

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 27, 2009

IN RE:

PETITION FOR APPROVAL TO TRANSFER
HC SEWAGE TREATMENT LLC'S AUTHORITY
TO PROVIDE WASTEWATER UTILITY SERVICES
TO GREENEVILLE OIL AND PETROLEUM, INC.

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DOCKET NO.
08-00222

INITIAL ORDER GRANTING TRANSFER OF AUTHORITY

This matter came before Kelly Cashman-Grams, Hearing Officer of the Tennessee Regulatory Authority ("Authority" or "TRA") at a Hearing on the merits held on April 14, 2009 for consideration of the *Petition to Transfer Certificate of Public Convenience and Necessity of HC Sewage Treatment, LLC to Greeneville Oil and Petroleum, Inc.* ("Petition") filed on December 5, 2008 by Greeneville Oil and Petroleum, Inc. ("Greeneville Oil").

TRAVEL OF THE CASE

On January 22, 2009, Greeneville Oil filed a *Motion of Greeneville Oil and Petroleum, Inc. to Substitute Greeneville Sewage, LLC as the Petitioner*.¹ On February 2, 2009, the *Order Granting Motion to Substitute Petitioner, Convening a Contested Case and Appointing a Hearing Officer* was entered in the docket. The Order sets out that the Hearing Officer is appointed to render an initial decision on the merits of the *Petition*.

On February 2, 2009, the Hearing Officer issued a *Notice of Status Conference* directing that "any proposed agreement, contract, or other documentation relevant to the request for approval of transfer" be filed by February 4, 2009. HC Sewage Treatment, LLC ("HC") filed a

¹ Hereafter, the term "Greeneville" will be used for Greeneville Sewage, LLC.

Response of HC Sewage to Notice of Status Conference and Greenville filed under seal a proposed *Asset Purchase Agreement* on February 4, 2009. At the request of the parties, the Hearing Officer filed a *Notice of Status Conference* on February 11, 2009 and a *Re-Notice of Status Conference* on February 13, 2009.

Due to certain scheduling difficulties between the parties, on February 26, 2009, the Hearing Officer filed a *Notice of Pre-Hearing Conference* and an *Order Setting Pre-Hearing Conference and Directing Personal Appearance*. On March 5, 2009, Greenville filed correspondence stating that the parties had reached an agreement in principle on the *Asset Purchase Agreement*, and therefore, both parties requested the continuance of the Pre-Hearing Conference to in order to finalize the agreement. As a consequence of this correspondence, the Hearing Officer issued a *Notice of Cancellation of Pre-Hearing Conference* on March 5, 2009. On March 20, 2009, the Hearing Officer filed a *Notice of Hearing* setting a Hearing on the merits on April 14, 2009.

THE PETITION

The *Petition* states that HC is a small public utility that operates a wastewater treatment facility in accordance with a Certificate of Public Convenience and Necessity (“CCN”) issued by the Authority on January 2, 2002 in Docket No. 00-00667.² Greenville Oil owns and operates gasoline stations in Upper East Tennessee. Currently, HC’s customers include Greenville Oil’s BP gas station and a Pizza Plus restaurant. A McDonald’s Restaurant leases space inside the BP station and therefore, effectively, three businesses rely on HC’s wastewater utility services. In response to HC’s September 23, 2008 letter informing the Authority that HC was insolvent and

² See, *In re: Application of HC Sewage Treatment, LLC for a Certificate of Convenience and Necessity*, Docket No. 00-00667, *Initial Order Granting Certificate of Public Convenience and Necessity* (January 2, 2002).

would discontinue operation of its wastewater plant on or after October 10, 2008,³ Greeneville Oil – with the knowledge of the Authority and cooperation of HC – assumed the day-to-day operations of the wastewater facility on or about October 10, 2008. Thus, Greeneville Oil seeks the Authority’s approval pursuant to Tenn. Code Ann. § 65-4-113 for HC’s CCN to be transferred to Greeneville, a subsidiary newly formed for the sole purpose of formally operating the wastewater facility.

In the *Petition*, Greeneville proposes to assume ownership and operation of HC. The *Petition* claims that the proposed transaction would be accomplished seamlessly and would not adversely affect HC’s customers. The *Petition* further states that the parties were in negotiations to transfer the system, and Greeneville was submitting the *Petition* as a show of good faith and concern for the public interest.

In support of the *Petition*, Greeneville states that it is a suitable, financially responsible entity capable of efficiently overseeing and operating the utility service. Further, Greeneville notes that it has been operating the plant since October 10, 2008 and has demonstrated that it has the managerial, financial, and technical ability to operate the system. The public interest will be served by keeping the essential wastewater services available to HC’s customers. If the *Petition* is not granted, all three businesses that rely on HC’s services will be detrimentally impacted.

THE HEARING

After being duly noticed on March 20, 2009, the Hearing on the merits was held on April 14, 2009 before the Hearing Officer. Appearing either in person or telephonically at the Hearing was:

³ See also, *In re: Request of HC Sewage Treatment, LLC for Authority Action Pursuant to Letter dated September 23, 2008*, Docket No. 08-00183.

Greeneville: Melvin J. Malone, Esq., and Jim Porter, Esq., Miller & Martin, 150 Fourth Avenue North, 1200 One Nashville Place, Nashville, Tennessee 37219-2433; Allen Johnson, President, Greeneville Oil & Petroleum, Inc., 860 West Andrew Johnson Highway, Greeneville, Tennessee 37745; and,

HC: Buddy Scott, Esq., 130 Nevermore Lane, Kingsport, Tennessee 37664.

No person sought intervention prior to or during the Hearing. During the Hearing, Allen Johnson, President of Greeneville Oil and Greeneville, presented testimony and was subject to examination by the Hearing Officer. The Pre-Filed Testimony of Allen Johnson was entered into the record without objection, and states that the Company has the managerial, technical, and financial ability to provide wastewater services.

FINDINGS AND CONCLUSIONS

Tenn. Code Ann. § 65-4-113(a) (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services and provides:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, which in pertinent part, states as follows:

Upon application for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

Based upon the testimony of the witnesses and the entire record, the Hearing Officer found that Greeneville has met the requirements of Tenn. Code Ann. § 65-4-113 (2004) and that approval of the *Petition* furthers the public interest. Therefore, the Hearing Officer granted the

Petition contingent upon the timely receipt of a properly executed witness certification and notary public affidavit;⁴ filing of a notice of consummation of the closing of the *Asset Purchase Agreement*; and the filing of a copy of the official Tennessee Department of Environment and Conservation State Operating Permit with the Authority.

Furthermore, as the underlying conveyance between the parties is an assignment of assets only and not of the business entity known as HC Sewage, neither known nor unknown issues concerning regulatory non-compliance will follow from HC to Greeneville in the transfer of the CCN.

IT IS THEREFORE ORDERED:

The *Petition to Transfer Certificate of Public Convenience and Necessity of HC Sewage Treatment, LLC to Greeneville Oil and Petroleum, Inc.* is hereby granted contingent upon the filing of a notice of consummation of the closing of the *Asset Purchase Agreement* and the filing of a copy of the official Tennessee Department of Environment and Conservation State Operating Permit with the Authority. Additionally, neither known nor unknown issues concerning regulatory non-compliance shall follow from HC to Greeneville in the transfer of this CCN.


Kelly Cashman-Grams, Hearing Officer

⁴ Mr. Johnson appeared telephonically. In granting approval for him to appear telephonically, the Hearing Officer set out certain conditions, including requiring the filing of a witness certification and notary public affidavit. See *Order Granting Motion of Greeneville Sewage to Permit Substitute Testimony and to Permit Allen Johnson to Appear Telephonically at the Hearing* (April 9, 2009). These required filings were made on April 17, 2009.