

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 12, 2015

IN RE:

PETITION OF KINGS CHAPEL CAPACITY  
FOR EXEMPTION FROM FINANCIAL  
SECURITY REQUIRED BY THE TRA'S  
WASTEWATER REGULATIONS

)  
)  
)  
)  
)  
)

DOCKET NO.  
13-00141

---

ORDER DENYING REQUEST FOR  
ALTERNATIVE FINANCIAL SECURITY

---

This matter came before Vice Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director David F. Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 13, 2014, to hear and consider the *Request to Continue Exemption* ("Petition") filed by Kings Chapel Capacity, LLC ("Kings Chapel", "KCC" or the "Company") on October 31, 2013. In the *Petition*, Kings Chapel requests the Authority to approve financial security required by Williamson County, Tennessee, as an alternative form of financial security pursuant to TRA Rule 1220-4-13-.07(5).

**BACKGROUND**

Kings Chapel was granted a Certificate of Public Convenience and Necessity ("CCN") to serve the Ashby Communities Development in Williamson County by Order dated January 3, 2006.<sup>1</sup> In that Order, the panel noted that Kings Chapel had changed the tariff filed with its

---

<sup>1</sup> In re: *Petition of Kings Chapel Capacity, LLC for a Certificate of Convenience and Necessity to Serve an Area in Williamson County, Tennessee Known as Ashby Community*, Docket No. 04-00335, *Order Approving Petition for Certificate of Public Convenience and Necessity* (January 3, 2006).

petition for a CCN to include a function that would dictate the manner in which Kings Chapel could recover the costs associated with its required bond from Williamson County.<sup>2</sup> The panel ordered Kings Chapel to list the bonding requirement of Williamson County as a separate line item on its customers' bills.<sup>3</sup>

The TRA promulgated public necessity rules for wastewater utilities, effective December 29, 2005, through June 12, 2006. The permanent TRA Rules 1220-4-13 became effective on June 12, 2006. The regulations pertaining to financial security for regulated wastewater utilities, read in pertinent part:

**1220-4-13-.07 FINANCIAL SECURITY.**

(1) All public wastewater utilities either holding or seeking to hold a CCN and owning wastewater systems shall furnish to the Authority, prior to providing service to a customer, acceptable financial security using a format prescribed by the Authority. The public wastewater utility shall ensure that such financial security is maintained in continuous force in conformity to these rules.

(2) Proof of financial security shall be furnished to the Authority for review and approval as follows:

(a) On or before July 1 of each year, public wastewater utilities holding a CCN and providing service shall file proof with the Authority of a security in the amount of one hundred percent (100%) of the gross annual revenue in the most recent Authority Form UD20 or \$20,000, whichever is greater. If no UD20 has been filed, the public utility shall file proof of security in the amount of one hundred percent (100%) of the estimated gross annual revenue forecasted in the CCN application submitted to the Authority or \$20,000, whichever is greater. Utilities holding a CCN and not providing a service shall provide a security in the amount of \$20,000.

\* \* \*

(c) The Authority shall review each subsequent UD20, existing financial securities pursuant to local government requirements and any

---

<sup>2</sup> The tariff read as follows: "Bonding Cost. The Company is currently required to post a bond to assure continued operation of the wastewater system by the Williamson County government. The cost of such bond, which is subject to change by the Williamson County government, is passed along to the customer, without markup by the Company, as a separate line item on each customer's monthly bill and is titled 'Williamson County Bonding Charge.'" The tariff also contains a formula to calculate the monthly charge for the bonding cost. *See In re: Petition of Kings Chapel Capacity, LLC for a Certificate of Convenience and Necessity to Serve an Area in Williamson County, Tennessee Known as Ashby Community*, Docket No. 04-00335, *Kings Chapel Capacity Wastewater Service Tariff*, Sheet # 6 (September 22, 2005).

<sup>3</sup> *In re: Petition of Kings Chapel Capacity, LLC for a Certificate of Convenience and Necessity to Serve an Area in Williamson County, Tennessee Known as Ashby Community*, Docket No. 04-00335, *Order Approving Petition for Certificate of Public Convenience and Necessity*, p. 6 (January 3, 2006).

other information that the Authority may request to determine the appropriate amount of financial security required for each public wastewater utility based upon the annual gross revenue information submitted.

(3) Sufficient financial security shall be provided in one of the following manners:

(a) A bond issued by any duly licensed commercial bonding or insurance company authorized to do business in Tennessee; or

(b) An irrevocable letter of credit issued by a financial institution acceptable to the Authority.

\* \* \*

(5) If the public wastewater utility proposes to post financial security other than the type or amount permitted above, it must file with the Authority by May 1 of each year a petition requesting acceptance of the security. A hearing shall be held to determine the amount of the financial security and if the form of the proposed financial security serves the public interest. At this hearing, the burden of proof shall be on the public wastewater utility to show that the proposed financial security and the proposed amount will be in the public interest. The public wastewater utility shall comply with Rule 1220-4-13-.07(2) until the alternative financial security is approved by the Authority.

(6) Financial securities required by any local government may be counted by the Authority in fulfilling this financial security obligation. The public wastewater utility shall file with the Authority by May 1 of each year evidence of any financial security required by any local government and a written request that the Authority count the security toward fulfilling the requirements of this Chapter.

On February 27, 2006, Kings Chapel filed a Petition requesting that the TRA exempt it from its financial security obligations under the TRA rule, asserting that

as it has already fulfilled the bonding requirements of the local government of Williamson County, Tennessee, it has ostensibly proven that it has the financial security necessary to fulfill the requirements of TRA Rule 1220-4-13-.07. As a result, the Company contends that it should not be required to provide financial security in accordance with Rule 1220-4-13-.07, because to do so would constitute additional, or excessive, financial security beyond that which the Rule mandates, and such would be burdensome to the Company.<sup>4</sup>

Further, Kings Chapel “proffered proof of its financial condition and security, which includes two (2) Letters of Credit, which satisfy the performance and maintenance costs of the wastewater

---

<sup>4</sup> *In re: Petition of Kings Chapel Capacity for Exemption from Financial Security as Required by the Tennessee Regulatory Authority’s Proposed Wastewater Regulations*, Docket No. 06-00061, *Order Granting Petition*, p. 2 (December 7, 2006).

treatment system and name the Williamson County Planning Commission as beneficiary.”<sup>5</sup> The panel granted the Petition, insofar as it requested a finding that the security submitted by the Company to Williamson County fulfills the requirements of TRA Rule 1220-4-13-.07.<sup>6</sup> Kings Chapel filed requests to continue the “exemption” from the TRA’s financial security requirement in 2007 and 2008 on the basis of the Williamson County bonding requirements, which the Authority subsequently granted.<sup>7</sup>

On May 8, 2008, Kings Chapel received notice from the Williamson County Planning Commission that its total bonding requirement had been reduced from \$1,780,248 to \$260,400. Of that amount, \$151,642 was considered a permanent utility bond related to the treatment and dispersal of wastewater.<sup>8</sup> Until that time, the developer of Ashby Communities had funded the bonding costs. The TRA subsequently approved a financing transaction that allowed the Company to borrow up to \$152,000 from the developer to finance the bonding costs.<sup>9</sup>

On October 29, 2010, Kings Chapel filed another request to continue the “exemption” on the basis of the Williamson County bonding requirements.<sup>10</sup> Because of additional information received from the Company about the Williamson County bond reduction and financing in the dockets related thereto, the Authority began to have questions about the usefulness of the Williamson County bond for the purposes set forth in the TRA rules. Specifically, as noted in the bond form provided in TRA Rule 1220-4-13-.08, the required bond may be used by the TRA

---

<sup>5</sup> *Id.* at 2-3. The Letters of Credit initially were for \$651,000 and \$998,208. *Id.* at 3.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *In re: Petition of Kings Chapel Capacity for Exemption from Financial Security - Request to Continue Exemption*, Docket No. 07-00151, *Order Granting Petition* (September 13, 2007) and *In re: Petition of Kings Chapel Capacity for Exemption from Financial Security*, Docket No. 08-00069, *Order Granting Petition* (September 16, 2008).

<sup>8</sup> *See In re: Petition of Kings Chapel Capacity for Approval of a Loan in Order to Finance Bonding Costs Required by the Williamson County Planning Commission*, Docket No. 08-00181, *Order Approving Financing Transaction*, p. 2 (December 23, 2008).

<sup>9</sup> *Id.* at 2-3.

<sup>10</sup> Kings Chapel did not file its annual request for alternative security in 2009 as required by the TRA Rule.

“to enable the continued operation of the public wastewater utility.”<sup>11</sup> In a data request to Kings Chapel in TRA Docket No. 10-00207, TRA Staff asked the Company to “[p]rovide an explanation of the purpose of the Williamson County Bond.”<sup>12</sup> In addition, TRA Staff asked: “Will the Williamson County Bond amount be awarded to the TRA to cover operation expenses in the event Kings Chapel Capacity ceases operations?”<sup>13</sup> Although the Company filed a request for more time to file its response, it did not respond to the questions presented by TRA Staff.

Williamson County, however, sent a letter to the TRA’s General Counsel expressing its concerns over the issues raised in the data request. Specifically, Williamson County notes “[a]s you know from our past discussions, the bond required by Williamson County is for the installation of said system and a maintenance term for same. It is not intended for operation of the system in the event of financial or any other difficulties of the utility or operator of the system.”<sup>14</sup>

Although TRA Rule 1220-4-13-.07(6) allows financial securities required by a local government to be counted as fulfilling the financial security obligation at the discretion of the Authority, since Williamson County confirmed that its required bond would provide no assistance in the utility’s continued operation in case of a failure of the utility, the Williamson County bonding requirements did not meet the stated purpose of the bond requirement under the TRA Rule. The TRA’s General Counsel sent a letter to Kings Chapel on May 20, 2011, attaching a copy of the letter from Williamson County and asking if, in light of the issues raised,

---

<sup>11</sup> Similarly, the Letter of Credit form in the same Rule provides that its purpose is “to secure payment of any monetary obligation imposed against the Company, its representatives, successors or assigns, in any contested case proceeding brought ... by or on behalf of the Authority.”

<sup>12</sup> *In re: Petition of Kings Chapel Capacity for Exemption from Financial Security as Required by the TRA’s Wastewater Regulations*, Docket No. 10-00207, *Data Request*, p. 2 (November 29, 2010).

<sup>13</sup> *Id.*

<sup>14</sup> *In re: Petition of Kings Chapel Capacity for Exemption from Financial Security as Required by the TRA’s Wastewater Regulations*, Docket No. 10-00207, Letter from Kristi Dunlap Earwood to J. Richard Collier, p. 1 (November 10, 2010).

the Company still intended to seek an exemption from providing financial security. General Counsel Collier states:

Due to circumstances surrounding Williamson County's bond requirement, it appears that the bond can no longer be used as a substitute for the financial security required in TRA Rule 1220-4-13-.07(2). If King's Chapel is seeking an exemption, such request must address the concerns raised by Williamson County and explain how the financial security provided to Williamson County meets the requirements of the TRA insofar as that security is for the "continued operation of the public wastewater utility."<sup>15</sup>

Kings Chapel did not respond to the questions raised in this letter, either.<sup>16</sup> The TRA's General Counsel sent a letter to Kings Chapel on July 3, 2012, notifying the Company that since it had not filed a proposal for alternative financing nor had financial security in place, Kings Chapel was in violation of TRA rules and could be subject to fines and revocation of its CCN.<sup>17</sup>

### **THE PETITION**

On October 31, 2013, Kings Chapel filed its *Petition* in this docket. In the *Petition*, Kings Chapel requests that the TRA "**continue** to exempt it from providing additional financial security and instead find that the financial security already in place and required by the local government authority is adequate to fulfill the requirements of the TRA's rules."<sup>18</sup> The Company asserts that the bonds required by Williamson County are sufficient to fulfill the requirements of TRA Rule 1220-4-13-.07.

Staff members of the TRA's Compliance Division were designated as a Party ("Party Staff") in this docket.<sup>19</sup> Although they have not officially intervened, Party Staff asked Kings

---

<sup>15</sup> See *Data Request*, Exhibit 1, Letter from J. Richard Collier to John Powell, dated May 20, 2011 (November 8, 2013).

<sup>16</sup> TRA Docket No. 10-00207 remains open. However, because requests for alternative security must be filed annually, the 2010 request is now moot.

<sup>17</sup> See *Data Request*, Exhibit 2, Letter from Jean A. Stone to John Powell dated July 3, 2012 (November 8, 2013).

<sup>18</sup> *Request to Continue Exemption*, p. 1 (October 31, 2013) (emphasis supplied).

<sup>19</sup> Members of the Compliance Division designated as Party Staff in this matter are Jerry Kettles, Shiva Bozarth, Ectory Lawless and Henry Bayiye.

Chapel a number of questions about the Williamson County bonds, and the responses were filed in this docket.

### **FINDINGS AND CONCLUSIONS**

At the regularly scheduled Authority Conference held on January 13, 2014, Mr. John Powell, owner of Kings Chapel, was sworn and testified on behalf of the Company.<sup>20</sup> Mr. Powell presented the history of the Williamson County bonds and Kings Chapel's previous requests for an exemption from the TRA's financial security requirements based on those bonds.<sup>21</sup>

The *Petition* stated that the Company had "attached a copy of its bonds that are presently in force and required by the Williamson County Government."<sup>22</sup> However, no copies were attached. Party Staff's subsequent Data Request asked Kings Chapel to provide "copies of all bonds required by the Williamson County Planning Commission."<sup>23</sup> Kings Chapel responded with an email from Williamson County Government with a list of the current Letters of Credit in the amounts of \$65,000 for "Performance Collection System" and \$12,000 for "Maintenance Collection System."<sup>24</sup> The actual Letters of Credit were not included in the email. At the Authority Conference, the panel again asked Mr. Powell if he had a copy of the Letters of Credit. Mr. Powell responded "in our initial petition, we did supply a letter of credit."<sup>25</sup>

In a data request, Party Staff also asked: "Who is the beneficiary of the bonds required by the Williamson County Planning Commission."<sup>26</sup> Kings Chapel responded: "KCC objects to

---

<sup>20</sup> After this matter was placed on the Conference Agenda for consideration on December 18, 2013, Mr. Powell notified the Authority that he would be "out of the country and unable to attend" and requested deferral until the next TRA conference. See Letter from John Powell to Chairman Allison (December 9, 2013). The request for deferral was granted by the panel. See Transcript of Proceedings, p. 4 (December 18, 2013).

<sup>21</sup> See Transcript of Proceeding, pp. 23-26 (January 13, 2014).

<sup>22</sup> *Petition*, p. 2 (October 31, 2013).

<sup>23</sup> Data Request, p. 1 (November 8, 2013).

<sup>24</sup> *Second Initial Response*, Attachment 1 (November 22, 2013).

<sup>25</sup> Transcript of Proceedings, p. 32 (January 13, 2014).

<sup>26</sup> Data Request, p. 1 (November 8, 2013).

this question because it is outside the scope of this docket. The scope of this docket is contained within the Petition of KCC and it relates to KCC's request to the TRA to continue to exempt it from providing additional financial security in accordance with TRA Rule 1220-4-13-.07."<sup>27</sup> At the Authority Conference, the panel asked who could draw on the Letters of Credit in case of default and Mr. Powell responded "Williamson County."<sup>28</sup> When asked whether the Authority could draw on the Letters of Credit, Mr. Powell responded "No."<sup>29</sup>

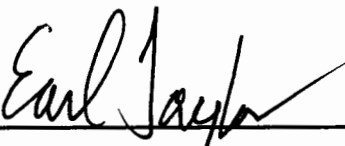
At the conclusion of Mr. Powell's presentation, the panel considered the evidence presented and found that Kings Chapel Capacity had not met its burden of proof in this matter, since no evidence was presented that the Letters of Credit that meet Williamson County's bonding requirements are for the purpose of the continued operation of the public wastewater utility as required by TRA Rule 1220-13-.07. Therefore, the panel denied the *Petition*.

**IT IS THEREFORE ORDERED THAT:**

The *Request to Continue Exemption* filed by Kings Chapel Capacity, LLC is denied.

**Vice Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director David F. Jones concur.**

**ATTEST:**

  
\_\_\_\_\_  
**Earl R. Taylor, Executive Director**

<sup>27</sup> *Second Initial Response*, p. 1 (November 22, 2013).

<sup>28</sup> Transcript of Proceedings, p. 33 (January 13, 2014).

<sup>29</sup> *Id.*