

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)	

PETITION FOR RECONSIDERATION OF CARTWRIGHT CREEK, LLC

Cartwright Creek, LLC ("Cartwright Creek") submits this Petition for Reconsideration of the Order issued by the Authority regarding Cartwright Creek's Petition of to Change and Increase Rates and Charges. For the reasons set forth below, Cartwright Creek asks for the reconsideration of the Authority's decision to set the tap fees of Cartwright Creek at \$5,000.00 rather than the requested amount of \$9,000.00. Cartwright Creek also appeals the decision to treat such fees as revenue. Additionally, Cartwright Creek relies upon and incorporates by reference its position regarding tap fees as stated in its Post-Hearing Brief.

Argument

I. Tap Fees should not be treated as revenue

The Authority held that Cartwright Creek's tap fees should be treated as revenue. The Authority did so in an attempt to be "consistent with the holding of the Authority in Docket Number 09-00034." The Authority's holding is inconsistent with the holding in Docket Number 09-00034. In that case, the Authority did hold that tap fees should be considered revenue; however, the Authority did not force the Petitioner to escrow such funds to be used only with the consent of the Authority. Essentially, the tap fees would be considered revenue, and treated like any other form of revenue.

In the case at bar, the Authority held that the tap fees should be considered revenue, but that special rules apply to the tap fees that do not apply to all other forms of revenue. The Authority forces this "revenue" to be escrowed and only be used with the consent of the Authority. Such a holding foists taxes upon Cartwright Creek on funds for which it has no control. This restriction is not supported by, nor is it "consistent" with the Authority's prior decisions. As such, Cartwright Creek requests that its tap fees be either (1) escrowed, only to be used with preapproval from the Authority, and not considered revenue; or (2) considered revenue with only the restrictions that are placed on all other forms of revenue.

II. The Tap Fee of Cartwright Creek should be increased to \$9,000.00

a. Necessity to Continue Service to Existing and Potential Customers

Since Cartwright Creek, LLC purchased Cartwright Creek Utility Company it has incurred losses in excess of \$600,000.00. Combined with the losses already sustained by the facility, the failure to receive adequate tap fees could cause significant harm to the customers of Cartwright Creek. There is a lack of available funds for repairs and upgrades to the system the need of which has been well documented in the original Petition and subsequent responses to the TRA staff and CAPD information requests. Cartwright Creek asks that a tap fee be instituted that allows Cartwright Creek to have sufficient funds in a timely manner to repair and upgrade its facilities. Failure to set an adequate tap fee will limit the ability of Cartwright Creek to complete repairs and upgrades and negatively impact the customers of Cartwright Creek. Based on the foregoing, Cartwright Creek's requested tap fee of \$9,000.00 should be approved.

b. Funds to be Escrowed and Used for the Sole Purpose of Repairing and Upgrading Facilities

As has been proposed by Cartwright Creek, funds collected from tap fees will be escrowed for the purposes of repairs and upgrades (but not considered revenue). As explained in Cartwright Creek's testimony, the first use of the escrowed funds will be to perform the detailed field investigations

and engineering to better define the scope and costs of the repairs and upgrades so that the funds are spent in a defined, cost effective manner. Additionally, in accordance with the authority's decision, use of the funds from the escrow account will be reviewed and accepted by TRA staff and therefore, the escrow account will ensure that such funds are used properly for the benefit of Cartwright Creek customers.

As stated above, if such fees are considered revenue, these fees should be treated like all other forms of revenue. The inclusion of tap fees as revenue would require that the Cartwright Creek further constrain the use of tap fee proceeds to fund needed improvements. Cartwright Creek's bank will require an additional cash collateral increase to the current Letter of Credit posted with the Authority to comply with its financial security requirements. The inclusion of tap fee revenue in this calculation will require the Cartwright Creek to further restrict tap fee proceeds to facilitate the required financial security increase associated with any tap fee revenue increase.

c. Tap Fees of Similar Utilities are in Excess of \$9,000.00

The Authority relied upon the statement that the City of Brentwood currently charges the highest tap fee in the area at \$5,000.00. Excerpt of Transcript of Authority Conference, December 14, 2009, p. 4; attached hereto as **Exhibit 1**. See also the March 2, 2010 Order Approving Settlement Agreement and Determining Contested Issues. The Authority therefore capped the tap fee of Cartwright Creek at \$5,000.00. *Id.*

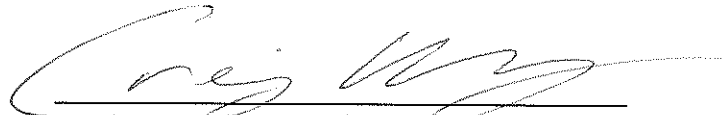
However, the City of Brentwood actually charges a tap fee of \$10,000.00 for dwellings outside of the city limits. Brentwood Municipal Code § 70-132(a); attached hereto as **Exhibit 2**. Cartwright Creek's customers are similarly situated, as the area served by Cartwright Creek is solely outside of any city limits. As such, it was improper to rely on the inaccurate statement that the highest tap fee in the area is \$5,000.00.

Moreover, the City of Brentwood outsources its wastewater treatment services to Nashville Metro. See Annual Operating Budget of the City of Brentwood; attached hereto as **Exhibit 3**. As such, Brentwood utilizes its tap fees AND monthly user fees for maintenance and repair of only its collection system. As such, the proposed tap fee of Cartwright Creek is entirely reasonable as it is less than the highest tap fee and serves the purpose of providing for the renovation and repair of both collection and treatment facilities. Based on the foregoing and in light of the \$10,000.00 fee charged by the City of Brentwood, Cartwright Creek's requested tap fee of \$9,000.00 is entirely appropriate and should be approved by the Authority.

III. Conclusion

For the reasons set forth above, Cartwright Creek would respectfully request that the Authority grant the relief sought by Cartwright Creek and that the tap fee for new customers be set at \$9,000.00. Additionally, Cartwright Creek requests that its tap fees not be considered revenue. In the alternative, pursuant to T.C.A. 4-5-317(c), Cartwright Creek would request that additional proceedings be granted with the limited scope of oral argument for the purposes of reconsidering the amount of the tap fee to be charged new customers and whether such fees should be considered revenue.

Respectfully submitted this the 25th day of March, 2010.



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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 25th day of March, 2010.

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