

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 26, 2015

IN RE:

**SHOW CAUSE PROCEEDING AGAINST KING'S
CHAPEL CAPACITY, LLC, FOR ALLEGED
VIOLATIONS OF WASTEWATER UTILITY LAWS
& TRA RULES**

**DOCKET NO.
14-00007**

**ORDER HOLDING DOCKET IN ABEYANCE
PENDING RESOLUTION OF KING'S CHAPEL'S
TARIFF TO TRUE-UP BONDING COSTS IN DOCKET NO. 14-00158**

This matter is before the Hearing Officer of the Tennessee Regulatory Authority ("TRA" or "Authority") to consider the procedural posture of this proceeding in light of a tariff to true-up the security bonding costs that it recovers from customers filed by King's Chapel Capacity, LLC ("King's Chapel") on December 12, 2014.

Background

On January 23, 2014, the Tennessee Regulatory Authority Compliance Division Staff designated as a Party ("Party Staff")¹ filed a memorandum opening this docket file in which it asserted that King's Chapel had failed to meet various utility filing and compliance requirements and refused to respond to Party Staff's requests for information concerning its actions pertaining to those requirements. Further alleging that King's Chapel's actions and omissions constituted violations of state statutes and TRA rules, Party Staff requested that the Authority appoint a Hearing Officer to issue a show cause order and prepare the matter for hearing.

¹ In accordance with TRA Rule 1220-1-2-.21(1), as to show cause proceedings, staff members designated by the Authority and represented by counsel employed by the Authority *shall* participate as a party.

During a regularly scheduled Authority Conference held on August 11, 2014, the panel of Directors assigned to the docket voted unanimously to appoint General Counsel or her designee as Hearing Officer in order to determine whether a show cause Order should be issued against King's Chapel and, if so, to prepare the matter for a hearing before the panel.² On September 24, 2014, Party Staff presented its *Petition* along with the *Affidavit of Darlene Standley* (Exhibit 1) and copies of a Compliance Data Request dated November 15, 2013³ and the Response of King's Chapel dated December 2, 2013 (Exhibit 2), which alleges that King's Chapel has violated various provisions of state law, including Tenn. Code Ann. §§ 65-3-106(b), 65-4-115, and 65-4-117(a)(1), and the TRA's Wastewater Rules, Tenn. Comp. R. & Regs. 1220-04-13-.07(2), (5) and (7)(b).

Pursuant to the various powers delegated to the Authority by the Tennessee General Assembly, including Tenn. Code Ann. § 65-2-106, the Hearing Officer issued an *Order Requiring King's Chapel Capacity, LLC to Appear and Show Cause Why the TRA Should Not Take Action Against It for Violation of State Law and TRA Rules ("Show Cause Order")* and *Notice to Appear for Hearing* on October 13, 2014. The *Show Cause Order* lists five (5) Counts, or charges of violation, alleged against King's Chapel for certain unlawful acts or omissions, as appear from the Authority's preliminary investigation.⁴ Under Tenn. Code Ann. § 65-2-109, the

² *Order Appointing a Hearing Officer* (August 19, 2014).

³ As noted in the *Petition*, the Compliance Data Request dated November 15, 2013, filed as part of Exhibit 2, reflects an incorrect date and should have been dated on or about November 22, 2015.

⁴ The Counts against King's Chapel include the failure to file proof of financial security; failure to file a request to utilize an alternative financial security; failure to file a tariff true-up that reflects the amounts it has charged to customers for the recovery of its security bonding costs; following the expiration of its last approved true-up, continuing to charge customers an unauthorized, unjust and unreasonable rate for its security bonding costs; and the refusal and failure to respond to the Authority's requests for information concerning its business affairs and compliance with the laws and regulations to which it is subject as a public utility.

burden of proof in this proceeding is upon King's Chapel to appear and show cause why the Authority should not proceed to take action against it for such unlawful acts or omissions.⁵

Thereafter, the Parties commenced discovery concerning the charges in the *Show Cause Order*.⁶ On October 27, 2014, King's Chapel sent a request for information to the Authority's Consumer Services Division ("CSD"); to which the CSD responded on October 30, 2014. On November 18, 2014, Party Staff sent King's Chapel an additional request for information and documents. On November 20, 2014, the parties filed a joint motion asking that the hearing be continued from its initial setting of December 1, 2014, to February 2015, in order to allow King's Chapel additional time in which to prepare its defense and reply fully to the *Show Cause Order*.⁷ On November 21, 2014, the Hearing Officer continued the hearing and established certain deadlines for submitting a proposed procedural schedule and filings related to the Consumer Advocate's *Petition to Intervene*.⁸ On December 3, 2014, after considering the format and deadlines proposed by the Parties, the Hearing Officer established a Procedural Schedule for the orderly administration of the proceedings.⁹ In accordance with the Procedural Schedule, the Parties have continued to exchange and make filings related to discovery in this matter.

In addition, Party Staff filed its *Objection* and King's Chapel filed its *Response to the Petition to Intervene*, consistent with the Procedural Schedule, on December 8, 2014. Thereafter, on December 11, 2014, the Consumer Advocate filed its *Reply of the Consumer Advocate and Protection Division of the Attorney General's Office to the Party Staff's Objection to Petition to Intervene* ("*Reply to Party Staff's Objection*"). Also, on December 11, 2014, the Hearing

⁵ *Show Cause Order* (October 13, 2014).

⁶ As noted herein, "Parties" refers to Party Staff and King's Chapel, collectively.

⁷ *Joint Motion to Continue Hearing* (November 20, 2014).

⁸ *Order Granting Joint Motion to Continue Hearing, and Establishing Deadlines for a Proposed Procedural Schedule and Filings Related to the Consumer Advocate's Petition to Intervene* (November 21, 2014).

⁹ *Order Establishing Procedural Schedule* (December 3, 2014).

Officer issued a public notice scheduling a status conference for the purpose of allowing oral argument on the Consumer Advocate's *Petition to Intervene*, which had been filed on January 31, 2014. Upon receiving requests to reschedule the conference from both the Consumer Advocate and Party Staff, the Hearing Officer entered an order on December 17, 2014, that continued the proceedings and held the Procedural Schedule in abeyance until such time as a Status Conference could be convened.¹⁰

King's Chapel's Tariff True-up Filing

On December 12, 2014, King's Chapel filed in this docket a tariff intended to true-up the recovery of its bonding security costs from February 2009 through September 2014.¹¹ The tariff pages and supporting documentation were promptly moved to TRA Docket No. 14-00158 for technical review and future consideration by the Authority.¹² Nevertheless, as the actions of King's Chapel in filing the tariff are relevant to the charges brought against it in the *Show Cause Order*, a copy of the filing has remained in the docket file for evidentiary purposes.

Thereafter, during a status conference held on January 7, 2015, the Consumer Advocate and Party Staff each presented oral argument on the Consumer Advocate's *Petition to Intervene*.¹³ Following their presentations, the Hearing Officer asked both the Consumer Advocate and Party Staff to comment on the recent tariff filing by King's Chapel to true-up the bonding costs that it recovers from customers that is under review by the Authority in Docket

¹⁰ *Order Granting Continuance of the Proceedings* (December 17, 2014).

¹¹ *Tariff Filing of King's Chapel Capacity to True-up Bonding Costs (Tariff No. 20140176)* (December 12, 2014).

¹² During a regularly scheduled Authority Conference held on January 12, 2015, the voting panel assigned in Docket No. 14-00158, finding that additional information is needed to properly review and evaluate the proposed tariff changes, suspended King's Chapel's proposed tariff for sixty (60) days from its listed effective date of February 1, 2015, and appointed General Counsel or her designee as Hearing Officer to rule on intervention requests and discovery issues, including entering a protective order, if necessary. See TRA Docket No. 14-00158, *Order Suspending Tariff for Sixty (60) Days and Appointing a Hearing Officer* (January 14, 2015).

¹³ Due to an unforeseen emergency, Counsel for King's Chapel did not appear during the Status Conference, but informed the Hearing Officer that King's Chapel neither supported, nor opposed, the Consumer Advocate's request to intervene.

No. 14-00158. In response, the Consumer Advocate noted that it appeared that additional information concerning the tariff and bonding pass-through provision needed to be developed and that consumers had an interest in the tariff, but asserted that consumer refunds and the alleged violations of law in this docket are inextricably intertwined and cannot be separated. Party Staff stated that issues surrounding the actual amounts that King's Chapel has charged, or will charge, to customers for bonding costs and whether and/or to what extent customers are entitled to refunds if an over collection of such costs has occurred, are most appropriately explored and resolved in the tariff filing docket. Upon conclusion of the conference, the Hearing Officer stated that the pleadings and arguments of counsel would be taken under consideration.¹⁴

Findings and Conclusions

As set forth in the *Show Cause Order*, the charges alleged against King's Chapel concern its failure to comply with certain laws and regulations to which it is subject as a public utility. Specifically, the allegations relate to King's Chapel's duty to make mandatory filings concerning its proof of financial security/bonding, tariffs to true-up its customer charges for costs incurred for financial security/bonding, to charge customers only amounts that are authorized, and to promptly provide complete and accurate information to any requests made by the Authority. Inasmuch as it demonstrates performance and timing of certain actions by King's Chapel, the tariff filing made on December 12, 2014, is relevant to the allegations at issue in this docket.

Nevertheless, as reflected in the Authority's decision to move the tariff filing to Docket No. 14-00158, a technical review of the tariff itself, including the actual amounts charged by King's Chapel for its security bonding costs, when such charges were made, whether an over-collection has occurred, and whether or to what extent consumers might be entitled to a refund, along with the calculation and possible method of distribution of any such refund, are all issues

¹⁴ Transcript of Proceedings, p. 26-29 (January 7, 2015).

that are appropriate and most efficiently determined in the tariff docket.¹⁵ While the resolution and ultimate determination of those technical issues might impact the Authority's findings and potential imposition of any civil penalties or fines, such issues are not properly before the Authority in this docket. Therefore, as a final determination in Docket No. 14-00158 concerning the tariff true-up filed by King's Chapel on December 12, 2015, might be relevant to the Authority's considerations and actions in this docket, the Hearing Officer hereby holds this show cause docket in abeyance pending resolution of Docket No. 14-00158.

IT IS THEREFORE ORDERED THAT:

This show cause docket is held in abeyance pending the resolution in Docket No. 14-00158 of King's Chapel Capacity, LLC's December 12, 2014, tariff to true-up recovery of its bonding security costs from February 2009 through September 2014.



Kelly Cashman-Grams, Hearing Officer

¹⁵ It should be noted that the Consumer Advocate strenuously contends that, because Party Staff noted that customer refunds may be required as a result of the alleged violations, the existence of a consumer pecuniary, or financial, interest should be found in this docket and the TRA must allow it to intervene under Tenn. Code Ann. § 4-5-310(a). Further, the Consumer Advocate has stated that consumers have an interest in the tariff true-up filing in Docket No. 14-00158. Nevertheless, despite these assertions, the Consumer Advocate has not yet filed a petition to intervene in Docket No. 14-00158.