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BEFORE THE TENNESSEE REGULATORY AUTHORITY

TRANSCRIPT OF AUTHORITY CONFERENCE

Monday, September 27, 2010

APPEARANCES:

TRA Docket Manager: Ms. Sharla Dillon
North Central Mr. Melvin Malone
Communications: Ms. Nancy Johnson White

CAPD: Mr. Scott Jackson

Piedmont: Mr. Dale Grimes
Mr. Jim Jeffries
Express Connection: Ms. Roberta Swager
Mr. Jack Thompson

Reported By:

Teri A. Campbell, RPR, CCR

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1 Annotated Section 7-59-304(a)(5)(A). And based on the
2 filings in this docket, I find that sufficient customer
3 notification has been provided as required by TRA Rule
4 1220-4-2-.56(2)(d) and move that the preapproval
5 requirement for customer notification letters found in
6 1220-4-2-.56(2)(d)(2) be waived. I so move.

7 DIRECTOR ROBERSON: Second. Vote aye.

8 DIRECTOR HILL: Vote aye.

9 MS. DILLON: Next we have Docket
10 No. 10-00173, Chattanooga Gas Company. Chattanooga Gas
11 Company actual cost adjustment for the 12 months ended
12 June 30, 2010. Consider convening a contested case
13 proceeding and appointing a hearing officer.

14 CHAIRMAN FREEMAN: Thank you. I would
15 move to convene a contested case proceeding and appoint
16 general counsel or his designee as hearing officer to
17 handle any preliminary matters including entering a
18 protective order. Additionally, Chattanooga Gas
19 Company should file with the Authority a proposed
20 protective order no later than 2:00 p.m. on Thursday,
21 October 7, 2010.

22 DIRECTOR ROBERSON: Second. Vote aye.

23 DIRECTOR HILL: Vote aye.

24 MS. DILLON: Next we have addendum
25 item 04-00406, Express Connection, LLC. Application of

1 Express Connection, LLC for authority to provide resell
2 telecommunications services in Tennessee. Notice to
3 appear.

4 CHAIRMAN FREEMAN: Thank you. A
5 notice to appear was issued to Express Connection, LLC
6 on September 17, 2010, to come before the Authority to
7 show cause why the Authority should not proceed to
8 convene a proceeding to impose civil penalties and
9 sanctions against the company for operating without a
10 bond or irrevocable letter of credit in violation of
11 Tennessee Code Annotated Section 65-4-125(j).

12 I see we have representatives from
13 Express Connection with us. Good afternoon. Would you
14 both please state your name and position with the
15 company.

16 MS. SWAGER: Roberta Swager,
17 president.

18 MR. THOMPSON: Jack Thompson, officer.

19 CHAIRMAN FREEMAN: Thank you. Who
20 will be representing the company today?

21 MS. SWAGER: Can we both?

22 CHAIRMAN FREEMAN: Sure. Okay. Will
23 you both raise your right hand.

24 ///

25 ///

1 ROBERTA SWAGER AND JACK THOMPSON,
2 called as witnesses, having been duly sworn, were
3 examined and testified as follows:

4 CHAIRMAN FREEMAN: Thank you. At this
5 time, I will ask Rebecca Montgomery, TRA counsel, to
6 present this matter. And then, Ms. Swager, you will
7 have an opportunity to respond.

8 MS. MONTGOMERY: Thank you, Madam
9 Chair. Rebecca Montgomery, assistant to general
10 counsel.

11 On May 19th, 2010, the Authority
12 received a notice of cancellation from Old Republic
13 Surety Company regarding Bond No. LLI2092321 issued on
14 behalf of Express Connection with an effective
15 cancellation date of 30 days from the date of the
16 Authority receiving the letter.

17 TRA staff members called the president
18 of the company, Roberta Swager, on May 19, 2010 and
19 June 4, 2010, leaving telephone messages explaining
20 that Ms. Swager needed to call staff concerning the
21 cancellation of Express Connection's bond.

22 The bond subsequently expired on
23 June 19, 2010, pursuant to the notice from Old
24 Republic. On June 21, 2010, Ms. Swager returned
25 staff's calls and stated that she would be replacing

1 the bond with a letter of credit which would be
2 retroactively effective to the date of cancellation of
3 the Old Republic bond.

4 As of August 3rd, 2010, no replacement
5 instrument had been received by the TRA, and a
6 certified letter was sent to Roberta Swager advising
7 that a new surety bond or letter of credit should be
8 submitted immediately in order to avoid the company
9 being placed on the August 23rd, 2010 Authority
10 Conference for cancellation. The company received the
11 letter which was delivered to and signed as received by
12 Arlander Rice at Express Connection.

13 On August 19th, 2010, Ms. Swager
14 called staff to say that she has a banking relationship
15 with Regions Bank and it was her intention to get a
16 letter of credit to replace the bond. As of this date,
17 no surety bond or letter of credit has been received by
18 the TRA. As a result, Express Connection has been in
19 violation of Tennessee Code Annotated 65-4-125(j) for
20 three months.

21 CHAIRMAN FREEMAN: Thank you,
22 Ms. Montgomery.

23 Ms. Swager or Mr. Thompson, would one
24 of you like to respond at this time?

25 MS. SWAGER: Yes. It was never my

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1 response to mislead -- and I had spoken several times
2 to Lisa Foust -- never my intention to mislead her.
3 All that she just mentioned is correct. Lisa called me
4 and let me know this was happening, and I told her I
5 would take care of it. And I had every intention of
6 doing so.

7 I have had this business for 13 years
8 and have never been before this -- I'm sorry. Is it a
9 court or a committee? -- council before. I have never
10 had any problems with my company before attempting to
11 renew the bond at this time.

12 However, when my bond company said
13 that they could not renew it, it was not because of any
14 criminal action or any kind of problem on my part.
15 They just chose not to renew it for their own reasons.

16 And because I have had a 20-year
17 relationship with Regions Bank, I knew that it would be
18 no problem to get a letter of credit from them.
19 However, they said they needed collateral. They needed
20 \$20,000 collateral to give me a \$20,000 letter of
21 credit. So I said at that point, Well, I'll just go
22 get another bond. That's okay.

23 Unfortunately -- well, I'll just be
24 real honest with you. I chose to invest in the real
25 estate market with a couple of properties that I bought

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1 to flip and turn the day before the market bombed a
2 couple of years ago, and it had an effect on my
3 personal credit. I found that in applying for another
4 bond over the next few months that that was affecting
5 my ability to get a bond.

6 So I went back to Regions and told
7 them I would go ahead and put up the collateral. And,
8 actually, in the meantime, I asked Ms. Foust if I could
9 just bring down a cashier's check for the 20,000.
10 Because I thought if I was going to give it to Regions
11 anyway, I might as well give it to you-guys. But she
12 said that you couldn't do that. So that was fine.

13 So I went to Regions. And this just
14 happened Friday. I was given a final answer from them
15 that they could not give me a letter of credit even if
16 I gave them \$20,000 collateral, in return for the
17 letter of credit, and I asked why they could not give
18 me an answer.

19 So I'm -- I've been trying over the
20 last three months to get you what you need. I have the
21 \$20,000 that I can give you in any way, shape, or form.
22 I just can't find an institution to take my \$20,000 and
23 give you a form in return for that. And I honestly
24 don't know what to do at this point other than to ask
25 for a continuance where I can bring an attorney in that

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1 may help me out and may not. I really don't know.

2 I've never been in this position
3 before. Until two years ago, I had perfect credit,
4 absolutely perfect credit. And now this is -- you
5 know, one -- so I would just -- I don't know what to
6 do.

7 MR. THOMPSON: We're kind of at the
8 mercy of you-guys at this point. We're asking for
9 something that you-guys can give to us that would help
10 us to make this right.

11 MS. SWAGER: The money is not the
12 problem. The forms that are being required are the
13 problem. And I'm sure five or ten years ago that would
14 not have been a problem. It's just that banks and bond
15 companies are not reacting now because of the economy
16 and the bank meltdown in the way I know they would have
17 reacted five years ago. You know, everybody is just --
18 I don't know what to make of it.

19 When I say I have \$20,000 I can give
20 you and I just want you to give me a form stating that
21 I'm okay for the 20,000, and they say they can't do
22 that, I don't know what to do. I really don't. I
23 would love a continuance if I need one. I will bring
24 an attorney in if I need one. I just really don't know
25 what to do at the moment.

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1 DIRECTOR ROBERSON: I'm not sure if
2 there's any attorneys in the room or not.

3 MS. SWAGER: I would hire one if there
4 were. Like I said, I just got this answer Friday from
5 Regions. And after 20 years with them, I have --
6 because of my different stores and things, I have eight
7 different accounts with them. They know -- I mean,
8 there's no question but what I am good for the money.
9 And the officer I was dealing with -- an officer and
10 vice president of the bank -- he could not tell me why
11 they couldn't do it.

12 MR. THOMPSON: I guess what we're
13 asking from you-guys is, you know, if we can't get the
14 bond itself or we can't get the letter of credit, would
15 an escrow account be sufficient in this type of
16 situation?

17 MS. SWAGER: I really want this to
18 work out.

19 CHAIRMAN FREEMAN: I don't think we
20 are allowed by statute to accept, I guess, the escrow
21 account. I'll turn to staff if I'm misspeaking.

22 MR. COLLIER: That's correct, Madam
23 Chairman. The statute requires either a surety bond or
24 an irrevocable letter of credit. Those are the only
25 options.

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1 MR. THOMPSON: In that sense, can we
2 have a continuance to try to get these things in place
3 or try to find a source that would . . .

4 MR. COLLIER: I would ask are you
5 willing to put the money in a certificate of deposit?

6 MR. THOMPSON: Yes.

7 MS. SWAGER: Yes. By all means.

8 MR. COLLIER: That's generally what a
9 bank would require for an irrevocable letter of credit.

10 MR. THOMPSON: That's what we were
11 trying to do with Regions.

12 MS. SWAGER: If you have a bank
13 contact that you can give me -- not that it's your
14 responsibility to do that. But if you know someone
15 that I could call that might be more amenable to that,
16 I would love to know about them. But that is what I
17 tried to do with Regions, and they would not do that.

18 DIRECTOR ROBERSON: I'm sure we have
19 no bankers in here. We've got lawyers, but no bankers.

20 DIRECTOR HILL: If I may make an idea
21 or a statement here. This is something that I've seen
22 throughout the various industries now for the last
23 couple of years. I really commiserate with you because
24 I've seen it firsthand as well. It's the kind of thing
25 that just makes me cringe because our economy can't

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1 move forward if we don't have the credit lines
2 available.

3 Let me suggest that you work through a
4 community bank. Community banks are far more stable
5 than the larger banks that have received the various
6 fundings from the federal government. And while they
7 are hamstrung by many things, they still are giving
8 lines of credit for CDs. And I can tell you that
9 firsthand because I've done that.

10 So I would check with a community
11 bank. I would check with a bank that maybe you know
12 somebody that is a vice president of one of their banks
13 or something like that. That's just a personal
14 observation. That certainly isn't coming from the TRA.

15 MS. SWAGER: And I understand that and
16 respect that. Off the record in front of a hundred
17 people, Mr. Director, do you have any community banks
18 that you know of that are more apt to do business than
19 others at the moment?

20 DIRECTOR HILL: Well, I don't know
21 what I can say on that. Counsel, would you advise?

22 MR. COLLIER: Unfortunately, we cannot
23 recommend doing business with a particular branch or
24 business.

25 MS. SWAGER: Okay. Well, I do have a

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1 couple of ideas that I have gotten in the last week
2 that I hadn't thought of before as to doing different
3 things with the company and officers to where another
4 officer could get this. I just never in a million
5 years thought that I couldn't.

6 So if we could get a continuance, I
7 can come up with something that will enable me to get
8 something done. After 13 years, I'm not going to go
9 out of business over this. I just -- I've been working
10 on this for a few months. My last resort was Regions
11 only because I knew I would have to give them the equal
12 amount of cash to get a letter of credit. And that's
13 just not smart business, but I knew that would work.
14 And when that didn't work, I was just really caught off
15 guard.

16 But if I could get a continuance to
17 get another officer of the company involved to get
18 either a letter of credit or a bond or something, I can
19 make this work in some way, shape, or form.

20 CHAIRMAN FREEMAN: Before we have a
21 motion, I guess I would just say that it would have
22 been great to hear this before we had you-all come in
23 today.

24 MS. SWAGER: I know. Hindsight is so
25 20-20. And I certainly thought after 30 years of being

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1 able to walk into any place and get whatever you want,
2 I just was not prepared even when I got a "no" one
3 place, I knew if I went to another, I would get a
4 "yes." I've been doing that for two and a half months
5 now. It was just Friday actually that Regions said
6 they could not do it.

7 Like I said, I've been dealing with
8 them for 20 years. So I knew for a fact I could walk
9 in here with what you needed today. And I don't want
10 to be here any more than you want me here today. And I
11 will not be here next time. I will already have this
12 taken care of in some way if we can get a continuance
13 to figure something out here.

14 CHAIRMAN FREEMAN: Thank you. Do my
15 fellow directors have a motion?

16 DIRECTOR ROBERSON: I have one, Madam
17 Chair. I understand your request for a continuance,
18 but I believe there is a better way to resolve this
19 problem than to give you a continuance.

20 I move that we open a docket to
21 determine whether grounds exist for the issuance of a
22 show cause for possible violations under Tennessee Code
23 Annotated Section 65-4-125(j) for operating without a
24 bond or irrevocable letter of credit, and that the
25 general counsel or his designee be appointed as a

1 hearing officer to prepare the matter for hearing or a
2 recommendation before this panel.

3 Now, that doesn't mean, Ms. Swager,
4 that there's going to be a formal proceeding initiated.
5 But this means that you will have somebody in the
6 general counsel's office that you can try to work
7 through this situation with the staff, and then they
8 will report back to us whether a resolution or whether
9 we need to proceed with a legal proceeding. Hopefully,
10 the former that we can work this out and have it
11 resolved.

12 General Counsel, do you see
13 anything -- I know this is uncanny. Is that an
14 appropriate motion, do you believe?

15 MR. COLLIER: That would be
16 appropriate, Director Roberson.

17 DIRECTOR ROBERSON: Okay. I so move.

18 CHAIRMAN FREEMAN: I would second and
19 vote aye.

20 DIRECTOR HILL: I would vote aye as
21 well.

22 DIRECTOR ROBERSON: And I would -- now
23 that that matter is settled, I would like to say that I
24 understand from our staff that we still have some
25 complaints from consumers, your customers, that need to

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1 be resolved. So, after the hearing, if you would talk
2 with Ms. Cooper here and try to get those resolved.
3 Because consumers look to us to try to mediate those
4 problems without your response.

5 MS. SWAGER: Yes, sir. We actually
6 approached her before the hearing. They have all been
7 resolved. There's just a timing matter that's at
8 stake. But they have all been resolved and everything
9 is fine in that respect.

10 DIRECTOR ROBERSON: Thank you.

11 MS. DILLON: Next we have
12 interconnection and resale agreements. Docket Nos.
13 10-00160 and 10-00163.

14 CHAIRMAN FREEMAN: I move approval.

15 DIRECTOR ROBERSON: Second. Vote aye.

16 MS. DILLON: Miscellaneous business?

17 DIRECTOR HILL: Vote aye.

18 MS. DILLON: I'm sorry.

19 CHAIRMAN FREEMAN: None. I move we
20 adjourn.

21

22 (Proceedings concluded at
23 2:14 p.m.)

24

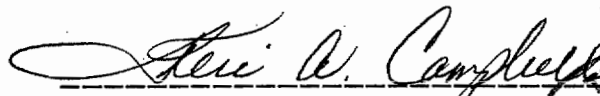
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REPORTER'S CERTIFICATE

I, Teri A. Campbell, Licensed Court Reporter, Registered Professional Reporter, Certified Court Reporter, and Notary Public for the State of Tennessee, hereby certify that I reported the foregoing proceedings at the time and place set forth in the caption thereof; that the proceedings were stenographically reported by me; and that the foregoing proceedings constitute a true and correct transcript of said proceedings to the best of my ability.

I FURTHER CERTIFY that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome or events of this action.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of office this 1st day of October, 2010.



TERI A. CAMPBELL, LCR, RPR, CCR
AND NOTARY PUBLIC FOR THE STATE
OF TENNESSEE

LCR No. 132, Expires 6/30/2012

Notary Commission Expires 5/8/2012

