

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 22, 2007

IN RE:

**PETITION OF CARTWRIGHT CREEK, L.L.C.
FOR EXEMPTION FROM FINANCIAL
SECURITY AS REQUIRED BY THE
TENNESSEE REGULATORY AUTHORITY'S
PROPOSED WASTEWATER REGULATIONS**

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**DOCKET NO.
06-00062**

**ORDER APPROVING AN
ALTERNATIVE FINANCIAL SECURITY ARRANGEMENT**

This matter came before Chairman Ron Jones, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on May 30, 2006 upon the petition of Cartwright Creek, L.L.C. ("Cartwright Creek" or the "Company") requesting that the TRA exempt it from providing financial security as mandated by the proposed public necessity regulations for wastewater utilities, Tenn. Comp. R. & Regs. 1220-4-13.¹

BACKGROUND

On March 20, 2006, Cartwright Creek filed its *Petition*² for exemption from the financial security requirements contained within Tenn. Comp. R. & Regs. 1220-4-13. According to the Rules, proof of financial security is to be filed by March 13, 2006. Although the *Petition* is styled as an exemption from the proposed wastewater regulations, Cartwright Creek's *Petition*

¹ The Authority promulgated public necessity rules for wastewater, effective December 29, 2005 through June 12, 2006. The permanent TRA Rules 1220-4-13 became effective on June 12, 2006.

² The original petition in this docket was submitted by William H. Novak, a regulatory agent for Cartwright Creek, L.L.C. on February 27, 2006. Because Mr. Novak is not a company representative under Tennessee law, a new petition was filed on March 20, 2006. The new *Petition* is identical to the one filed previously, except the latter was filed by Cartwright Creek's Chief Financial Officer, Robert Ian Cochrane.

asserts that it should be exempt from all financial security obligations under the TRA's proposed interim and final rules.

Cartwright Creek contends that the TRA created the aforementioned rules to apply to wastewater companies that receive plant contributions from third-party developers after concerns arose regarding whether these entities could be considered financially viable if faced with financial stress. The Company further states that it agrees with the TRA that these utilities should provide additional security to ensure continued operation.

Cartwright Creek states that its operations are funded via debt and equity investment by its owners, as opposed to third-party contributions. The Company argues that it should not have to file financial security to demonstrate its viability as a going concern, as the Rules require, because it does not face the same risks as other wastewater utilities that receive capital exclusively from third-party developers. The Company asserts that its existing financial structure is evidence sufficient to assure the TRA that it will be a going concern and, as such, it fulfills the TRA's financial security obligations. In its *Petition*, the Company argues that to view all wastewater utilities homogeneously is unjust, and that, instead, each utility should be evaluated individually in light of its capital structure. Testimony was submitted by Robert Ian Cochrane, Chief Financial Officer of Cartwright Creek, in support of the relief and positions set forth by the Company in its *Petition*.

On April 3, 2006, at a regularly scheduled Authority Conference, the panel considered the *Petition* and the testimony of Mr. Cochrane, and directed the Company to confer with the TRA Staff to clarify the Company's proposal for satisfying the Rules, as provided for in Rule 1220-4-13-.07(5). Thereafter, the TRA Staff worked with Cartwright Creek to develop a proposal for an alternative financial security that would fulfill the security requirements of the

wastewater rules and best serve the interests of the ratepayers. On May 2, 2006, Cartwright Creek filed a second *Petition* ("*Revised Petition*"), again requesting exemption due to the uniqueness of its capital structure and proposing the establishment of a Three Hundred Thousand Dollar (\$300,000.00) construction escrow fund as financial security in lieu of the bond or letter of credit referred to in Rule 1220-4-13-.07. According to the *Revised Petition*, the use of the escrow funds will be limited to paying the direct construction costs of a Sheaffer Sludge Elimination System and for repairs to the collection system. It is expected that the upgrades and repairs to the system will eliminate much of the risk that now hinders the Company's ability to obtain the financial security contemplated by the Rules. According to the *Revised Petition* the escrow account will be established by Cartwright Creek, LLC at the First American Title Company, AmSouth Center, 315 Deadrick Street, Suite 2005, Nashville, Tennessee 37230. Shaeffer International will fund this escrow account and Mr. Robert I. Cochrane, CFO, will be appointed the authorized agent for the escrow account, which has been insured against loss.

LEGAL STANDARD & ANALYSIS

While the growing number of smaller project-by-project wastewater utilities may have sparked the initial concern of the TRA regarding the ongoing viability of wastewater systems, the Authority did not seek or intend to exclude any wastewater company from the financial security requirements. As stated in the public necessity rules 1220-4-13-01(2):

The purpose of these rules is to define acceptable practices for the provision of wastewater service. The rules are intended to ensure continued adequate and reasonable service.

Accordingly, the Authority developed uniform rules applicable to all wastewater utilities without exception. The purpose of the Rule requiring financial security obligations from all wastewater utilities is to ensure that consumers receive continued reliable service. Cartwright

Creek was provided numerous opportunities to file comments on the proposed wastewater rules and failed to present for consideration the issue of whether an investor-owned utility should be excluded from the financial security obligations.

Additionally, Rule 1220-4-13-.07(5) provides that a wastewater utility may petition the Authority to post an alternative financial security, both in form and amount. Cartwright Creek's argument that it should be exempt from the financial security requirements because its current financial structure and status is sufficient proof of its continued viability is not persuasive. On the contrary, the Company's own financial reports and filed testimony demonstrate that proof of financial security is appropriate and necessary. Further, the original wastewater system at issue is over 30 years old and in dire need of substantial and numerous upgrades and repairs.

MAY 30, 2006 AUTHORITY CONFERENCE

During the regularly scheduled Authority Conference on May 30, 2006, the panel considered the proposal offered in the Company's *Revised Petition* and the testimony of Robert Cochrane. The panel also heard from Ms. Darlene Standley, Chief of the TRA's Utilities Division. At the panel's request, Ms. Standley explained the agreement reached between the Company and the TRA Staff. The agreement contemplates that \$300,000.00 will be placed into an escrow account according to the following schedule: \$240,000.00 by June 6, 2006 and the remaining \$60,000.00 by July 31, 2006. Further, that the escrowed funds will be used for construction and the upgrading, and repair of the system to a standard which will enable the Company to secure a bond or letter of credit in 2007. According to the agreement the signatory on the escrow account (Mr. Cochrane) will be bonded or insured, and the bank holding the escrow account will notify the TRA of all disbursements from the account. The proposed alternative financial security arrangement applies only to the Company's current Certificate of

Public Convenience and Necessity, and a minimum \$20,000.00 bond is required on any future applications to expand the area served. Finally, the alternative financing arrangement negotiated for 2006 expires no later than July 1, 2007, and thereon, the Company shall have secured a letter of credit or bond based on revenues of the utility, as required by the Rules. In response to the panel's inquiry, Mr. Cochrane advised the panel that the Company will provide a monthly accounting of disbursements, which specifically detail the construction and repairs performed therewith.

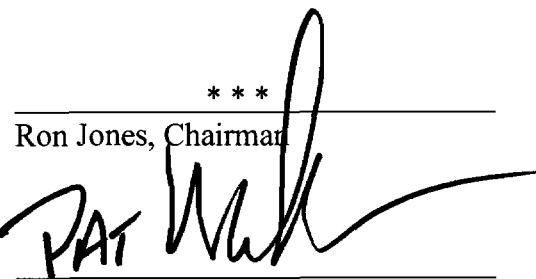
Thereafter, in light of the evidence and testimony, and upon careful consideration of the entire record, a majority of the panel approved the *Revised Petition* and found that the proposal for alternative financial security serves the best interests of Cartwright Creek's customers.³

IT IS THEREFORE ORDERED THAT:

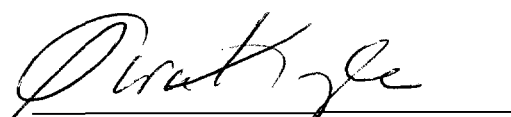
The proposed alternative financial security arrangement described in the *Revised Petition* filed by Cartwright Creek, L.L.C., and set forth herein, is approved.

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Ron Jones, Chairman



Pat Miller, Director



Sara Kyle, Director

³ Chairman Ron Jones did not vote to approve the *Revised Petition* and filed a separate dissent.