

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

CARTWRIGHT CREEK, LLC'S RESPONSE TO WATERBRIDGE  
DEVELOPMENT, INC.'S REPLY

COMES NOW Cartwright Creek, LLC, ("Cartwright") by and through counsel, with permission of Gary Hotvedt, Hearing Officer for the case at bar, and files its response to the Reply of Waterbridge Development, LLC ("Waterbridge").

Waterbridge cites cases that hold that the Authority may consider the adequacy of services provided by utilities when considering a rate increase. (Reply of Waterbridge, p.3). Those cases held that a rate increase can be conditioned upon an upgrade of services by a public utility. See *Tenn. Cable Television Assoc. v. Tenn. Public Service Commission*, 844 S.W.2d 151, 160 (Tenn. Ct. App., 1992); *South Central Bell v. Tenn. Public Service Commission*, 12 P.U.R. 4th 157 (Tenn. Chancery Court, 1975). However, none of those cases support Waterbridge's position that it must interject issues concerning a proposed contract between Waterbridge and Cartwright Creek into a hearing concerning a rate increase of Cartwright Creek.

Furthermore, Waterbridge cites a case for the proposition that rates cannot be set by private contract. (Reply of Waterbridge, p. 4). In that case, the rates to be charged by railroad companies were to be set by the Railroad Commission pursuant to the 1897

Railroad Commission Act. *New River Lumber Co. v. Tennessee R.R. Co.*, 238 S.W. 867, 875 (Tenn. 1922). As the holding is based upon the 1897 Railroad Commission Act, the case is irrelevant to the issues in the case at bar.

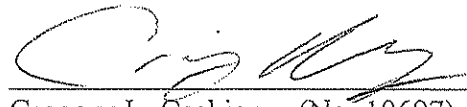
Moreover, at the hearing on September 9, 2009, Waterbridge stated that rates for Waterbridge must be established by a special contract. (Transcript of September 9, 2009 hearing (“Tr.”), p. 8). Waterbridge relies on the language in Paragraph 23(b) of the proposed tariff for the above proposition. (Tr., p. 8 and 11). However, Cartwright Creek would note that the tariff that Waterbridge quoted is only proposed and is not yet effective. Moreover, the existing tariff contains no such requirement. As such, the language in Paragraph 23(b) of the proposed tariff is not controlling.

Furthermore, if the Authority determines that Waterbridge should be allowed to intervene in order to negotiate a special contract for the proposed service to Waterbridge development, Cartwright Creek would request that the matters should be bifurcated per the request of the Consumer Advocate. This would ensure that the issues raised by Waterbridge would be addressed in a separate hearing and would also allow for the matter of the proposed rate increase of Cartwright Creek to continue without delay. Furthermore, as negotiations between the Consumer Advocate and Cartwright Creek have stalled since the proposed intervention, allowing for bifurcation could lead to a speedy settlement of the proposed general rate increase of Cartwright Creek. As such, Cartwright Creek would respectfully request a bifurcation of the issues presented by Waterbridge, should Waterbridge be allowed to intervene in the matter.

Additionally, Cartwright Creek has great concern about being forced to contract with Waterbridge, expending money to provide service to Waterbridge, and ultimately

not recouping its expenses in providing service because Waterbridge does not provide adequate security that those expenses in providing services will be recouped by Cartwright Creek. In its negotiations with Waterbridge, Cartwright Creek has been requesting such security in the form of bonding as required by Williamson County and the TRA, in addition to satisfactory indemnification provisions for operating costs shortfalls. However, as negotiations developed, Waterbridge has been reluctant to provide the security Cartwright Creek requests. Therefore, should Cartwright Creek be forced to accept a facility operating at a deficit, the existing customers will be negatively impacted as Cartwright Creek will be forced to increase its rate to cover these additional expenses. Therefore, should the Authority determine that Waterbridge is allowed to intervene and that Cartwright Creek must provide services to Waterbridge, Cartwright Creek would request that it be allowed an additional rate increase to cover the expenses in providing its services should Waterbridge fail to provide security to cover these expenses.

Respectfully submitted this the 16th day of September, 2009.



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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document on all counsel of record as listed below by placing a copy thereof, in the United States mail, postage prepaid, on this the 16th day of September, 2009.

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