

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:

**PETITION OF CARTWRIGHT CREEK,
LLC TO CHANGE AND INCREASE
RATES AND CHARGES**

DOCKET NO. 09-00056

)
)
)
)
) electronically filed 4/5/10 2pm

**CONSUMER ADVOCATE'S RESPONSE TO CARTWRIGHT CREEK'S PETITION
FOR RECONSIDERATION**

Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), respectfully provides the following response to Cartwright Creek LLC's ("Cartwright Creek" or "Company") *Petition for Reconsideration*. Additionally, the Consumer Advocate relies upon and incorporates by reference any and all positions regarding tap fees as stated in our Post-Hearing Brief and at the November 30, 2009 Hearing on the Merits.

PETITION FOR RECONSIDERATION SHOULD BE DISMISSED AS UNTIMELY

On March 2, 2010, the Tennessee Regulatory Authority ("TRA") filed an *Order Approving Settlement Agreement and Determining Contested Issues* ("Order") in the above-referenced docket. On March 25, 2010, twenty-three days later, Cartwright Creek filed their *Petition for Reconsideration*. The Consumer Advocate received notice of this filing by mail on March 26, 2010. TRA Rule 1220-1-2-.20(1) clearly states, "any petition for reconsideration shall be filed within (15) days after the date of the entry of an order." As such, Cartwright Creek's Petition is untimely, and should be denied by the TRA for failure to adhere to the time period as proscribed by TRA Rule 1220-1-2-.20(1).

CARTWRIGHT CREEK HAS FAILED TO PROVIDE RELEVANT EVIDENCE WARRANTING AN INCREASE IN TAP FEES

The TRA stated in their Order that an increase in tap fees for new customers is warranted and voted to unanimously approve a tap fee of \$5,000, consistent with the City of Brentwood, the highest known tap fee in the area.¹ Cartwright Creek has since alleged that the City of Brentwood charges a \$10,000 tap fee to those residents located outside the city limits, and as a result, Cartwright Creek should be permitted to charge \$9,000 as requested.² As was clearly outlined in the Consumer Advocate's Post-Hearing Brief, the Consumer Advocate is of the opinion that Cartwright Creek has failed to meet their burden in justifying the requested tap fee increase, and that no increase should be arbitrarily granted based on speculative facts.³ Cartwright Creek has failed to provide verifiable evidence demonstrating anticipated costs to repair the system, nor have they provided any evidence as to the existence of potential customers willing or able to tap onto their system.⁴

In light of Cartwright Creek's contention regarding the City of Brentwood's tap fees, submitted in Cartwright Creek's *Petition for Reconsideration*, the Consumer Advocate would point out that tap fees are exclusive to individual utilities and should be analyzed on a case by case basis. Wastewater utilities regulated by the TRA must present evidence to justify any

¹ TRA Docket 09-00056, *Order Approving Settlement Agreement and Determining Contested Issues* (March 2, 2010), at 7.

² TRA Docket 09-00056, *Petition for Reconsideration of Cartwright Creek, LLC* (March 25, 2010), at 3.

³ TRA Docket 09-00056, *Post-Hearing Brief of the Consumer Advocate* (December 07, 2010), at 4-8.

⁴ *Id.*

increase in rates, namely, the utility must demonstrate why the current tap fee is inadequate to meet their needs. The mere fact that a neighboring utility collects tap fees in amounts in excess of \$5,000 is of no merit to warrant an increase. While it is important to understand the industry practices of similarly situated utilities in the area, solely basing the need for a rate increase on what other companies are charging negates the principle that a utility's rates are tied to their financial needs.

The Company has also raised a new argument stating, "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" because of the requirement that tap fee proceeds be treated as revenue.⁵ However, Cartwright Creek has failed to introduce any evidence supporting this argument. TRA Rule 1220-1-2-.20(1) clearly outlines the process for presenting new evidence in a Petition for Reconsideration:

if the petitioners seek to present new evidence, the petition shall contain a statement of the cause for the failure to introduce the proposed new evidence in the original proceeding, a detailed description of any such new evidence proposed to be introduced, including copies of documents sought to be introduced, identities of proposed witnesses, and summaries of any testimony sought to be presented.

Cartwright Creek has failed to meet these minimum standards. As such, this new argument should be disregarded.

⁵ TRA Docket 09-00056, *Petition for Reconsideration of Cartwright Creek, LLC* (March 25, 2010), at 3.

TAP FEE PROCEEDS SHOULD BE TREATED AS REVENUE AND ESCROW TREATMENT THEREAFTER IS NOT INCONSISTENT WITH PREVIOUS RULINGS

Cartwright Creek argues that the TRA's Order requiring the Company to book tap fees as revenue, as well as requiring the Company to escrow such revenue for necessary system repairs and upgrades, is inconsistent with previous TRA opinions.⁶ As a result, Cartwright Creek demands that all tap fee proceeds either be treated as revenue or escrowed, but not both.⁷

Cartwright Creek relies on the holding in TRA Docket No. 09-00034, involving neighboring wastewater utility Lynnwood Utility Corporation, wherein the TRA required Lynnwood to book tap fees as revenue, but did not require any additional escrow treatment thereafter.⁸ In their analysis, however, Cartwright Creek has failed to recognize the TRA's authority under TRA Rule 1220-4-13-.07(8)-(9), which permits the TRA to require a wastewater utility to maintain a reserve/escrow account after review of a utility's financial condition. In addition, the TRA may specify that certain conditions be met in relation to any reserve/escrow account established for the purpose of paying for non-routine operation and maintenance expenses.⁹

The Consumer Advocate is of the opinion that the TRA has not made a ruling inconsistent with the holding in TRA Docket No. 09-00034 by requiring Cartwright Creek to treat tap fee proceeds as revenue and thereafter requiring Cartwright Creek to escrow those

⁶ *Id.* at 1.

⁷ *Id.* at 2.

⁸ *Id.* at 1.

⁹ Tenn. Comp. R. & Regs. 1220-4-13-.07(9) (2006).

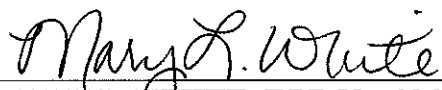
proceeds for necessary system repairs and upgrades. Rather, the TRA has simply imposed additional standards above and beyond those required in Docket No. 09-00034 by exercising their authority under TRA Rule 1220-4-13-.07(8)-(9).

CONCLUSION

For the foregoing reasons, the Consumer Advocate respectfully requests the TRA to deny Cartwright Creek's *Petition for Reconsideration*. Cartwright Creek's *Petition for Reconsideration* is untimely and presents no relevant evidence supporting the Company's request that tap fee proceeds should be increased or escrowed.

RESPECTFULLY SUBMITTED,

ROBERT E. COOPER, JR., No. 010934
Attorney General and Reporter


MARY L. WHITE (BPR No. 026659)
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
Phone: (615) 741- 4657
Fax: (615) 741-1026

Dated: April 5th, 2010.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

Tom Kolschowsky
Counsel for Cartwright Creek
Sheaffer International, LLC
800 Roosevelt Road, Ste A-120
Glen Ellyn, IL 60137
(630) 469-3331

Gregory L. Cashion
Craig N. Mangum
Smith Cashion & Orr, PLC
231 Third Avenue North
Nashville, TN 37201

This, the 5th day of April, 2010.



MARY L. WHITE