

BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE:	January 17, 2008)	
)	
FORMAL COMPLAINT BY KING'S CHAPEL CAPACITY,)	DOCKET NO.
LLC AGAINST TENNESSEE WASTEWATER SERVICES)	05-00016
REGARDING ABUSE OF ITS CCN)	

ORDER DISMISSING COMPLAINT

This matter came before Director Eddie Roberson, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on March 12, 2007 to consider dismissal of the *Formal Complaint by King's Chapel Capacity, LLC Against Tennessee Wastewater Services Regarding Abuse of Its CCN* ("Complaint") filed on January 14, 2005.

BACKGROUND

In the Complaint filed by King's Chapel Capacity, LLC ("KCC") against Tennessee Wastewater Services, Inc. ("TWS"), KCC alleged that TWS had engaged in certain abuses of authority and privileges granted to TWS pursuant to a Certificate of Public Convenience and Necessity ("CCN") issued by the Authority. Later, a substantively similar case was commenced upon the filing of a *Petition for a Declaratory Ruling Regarding the Assignment of Wastewater Service Territory to Private Utilities in Tennessee* by King's Chapel on February 25, 2005, which was opened as TRA Docket No. 05-00062.

During a Status Conference held on July 21, 2005, the Authority was informed that all outstanding disputes related to TRA Docket Nos. 05-00016 and 05-00062, as well as TRA Docket

No. 04-00335,¹ were in the process of being resolved. Additionally, the Authority had notice of a lawsuit between the parties filed in the Williamson County Chancery Court, *Tennessee Wastewater, et. al v. J. Powell Development, et al.*, Case No. 31074, raising contractual issues involving substantially similar issues to those raised in these TRA Dockets. For these reasons, the Authority, by Order dated July 25, 2005, ruled that Docket No. 05-00016 would be held in abeyance pending the Chancery Court's decision as to ownership of the subject wastewater system.

Also on July 25, 2005, TWS filed its *Notice of Settlement and Withdrawal of Objections* ("Settlement Agreement") in TRA Docket No. 04-00335. In the Settlement Agreement which resolved the Chancery Court action, the parties agreed that TWS would transfer its State Operating Permit before the Tennessee Department of Environment & Conservation to King's Chapel and withdraw its opposition to King's Chapel's CCN Application before the TRA.

In pertinent part, the Settlement Agreement also provided:

The Parties Intend By This Settlement Agreement To Compromise And Settle All Matters that may exist between them . . .

All Parties release all other parties from the various claims, causes of action, etc. except those necessary to enforce this Settlement Agreement and associated agreements.

Any Complaint Or Proceeding brought by a party hereto in any other forum shall be withdrawn by the party bringing such complaint or proceeding, if possible, subject to the faithful performance of the provisions herein by the parties hereto.²

On November 1, 2006, Authority Staff sent KCC a letter requesting that KCC advise the Authority of any reason why the docket should remain open. To date, KCC has not filed any response in this docket.

On February 22, 2007 the TRA issued its *Notice of Taking Official Notice and Time for Filing Response* ("Notice"). The Notice incorporated the Settlement Agreement in TRA Docket No.

¹ See *In re: Petition of King's Chapel Capacity, LLC for a Certificate of Convenience and Necessity to Serve an Area in Williamson County, Tennessee Known as Ashby Community*, Docket No. 04-00335 (October 5, 2004).

² *In re: Petition of King's Chapel Capacity, LLC for a Certificate of Convenience and Necessity to Serve an Area in Williamson County, Tennessee Known as Ashby Community*, Docket No. 04-00335, *Notice of Settlement and Withdrawal of Objections*, pp. 1, 3, 4. (July 25, 2005).

04-00335 with this docket and allowed for the parties to file written responses to contest the material noticed by the Authority by Thursday, March 1, 2007. No party filed a written response to the Notice. On March 6, 2007, B&B Concrete Products, Inc. ("B&B") filed a petition to intervene.

FINDINGS AND CONCLUSIONS


At the regularly scheduled Authority Conference held on March 12, 2007, the voting panel having considered the record and having heard from counsel made the following findings:

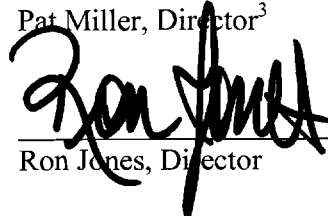
- (1) KCC did not file a response or appear after having received ample notice that the Authority was going to consider dismissal of its Complaint at the March 12, 2007 Authority Conference.
- (2) The Settlement Agreement provided that any related complaint in any other forum shall be withdrawn by the party bringing such complaint.
- (3) Dismissing the Complaint makes B&B's intervention request moot. However, B&B shall have access to any of the filings in the instant docket that are public records, and B&B has the option of bringing its concerns to the Authority in a separate proceeding. Further, TWS has agreed to meet with B&B to discuss its concerns.

Based on these findings, the panel voted unanimously to dismiss the Complaint.

IT IS THEREFORE ORDERED THAT:

1. The Formal Complaint by King's Chapel Capacity, LLC Against Tennessee Wastewater Services Regarding Abuse of Its CCN is dismissed.
2. The *Petition to Intervene* filed by B&B Concrete Products, Inc. is denied as moot.


Eddie Roberson, Chairman

Pat Miller, Director³

Ron Jones, Director

³ Director Miller voted in agreement with the other directors but resigned his position as Director before the issuance of this order.