

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**September 13, 2007**

<b>IN RE:</b>	)	
	)	
<b>PETITION OF KING'S CHAPEL CAPACITY</b>	)	<b>DOCKET NO.</b>
<b>FOR EXEMPTION FROM FINANCIAL</b>	)	<b>07-00151</b>
<b>SECURITY AS REQUIRED BY THE</b>	)	
<b>TENNESSEE REGULATORY AUTHORITY'S</b>	)	
<b>PROPOSED WASTEWATER REGULATIONS</b>	)	

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**ORDER GRANTING PETITION**

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This matter came before Chairman Sara Kyle, Director Eddie Roberson 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 June 25, 2007 upon the *Request to Continue Exemption ("Petition")* filed on May 30, 2007 by King's Chapel Capacity ("King's Chapel" or the "Company") requesting the TRA to continue the Company's exemption from providing additional financial security and to find that the financing required by the local government authority is adequate to meet the TRA requirements set out in Tenn. Comp. R. & Regs. 1220-4-13-.07.

**BACKGROUND**

King's Chapel filed a petition on February 27, 2006 in Docket No. 06-00061 seeking an exemption from providing additional financial security as provided for in Tenn. Comp. R. & Regs. 1220-4-13-.07 based on its position that the financial security required by the local government authority, Williamson County, Tennessee, was adequate to meet the TRA's financial requirements. The Authority granted the Company's petition at a regularly scheduled Authority

Conference on April 3, 2006. In the *Petition* currently before the Authority, King's Chapel seeks to continue its financial exemption for another twelve (12) months as permitted by the provisions of Tenn. Comp. R. & Regs. 1220-4-13-.07(6).

### **STANDARD OF REVIEW**

In accordance with Tenn. Code Ann. § 65-4-201(e) and Tenn. Comp. R. & Regs. 1220-4-13-.07, wastewater utilities regulated by the TRA are required to provide proof of financial security pursuant to the terms established in the regulations. The rule allows, however, an exemption from providing the required financial security. Specifically, Tenn. Comp. R. & Regs. 1220-4-13-.07(6) provides:

Financial securities required by any local government may be counted by the Authority in fulfilling this financial security obligation. The public wastewater utility shall file with the Authority by May 1 of each year evidence of any financial security required by any local government and a written request that the Authority count the security toward fulfilling the requirements of this Chapter.

When reviewing a request filed pursuant to Rule 1220-4-13-.07(6), the Authority has considered two elements: (1) the relative value of the local government security to the value of the Authority's required security and (2) the purpose for which the local government security serves. As to the second element, the more specific question is whether the purpose of the local government security is analogous to the purpose of the Authority's security.<sup>1</sup>

### **ANALYSIS**

King's Chapel is authorized to provide services for the Ashby Communities Development located in Williamson County.<sup>2</sup> In Docket 06-00061, the panel applied the above

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<sup>1</sup> See *In re: Petition of King's Chapel Capacity for Exemption from Financial Security as Required by the Tennessee Regulatory Authority's Proposed Wastewater Regulations*, Docket No. 06-00061, *Order Granting Petition* (December 7, 2006).

<sup>2</sup> See *In re: Petition of King's Chapel Capacity, LLC for Certificate of Public Convenience and Necessity to Serve An Area in Williamson County Known As Ashby Community*, Docket No. 04-00335, *Order Approving Petition For Certificate Of Public Convenience And Necessity* (January 3, 2006).

described standard of review and determined that the bonding requirements of Williamson County applicable to King's Chapel are in excess of that required by Rule 1220-4-13-.07 and are required for a purpose similar to that of the Authority, that is, for the performance and maintenance of the wastewater system.<sup>3</sup> As evidence for these findings, the Authority relied on two letters of credit with SunTrust Bank covering performance/maintenance for the wastewater treatment system and naming the Williamson County Planning Commission as beneficiary that had been filed by the Company in Docket No. 04-00335.<sup>4</sup> The tariff filed with the original petition for a Certificate of Public Convenience and Necessity included a separate billing rate in the amount of \$6.31 for Bonding Cost (Pass Through).

In the current *Petition*, King's Chapel requests that the Company be granted an exemption for an additional twelve (12) months pursuant to TRA Rule 1220-4-13-.07(6).<sup>5</sup> As evidence in support of the *Petition*, the Company filed two letters of credit naming the Williamson County Planning Commission as beneficiary: Letter of Credit Number F850008 for \$651,000 and Letter of Credit Number F850007 for \$998,748.

In light of the evidence, and careful consideration of the record, the panel found that the amount of securities held by King's Chapel for Williamson County are for an amount that exceeds the Authority's required security amount, and the Williamson County securities are for the performance and maintenance of the treatment systems. The panel further found that in granting the Company's request to continue the exemption that it was affirming the Authority's finding in Docket No. 06-00061 that the securities submitted by King's Chapel to Williamson County, Tennessee fulfill the requirements of Tenn. Comp. R. & Regs. 1220-4-13-.07.

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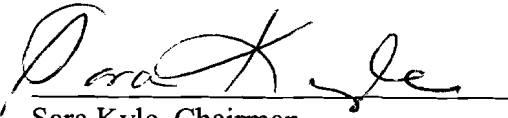
<sup>3</sup> See Tenn. Code Ann. 65-4-201(e) (Supp. 2006); Tenn. Comp. R. & Regs. 1220-4-13-.01(2) (June 2006).


<sup>4</sup> See *Data Response*, pp. 22-27 (August 17, 2005).

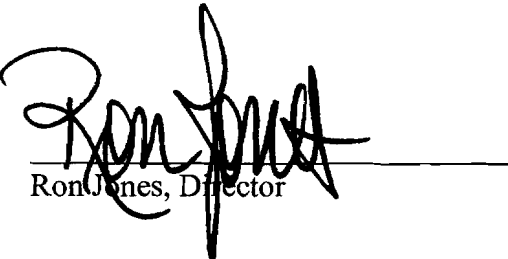
<sup>5</sup> The Company states in its *Petition* that it was unaware of the requirement to file annually for this exemption by May 1 but will comply with the rule going forward.

**IT IS THEREFORE ORDERED THAT:**

The *Petition* of King's Chapel Capacity for continued exemption from the provisions of Tenn. Comp. R. & Regs. 1220-4-13-.07, which mandate the submission of financial security, insofar as the *Petition* requests a finding by the Authority that the security submitted by the Company to Williamson County, Tennessee, fulfills the requirements of TRA Rule 1220-4-13-.07, is granted.

  
Sara Kyle, Chairman

  
Eddie Roberson, Director

  
Ron Jones, Director