

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re:

Petition of Cartwright Creek, LLC to Change
and Increase Rates and Charges.

Docket No.: 09-00056

REPLY OF WATERBRIDGE DEVELOPMENT

Waterbridge Development ("Waterbridge") filed a petition to intervene in this proceeding on August 24, 2009. On August 31, 2009, Cartwright Creek filed a memorandum in opposition to the request to intervene. Waterbridge asks that it be allowed to submit this reply to Cartwright Creek and suggests that, as one of the utility's largest potential customers, Waterbridge has a clear statutory right to participate as a party in this case. Furthermore, the issues Waterbridge intends to raise are not only relevant, but critical to the determination of whether Cartwright Creek is offering adequate service at just and reasonable rates.

I. RIGHT TO INTERVENE

Cartwright Creek does not dispute the fact that Waterbridge, as one of the utility's largest potential customers, has a financial interest in the outcome of this rate case. As Cartwright Creek has told the Authority, Waterbridge and Cartwright Creek are expected to sign a service contract "during 2009."¹ Once that occurs, Waterbridge will be obligated under the terms of the contract to pay a "vacant lot fee" of \$43.75 per quarter for each of the 225 lots in the development. That fee, which corresponds to the "Sewer Access Fee" described in the utility's

¹ Prefiled testimony of Robert Cochrane at 12, line 24; Petition of Cartwright Creek, paragraph 3.

proposed tariff, may increase or decrease depending upon the outcome of this rate case. As a customer about to pay up to \$40,000 a year to Cartwright Creek, Waterbridge obviously has a legally cognizable interest in this proceeding.

While acknowledging that Waterbridge has a financial stake in the rate case, Cartwright Creek argues that the interests of Waterbridge are adequately represented by the Consumer Advocate and Protection Division ("CAPD"). By statute, the CAPD has the "duty and authority to represent the interests of Tennessee consumers of public utility services." T.C.A. § 65-4-118(b)(1). According to Cartwright Creek, allowing utility customers to intervene in this rate case alongside the CAPD would be "duplicative" and "wasteful" and could "potentially delay the prompt and orderly handling of the proceedings." Response of Cartwright Creek, at 1.

These are meritless arguments. Waterbridge has stated that it will adhere to the procedural schedule established by the Hearing Officer. Therefore, Waterbridge's participation will not "delay the prompt and orderly handling of the proceedings." Furthermore, the CAPD's statutory duty to represent "Tennessee consumers" does not preclude actual utility customers from intervening as well. If Cartwright Creek were correct, no customers could ever participate in a utility rate case once the CAPD had intervened. That, of course, is not the law in Tennessee. Under the Uniform Administrative Procedures Act, the Authority "shall" permit intervention by any person with a legal interest in the outcome of a rate case. T.C.A. §4-5-310(a). For that reason, the Authority has never, to counsel's knowledge, denied a properly filed petition to intervene by a utility ratepayer.

II. RELEVANCE OF PETITIONER'S ISSUES

The statutory right of Waterbridge to intervene in this rate case is not seriously disputed. The utility's filing opposing the petition is really more about whether some of the issues Waterbridge intends to raise are relevant to the rate case. Although relevancy objections are

typically not at issue at this stage in the proceedings, Waterbridge submits this short response to the company's argument.

As any customer might, Waterbridge opposes the large rate increase requested by Cartwright Creek. Waterbridge will also question the utility's witnesses about the rates, terms and conditions proposed by Cartwright Creek in the "service agreement" which Waterbridge must sign in order to receive service. There are three reasons why issues about the service contract are relevant to this rate case.

First, the adequacy of a utility's service is always on issue in a rate case. As one of the utility's largest potential customers, Waterbridge is entitled to raise questions about the terms and conditions of the service Cartwright Creek intends to provide. The agency "must consider the adequacy of the company's service when it is fixing rates." Tenn. Cable Television Association v. Tenn. Public Service Commission, 844 S.W.2d 151, at 160 (Tenn. Ct. App., 1992). "[T]he legislature of Tennessee has specifically commanded the commission to consider adequacy of service in setting just and reasonable rates." South Central Bell v. Tenn. Public Service Commission, 12 P.U.R. 4th 157 (Tenn. Chancery Court, 1975); see T.C.A. §65-5-103 stating, "In determining whether such increase, change or alteration [in rates and terms of service] are just and reasonable, the Authority shall take into account the safety, adequacy and efficiency, or lack thereof, of service or services furnished by the public utility."

The "adequacy and efficiency" of the services Cartwright Creek intends to offer to Waterbridge will be spelled out in the service contract. Two versions of that contract, one proposed by Waterbridge and one proposed by Cartwright Creek, are attached to the petition to intervene. Some of the terms proposed by Cartwright Creek are reasonable; others are not, such as Cartwright Creek's insistence that disputes be handled through arbitration instead of being

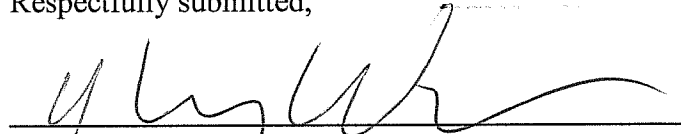
brought to the Authority. Unless the parties come to an agreement, Waterbridge has no option but to submit these contract issues to the TRA. As a captive customer, Waterbridge cannot effectively negotiate the terms and conditions of service from a monopoly provider. That is why Cartwright Creek is subject to the jurisdiction of the TRA and why issues concerning a utility's service are a mandatory part of every rate case.

Second, in supplemental testimony filed August 31, 2009, the CAPD recognized that the proposed service contract will produce nearly \$10,000 in additional revenue for Cartwright Creek in 2009 and will reduce by \$10,000 the rate increase needed by the utility. In other words, this rate case cannot be correctly decided unless the Authority determines whether the service contract will, in fact, be signed and what revenues the contract will provide to Cartwright Creek. But the contract cannot be signed and the terms cannot be finalized until the Authority resolves the remaining contract issues between the parties.

Finally, rates between an utility and one of its customers cannot be established by private contract; only the TRA has the power to determine those prices. New River Lumber Company v. Tennessee Railway Co., 238 S.W. 867, 875 (Tenn. 1922) ("No shipper and no carrier can make a special contract for special rates independently of the Commission.") Therefore, every rate and every term and condition of service contained in the "service contract" is subject to the jurisdiction of the TRA and may be addressed in this rate case.

For these reasons, Waterbridge asks that the petition to intervene be granted and that Waterbridge be allowed to raise issues concerning the adequacy, rates, terms, and conditions of service offered by Cartwright Creek to one of its largest potential customers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'H. Walker', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Petition has been served upon the following by U.S. Mail this 3rd day of September, 2009.

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