

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

IN RE:

PETITION OF CARTWRIGHT CREEK, LLC)	
TO CHANGE AND INCREASE RATES)	DOCKET NO. 09-00056
AND CHARGES)	

POST HEARING BRIEF OF CARTWRIGHT CREEK, LLC

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Cartwright Creek, LLC submits this post-hearing brief in support of its Petition to increase its rates and charges as requested in the Petition. Cartwright Creek, LLC and the Consumer Advocate and Protection Division (the Consumer Advocate) reached a Settlement Agreement dated November 4, 2009, such Settlement Agreement was subsequently approved by the TRA at the November 30, 2009 hearing which authorized, among other things, the approval of new rates and charges to produce additional annual revenues of \$98,054.00. This post-hearing brief will primarily address the issues in this docket which were unresolved at the hearing by the Consumer Advocate and Protection Division (the Consumer Advocate) as identified in the Joint Petition regarding issues not resolved by proposed Settlement Agreement filed in this docket on November 23, 2009.

I. Introduction

Cartwright Creek, LLC provides sewer service to approximately 495 residential customers and 35 commercial customers within its service area in Williamson County. Cartwright Creek, LLC was granted its original certificate of public convenience and necessity by the Tennessee Public Service Commission in September 2004. As a sewer utility the operation of Cartwright Creek, LLC's sewer system is strictly regulated by the Tennessee Department of Environment and Conservation (TDEC).

Cartwright Creek, LLC must operate, maintain and replace its sewer infrastructure to meet the rules and regulations of TDEC governing sewer systems and must comply with the terms and parameters of its NPDES permit issued by TDEC to discourage its effluent into the Harpeth River. If Cartwright Creek, LLC fails to comply with the TDEC regulations or with the terms and parameters of its NPDES permit, Cartwright Creek and its owners are subject to civil penalties issued by TDEC, and the owners of Cartwright Creek, LLC could be criminally prosecuted for such noncompliance. T.C.A. § 69-3-115. Unless the Authority approves the increased tap fees requested by Cartwright Creek, LLC in order to provide Cartwright Creek, LLC with sufficient contribution in aid of construction to maintain and replace its sewer infrastructure, Cartwright Creek cannot meet its service obligations or and cannot meet its environmental obligations to its customers and the citizens of Tennessee who use and enjoy the Harpeth River.

Cartwright Creek, LLC asserts that in developing its revenue requirements, the Authority should recognize Cartwright Creek, LLC is a small sewer utility. As a small utility, Cartwright Creek, LLC has fewer customers than most municipal sewer systems which are able to spread its cost of providing sewer service over a large customer base. Cartwright Creek, LLC is unable to obtain funding for capital improvements. Cartwright Creek, LLC is owned 90% by Sheaffer International, LLC, a Delaware limited liability company and 10% by MRS, LLC a Tennessee limited liability company. Since Cartwright Creek, LLC purchased Cartwright Creek Utility Company, it has incurred losses in excess of \$600,000.00.

II. Issues not resolved by the Settlement Agreement

Cartwright Creek and the Consumer Advocate have identified 5 issues which were not addressed in the Settlement Agreement and which Cartwright Creek's position is summarized as follows:

(1) Tap Fee Increase

Tap fees should be treated as contributions in aid of construction and should not be considered revenue to Cartwright Creek, LLC. The Uniform System of Accounts for Wastewater Utilities (NARUC, 1996) states that Contributions in Aid of Construction (Account 271) shall include "any amount or item of money, services or property received by a utility, from any person or governmental agency, any portion of which is provided at no cost to the utility, and which is utility to offset the acquisition, improvement or construction costs of the utility's property, facilities, or equipment used to provide utility services to the public. Accordingly, the inclusion as revenue as suggested by the Consumer Advocate is not proper.

Cartwright Creek, LLC has never received tap fees since it purchased the facility in 2005. The Consumer Advocate in its statement of position filed November 25, 2009 took the position that tap fees should be considered revenue based on the rule of the TRA in Docket No. 09-00034. Up until the filing of the Joint Petition, the Consumer Advocate did not assert any position with respect to the classification of tap fee income. To assert any position at this time is inappropriate and creates undue hardship on Cartwright Creek, LLC. The Consumer Advocate did not provide any basis for its position and its testimony should be stricken from the record. The Consumer Advocate provided no facts to the Authority upon which the Authority can rely in its position that tap fee income be classified as revenue or that the amount of tap fees requested by Cartwright Creek of \$9,000.00 are excessive. The Consumer Advocate fails to acknowledge and the authority needs to be aware that the system is in need of repair and upgrades. If taps are not sold then there will not be monies available to repair the system. If taps are sold for less than \$9,000.00 there will still be an inadequate amount of funds necessary to repair and upgrade the system. The current Grassland customers will suffer if the needed repairs and upgrades cannot be made. There has been significant interest expressed for the purchase of taps and Cartwright Creek, LLC is confident that

\$9,000.00 will be acceptable to prospective purchasers. The money received will be used entirely to fund indirect and direct costs associated with the repair and upgrades to the system and Cartwright Creek, LLC is prepared to establish an escrow so that funds will be used for such purpose.

Previous rate case rulings and the Settlement Agreement, while allowing for the provision of depreciation to be used for income tax purposes, have not provided sufficient revenues to cover depreciation on contributed capital. As a result, there have been no excessive operating costs available to establish reserves to fund for the systematic replacement of the plant. Although in this rate case the Company has sought to recover modest depreciation provisions, the Settlement Agreement does not allow for any funds to recover depreciation expenses. The Company is seeking an increase in its tap fee in order to offset the need to increase future rates to continue to make repairs and improvements to the facility.

(2) Sewer Access Fee

Cartwright Creek, LLC is requesting a Sewer Access Fee for customers that have purchased a tap, but have not elected to connect to the system. The company will not charge a fee to a purchaser of a tap if the company is unable to connect to the system due to the service connection being denied by Cartwright Creek, LLC.

(3) Rate Design

The Company has approximately 495 residential customers and 35 commercial customers. For residential customers, the Company currently does not have the administrative and financial resources to bill residential customers based upon flow, nor were the expenses to convert to and maintain a flow based billing included in the Settlement Agreement. The Company is proposing to continue billing residential customers based upon the number of bedrooms and during 2010

investigate the administrative and financial resources, rate design, and tariff modifications required to convert to a flow-based residential billing system.

For commercial customers, the Company will bill based upon flow. The Company will request the water use information once annually from City of Franklin and Harpeth Valley Utility District and then will calculate an average monthly volume based upon the data. This average monthly volume will be used with the "rate per 1000 gallons" in the final approved tariff to arrive at a monthly bill, plus any TRA approved bonding surcharges and taxes, where applicable.

The per 1000 gallon rate used in the proposed tariff was developed from actual customer usage data obtained by the Company and provided to the staff in response to a data request. In this recent evaluation of actual water usage by its commercial customers, the Company excluded flows that the water supplier indicated were separate irrigation meters and thus provided a more accurate representation of actual volume discharged. Previous commercial customer billings reflected what Cartwright Creek, LLC, believed were estimated flow volumes that the customers and the predecessor utility company agreed upon at the time of service connection. Under the proposed tariff, total revenues received from commercial customers will be increased by 40% and billing based upon actual volumes will result in some customers receiving actual rate increases higher or lower than 40% based upon their actual water usage. Any customer whose rate increase exceeds 40% will reflect actual water usage greater than the Company's estimated usage. Customers whose usage is less than their previously estimated usage will either receive an increase of less than 40% or a decrease in monthly bill, and thus will thus accrue a benefit from their water conservation.

(4) Claims from individuals that taps have been purchased and no connection provided.

Cartwright Creek, LLC purchased the facility in 2005 and at that time there was no disclosure made by Cartwright Creek Utility Company that there were any liabilities of such company to either

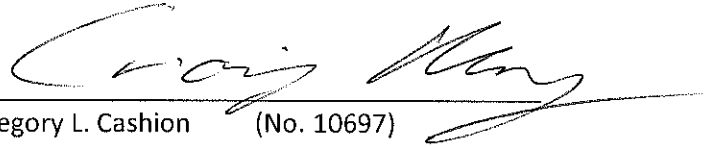
connect individuals or entities that paid for taps or the transfer of taps to a purchaser. Cartwright Creek, LLC is willing to submit any disputes to the TRA for final determination with specific requirements of a potential claimant to be identified in the tariff. Such evidence or proof would include, but not be limited to, purchase agreement, assignment document, cancelled check or closing statement.

Cartwright Creek is willing to subject itself to the jurisdiction of the TRA to resolve disputes but request that the form of consideration be taken into account when determining whether a tap should be transferred and the cost if any to the potential customer. The recent documentation supplied by the General Counsel for the TRA suggested that an easement was granted in exchange for a tap. Thus, there was no money that was received by Cartwright Creek Utility Company and thus no benefit to Cartwright Creek, LLC.

(5) Disconnection/Reconnection Fee

Cartwright Creek, LLC is requesting a disconnection/reconnection fee of \$100/\$100 in its proposed tariff. There is nothing in the pre filed testimony or the testimony from the hearing that suggests that this fee is excessive or unwarranted. The company is not physically able to shut off a customer's sewer or water so Cartwright Creek, LLC's options to collect are limited to sending out collection letters, legal assistance and the filing and recording of liens, all of which would exceed \$100.00.

Respectfully submitted this the 7th day of December, 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 7th day of December, 2009.

Mary White
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