

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 28, 2007

IN RE:)	
)	
PETITION OF CUMBERLAND BASIN WASTEWATER)	DOCKET NO.
SYSTEMS FOR A CERTIFICATE OF CONVENIENCE)	07-00079
AND NECESSITY TO SERVE AN AREA IN PUTNAM)	
COUNTY, TENNESSEE KNOWN AS THE BLUFFS AT)	
CUMBERLAND COVE)	

ORDER APPROVING APPLICATION FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND TARIFF

This matter came before Director Pat Miller, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a Hearing held on July 23, 2007, to consider the Petition of Cumberland Basin Wastewater Systems, LLC (“Cumberland”) for a Certificate of Convenience and Necessity to Serve an Area in Putnam County, Tennessee known as the Bluffs at Cumberland Cove (the “*Petition*”).

BACKGROUND

On March 28, 2007, Cumberland filed its *Petition* for a Certificate of Convenience and Public Necessity (“CCN”) to provide service to 175 single family homes and one commercial establishment in Putnam County, Tennessee. Maps showing the locations of these customers were attached to the *Petition*.¹ Also included in the *Petition* was a proposed Tariff for both residential and commercial sewer rates.²

¹ See *Petition*, Exhibit 2 (March 28, 2007).

² *Id.* at Exhibit 7.

LEGAL STANDARD FOR GRANTING CCN

No public utility is permitted to begin construction or operation of a new utility facility or service before obtaining the approval of the TRA. The procedure for obtaining such approval is outlined in Tenn. Code Ann. § 65-4-201(a) (supp. 2006), which reads in pertinent part as follows:

No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate

PETITION FOR CCN

Cumberland has submitted owner financial statements, *pro forma* operating costs and biographical information for Cumberland management personnel in support of its *Petition*.³ According to the *Petition*, Cumberland was initially created to provide wastewater services to the Bluffs at Cumberland Cove (“the Bluffs”) development. The Bluffs plans to construct a wastewater system of approved design by the Tennessee Department of Environment and Conservation (“TDEC”) and then transfer the system to Cumberland to own and operate. Cumberland has separately petitioned TDEC for a State Operating Permit for the installation of the system to serve the Bluffs. A copy of the engineering report and other data submitted to TDEC were attached to the *Petition*.⁴

³ *Id.* at Exhibits 6, 8 and 5 (respectively).

⁴ *Id.* at Exhibit 3.

Cumberland contends that Putnam County, the City of Crossville nor the Town of Monterey desire to provide wastewater services to the Bluffs. In support of this contention, Cumberland attached to its *Petition* letters submitted from the above mention cities.⁵

JULY 23, 2007 AUTHORITY CONFERENCE

The voting panel considered Cumberland's *Petition*, together with the proposed tariff, at the regularly scheduled Authority Conference held on July 23, 2007. The panel found that Cumberland meets the statutory criteria of Tenn. Code Ann. § 65-4-201 and TRA Rule 1220-4-13-.04(1)(b) by demonstrating that it has sufficient financial, managerial and technical expertise to operate the wastewater system in the Bluffs at Cumberland Cove Development in Putnam County. The panel further found that there exists a public need in the requested area as required by TRA Rule 1220-4-13-.04(1)(b), and that Cumberland's *Petition* conforms to TRA rules regarding CCN review. As such, the panel unanimously voted grant Cumberland a CCN and directed the company to work with staff to develop a commercial escrow rate. Concerning the tariff, Director Jones took issue with the majority's conclusion relative to the establishment of an escrow account, its purpose, and its amount. As such a majority voted to approve the tariff.

IT IS THEREFORE ORDERED THAT:

1. The Petition of Cumberland Basin Wastewater Systems, LLC ("Cumberland") for a Certificate of Convenience and Necessity to Serve an Area in Putnam County, Tennessee known as the Bluffs at Cumberland Cove, is hereby approved.
2. The proposed rate of residential services of \$35.11, which includes an escrow amount of \$7.03 for capital equipment replacement costs is approved, with the \$7.03 to be segregated in a separate bank account.

⁵ *Id.* at collective Exhibit 4.

3. Public wastewater utility employees having signature authority over such escrow account are required to obtain a fidelity bond pursuant to TRA Rule 1220-4-13.07(9) and that Cumberland Basin Wastewater, LLC, file an accounting of the escrow funds with the TRA, concurrent with its annual report.

4. Cumberland Basin Wastewater System should re-file its tariff reflecting \$28.08 as the monthly rate and \$7.03 as the residential escrow amount.

5. Staff and the Company are directed to work together to determine the appropriate escrow amount for the commercial account.

6. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from the date of this Order.

7. Any party aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.



11-26-07

Pat Miller, Director



Sara Kyle, Director

* * *

Ron Jones, Director⁶

⁶ Director Jones voted in favor of granting Cumberland a CCN and in favor of directing the company to work with staff to develop a commercial escrow rate. Director Jones dissented from the decision to accept the total rate proposed by Cumberland Basin Wastewater Systems for residential and commercial customers and the decision to reduce the amount to be escrowed by \$3.10 to exclude the expense of tank pumping. Director Jones filed a separate opinion explaining his analysis.