

BEFORE THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

February 5, 2008

IN RE:

PETITION OF KING'S CHAPEL CAPACITY'S, LLC
FOR A DECLARATORY RULING REGARDING THE
ASSIGNMENT OF WASTEWATER SERVICE
TERRITORY TO PRIVATE UTILITIES IN TENNESSEE

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DOCKET NO.
05-00062

INITIAL ORDER DISMISSING PETITION

This matter was remanded to the Hearing Officer by the voting panel assigned to this docket of the Tennessee Regulatory Authority (the "Authority" or "TRA"), at a regularly scheduled Authority Conference held on November 6, 2006 to consider whether the *Petition for a Declaratory Ruling* ("Petition"), filed on February 25, 2005 by King's Chapel Capacity, LLC ("King's Chapel"), should be dismissed or remain open in light of the resolution of other related dockets, both before the Authority and before the Williamson County Chancery Court.

BACKGROUND

In the *Petition*, King's Chapel is seeking a declaratory ruling from the Authority to apply, on a statewide basis, the Order entered in TRA Docket No. 03-00329. The *Petition* asserts that the findings in that docket should be expanded to all service territories outside of Sevier County. The request in the *Petition* is based on allegations that certain providers of wastewater services were obtaining Certificates of Public Convenience and Necessity ("CCNs") for service territories with no intention of constructing facilities therein, thereby preventing King's Chapel from obtaining a CCN to serve such areas.

On March 2, 2005, Tennessee Wastewater Systems, Inc. (“TWS”) filed a petition to intervene in this proceeding. During an Authority Conference held on April 4, 2005, the voting panel convened a contested case proceeding and appointed General Counsel or his designee as Hearing Officer to prepare this matter for a hearing before the panel. Concurrent with this action, the Authority received notice of a lawsuit filed in the Williamson County Chancery Court, *Tennessee Wastewater, et. al v. J. Powell Development, et al.* [King’s Chapel], Case No. 31074, concerning issues substantially similar to issues raised in this docket. During a Status Conference held on July 21, 2005, Hearing Officer Jean Stone granted TWS’ petition to intervene and directed TWS to file a response to the *Petition*.

On July 25, 2005, TWS, the other party to the Williamson County Chancery Court action, filed a *Notice of Settlement and Withdrawal of Objections* (“Settlement Agreement”) in TRA Docket No. 04-00335. In the Settlement Agreement which resolved the Chancery Court lawsuit, 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.¹ (Emphasis added).

¹ 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).

In its *Order Returning Docket to Hearing Officer*, issued in this docket by the Authority on January 23, 2007, the voting panel described events subsequent to the filing of the Settlement Agreement as follows:

On October 27, 2006, the Authority issued an Agenda Notice, which included consideration of this docket during the November 6, 2006 Authority Conference. On October 31, 2006, King's Chapel filed a letter renewing its request for a declaratory ruling stating that there has been no settlement in this docket. TWS filed a response on November 3, 2006 stating that the issues in this docket have been settled. TWS stated that the settlement agreement filed in Authority Docket No. 04-00335 encompassed all matters that may exist between King's Chapel and TWS.

During the November 6, 2006 Authority Conference, the panel heard argument from John Powell, corporate representative for King's Chapel, and Henry Walker, Esq., counsel for TWS. The parties asserted opposing positions regarding whether the settlement agreement in Docket No. 04-00335 encompasses this docket and requires the dismissal of this docket.

Because of the contradictory interpretations of the settlement agreement, the panel voted unanimously to return this docket to the Hearing Officer to determine whether any issues remain in this docket and, if so, to prepare the matter for a hearing before the panel.²

On February 22, 2007, the Authority issued its *Notice of Taking Official Notice and Time for Filing Response* ("Notice"). The *Notice* incorporated the Settlement Agreement in TRA Docket No. 04-00335 with this docket and allowed for the parties to file written responses to contest or object to the material noticed by the Authority by Thursday, March 1, 2007. No party filed a response to the *Notice*.

FINDINGS AND CONCLUSIONS

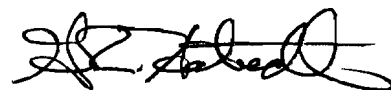
This matter was returned to the Hearing Officer for the purpose of determining whether the Settlement Agreement between the parties filed in Docket No. 04-00335 encompasses and requires the dismissal of this docket. By *Notice* of February 22, 2007, the Settlement Agreement was specifically made a part of the record in this docket, and no party has filed any objection or provided any comment to that fact. Further, there have been no filings or any other activity in this docket by the parties for in excess of twelve months.

² Order Returning Docket to Hearing Officer, p.2 (January 23, 2007).

Based on a review of the record in this docket, this Hearing Officer determines that this matter is ripe for decision, and that this matter should be dismissed as a part of the Settlement Agreement entered into in the Williamson County Chancery Court action and filed in this docket. Furthermore, and most significantly, the express language of the Settlement Agreement, which is referenced in bold above, states that such agreement specifically encompasses any “complaint” or any “proceeding,” which clearly includes the instant docket. As such, this Hearing Officer finds that the Settlement Agreement encompasses this docket and concludes that no issues remain in this docket. For these reasons, the Hearing Officer dismisses this docket with prejudice.

IT IS THEREFORE ORDERED THAT:

1. The Petition of King’s Chapel Capacity, LLC for a declaratory ruling is dismissed with prejudice.
2. Any party aggrieved by the Hearing Officer’s decision in this matter may file a Petition for Reconsideration with the Hearing Officer within fifteen (15) days from the date of this Initial Order.
3. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this Initial Order.
4. In the event this Initial Order is not appealed to the Directors of the Tennessee Regulatory Authority within fifteen (15) days, this Initial Order shall become final and shall be effective from the date of entry. Thereafter, any party aggrieved by the decision of the Hearing Officer, may file a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Initial Order.



Gary Hotvedt, Hearing Officer