of the Applications was published in the Delaware State News, along with first-class U.S. mailing to all affected residents. (PSC Order No. 8248,¶3.)

10. On December 6, 2012, the Division of the Public Advocate (the "Public Advocate") exercised its statutory right to intervene in this case, pursuant to 29 *Del. C*. ¶8716(d)(1). Due to the Public

Advocate's resignation, on March 18, 2013, the Delaware Attorney General's Office filed a Motion to Intervene on behalf of the Division of Public Advocate's office. On March 21, 2013, by PSC Order No. 8329, I permitted the Delaware Attorney General's office to intervene on behalf of the Public Advocate's office.

11. On January 10, 2013, I also permitted the Joint Wastewater Committee of The Plantations and The Plantations East Communities to intervene. (*See* PSC Order No. 8274, Jan. 10, 2013.) The Committee represents six hundred and eleven (611) homeowners. (*Id.* at ¶4.) The Plantations community has 232 owners and The Plantations East community has 379 Owners. (Exh. 8, ¶2.)

12. On February 21, 2013, I held a Public Comment Session at the Cape Henlopen High School in Sussex County. Approximately twenty (20) customers attended the Public Comment Session (PCS). According to customers' comments at the PCS and written comments received by the Commission, while The Plantations' residents want TESI to begin serving their community, some residents oppose the amount of the Company's proposed rate increase. (TR.15,25.) Other residents argued that the proposed rates should not be approved considering the weak economy and the dwindling financial resource of retirees. (*Id.*)

13. On January 14, 2013, I issued the Procedural Schedule, which was agreed to by the parties. The parties thereafter conducted extensive discovery. All parties and myself participated in a pre-evidentiary hearing conference call on May 28, 2013. I held the evidentiary hearing on Tuesday, June 11, 2013 at the Commission's office in Dover.

14. The evidentiary record consists of twelve (12) hearing exhibits and a two hundred and ten (210) page hearing transcript. Before discussing the record evidence, however, I will first discuss background relating to YMG Corporation's authorization to operate this wastewater treatment utility.

III. BACKGROUND

A. YMG's Original Authorization To Operate Wastewater Treatment Plant

15. State of Delaware Permit No. WPCC 3009C/86 was issued to YMG Corporation ("YMG") by Delaware's Department of Resources and Environmental Control ("DNREC") on March 2, 2001. (Dkt. No. 12-497, Exhibit 1, DNREC Order No. 2011-W-0011, p.1.) The permit authorized the discharge of effluent from the Respondent's Plantations Wastewater Treatment Plant in Rehoboth Beach, Delaware. (*Id.*) "This facility is designed to treat domestic wastewater from The Plantations development and spray irrigate, the treated effluent, on the following parcel(s): spray fields located on the west side of County Road 275 between County Roads 277 and 283, Sussex County, Delaware." (*Id.*)

16. On July 6, 2004, the Delaware General Assembly amended the Public Utilities Act of 1974 making wastewater public utility systems thereafter subject to the jurisdiction of the Delaware Public Service Commission.[2] ("the Commission") In PSC Order No. 6485 (October 5,

[2] *See* 74 Del. Laws ch. 317 (July 6, 2004). The new law exempted from Commission oversight wastewater systems owned or operated by municipalities and specific water and sewer districts. *See* 74 Del. Laws ch. 317 §§3, 5 (2004) (amending 26 *Del. C*. §202(b)). The new law also exempted from Commission oversight wastewater public utilities "serving fewer than fifty (50) customers in aggregate." See 74 Del. Laws ch. 317 §4 (2004), adding 26 *Del. C*. §202(h). Finally, *26 Del. C*. §203(D)(a) (2) provided that, unlike new wastewater utilities, existing wastewater utilities were not required to

2004), the Commission established a process to "grandfather" pre-existing wastewater utilities into the new regime and ordered all existing wastewater utilities to abide by all statutes and laws of the State of Delaware governing public wastewater facilities. (PSC Order No. 6485, October 5, 2004, §1.)

17. As mandated by the new law, YMG filed an Application for a Certificate of Public Convenience and Necessity ("CPCN") with the Commission. On February 22, 2005, by PSC Order No. 6580, the Commission issued CPCN No. 05-WW-001 to YMG to continue operating the wastewater utility at The Plantations. ("the CPCN") The Commission held that it "has no actual knowledge of any present violations by YMG of any of the provisions applicable to public utilities in Title 26 within the [Plantations] service territory.…"[3] (PSC Order No. 6580, February 22, 2005, §5.)

18. In granting the CPCN to YMG Corporation, the Commission ordered as follows:

> i. "That, pursuant to the provisions of 26 *Del. C.* §203D(a)(ii), a Certificate of Public Convenience and Necessity is granted to YMG Corporation to

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comply with *26 Del. C*. §203D(d) (4), which required that, before a CPCN be issued, that the Commission determine that the proposed wastewater utility "possesses the financial, operational and managerial capacity to serve the public convenience and necessity and to comply with all state and federal regulations."

[3]Delaware's Department of Natural Resources & Environmental Control ("DNREC"), which also administers wastewater utility systems as to groundwater pursuant to the provisions of Title 7, and Delaware's Department of Health and Social Services ("DHSS"), the primary agency for enforcement of the public health provisions of Title 16, were contracted by the Commission regarding YMG Corporation's CPCN Application. DNREC stated "the Community Wastewater Treatment and Spray Irrigation Facility which services the Plantations development is currently operating in compliance with its operating permit and state regulations." (*See* PSC Docket No. 05-WW-001, PSC Order No. 6580, ¶5). DHSS stated that DHSS "was not aware of any material violation under Title 16 by YMG in its provision of wastewater treatment and disposal within the Plantations community." (*Id*.)

continue to provide wastewater public utility services as described in its request filed January 10, 2005, within the [Plantations] service territory.…"

ii. That YMG Corporation shall comply with any and all federal, state, county, and local statutes, ordinances, orders, regulations, rules and permit conditions that are applicable, or may become applicable, to any matter involving water utility services provided to the service territory granted by this Certificate of Public Convenience and Necessity." (*Id*. at §§1,2.)

19. In PSC Order No. 6755 (October 25, 2005), after requiring mailing notice to YMG's then existing customers and general newspaper publication notice, the Commission approved the rate of $96 per quarter, increasing from the rate of $66 per quarter established (5) five years before in 2000. (*Id.* at p.2,§2.) The $96 per quarter rate ($384 annually) has remained in effect since 2005.

B. DNREC'S Position Regarding Future of Wastewater Treatment System

20. On January 7, 2013, Collin P. O'Mara, Secretary of Delaware's Department of Natural Resources and Environmental Control ("DNREC") issued a written statement, which provides as follows:

> "DNREC supports the PSC approval of the transfer of assets and CPCN from YMG to TESI and is prepared to waive the penalty assessment levied in the Administrative Penalty Assessment and Secretary's Order No. 2011-W-0011 issued by DNREC on July 3, 2011 if TESI does, in fact, purchase the assets of YMG. Additionally, we are prepared to review and process the transfer with modification of all DNREC permits to TESI should it assume ownership.
>
> DNREC believes that it would be environmentally beneficial for TESI to assume ownership and operational control of the YMG wastewater treatment system serving the

> Plantations Residential Community because TESI possesses the necessary resources and technical expertise to operate this facility consistent with our standards to protect water quality. DNREC has met with the representatives of TESI and is satisfied that the needed improvements to the wastewater treatment facility delineated in DNREC's letter dated May 15, 2012 to YMG … will be effectively completed by TESI if the application is approved."
>
> (DNREC's Jan. 30, 2013 letter to PSC; PSC file.)

21. DNREC has agreed to eliminate the penalty if YMG's assets and CPCN are transferred to TESI, except that DNREC is requiring reimbursement of $16,000 of costs incurred in the enforcement action which determined the administrative penalty. (Exh. 10, Exhibit "A"- DNREC's May 15, 2012 letter to TESI's attorney.)

22. The extensive capital improvements which TESI maintains are required at the Plantations Residential Community Wastewater System are described in the following Section. However, I will first discuss TESI's overall wastewater operation in Delaware, and then describe the Plantations' wastewater system and how it operates, and then the needed capital improvements.

IV. SUMMARY OF THE EVIDENCE

A. Company's Pre-Filed Testimony

23. TESI's rate case Application was verified by A. Bruce O'Connor, the Vice President and Chief Financial Officer of TESI's parent company, Middlesex Water Company. (Exh. 5.) In addition to Mr. O'Connor's pre-filed testimony, the rate case Application also included the pre-filed testimony of three (3) additional witnesses: a)

TESI's President Gerard L. Esposito;[4] b) Jeremy M. Kalmbacher, Director of Engineering of Tidewater Utilities, Inc. ("TUI"); and c) Bruce E. Patrick, TUI's Vice President and General Manager. (Exhs. 5, 5A, 5B, 5C & 5D, *respectively*.)

24. I will first provide a general description of TESI's Delaware operation according to the testimony of its President Gerard L. Esposito. (*Id.* at T-1.) TESI currently provides wastewater service to approximately 2,200 customers in seven (7) communities in Kent and Sussex Counties. (*Id.* at p.1 L24 - p.2 L3-4.)) TESI's President Gerard Esposito described TESI's wastewater systems as follows:

> "TESI serves … [its] customers through 7 wastewater systems. Two of these systems are "regional," that is they interconnect at least two communities. The other 5 are independent systems, and are not interconnected with other communities. The systems' capacities range in size from those constructed to serve 63 customers to 1,556 customers at build-out in the communities these systems serve."[5] (*Id.* at p.1 L24-p.2 L4.)

25. "The Plantations Wastewater system is comprised of three treatment, polishing and storage lagoons with the treated effluent spray irrigated [through solid set sprinklers] on approximately 8.4 acres of vegetated land." (*Id.* at p.5 LL 10-13; Patrick, Exh. 5C, p.2, LL 4-8.) "It consists of a lagoon treatment type system, which is comprised of two process lagoons (aerated and facultative) and one

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[4] Mr. Esposito is also President of TESI's affiliate Tidewater Utilities, Inc., a public water utility regulated by the Commission. (*Id.* at p.1, LL 9-12.) TESI and Tidewater Utilities, Inc. are wholly-owned subsidiaries of Middlesex Water Company.(*Id.*)

[5] For a detailed description of the operation of TESI's seven (7) active treatment plants and four (4) wastewater treatment processes, *see* the rate case Application, Exh. 5,Esposito, Exh. 5A, pp. 2-5.

storage/polishing lagoon with the limiting design factor being hydraulic flow and nitrogen through the plant." (*Id.* at Patrick, Exh. 5C, p.2 LL 4-7.) "There are 612 existing service taps … [and] the development consists of residential single family and multi-family dwellings with no dedicated commercial use." (*Id.* at LL 12-14.)

26. According to Jeremy M. Kalmbacher, Director of Engineering of TESI's parent company, Tidewater Utilities, Inc., $648,595 of capital improvements are needed "to provide safe, adequate and proper service" at the Plantations, which are as follows:

a. "Collection System Improvements - The collection system improvements include videoing, smoke testing, and jetting the collection system, installing manhole bowls, replacing a blocked collection main, replacing sections of pipe identified during videoing and smoke testing, and creating an asset record for the GIS and work and asset management programs.
Estimated Cost: $101,920

b. Pumping Equipment Improvements - The pumping equipment improvements include the installation of eight transfer switches, two stationary generators, one portable generator, level transducers in each pump station, and replacing the pumps in each lift station.
Estimated Cost: $341,475

c. Treatment and Disposal Equipment Improvements - The treatment and disposal equipment improvements include the replacement of the existing irrigation system, installation of chart recorders and spray pumps, replanting the crops in the spray field, rehabilitating the monitoring wells, and performing a bio-solids evaluation.
Estimated Cost: $76,658

d. Structures and Improvements - Structures and improvements consist of rehabilitating the aeration building and installing a new roof on the pumping building.
Estimated Cost: $29,618

e. Land and Land Rights - Land and land rights costs include site restoration and groundwater remediation.[6]

Estimated Cost: $86,728

f. Transportation Equipment - Transportation equipment costs include the purchase of an all-terrain vehicle for transporting the irrigation equipment within the spray field."

Estimated Cost: $12,196

(*Id.* at Kalmbacher, Exh. 5B, pp.1-3.)

27. TESI's rate case Application seeks a 37.01% rate increase. (Exh. 5, ¶2.) If granted, the proposed rate increase would produce an additional $89,720 in annual revenue in excess of the Test Period[7] annual operating revenue of $241,231, and a rate base of $998,267. (*Id.*; MFR Sch. 3A, pg. 1 of 2, Column 3, line 3; Sch.2.) The Company proposes a Return on Equity[8] of 10%, and a long term debt rate of 7%, based on TESI's most recent general rate case decided by the Commission in June, 2012. (*Id.* at p.3, L 24-p.4 LL 1-3; p.11 LL 2-3.)

[6] If approved by the Commission, DNREC would monitor the groundwater for 18-24 months after the acquisition period regarding compliance with applicable Drinking Water Standards and to determine whether any additional capital improvements are needed. (Esposito, Exh. 5A,, p. 6, LL 1-4.)

[7] "The Test Period includes the 3 months of actual results, as represented by the current owner, namely April 1, 2012 through June 30, 2012, and nine months of projected expenses."(O'Connor, Exh.5D, p.4, LL 14-16.) Thus, the Test Period ended April 30, 2013. (*Id.*) The Company used a "Test Year" comprised of the 12 month period ending June 30, 2012. (*Id.* at p.4, LL 13-14.) No party disagreed with the Company's selected Test Year or Test Period. However, as will be described later herein, Staff, the Public Advocate and the Committee disagreed with some of the Company's determinations regarding rate base, revenue, and operating expenses.

[8] Although the term "Common Equity Cost Rate" is sometimes used, this Report uses the terms "Return on Equity" since the witnesses used that term in their testimony. The Return on Equity (or "ROE") is defined as the annual rate of return which an investor expects to earn when investing in shares of the Company. (Financial Accounting Institute, *Definitions Section*.)

The Company is seeking the opportunity to earn an 8.22% Rate of Return.[9] (*Id.* at Sch. 4.)

28. The Company argues that the rate increase is primarily for the "capital projects needed to remediate system deficiencies identified by the Department of Natural Resources and Environmental Control ("DNREC") and TESI." (Exh. 5D, O'Connor, p.4, LL 16-19.) The Company maintains that the rate increase is needed to "provide safe and adequate service after the system is acquired by TESI." (*Id.* at LL 20-22.) The Public Advocate's and Commission Staff's pre-filed testimony are discussed next.

B. Public Advocate's & Commission Staff's Pre-Filed Testimony

29. On April 1, 2013, the Public Advocate filed the pre-filed testimony of Consultant, Howard J. Woods, Jr., P.E. (Exh. 7.) Mr. Woods was engaged by the Public Advocate to review whether the Applicants' proposed sale and transfer of assets and transfer of the CPCN by YMG to TESI, and TESI's requested rate increase. (*Id.* at p.5, LL 4-8.) Mr. Woods has over thirty five (35) years of water and wastewater utility and engineering experience. (*Id.* at p.25.)

30. On April 1, 2013, Commission Staff filed the pre-filed testimony of Public Utility Analyst III, Amy Woodward. (Exh. 9.) According to Ms. Woodward, along with the Public Advocate, Staff jointly utilized Mr. Woods' services given the limited issues involved, the limited amount of affected customers compared to those

[9] The Rate of Return is defined as TESI's net operating income divided by its rate base. *E.g.,* FPC v. Hope Nat. Gas Co., 320 U.S. 591,596-97 (1944). According to the Application, without a rate increase, the Rate of Return for the Test Year was 0.76% and 2.85% for the post-acquisition Test Period. (Exh. 5 at Sch.1.) "Rate base" is defined in 26 *Del. C.* §102(3).

involved in a general rate case, and the substantial expense to the Plantations residents if Staff retained a second consultant. (*Id.* at pp. 2-3.)

31. Consultant Woods calculated the Company's total annual operating revenue as $256,090, as opposed to $241,231 derived by the Company. (Woods, Exh. 7, p.10 LL 8-9; p.11 LL 1-2.) Mr. Woods included in his increased revenue calculation two (2) items which Staff's pre-filed testimony also wants included: 1) revenue from the SharpGas Land Lease Agreement (that includes the bulk propane storage tanks used by others to provide community propane gas services to the residents), provided that the land upon which the storage tank is located is included in the utility's rate base; and 2) to increase the number of system users from 612 to 613 to include the guardhouse which uses wastewater, but is not currently billed. (*Id.* at p.11 LL 1-6; Sch. HJW-1; Woodward, Exh. 9; p.4, LL 13-19.) The fact that the guardhouse was not being billed was discovered by Staff in its field audit. (Woodward, Exh. 9; p.4, LL 11-15.)

32. Consultant Wood calculated the rate base differently than the Company. Since this rate case involves a utility which has not begun serving an existing community, for illustration purposes, Mr. Woods calculated the rate base two (2) different ways: a) when TESI acquired the assets ($433,751); and b) one (1) year after TESI acquired the assets when the planned capital improvements are to be completed ($1,039,819), along with accumulated depreciation. (Woods, Exh. 7, p.21.)

33. Utilizing the latter rate base calculation, Consultant Woods recommends as follows: a) that the current rates stay in effect for one (1) year from the closing date; and b) after the Company certifies that it has completed the capital improvement program, a one-time rate increase of 23.89% (or $118.94 per quarter) should be implemented. (Woods, Exh. 7, p.9, LL 1-6.) In its pre-filed testimony, Staff also agrees with Mr. Woods in this regard. (Woodward, Exh. 9, p.5, LL 1-5.)

34. In his pre-filed testimony, Consultant Woods agrees that an 8.22% Rate of Return is warranted, based on TESI's most recent base rate case decided by the Commission in June, 2012. (Woods, Exh. 7, p.12, LL 1-6; 17-22.) According to Mr. Woods, however, this Rate of Return would begin one (1) year after closing, after the Company certifies that it has completed the capital improvement program. (*Id.* at p.12 LL 1-13.)

35. According to Consultant Woods' and Staff's pre-filed testimony, although DNREC has agreed to reduce the $233,818 aggregate administrative penalty levied by DNREC against YMG to $16,000 for reimbursement of DNREC's costs, the $16,000 must be paid by YMG because YMG caused this liability, not TESI or the Plantations' customers.[10] (*See* DNREC Order No. 2011, Exh. 4, Exhibit 1 thereto; Woods, p.17 LL 8-12; Woodward, p.4, LL 21-29.) According to the Public Advocate and Staff, this amount should be removed from regulatory

[10] The aggregate administrative penalty of $233,818 consists of $203,320 in fines and $30,498 in administrative costs. (*See* DNREC Order No. 2011, Exh. 4, Exhibit 1 thereto.)

expense and normalized over three (3) years. (*Id.* at Woods, pp. 17-18.)

C. Pre-Filed Testimony of Intervener, Joint Wastewater Committee of The Plantations and The Plantations East Communities ("the Residents' Wastewater Committee")

36. The Residents' Wastewater Committee filed its pre-filed testimony on April 3, 2013. (Exh. 8.) The Committee agrees that the CPCN and assets should be transferred by YMG to TESI. (*Id.* at ¶6.)

37. The Committee agrees with the Public Advocate's office and Commission Staff that the $16,000 for reimbursement of DNREC's costs must be paid by YMG because YMG caused this liability, not TESI or the Plantations' customers. (*Id.* at ¶¶¶5-7.)

38. The Committee agrees with including income from the SharpGas Lease Agreement in TESI's revenue but does not discuss how the land should be treated in rate base. (*Id.* at ¶8.) This Agreement is being assigned to TESI in the Agreement of Sale. (*Id.*) The Committee seeks that TESI re-new the Lease "because the renewal is in the best interests of the residents." (*Id.*) The Committee also seeks that the Lease be renewed at the highest rate when it comes up for renewal in 2014. (*Id.*)

39. The Committee also argued that the cost of TESI's improvements should be reduced by $160,000. (*Id.* at ¶12.) This issue is discussed in the next section of this Report involving the Company's Rebuttal Testimony.

40. Finally, the Committee proposed that: a) 33.3% of the total awarded rate increase should be granted to TESI upon closing this transaction with YMG; b) 33.3% should be effective one (1) year after

closing; and c) the remaining 33.3% should be effective two (2) years after the closing. (*Id.* at ¶15.)

D. Company's Rebuttal Testimony

41. On May 21, 2013, TESI filed the Rebuttal Testimony of A. Bruce O'Connor, the Vice President and Chief Financial Officer of TESI's parent company, Middlesex Water Company. (Exh. 10.) This Rebuttal Testimony addressed: a) the parties' proposed Settlement Agreement; and b) the Committee's Objections thereto. The Committee is the only party which has not agreed to the proposed Settlement Agreement.

42. I will not describe the terms of the Settlement Agreement now because they are described in detail in Section VI of this Report. However, I will now describe how the Company's Rebuttal Testimony addresses four (4) issues which were raised by the Committee.

43. First, the Committee had argued that the cost of TESI's capital improvements should be reduced by $160,000. (Exh. 8, ¶12.) The Company responded that the Committee was simply seeking to reduce the proposed capital improvement costs by 25%, without filing any evidence as to how or why. (Exh. 10, p.4, LL 13-22.) According to TESI, "[t]he Company has provided sufficient [expert witness] testimony and support for the proposed improvements." (*Id.* at LL 18-19.)

44. Second, as to revenue from the SharpGas Land Lease Agreement, TESI has agreed to remove this revenue and associated costs from the utility's rate base. (*Id.* at p.5, LL 11-13.) However, "[i]n an effort to recognize cost concerns raised by [the Committee], if the Settlement Agreement is approved … TESI has agreed to share 40% of

these non-regulated revenues … with the residents of The Plantations communities [in the form of a bill credit]."(*Id.* at p.5, LL 13-17.)

45. Third, if the Settlement Agreement is approved by the Commission, TESI has agreed to exclude the $16,000 DNREC administrative cost amount from rate base. (*Id.* at p.4, LL 1-7.) TESI has agreed to pay the cost itself. (Settlement Agreement, Exhibit 1, ¶11.)

46. Finally, the Company does not agree with the Committee's "rate-phase in" proposal because "it does not provide sufficient revenues to TESI to support the provision of safe, adequate and proper service." (*Id.* at LL 26-27.)

V. APPLICABLE LAW

A. Sale and Transfer of Assets and Transfer of CPCN

47. Pursuant to 26 *Del. C.* §215(a)(1), no public utility, without having first obtained the approval of the Commission, shall dispose of any essential part of its franchise, plant, equipment, or other property necessary or useful in the performance of its duty to the public. Pursuant to 26 *Del. C.* §215(d), the Commission must approve any proposed transfer when it finds the same to be: a) made in accordance with law; b) for a proper purpose, and c) is consistent with the public interest.

B. Proposed Wastewater Rates

48. The Commission applies certain principles in deciding whether or not to grant a rate increase proposed by a wastewater utility. According to the United States Supreme Court, a utility

seeking a rate increase is entitled to an opportunity to earn a fair rate of return on the value of its property dedicated to public service. *E.g.*, Bluefield Water Works and Improvement Co. v. Public Service Comm. of West Virginia, 262 U.S. 679 (1923); Federal Power Comm. v. Hope Natural Gas Co., 320 U.S. 591 (1944). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield* where the Court held as follows:

> "A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally."

Bluefield Water Works and Improvement Co. v. Public Service Comm. of West Virginia, 262 U.S. 679,692-93 (1923).

49. In Delaware, a public utility seeking a rate increase has the Burden of Proof to establish the justness and reasonableness of the rate increase request, pursuant to 26 *Del. C.* §307(a). This statute sets forth the "just and reasonable" standard which has to be satisfied by the public utility:

> §307. **Burden of Proof**
>
> (a) In any proceeding upon the motion of the Commission, or upon complaint, or upon application of a public utility, involving any proposed or existing rate of any public utility, or any proposed change in rates, the burden of proof to show that the rate involved is just and reasonable is upon the public utility.

50. Thus, according to 26 *Del. C.* §307(a), the Burden of Proof does not shift to parties challenging a requested rate increase. The utility has the burden of establishing the justness and reasonableness of every component of its rate request. Other parties to this proceeding do not have the Burden of Proof to justify any adjustment to the public utility's filing. In this regard, the Pennsylvania Supreme Court held in Berner v. Pennsylvania Pub. Util. Comm., 116 A.2d 738, 744 (Pa. 1955):

> "[T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of installations, and that is the burden which the utility patently failed to carry."

51. In analyzing a proposed rate increase, the Commission determines a rate of return to be applied to a rate base measured by the aggregate value of all the utility's property used and useful in the public service. E.g., PSC v. Wilmington Suburban Water Corp., 211 A.2d 602 (Del. 1965); *see 26 Del. C.* §§302, 303. In determining a proper rate of return, the Commission calculates the utility's capital

structure and the cost of the different types of capital during the period in issue. (*Id.* at Wilmington Suburban.) Due to its administrative expertise, the Commission has wide discretion in determining a proper rate of return, provided that the Commission reasonably supports its calculations. (*Id.*)

VI. THE TERMS OF THE PROPOSED SETTLEMENT AGREEMENT

52. In this case, the parties i.e. the Company, Commission Staff, and the Public Advocate have reached a settlement. The Committee does not agree to the settlement. The Settlement Agreement was marked as Exhibit 11 at the evidentiary hearing and is attached hereto as Exhibit "1" hereto.

53. According to the proposed Settlement Agreement, if approved by the Commission, the additional annual revenue awarded to the Company will be $79,396, based upon a long term debt cost rate of 10% and a Return on Equity of 10%. (Exhibit "1", ¶8.) The amount of the agreed upon rate increase is 33.56%. (*Id.* at Exh. A.)

54. The proposed quarterly rate will increase from $96 to $128.22, however, until this rate increase will not become effective until: a) one (1) year after TESI purchases YMG's assets; and b) TESI provides Staff and the Attorney General's Office with a compliance filing certifying to the Commission that TESI has completed the capital improvements described in the Joint Application. (Exhibit "1", ¶9.)

55. As to reimbursement of DNREC's $16,000 administrative costs, the settling parties have agreed as follows:

> "The Settling Parties agree that the administrative fee that TESI has agreed to pay to the Delaware Department of Natural Resources and Environmental Control ("DNREC") in the amount of $16,000.00 has not been and will not be included in the proposed rates." (*Id.* at ¶11.)

56. As to the SharpGas Lease involving propane sales to coummunity residents, the settling parties have agreed to: a) exclude from rate base the land upon which the propane tanks are located and the revenue received from SharpGas; and b) permit the Plantations' residents to receive a 40% share of the lease revenue. The Settlement Agreement provides as follows:

> "The Settling Parties agree that the portion of the YMG land on which bulk propane storage tanks owned by Sharp Energy, Inc. ("Sharp") are located will not be included in TESI's rate base, nor will the revenues received by TESI from Sharp be included in TESI's revenues for ratemaking purposes. As an accommodation to the … customers, TESI agrees to issue a credit to the customers receiving wastewater services from the Acquired Assets, on a pro rata basis, equal to forty percent (40%) of the actual lease revenues received by TESI from Sharp during any period that the rates shown on Exhibit A are in effect. By way of example, if the Sharp revenues actually received by TESI during the applicable rate year are $15,000, the amount of the credit that will appear on each customer's bill will be equal to $6,000 ($15,000 * 40%) divided by X, where X equals the total number of customers receiving wastewater services from TESI at the end of the applicable rate year from the Acquired Assets." (*Id.* at ¶12.)

VII. <u>DISCUSSION OF THE PROPOSED SETTLEMENT AGREEMENT</u>

57. I incorporate Sections III, IV and VI of this Report, as well as references to the testimony at the evidentiary hearing contained in this Section, as my Findings of Fact. I recommend that the Commission approve the proposed Settlement Agreement.

58. First, Delaware law promotes settlements in utility rate cases, provided that the settlements are in the public interest. Section 512 of Delaware's Public Utilities Act directs the Commission to "encourage the resolution of matters brought before it through the use of stipulations and settlements." (26 *Del. C.* §512(a).) The Commission may, upon hearing, approve the resolution of matters by stipulations or settlements when the Commission finds such resolutions to be in the public interest. (*Id.* at §(c).)

59. Before examining the rates proposed in the Settlement Agreement, I want to first remind the Commission that TESI began considering serving the Plantations after DNREC had imposed a $233,818 aggregate administrative penalty against YMG for failing to properly maintain The Plantations wastewater system.

60. According to Jeremy M. Kalmbacher, Director of Engineering, $648,595 of capital improvements are needed "to provide safe, adequate and proper service" at the Plantations community. (Exh. 5, Kalmbacher (T-2), pp. 1-3.) Consultant Howard Woods, P.E. testified that "the Company's plan of improvements is well thought-out and necessary." (Exh. 7, Woods, p.22, LL 19-22.) This evidence is essentially uncontroverted by the Committee, which only questioned the cost of the generators proposed by TESI without submitting any evidence that TESI's generator plan was not prudent. (TR. 74-82.)

61. Unfortunately, according to Jeremy M. Kalmbacher, TUI's Director of Engineering, nearly every portion of this wastewater system in is need of repair. Mr. Kalmbacher testified that replacement, renovation or repairs are needed to the Collection

System, Pumping Equipment, Treatment and Disposal Equipment, generators, the aeration building, the pumping building's roof, and finally site restoration and groundwater remediation is needed. (TR. 75-79; eliminate; see ¶25, *supra,* for a detailed description of the needed improvements.) Additionally, if these capital improvements are not completed as soon as practicable, the Plantations wastewater system will further deteriorate. (TR. 80-82.)

62. DNREC agreed to eliminate the $233,818 penalty if YMG's assets and CPCN are transferred to TESI, except that DNREC is requiring reimbursement of $16,000 of its costs incurred in the enforcement action. Obviously, DNREC agreed to this substantial penalty and cost reduction to encourage TESI, a large wastewater operator with a history of providing reliable service in Delaware, to assume operation of the deteriorating Plantations system.

63. In fact, on January 7, 2013, Collin P. O'Mara, Secretary of Delaware's Department of Natural Resources and Environmental Control ("DNREC") issued a written statement, which provides as follows:

> "DNREC supports the PSC approval of the transfer of assets and CPCN from YMG to TESI and is prepared to waive the penalty assessment levied in the Administrative Penalty Assessment and Secretary's Order No. 2011-W-0011 issued by DNREC on July 3, 2011 if TESI does, in fact, purchase the assets of YMG. Additionally, we are prepared to review and process the transfer with modification of all DNREC permits to TESI should it assume ownership.
>
> DNREC believes that it would be environmentally beneficial for TESI to assume ownership and operational control of the YMG wastewater treatment system serving the Plantations Residential Community because TESI possesses the necessary resources and

> technical expertise to operate this facility consistent with our standards to protect water quality. DNREC has met with the representatives of TESI and is satisfied that the needed improvements to the wastewater treatment facility delineated in DNREC's letter dated May 15, 2012 to YMG … will be effectively completed by TESI if the application is approved."
>
> (DNREC's Jan. 30, 2013 letter to PSC; PSC file.)

64. At the evidentiary hearing, DNREC's Ronald E. Graeber, Manager of Large Wastewater Systems, testified that, although YMG belatedly repaired a leaking lagoon which had been causing groundwater contamination, The Plantations system is not in compliance with DNREC's operating permit requirements because YMG has not performed many repairs required by DNREC, including but not limited to, repairing the spray field, and repairing leaking irrigation systems and pumps. (TR. 120-22.)

65. As to rates, the current $96 per quarter rate ($384 annually) at the Plantations has remained in effect since October, 2005, nearly eight (8) years ago. (PSC Order No. 6755 (October 25, 2005)) Clearly, the current rate would be substantially higher if the current operator, YMG Corporation, had expended the funds necessary to properly maintain the system. (Woods, Exh. 7, p.22, LL 19-22.)

66. Although the quarterly rate will increase from $96 to $128.22 if the proposed 33.56% rate increase is approved, this rate increase will not become effective until: a) one (1) year after TESI purchases YMG's assets; and b) TESI provides Staff and the Attorney General's Office with a compliance filing certifying to the Commission

that TESI has completed the capital improvements described in the Joint Application. (Exhibit "1", ¶9.)

67. Thus, if the settlement is approved by the Commission, the rate increase would be delayed at least one (1) year while TESI is performing the necessary capital improvements. In my opinion, this delay of the rate increase fairly balances the needs of the Plantations customers to budget their personal expenses with the legal right of this utility to be provided with the opportunity to earn a fair rate of return, while TESI repairs the deteriorating Plantations system.

68. In the proposed Settlement Agreement, the settling parties, including TESI, have further accommodated the Plantations customers by: 1) reducing TESI's annual revenue request from $89,270 to $79,396; 2) reducing the proposed rate increase from 37.01% to 33.56%; 3) TESI conserving attorney and outside consultant fees in this docket; 4) excluding the $16,000 DNREC cost reimbursement from rate base while TESI pays this cost itself;[11] and 5) excluding the SharpGas Land Lease which expires in 2014 from rate base and issuing a bill credit to the customers receiving wastewater services, on a pro-

[11] In its Objections to the Settlement Agreement, the Committee sought to have the Commission require YMG to pay the $16,000 DNREC cost, not TESI. (TR.177-79.) The Committee admitted that its request was due solely to the Committee's unhappiness with YMG's service. (TR.178.) However, the Commission does not have the unilateral authority to alter this sole provision resulting from the Asset Purchase Agreement between YMG and TESI and the Settlement Agreement, which the Commission is being asked to approve in their entirety. *E.g.,* Bass Properties, Inc. v. Public Service Commission et al., WL 2791129 (Del. Super. July 14, 2011) (unreported decision) (*relying upon* Artesian Water v. Cynwood Club Apartments, 297 A.2d 387 (Del. 1972); Settlement Agreement, Exhibit 1, ¶13. Even assuming arguendo that the Commission has the authority, however, there is currently no way of accomplishing the Committee's request through the penalty provisions of Title 26, Delaware Code. (Bass Properties, *supra*.)

rata basis, equal to forty percent (40%) of the actual lease revenues received by TESI during any period that the rates shown on Exhibit "A" of the Settlement Agreement are in effect. (TR. 92,93,96,98,135,138.)

69. The Committee's principal objections to the proposed Settlement Agreement are: a) the amount of the rate increase; and b) its implementation. The Committee seeks a one-time rate increase of 23.89% (or $118.94 per quarter) be implemented as originally proposed by Consultant Woods in his pre-filed testimony on April 1, 2013. (Woods, Exh. 7, p.9, LL 1-6.) However, Consultant Woods testified at the June 11, 2013 evidentiary hearing that the 33.56% agreed upon increase was in the public interest. Mr. Woods modified his position due to the substantial differences between the original Applications and the Settlement Agreement, particularly the delay of the rate increase until one (1) year after TESI purchases YMG's assets one and after TESI certifies that it has completed the improvements. (TR. 140-45.)

70. As to implementing the rate increase, the Committee seeks a three (3) year rate phase-in which requires that TESI certify both that the improvements are completed and their cost. (TR. 189-92; Committee's Objections,¶10.) The settling parties object to requiring TESI to track improvement costs between rate cases.

71. According to Mr. Woods, a wastewater expert with over 35 years of water and wastewater utility and engineering experience, expense tracking disregards traditional rate-making principals since it is single-issue rate making, and also disregards this Commission's precedent. (TR. 139-40,157-59.) Mr. Woods testified that, according to

traditional rate making, the Commission should establish a new rate now, and the amount TESI spends in the future on capital improvements, whether more or less than currently projected, will be addressed in the next rate case. (Id.)

72. Traditional rate making is consistent with Delaware law. The Delaware Supreme Court has held that "a pervasive and fundamental rule underlying the rate-making process is that "rates are exclusively prospective in application…." Public Service Comm. v. Diamond State Telephone, 468 A.2D 1285, 1298 (DE. 1983) As testified to by Mr. Woods, the Commission has rarely ordered expense tracking, but has done so where required by law, for example Delaware's Distribution System Improvement Charge ("DSIC") statute. (TR. 140.)

73. In conclusion, the Committee's objections to the proposed Settlement Agreement are not well-founded. The agreed upon rate increase is consistent with traditional rate-making analysis. By assuming service responsibilities at the Plantations community, TESI is fortunately trying to solve a potential service problem created by YMG. (TR. 178.) Clearly, by changing to TESI, the residents of the Plantations community are upgrading their wastewater service provider.

74. The settling parties each testified that the Settlement Agreement is in the public interest. (TR. 104,140,165-66.) I find that the Settlement Agreement is in the public interest.

VIII. RECOMMENDATIONS

75. In summary, and for the reasons discussed above, I recommend that the Commission: 1) approve the proposed sale and transfer of assets and the transfer of the CPCN by YMG to TESI; and 2)

hold that the proposed Settlement Agreement is in the public interest because it results in a just and reasonable rate consistent with the Commission's traditional rate-making analysis. For clarity purposes, I will now make separate my specific recommendations by docket. Also, I am recommending that the Commission approve a separate order for each docket.

A. PSC Docket No. 12-497 - Sale & Transfer of Assets & Transfer of CPCN By YMG To TESI

76. I recommend that the Commission approve the sale and transfer of assets and the transfer of the CPCN by YMG Corporation to TESI. The Commission can reasonably require YMG Corporation to complete the sale and transfer of the assets and CPCN to TESI within sixty (60) days of the date of the Commission's order, including but not limited to the transfer of title to the facility's Plant/Equipment and the land underlying the treatment facility, through proper deed(s) and contracts. Due to the circumstances, including but not limited to the needed capital improvements, the transfer of permits and licenses by the Delaware Department of Natural Resources should not be subject to this sixty (60) day deadline.

77. I also recommend that the Commission order that the proposed CPCN transfer and the sale and transfer of assets is in accordance with law, for a proper purpose, and is consistent with the public interest, as required by 26 *Del. C.* §215(d).

78. In accordance with 26 *Del. C.* §215(d), I recommend that the Commission grant the transfer of the CPCN currently held by YMG Corporation (CPCN No. 05-WW-001, February 22, 2005) to Tidewater Environmental Services, Inc.

79. Regarding the sale and transfer of assets and the CPCN transfer, a proposed Order for the Commission's consideration is attached hereto as Exhibit "A". The service territory is described in the proposed Order.

B. PSC Docket No. 12-498WW - Wastewater Rate Case

80. In this docket, I recommend that the Commission order that the proposed Settlement Agreement will produce just and reasonable wastewater rates.

81. I also recommend that the new rates shall take effect as described in the Settlement Agreement. The additional annual revenue awarded to the Company will be $73,396, based upon a Return on Equity of 10%. The quarterly rate will increase from $96 to $128.22, however, this rate increase will not become effective until: a) one (1) year after TESI purchases YMG's assets; and b) TESI provides Staff and the Attorney General's Office with a compliance filing certifying to the Commission that TESI has completed the capital improvements described in the Joint Application. Regarding the new rates, a proposed Order for the Commission's consideration is attached hereto as Exhibit "B".

Respectfully Submitted,

Date: June 25, 2013

Mark Lawrence
Hearing Examiner

EXHIBIT "1"

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

JOINT APPLICATION OF YMG CORPORATION AND TIDEWATER ENVIRONMENTAL SERVICES, INC. FOR APPROVAL OF THE SALE OF ASSETS AND TRANSFER OF CPCN FROM YMG CORPORATION TO TIDEWATER ENVIRONMENTAL SERVICES, INC. (FILED NOVEMBER 7, 2012)	)	PSC Docket No. 12-497
IN THE MATTER OF THE APPLICATION OF TIDEWATER ENVIRONMENTAL SERVICES, INC. FOR A GENERAL RATE INCREASE FOR WASTEWATER SERVICES FOR THE CUSTOMERS OF THE PLANTATIONS RESIDENTIAL COMMUNITY WASTEWATER SYSTEM (FILED NOVEMBER 7, 2012)	)	PSC Docket No. 12-498 WW

PROPOSED SETTLEMENT AGREEMENT

This proposed Settlement Agreement (the "Settlement") is entered into by and among YMG Corporation ("YMG"), Tidewater Environmental Services, Inc. ("TESI" or the "Company"), the Staff of the Delaware Public Service Commission ("Staff"), and the Attorney General of the State of Delaware ("AG") (collectively, the "Settling Parties").

I. BACKGROUND

1. On November 7, 2012, YMG Corporation ("YMG"), a Delaware corporation and Delaware regulated public utility, and Tidewater Environmental Services, Inc., ("TESI") a Delaware corporation and Delaware regulated public utility, filed with the Delaware Public Service Commission ("the Commission") a Joint Application requesting the Commission to approve the transfer and assignment by YMG to TESI of substantially all of its assets and regulatory authorizations (the "YMG Assets"), including its Certificate of Public Convenience and Necessity ("CPCN") authorizing YMG to

EXHIBIT No.
11

provide wastewater treatment services to the residents of the residential developments known as The Plantations and The Plantations East (collectively, the "Plantations") located in Lewes, Delaware. (the "Joint Applications") Simultaneously, TESI filed with the Commission an Application seeking approval of a general increase in wastewater service rates for the Plantations designed to produce an additional $89,720 in annual revenues. (the "Rate Increase Application") The Joint Application and Rate Increase Application have been consolidated pursuant to Commission Order No. 8248 dated November 29, 2012. The tariff base rates for the Plantations were approved by the Commission on October 25, 2005 by Order No. 6755 in PSC Docket No. 05-68WW. The Joint Applications were prompted by a Notice of Administrative Penalty Assessment and Order issued by the Delaware Department of Natural Resources and Environmental Control ("DNREC") pursuant to which DNREC alleged that YMG had failed to properly maintain YMG's wastewater treatment plant and pursuant to which DNREC proposed an administrative fee and an administrative penalty in the aggregate amount of $233,818.00. DNREC agreed to eliminate the penalty if TESI, an experienced wastewater utility, purchased YMG's CPCN and wastewater treatment system and made the capital improvements deemed necessary by DNREC. TESI and YMG subsequently entered into an Asset Purchase Agreement pursuant to which TESI agreed to acquire the YMG Assets and undertake the required wastewater treatment system upgrades, subject to the conditions set forth in the Asset Purchase Agreement.

2. Pursuant to 26 *Del. C.* § 306(a)(1), in Commission Order No. 8250, the Commission suspended TESI's proposed rate increase pending the conduct of public evidentiary hearings to determine whether the proposed rate increase results in just and reasonable rates, and assigned this matter to Hearing Examiner Mark Lawrence (the "Hearing Examiner") to conduct such evidentiary hearings. In addition, the Commission took no action on the Joint Application requesting approval of the transfer of the YMG Assets.

3. The Delaware Division of the Public Advocate ("DPA") filed a statement of intervention in this proceeding. Subsequently, the Public Advocate resigned from office and to date, his successor has not been appointed. Accordingly, the AG was granted leave to intervene in this proceeding.

4. On December 19, 2012, the Joint Wastewater Committee of the Plantations and Plantations East communities (the "Committee") filed a petition for leave to intervene, which the Hearing Examiner granted on January 10, 2013.

5. During the course of this proceeding, the parties have conducted substantial written discovery in the form of both informal and formal data requests, and have submitted pre-filed testimony setting forth their respective positions. A Public Comment session was held on February 21, 2013 in Lewes, Delaware. While all of the parties recommended that the Commission authorize YMG to transfer the YMG Assets, the Staff, AG, and Committee took issue with other aspects of the proposed rate increase, including its amount and timing.

6. The Settling Parties have conferred in an effort to resolve all of the issues raised in this proceeding and to avoid the substantial cost of evidentiary hearings. The Settling Parties acknowledge that they differ as to the proper resolution of many of the underlying issues in this rate proceeding and that, except as specifically addressed in this Settlement, they preserve their rights to raise those issues in future proceedings; however, for purposes of this proceeding, they believe that settlement on the terms and conditions contained herein both serve the interests of the public, TESI, and YMG, and satisfy the statutory requirement that rates be just and reasonable.

NOW, THEREFORE, the Settling Parties submit to the Hearing Examiner the following terms and conditions for resolution of the pending proceeding:

II. SETTLEMENT PROVISIONS

7. In the Joint Application, YMG and TESI requested the Commission to approve TESI's purchase of the YMG Assets . The Settling Parties agree that the proposed transfer, as set forth in the Joint Application, is for a proper purpose, consistent with the public interest, and in accordance with Delaware law. Accordingly, the Settling Parties recommend that, subject to the other conditions set forth herein, said transfer be approved by the Commission, pursuant to 26 *Del. C.* §215, and that the Commission specifically approve the transfer of YMG's CPCN to TESI without the need for YMG to abandon the CPCN and for TESI to apply for said CPCN.

8. In this proceeding, TESI advised the Commission that TESI's willingness to purchase the YMG Assets was contingent upon the Commission's approval of a rate increase that would result in additional revenues of $89,270.00. TESI also proposed that the rate increase be placed into effect in three phases. The Settling Parties agree that the additional annual revenue to be awarded to TESI will be $79,396.00. This Settlement stipulates that the appropriate return on equity in this proceeding is 10%. The Settling Parties have agreed to this revenue requirement award as a compromise of their positions and believe that this proposed revenue requirement award is within the bounds of the statutory requirement of a fair rate of return based on circumstances unique to TESI.

9. The Settling Parties agree that for this proceeding and for purposes of this Settlement, the rate design agreed to by the Settling Parties and set forth in the attached Exhibit A shall be the tariff rates for the TESI customers located within the Plantations and Plantations East developments. The proposed new rate shall be $128.22 per quarter; however, such rate will not become effective until one year after TESI purchases the YMG Assets in accordance with the terms and conditions set forth in the Asset Purchase Agreement described in the Joint

Application. Prior to the implementation of the new rate, TESI shall submit to the Commission and the DPA/AG a compliance filing certifying to the Commission that TESI has completed the various improvements and repairs to the Plantations wastewater treatment system described in the Joint Application.

10. TESI shall file appropriate modifications to YMG's tariff that incorporate the stipulated revenue requirement increase and rate design within five (5) business days after TESI purchases the YMG Assets, with an effective date consistent with the terms and conditions set forth herein.

11. The Settling Parties agree that the administrative fee that TESI has agreed to pay to the Delaware Department of Natural Resources and Environmental Control ("DNREC") in the amount of $16,000.00 has not been and will not be included in the proposed rates. The Settling Parties agree that the rate base for the Plantations wastewater treatment system will not include any of the land that is purchased by TESI from YMG that includes the bulk propane storage tanks used by others to provide community propane gas services to the residents of the Plantations communities, and that any rental income received by TESI with respect to said land shall not be included in rates.

12. The Settling Parties agree that the portion of the YMG land on which bulk propane storage tanks owned by Sharp Energy, Inc. ("Sharp") are located will not be included in TESI's rate base, nor will the revenues received by TESI from Sharp be included in TESI's revenues for ratemaking purposes. As an accommodation to the residents of "The Plantations" and "The Plantations East" (collectively the "customers") TESI agrees to issue a credit to the customers receiving wastewater services from the Acquired Assets, on a pro rata basis, equal to forty percent (40%) of the actual lease revenues received by TESI from Sharp during any period

that the rates shown on Exhibit A are in effect. By way of example, if the Sharp revenues actually received by TESI during the applicable rate year are $15,000.00, the amount of the credit that will appear on each customer's bill will be equal to $15,000 divided by X, where X equals the total number of customers receiving wastewater services from the Acquired Assets.

13. This Settlement is the product of extensive negotiation and reflects a mutual balancing of various issues and positions of the Settling Parties. This Settlement is expressly conditioned upon the Commission's approval of each of the specific terms and conditions contained herein without modification. If the Commission fails to grant such approval, or modifies any of the terms and conditions herein, this Settlement will terminate and be of no force and effect unless the Settling Parties agree in writing to waive the application of this provision. If TESI does not purchase the YMG Assets, this Settlement will terminate and be of no force and effect.

14. This Settlement represents a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any ratemaking or any other principle in any future proceeding before the Commission, except as otherwise provided for herein. None of the Settling Parties necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, any calculation made, or the resolution of any particular issue, except that the Settling Parties agree the resolution of the issues herein taken as a whole results in a just and reasonable rate and is in the public interest.

15. This Settlement pertains to PSC Docket No. 12-497 and PSC Docket No. 12-498WW. To the extent opinions or views were expressed or issues were raised in this proceeding that are not specifically addressed in this Settlement, no findings, recommendations, or positions with respect to such opinions, views or issues should be implied or inferred.

16. The Settling Parties agree that they will submit this Settlement for a determination that it is in the public interest and results in just and reasonable rates and that no Settling Party will oppose such a determination. Except as provided herein, this Settlement shall not have issue or claim preclusion in any pending or future proceeding, and none of the Settling Parties waives any rights it may have to take any position in future proceedings regarding the issues in this proceeding, including positions contrary to positions taken herein or in previous cases.

17. If this Settlement does not become final, either because it is not approved by the Commission or because it is the subject of a successful appeal and remand, each Settling Party reserves its respective rights to submit additional testimony, file briefs, or otherwise take positions as it deems appropriate in its sole discretion to litigate the issues in this proceeding.

18. This Settlement will become effective upon the Commission's issuance of a final order approving it and all of its terms and conditions without modification. After the issuance of such final order, the terms of this Settlement shall be implemented and enforceable notwithstanding the pendency of a legal challenge to the Commission's approval of this Settlement or to actions taken by another regulatory agency or Court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a Court having jurisdiction over the matter.

19. The Settling Parties may enforce this Settlement through any appropriate action before the Commission or through any other available remedy. Any final Commission order related to the enforcement or interpretation of this Settlement shall be appealable to the Superior Court of the State of Delaware, in addition to any other available remedy at law or in equity.

20. If a Court grants a legal challenge to the Commission's approval of this Settlement and issues a final non-appealable order that prevents or precludes implementation of any material

term of this Settlement, or if some other legal bar has the same effect, then this Settlement is voidable upon written notice by any Settling Party to all other Settling Parties.

21. This Settlement resolves all of the issues specifically addressed herein and precludes the Parties from asserting contrary positions during subsequent litigation in this proceeding or related appeals; provided, however, that this Settlement is made without admission against or prejudice to any factual or legal positions which any of the Parties may assert (a) if the Commission does not issue a final order approving this Settlement without modifications; or (b) in other proceedings before the Commission or any other governmental body so long as such positions do not attempt to abrogate this Settlement. This Settlement, upon approval by the Commission, shall constitute a final adjudication as to the Parties of all of the issues in this proceeding.

22. The signatories hereto represent they have the authority to execute this Settlement on behalf of the Settling Party for whom they are signing.

23. This Settlement may be executed in counterparts, and each such counterpart shall be as valid as if all signatures appeared on the same page.

NOW, THEREFORE, intending to legally bind themselves and their successors and assigns, the undersigned Settling Parties have caused this Settlement to be signed by their duly-authorized representatives.

[SIGNATURE PAGE TO FOLLOW]

TIDEWATER ENVIRONMENTAL SERVICES, INC.

Date: May 16, 2013

By: A. Bruce O'Connor
(Print Name) A. Bruce O'Connor
(Title) Treasurer

YMG CORPORATION

Date: May 20, 2013

By: Norris E. Mitchell
(Print Name) NORRIS E. MITCHELL
(Title) PRESIDENT

DELAWARE PUBLIC SERVICE COMMISSION STAFF

Date: _____

By: _____
(Print Name) _____
(Title) _____

OFFICE OF THE ATTORNEY GENERAL FOR THE STATE OF DELAWARE

Date: _____

By: _____
(Print Name) _____
(Title) _____

TIDEWATER ENVIRONMENTAL SERVICES, INC.

Date: May 16, 2013

By: A. Bruce O'Connor
(Print Name) A. Bruce O'Connor
(Title) Treasurer

YMG CORPORATION

Date: _____

By: _____
(Print Name) _____
(Title) _____

DELAWARE PUBLIC SERVICE COMMISSION STAFF

Date: June 11, 2013

By: _____
(Print Name) Robert J. Howatt
(Title) Executive Director

OFFICE OF THE ATTORNEY GENERAL FOR THE STATE OF DELAWARE

Date: May 20, 2013

By: _____
(Print Name) James R. Adams
(Title) Deputy State Solicitor
Acting Public Advocate

EXHIBIT A

TARIFF RATES PER SETTLEMENT AGREEMENT

RATE DESIGN AND SETTLEMENT RATES

PLANTATIONS RATE INCREASE	1st Year - No Increase		2nd Year (1)	
Customer Count	613		613	
Fixed Rate ($/Month)	$ 32.00		$ 42.74	
Fixed Rate ($/Quarter)	$ 96.00		$ 128.22	
Fixed Rate ($/Annual)	$ 384.00		$ 512.88	
Annual Fixed Rate Revenue/Month	$ 19,616		$ 26,200	
Annual Fixed Rate Revenue/Quarter	$ 58,848		$ 78,599	
Annual Fixed Rate Revenue/Year		$ 235,392		$ 314,395
Other WW Revenue / Year		$ 6,223		$ 6,223
Rounding		$ -		$ 9
Total Annual Revenue		$ 241,615		$ 320,627
Change in Typical Monthly Bill ($)				$ 10.74
Change in Typical Monthly Bill (%)				33.56%
Change in Typical Quarterly Bill ($)				$ 32.22
Change in Typical Quarterly Bill (%)				33.56%
Change in Typical Annual Bill ($)				$ 128.88
Change in Typical Annual Bill (%)				33.56%

(1) Year 2 Proposed Rates effective 12 months after acquisition date.

EXHIBIT "A"

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

JOINT APPLICATION OF YMG CORPORATION AND TIDEWATER ENVIRONMENTAL SERVICES, INC. FOR APPROVAL OF THE SALE OF ASSETS AND TRANSFER OF CPCN FROM YMG CORPORATION TO TIDEWATER ENVIRONMENTAL SERVICES, INC. (FILED NOVEMBER 7, 2012)	)	PSC DOCKET NO. 12-497 ("PLANTATIONS")

ORDER NO. 8384

GRANTING SALE AND TRANSFER OF ASSETS AND TRANSFER OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BY YMG CORPORATION TO TIDEWATER ENVIRONMENTAL SERVICES, INC. TO OPERATE EXISTING WASTEWATER PUBLIC UTILITY

This ____ day of _____, 2013, the Commission Finds, Determines and Orders the following:

1. On November 7, 2012, YMG Corporation ("YMG"), a Delaware corporation and Delaware regulated utility and Tidewater Environmental Services, Inc. ("TESI"), a Delaware corporation, filed a joint Application with the Commission requesting the Commission to approve the sale and transfer by YMG to TESI of YMG's public utility and other assets, and its Certificate of Public Convenience and Necessity ("CPCN") authorizing TESI to provide wastewater treatment services to the residents of the residential development known as "the Plantations" located in Rehoboth Beach, Delaware.

2. The Proposed Service Area is currently located in YMG's wastewater service territory, which was granted by the Commission in CPCN No. 05-WW-001 (February 22, 2005).

3. TESI's Application meets all requirements for the granting of a CPCN under *26 Del. C.* §203D and the *Commission's Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services*. (8 DE Reg. 1464 (4/1/05.)

4. For the reasons described below, the Commission approves the Application filed in PSC Docket No. 12-497, including the sale and transfer of assets and the transfer of the CPCN from YMG to TESI.

5. **AND WHEREAS**, the Hearing Examiner recommends that the Proposed Settlement Agreement dated May 16, 2013, which is endorsed by all the parties except for one, and which is attached to the original hereof as Attachment "A", be approved as reasonable and in the public interest.

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the June 25, 2013 Findings and Recommendations of the Hearing Examiner, appended to the original hereof as Attachment "A".

2. That the Commission approves the Proposed Settlement dated May 16, 2013, appended to the original hereof as Attachment "B".

3. That, pursuant to 26 *Del. C.* §215(d), the November 7, 2012 request to transfer the CPCN from YMG Corporation to Tidewater Environmental Services, Inc., and the proposed sale and transfer of assets from YMG to TESI are approved.

4. That the proposed CPCN transfer and proposed sale and transfer of assets are in accordance with law, for a proper purpose, and are consistent with the public interest, as required by 26 *Del. C.* §215(d).

5. That the CPCN transfer and the sale and transfer of assets from YMG Corporation to TESI shall be completed within sixty (60) days of the date of the Commission's order, including but not limited to the transfer of title to the facility's Plant/Equipment and the land underlying the treatment facility, through proper deed(s) and contracts. The transfer of permits and licenses by the Delaware Department of Natural Resources shall not be subject to this sixty (60) day deadline.

6. That Certificate of Public Convenience and Necessity (CPCN) No. 05-WW-001, originally issued by the Commission to YMG Corporation on February 22, 2005, is hereby transferred to Tidewater Environmental Services, Inc. to serve the areas more specifically identified by the Sussex County Tax Map Parcels Numbers indicated on Attachment "C" attached hereto. TESI is hereby authorized to hereinafter provide wastewater treatment services to Plantations' residents pursuant to the authority in the CPCN granted to TESI by the Commission.

7. TESI will hereinafter be subject to the regulatory supervision of the Commission regarding The Plantations community.

8. That TESI shall comply with any and all federal requirements, state requirements (including, but not limited to, those of the Delaware Department of Natural Resources and Environmental Control), county laws, local statutes, ordinances, orders,

regulations, rules, license and permit conditions that are applicable, or may become applicable in the future, to any matter involving wastewater utility services provided to the service territory granted by this Certificate of Public Convenience and Necessity.

9. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

_____
Chair

_____
Commissioner

_____
Commissioner

_____
Commissioner

ATTEST:

_____
Secretary

ATTACHMENT "C"

APPROVED SERVICE AREA
PARCELS WITHIN CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

PLANTATIONS DEVELOPMENT
SUSSEX COUNTY, DELAWARE

SUSSEX COUNTY TAX MAP PARCELS NOS.

334-6.00-553.00	334-6.00-1130.00	334-6.00-1150.00
334-6.00-553.01	334-6.00-1131.00	334-6.00-1151.00
334-6.00-553.03	334-6.00-1132.00	334-6.00-1152.00
334-6.00-553.04	334-6.00-1133.00	334-6.00-1153.00
334-6.00-553.05	334-6.00-1134.00	334-6.00-1154.00
334-6.00-553.06	334-6.00-1135.00	334-6.00-1155.00
334-6.00-1116.00	334-6.00-1136.00	334-6.00-1156.00
334-6.00-1117.00	334-6.00-1137.00	334-6.00-1157.00
334-6.00-1118.00	334-6.00-1138.00	334-6.00-1158.00
334-6.00-1119.00	334-6.00-1139.00	334-6.00-1159.00
334-6.00-1120.00	334-6.00-1140.00	334-6.00-1160.00
334-6.00-1121.00	334-6.00-1141.00	334-6.00-1161.00
334-6.00-1122.00	334-6.00-1142.00	334-6.00-1162.00
334-6.00-1123.00	334-6.00-1143.00	334-6.00-1163.00
334-6.00-1124.00	334-6.00-1144.00	334-6.00-1164.00
334-6.00-1125.00	334-6.00-1145.00	334-6.00-1165.00
334-6.00-1126.00	334-6.00-1146.00	334-6.00-1166.00
334-6.00-1127.00	334-6.00-1147.00	334-6.00-1167.00
334-6.00-1128.00	334-6.00-1148.00	334-6.00-1168.00
334-6.00-1129.00	334-6.00-1149.00	334-6.00-1169.00

334-6.00-1170.00	334-6.00-1196.00	334-6.00-1222.00
334-6.00-1170.00	334-6.00-1197.00	334-6.00-1223.00
334-6.00-1171.00	334-6.00-1198.00	334-6.00-1224.00
334-6.00-1172.00	334-6.00-1199.00	334-6.00-1225.00
334-6.00-1173.00	334-6.00-1200.00	334-6.00-1226.00
334-6.00-1173.00	334-6.00-1201.00	334-6.00-1227.00
334-6.00-1174.00	334-6.00-1202.00	334-6.00-1228.00
334-6.00-1174.00	334-6.00-1203.00	334-6.00-1229.00
334-6.00-1176.00	334-6.00-1204.00	334-6.00-1258.00
334-6.00-1177.00	334-6.00-1205.00	334-6.00-1259.00
334-6.00-1180.00	334-6.00-1206.00	334-6.00-1260.00
334-6.00-1181.00	334-6.00-1207.00	334-6.00-1261.00
334-6.00-1182.00	334-6.00-1208.00	334-6.00-1262.00
334-6.00-1183.00	334-6.00-1209.00	334-6.00-1263.00
334-6.00-1184.00	334-6.00-1210.00	334-6.00-1264.00
334-6.00-1185.00	334-6.00-1211.00	334-6.00-1265.00
334-6.00-1186.00	334-6.00-1212.00	334-6.00-1266.00
334-6.00-1187.00	334-6.00-1213.00	334-6.00-1267.00
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334-6.00-1189.00	334-6.00-1215.00	334-6.00-1272.00
334-6.00-1190.00	334-6.00-1216.00	334-6.00-1273.00
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334-6.00-1193.00	334-6.00-1219.00	334-6.00-1276.00
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334-6.00-1352.00
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334-6.00-1354.00
334-6.00-1355.00

EXHIBIT "B"

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF	**)**	
TIDEWATER ENVIRONMENTAL SERVICES, INC.	**)**	
FOR A GENERAL RATE INCREASE FOR	**)**	
WASTEWATER SERVICES FOR THE CUSTOMERS	**)**	**PSC DOCKET NO. 12-498WW**
OF THE PLANTATIONS RESIDENTIAL	**)**	
COMMUNITY WASTEWATER SYSTEM	**)**	
(FILED NOVEMBER 7, 2012)	**)**	

ORDER NO. 8383

AND NOW, this ___ day of ___, 2013

WHEREAS, the Commission has received and considered the Findings and Recommendations of the Hearing Examiner issued in the above-captioned docket, submitted after a duly-noticed public evidentiary hearing, the original of which is attached hereto as Attachment "A"

AND WHEREAS, Tidewater Environmental Services, Inc. ("TESI") originally proposed a Wastewater Rate increase in the November 7, 2012 Application;

AND WHEREAS, the Hearing Examiner recommends that the Wastewater Rates proposed by the parties in their May 16, 2013 Settlement Agreement be approved as just and reasonable for services rendered as later described herein;

AND WHEREAS, the Hearing Examiner recommends that the Proposed Settlement Agreement dated May 16, 2013, which is endorsed by all the parties except for one, and which is attached to the original hereof as Attachment "B", be approved as reasonable and in the public interest;

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

1. That, by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the June 25, 2013 Findings and Recommendations of the Hearing Examiner, appended to the original hereof as Attachment "A".

2. That the Commission approves the Proposed Settlement, dated May 16, 2013 appended to the original hereof as Attachment "B", including Tidewater Environmental Services, Inc.'s proposed wastewater rates as described in Exhibit "A" of the Settlement Agreement.

3. The additional annual revenue awarded to the Company will be $73,396, based upon a Return on Equity of 10%.

4. That Tidewater Environmental Services Inc.'s proposed rates are approved as just and reasonable rates. The new rates are as follows: $42.74 per month, $128.22 per quarter and $512.88 per year. However, the current rates shall remain in effect until: a) one (1) year after TESI purchases YMG's assets; and b) TESI provides Commission Staff and the Attorney General's Office with a compliance filing certifying to the Commission that TESI has completed the capital improvements described in the Joint Application.

5. TESI shall file modifications to YMG's tariff incorporating the stipulated revenue requirement increase and rate design within five (5) business days TESI purchases YMG's assets, with an effective date consistent with the terms and conditions set forth herein.

6. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

_____
Chair

_____
Commissioner

_____
Commissioner

_____
Commissioner

ATTEST:

_____
Secretary

SERVICE LIST
PSC CONSOLIDATED DOCKET Nos. 12-497 & 12-498WW
TIDEWATER/YMG WASTEWATER RATE CASE
As of 6/25/13

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SERVICE LIST
PSC CONSOLIDATED DOCKET Nos. 12-497 & 12-498WW
TIDEWATER/YMG WASTEWATER RATE CASE
As of 6/25/13

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Plantations Joint Wastewater Comm.
c/o Chris Nichols
Seascape Property Mgmt.
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Bruce E. Patrick
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