

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 13, 2014

IN RE:

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

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DOCKET NO.
14-00007

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

This matter is before the Hearing Officer upon the Order of the Tennessee Regulatory Authority ("TRA" or "Authority") to determine whether an Order for Show Cause should be issued against Kings Chapel Capacity, LLC ("Kings Chapel"), and if so, to prepare the matter for hearing before the panel. The TRA Compliance Division ("Compliance") has presented a *Petition*, and exhibits consisting of the *Affidavit of Darlene Standley* (Exhibit 1) and copies of the Compliance Data Request dated November 15, 2013¹ and Response of King's Chapel dated December 2, 2013 (Exhibit 2). On the basis of its *Petition* and supporting exhibits, Compliance 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).

Upon review and due consideration, the Hearing Officer makes the following findings:

¹ 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.

JURISDICTION

As Tennessee's public utilities regulatory body, the Tennessee General Assembly has delegated to the TRA broad powers to exercise its jurisdiction over matters involving public utilities.² To that end, the Authority is charged and authorized to ensure that the laws of this State as they relate to the Authority's jurisdiction "are enforced and obeyed, that violations thereof are promptly prosecuted, and all penalties due the State are collected."³ The Authority is empowered to hear this matter and render an Order pursuant to the powers delegated to it by the Tennessee General Assembly, which include but are not necessarily limited to those powers provided in Tenn. Code Ann. §§ 65-2-106, 65-3-105, 65-4-104, 65-4-105(a), 65-4-106, 65-4-116, 65-4-117(1), 65-4-120, and 65-4-202 through 204.

Specifically, Tenn. Code Ann. § 65-2-106 empowers the Authority to "issue orders on its own motion citing persons under its jurisdiction to appear before it and show cause why the [A]uthority should not take such action as the [A]uthority shall indicate in its show cause order appears justified by preliminary investigation made by the [A]uthority under the powers conferred upon it by law." In addition, Tenn. Code Ann. § 65-2-109 assigns the burden of proof in a show cause proceeding upon the party that is required to appear and show cause why the Authority should not proceed in a certain manner.

Finally, under TRA Rules 1220-04-13, *et. seq.*, where a public wastewater utility demonstrates through its actions an unwillingness or incapacity to effectively operate or manage the wastewater system (i.e., provide service) in compliance with applicable statutes, rules, and orders of the Authority, the TRA shall take appropriate action based on good cause; such action

² Tenn. Code Ann. §§ 65-4-104, 105, and 106.

³ Tenn. Code Ann. § 65-1-113 (2004).

may include a suspension or revocation of the utility's CCN.⁴ Proceedings to revoke a wastewater utility's CCN shall be conducted in accordance with Tenn. Code Ann. § 65-2-106, which, except when exigent circumstances exist, includes notice and an opportunity to be heard.⁵ In addition, unless there is an imminent threat to public health or safety or the utility is unable to provide safe, adequate, and reliable service, the TRA will not seek to suspend or revoke a utility's CCN without first affording the utility an opportunity to correct the conditions that are alleged to constitute grounds for the revocation.⁶

RELEVANT FACTS

1. King's Chapel is a public utility certificated by and subject to the jurisdiction of the Authority that is providing wastewater services to the Ashby Communities Development in Williamson County, Tennessee. *See* TRA Docket No. 04-00335.

2. King's Chapel has failed to file proof of financial security in accordance with the requirements of Tenn. Comp. R. & Regs. 1220-4-13-.07 for the following time periods:

July 1, 2009 to July 1, 2010;

July 1, 2010 to July 1, 2011;

July 1, 2011 to July 1, 2012;

July 1, 2012 to July 1, 2013; and,

July 1, 2013 to July 1, 2014.

See Exhibit 1, *Affidavit of Darlene Standley*, ¶ 6.

3. King's Chapel has failed to file a tariff true-up for the recovery of its security costs in accordance with the requirements of Tenn. Comp. R. & Regs. 1220-4-13-.07 for

⁴ Tenn. R. & Regs. 1220-04-13-.09(1).

⁵ Tenn. R. & Regs. 1220-04-13-.09(4).

⁶ Tenn. R. & Regs. 1220-04-13(4).

December 2, 2008 to July 1, 2009 and the time periods listed above in paragraph 2. *See* Exhibit 1, *Affidavit of Darlene Standley*, ¶ 7.

4. On or about November 22, 2013, in TRA Docket No. 13-00141, Compliance sent King's Chapel data requests pursuant to its authority set forth in Tenn. Code Ann. §65-4-117(a)(1). In what it notes as its third initial response to Compliance's second follow-up request, King's Chapel asserts its continuing objections to the requests and declines to provide further response. To date, King's Chapel has failed to respond to the data requests propounded upon it by Compliance. *See* Exhibit 2, Compliance Data Request dated November 15, 2013⁷ and Response of King's Chapel dated December 2, 2013; *see also* TRA Docket No. 13-00141.

5. On January 13, 2014, King's Chapel's representative, John Powell, admitted under oath that King's Chapel did not have the bond amount required under the Authority's December 19, 2008, *Order Approving Tariff* in Docket No. 08-00069. King's Chapel continued to charge customers as if the bond amounts were unchanged. *See* Transcript of Authority Conference, January 13, 2014, pp. 16-37, esp. p. 17 lines 20-24 and p. 24 lines 8-11 (attached to this Order for ease of reference); *see also* TRA Docket No. 08-00069, *Order Approving Tariff* (December 19, 2008).

ALLEGED VIOLATIONS OF STATE LAW & TRA RULES

The following actions, alleged to have been performed by King's Chapel, constitute violations of state law and the TRA's Rules:

A. Each time that King's Chapel's failed to file proof of financial security on or before July 1 of a calendar year constitutes a violation of Tenn. Comp. R. & Regs. 1220-4-13-.07(2).

⁷ See footnote 1.

COUNT 1:

King's Chapel has failed to file proof of financial security on or before July 1 of 2009, 2010, 2011, 2012, 2013, and 2014 in violation of Tenn. Comp. R. & Regs. 1220-4-13-.07(2)(a) which states in part:

(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.

B. If King's Chapel intends to utilize a financial security other than those authorized by Tenn. Comp. R. & Regs. 1220-4-13-.07(2), it is required to file a request to utilize an alternate financial security on or before May 1 of the year in which it seeks to utilize an alternative security. Each time that King's Chapel failed to file a request to utilize an alternative financial security on or before May 1 of a calendar year constitutes a violation of Tenn. Comp. R. & Regs. 1220-4-13-.07(5).

COUNT 2:

King's Chapel has failed to file a request to utilize an alternate financial security on or before May 1 of 2009, 2010, 2011, 2012, 2013, and 2014, in violation of Tenn. Comp. R. & Regs. 1220-4-13-.07(5), which states in pertinent part:

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.

C. King's Chapel has not filed a tariff true-up for the recovery of its security costs that reflects the amount it charges each of its customers for the cost of its financial security since December 2, 2008. Each time that King's Chapel charged a customer for financial security costs that have not been authorized by the Authority is a violation of Tenn. Comp. R. & Regs. 1220-4-13-.07(7)(b).

COUNT 3:

King's Chapel has failed to file a tariff true-up based upon its then current financial security since the last true-up ordered by the Authority expired on December 2, 2008, and thereafter on or before July 1 of 2009, 2010, 2011, 2012, 2013, and 2014, in violation of Tenn. Comp. R. & Regs. 1220-4-13-.07(7)(b)(2) which states in part:

A proposed revised tariff to become effective August 1, specifying the amount of security in place, the updated monthly rate adjustment to be billed to customers and the percentage rate increase this represents.

D. As a result of King's Chapel's failure to true-up its tariff for recovery of security costs, customers are being charged an unauthorized, unjust and unreasonable rate for utility service. Each time that King's Chapel charged a customer an unauthorized, unjust and unreasonable amount for security costs it has violated Tenn. Code Ann. § 65-4-115.

COUNT 4:

King's Chapel has failed to file a tariff true-up reflecting its current financial security costs since December 2, 2008, which is the expiration date of the last true-up approved by the Authority, and has continued to charge its customers an unauthorized, unjust and unreasonable rate for its costs of financial security in violation of Tenn. Code Ann. §65-

4-115, which states:

No public utility shall adopt, maintain, or enforce any regulation, practice, or measurement which is unjust, unreasonable, unduly preferential or discriminatory, nor shall any public utility provide or maintain any service that is unsafe, improper, or inadequate, or withhold or refuse any service which can reasonably be demanded and furnished when ordered by the authority.

E. King's Chapel has failed to respond to Compliance's investigatory data requests made pursuant to its authority under Tenn. Code Ann. § 65-4-101 *et seq.*, including, but not limited, to Tenn. Code Ann. § 65-4-117(a), and Tenn. Code Ann. § 65-3-106(a).⁸ Its failure to respond to these requests constitutes a violation of the Authority's regulatory powers, and a specific violation of its duty to respond to the Authority's requests for information concerning its affairs under Tenn. Code Ann. § 65-3-106(b).

COUNT 5:

On December 22, 2013, John Powell, on behalf of King's Chapel, for a third time refused to answer the Authority's requests for information concerning its business affairs and its compliance with the laws and regulations to which it is subject by virtue of its status as a public utility. This refusal and failure to respond, which continues to date, violates Tenn.

Code Ann. § 65-3-106(b), which states:

Each company receiving from the [Authority] any such blanks shall cause the same to be properly filled out, so as to answer fully and correctly each question therein propounded, and in case such company is unable to answer any question, it shall give a satisfactory reason for its failure, and the answer, duly sworn to by the proper officer of the company, shall be returned to the [Authority] at its office in Nashville within thirty (30) days from receipt of same.

⁸ Tenn. Code Ann. § 65-3-106(a) states:

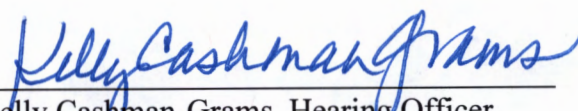
The department of transportation shall inform itself fully and thoroughly in regard to the affairs of every company doing business in this state, and under its jurisdiction. It shall cause to be prepared suitable blanks with questions calculated to elicit all information concerning same, and, as often as may be necessary, furnish the blanks to each such company.

See Tenn. Code Ann. § 65-4-105, which affirms that, in addition to the powers conferred in chapter 4 of Title 65, the Authority also possesses all other powers conferred in chapters 3 and 5 with reference to railroads regulated by the department of transportation or transportation companies regulated by the department of safety.

UPON THE FOREGOING INFORMATION AND ATTACHMENTS, and as demonstrated in the *Petition* and supporting exhibits presented by the TRA Compliance Division, the Hearing Officer acting pursuant to the scope of the TRA's authority granted under Tenn. Code Ann. §§ 65-1-113, 65-2-106, 65-3-105, and 65-4-116, hereby determines that King's Chapel should be required to appear and show cause why it should not be found in violation of state law and the TRA's Rules noted herein and, upon a finding of such violation, why the TRA should not immediately issue a cease and desist order, impose civil penalties and sanctions, and seek additional relief to the extent allowed by law.

IT IS THEREFORE ORDERED THAT:

King's Chapel Capacity, LLC shall appear before the Tennessee Regulatory Authority during its regularly scheduled Authority Conference at **1:00 p.m. (CST) on December 1, 2014,** in Hearing Room G.201 located on the ground floor of the Andrew Jackson State Office Building, 500 Deaderick Street, Nashville, Tennessee 37243, and show cause why the Authority should not proceed to take action against it for the unlawful acts and omissions alleged in this Order, including, but not limited to, the issuance of a cease and desist order, imposition of civil penalties and sanctions, and action for additional relief to the maximum extent allowed under law.



Kelly Cashman-Grams, Hearing Officer

In The Matter Of:
*Tennessee Regulatory Authority
Authority Conference*

*Transcript of Proceedings
January 13, 2014*

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BEFORE THE TENNESSEE REGULATORY AUTHORITY

TRANSCRIPT OF AUTHORITY CONFERENCE

Monday, January 13, 2014

APPEARANCES:

For King's Chapel Capacity:	Mr. John Powell
For TRA Staff:	Ms. Sharla Dillon Ms. Jean Stone Mr. Shiva Bozarth

Reported By:
Patricia A. Jennings, LCR, RPR

Patricia A. Jennings, LCR, RPR
Nashville Court Reporters 615-885-5798

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(Miscellaneous Business - None)

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(Miscellaneous Business - None)

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(Miscellaneous Business - None)

1 jurisdiction.

2 Based on Open Business Directory's
3 failure to appear at this proceeding and the evidence
4 presented that Open Business Directory transmitted
5 unsolicited facsimile advertisements to Tennesseans or
6 Tennessee entities 12 times, I move to issue a cease
7 and desist order on Open Business Directory and to
8 impose a civil penalty in the amount of \$24,000 for the
9 12 violations of the Tennessee Do-Not-Fax law.

10 DIRECTOR BENNETT: Second. Vote aye.

11 DIRECTOR JONES: This is David Jones.

12 And I vote aye.

13 MS. DILLON: Next we have Section 9,
14 Directors, Hill, Hilliard, and Jones.

15 Docket No. 13-00141, King's Chapel
16 Capacity, LLC; petition of King's Chapel Capacity for
17 exemption from financial security required by the TRA's
18 wastewater regulations, request to continue exemption.
19 Consider petition.

20 VICE CHAIRMAN HILLIARD: King's Chapel
21 filed a request for alternate security on October the
22 31st, 2013, in which it asked the Authority to approve
23 the use of letters of credit used by -- for the
24 Williamson County bonding requirements.

25 Mr. Powell, please come forward and

1 have a seat at the table. Are you here?

2 MR. POWELL: Yes, I am.

3 VICE CHAIRMAN HILLIARD: We have a few
4 questions for you about the petition.

5 MR. POWELL: Okay.

6 VICE CHAIRMAN HILLIARD: Please
7 identify yourself, for the record.

8 MR. POWELL: My name is John Powell.

9 VICE CHAIRMAN HILLIARD: Okay. Do you
10 have anyone with you or just yourself?

11 MR. POWELL: Just myself.

12 VICE CHAIRMAN HILLIARD: Okay. We will
13 need to swear you in.

14 (John Powell was duly sworn.)

15 MR. POWELL: I do.

16 VICE CHAIRMAN HILLIARD: Okay.

17 Mr. Powell, have you provided the Authority current
18 copies of the letters of credit that you wish to use to
19 be considered as alternate security?

20 MR. POWELL: At the time the request --
21 the data request of a few weeks ago, I did. Since
22 then, the bonding has gone up and another \$67,500 --
23 let me get my bond sheet. Right now the bonds for
24 Williamson County stand at 144,500. Within the first
25 quarter of this year, they will exceed \$259,500. And

1 by the end of this year, they will exceed \$609,000.

2 VICE CHAIRMAN HILLIARD: Okay. Are you
3 saying that you do have a bond in place, not letters of
4 credit?

5 MR. POWELL: The bond is in place with
6 Williamson County, and the letters of credit cash
7 secure or secure those bonds.

8 VICE CHAIRMAN HILLIARD: Okay. Now,
9 what about the letters of credit with the TRA, are
10 those payable to -- on default to the TRA or to
11 Williamson County?

12 MR. POWELL: The letters of credit back
13 up bonds. Those bonds are payable to Williamson
14 County.

15 VICE CHAIRMAN HILLIARD: Okay. So
16 there is no bonding that's in favor of the Tennessee
17 Regulatory Authority?

18 MR. POWELL: That is not correct. I
19 think if the TRA would like to look at codified law
20 69-3-108, it says in part every person who is planning
21 to carry on any activities outlined in subsection --
22 basically, it's where the TDEC issues an SOP. And then
23 it goes on to say that any person who's planning to
24 carry on any activities outlined in this subsection,
25 other than a person who discharges into a publicly

1 owned treatment works -- that means a homeowner
2 discharging into a publicly owned work -- or who is
3 regulated under a general permit as described in
4 subsection (1) shall file an application for a permit
5 with the commissioner or when necessary for
6 modification of such a person's existing permit. It's
7 unlawful for any person, other than a person who holds
8 the SOP, to construct, install, modify, repair, or
9 operate any treatment works without an SOP.

10 I'm prepared to tell you the history of
11 these bonds going back to when we were first granted
12 our CCN, and I think I should, so that the panel has an
13 idea of what's going on here, but the bonds are
14 worthless. If Williamson County called the bond, they
15 couldn't put a shovel in the dirt without holding an
16 SOP. No one -- it's unlawful for anyone to do it.

17 In the same regard, it's lawful for the
18 TRA to do anything. I think what needs to be done in
19 the future, and I want to go back to my history of
20 this, is that the TRA needs to promote legislation
21 where -- and both TDEC and TRA need to think this
22 out -- if a wastewater utility should fail, that
23 there's legislative rule or code that allows the SOP
24 and the CCN to transfer to a receivership immediately.

25 operating -- and I've read the water

1 Quality Control Acts from the federal government, and
2 they parallel Tennessee's water and Quality Control
3 Acts. I know the laws of where these bonds were coming
4 from. I know that TDEC never did the bonds for all
5 these plants. And they're supposed to be \$20,000 per
6 plant, not \$20,000 per utility.

7 At any rate, when we were first granted
8 our CCN back in -- let me get the right page here --
9 back in 2006, we had a very unusual order, and our
10 order granting our CCN was in two parts. I have copies
11 for the panel if they'd like, but the first part --

12 VICE CHAIRMAN HILLIARD: And copies
13 have been given to staff?

14 MR. POWELL: No, but I can read them
15 into the record. The party -- the order was granted,
16 the CCN. That was the first part that granted us the
17 CCN. The second part of our order granting our CCN is
18 very unusual because it says "The petition of King's
19 Chapel Capacity, LLC for an exemption from the
20 provision of TR rules --" I'm sorry, that's -- "The
21 petition of King's Chapel shall list the bonding
22 requirement, Williamson County, Tennessee, as a
23 separate line item on the customer's bill."

24 So they granted us the CCN, but they
25 knew at that time that the bonding requirements of

1 williamson County were way out of line, obtrusive,
2 abuse of power, and really, they couldn't do anything
3 with them. So they wanted us as a utility to put it on
4 the homeowner's bills, that hey, homeowner, you're
5 getting charged this extra money for williamson County
6 bonds.

7 To be quite frank, in our tariff, we
8 only included \$151,000 on our tariff. At that time,
9 the bonds were over a million five. I expect that in
10 the next two years our bonds will grow with williamson
11 County to 1.3 million. But that was in 2006.

12 Later in 2006, the TRA adopted its
13 wastewater rules. And in the rules, it says that --
14 let me get the rules out here. In the rules, it
15 mentions the \$20,000 bond that's required, unless the
16 utility -- and I'm sure they put this in for williamson
17 County and us. Just one second.

18 VICE CHAIRMAN HILLIARD: As you're
19 looking for that, Mr. Powell, has staff not requested
20 these documents in advance?

21 MR. POWELL: No.

22 MS. STONE: Mr. Powell, I think you're
23 looking for subsection (6) in the rule.

24 MR. POWELL: I thought it was (4), but
25 okay. Okay. You're right. Financial securities --

1 thank you, Jean. Financial securities required by any
2 local government may be counted by the Authority in
3 fulfilling this financial security obligation. The
4 public wastewater utility shall file with the Authority
5 by May 1st of each year evidence of any financial
6 security required by any local government and written
7 request that the Authority count that security toward
8 fulfillment of the requirements of this chapter and
9 rule.

10 So early in that year we were granted
11 our CCN. Four months later, the rules became
12 effective. Then we immediately filed for our financial
13 security exemption in Docket 06-0061. In 06-001 [sic],
14 the panel and TRA found that King's Chapel proffered
15 proof of financial conditions security, which includes
16 two letter of credits, which satisfy the performance
17 and maintenance costs of the wastewater treatment
18 system in Williamson County.

19 So it was ordered that the -- that
20 the -- that our tariff be approved. It was also
21 ordered that the petition of King's Chapel Capacity for
22 an exemption from provision of the TR Rules 1220-4-13,
23 which mandate the submission of financial security,
24 insofar as the petition requests a finding by the
25 Authority that the security submitted by the company to

1 Williamson County, Tennessee, fulfills the requirements
2 of Tennessee TRA Rule 1220-4-13-.07 was granted. So
3 right after we got our CCN, they -- the TRA recognized
4 that the -- that the bonds in Williamson County
5 sufficed.

6 Then in '07, in Docket 07-00151, we
7 again asked the TRA for exemption of financial security
8 for the rule that's still in existence, 1220-4-13-.07.
9 They reaffirmed their decision of the previous year in
10 '06 and -- they said it a little different. They said
11 county -- that the described standard determined that
12 the bonding requirements of Williamson County
13 applicable to King's Chapel are in excess of that
14 required by the rule and are required for purpose
15 similar to the Authority that is for the performance
16 and maintenance of the wastewater system.

17 The key word that people need to
18 consider in wastewater rules in the future and in the
19 past is maintenance operation -- and operation.
20 Therefore, they granted us that -- they found that
21 we -- they found that we should continue our exemption
22 from the previous -- of the Tennessee rule which
23 mandate the submission of financial security.

24 Again, in Docket 08 -- in 8, Docket
25 0069, the TRA again uphold -- upheld our request to

1 continue exemptions from the provision of the Rule
2 1220-4-13-.07 and was granted. In that petition, they
3 made us true-up our -- they wanted us to give a
4 calculation or a formula on how the bond should be --
5 should be treated. At that point, we still used the
6 \$151,600 figure and trued it up based on how many
7 customers we had -- we had at that time.

8 Since that time, there's only been a
9 few months where the bond has been below \$150,000.
10 Presently, it's at 144, but like I said, it's going up
11 this quarter again. So when the CCN was granted, the
12 TRA recognized this, that in order -- the TRA
13 recognized one thing, that bonds are a cost of the
14 ratepayers.

15 So when you -- and I would submit to
16 the TRA that our bonds are for maintenance. Williamson
17 County says so in letters. In the maintenance and
18 operation of a wastewater plant, we don't pollute. We
19 never have polluted in 10 years. We're a strong
20 utility. When you take a utility and you just put a --
21 pull a fee out of the hat of \$20,000 and ask a utility
22 to comply at minimum 20,000, and that utility has a
23 thousand customers, and yet you would require us to put
24 up a \$20,000 bond for a hundred customers, our
25 customers then will pay 10 times more than that of other

1 customers.

2 I would -- I'm not sure what the
3 \$20,000 bond is for at the TRA. I understand it's to
4 promote billing or continue the operation of a utility.
5 And you can't separate the operation of a utility to
6 billing and/or maintaining the plant. They're one in
7 the same. And under the Water Quality Control Acts,
8 operation is described as any business administrative
9 service necessary to keep the plant running. That
10 would be billing people and paying the electric bill.
11 So . . .

12 At any rate, I would strongly urge this
13 panel to exempt us again, and I also strongly urge
14 someone to create the proper connecting of the dots, if
15 you will, as when bonds are called. I'm not sure that
16 the TRA has authority, even if they called a bond. If
17 a wastewater plant failed or the operator -- who knows
18 what happens, I'm not sure that they have the
19 authority.

20 So you really need to look to the state
21 law and the intent of the laws. And like I say, the
22 intent of those \$20,000 bonds was per plant. It wasn't
23 per company. While the -- while the operation of a --
24 I think when a wastewater utility would fail, it's not
25 going to fail because people put a stamp on a bill or

1 collecting money or paying an electric bill. It's
2 going to fail because of a dilapidated system that
3 doesn't work and pollutes.

4 So we have the bonds in -- we have the
5 bonds in place to repair, maintain, or operate this
6 system if it fails, and while you say that the bonds
7 are due to Williamson County, I think the first thing
8 that Williamson County would do -- and someone needs to
9 ask them -- they would have to give the money or the
10 bonds to some receiver. And that would have to be in
11 coordination with TDEC on the SOP and TRA.

12 VICE CHAIRMAN HILLIARD: Any further
13 comments?

14 MR. POWELL: No. I just urge you to be
15 right to the ratepayers because it's not right to add
16 another \$20,000 bond to them.

17 VICE CHAIRMAN HILLIARD: Any questions
18 from any members of the panel?

19 DIRECTOR HILL: Yes, sir, if I may.
20 From your comments there, especially at the last, it
21 seems that you have no idea what Williamson County
22 would use the bonds for, or have they stated what the
23 bonds that they hold are for?

24 MR. POWELL: They stated that the bonds
25 that they -- they placed in a letter I have from

1 November 5th, 2010, "Installation of said system and
2 maintenance term for the same." So while these bonds
3 are in place, it's to maintain the system.

4 DIRECTOR HILL: So does Williamson
5 County then do this for all of their utilities and --

6 MR. POWELL: No. And that's a shame,
7 Director Hill. First time I've seen all you people.
8 It's really a shame because you can -- you can get an
9 NPDES permit in any county in the state to put in a
10 river and stream. That's called a traditional sewage
11 treatment plant. We're a non-traditional sewage
12 treatment plant.

13 And recent laws say -- their law says
14 that non-traditional sewage treatment plants, they can
15 request bonds. Our non-traditional sewer plant, the
16 effluent water, after it's treated, is disbursed into
17 drip fields underground. You can spray it, but our
18 particular one goes underground, in the lines that emit
19 the effluent water.

20 So no, Williamson County kind of got
21 behind the -- or in front of the cart. Their laws only
22 require that of new wastewater plants, not of old
23 wastewater plants.

24 DIRECTOR HILL: Since you've been doing
25 this since 2006 -- is that correct? --

1 MR. POWELL: Uh-huh.

2 DIRECTOR HILL: -- and you've proven
3 that it is no longer a new style plant, since it's been
4 in the ground for that amount of time, is there -- and
5 this has nothing to do with what we're going to decide.
6 This is a question that I have for you -- is there a
7 possibility that you and/or others could approach
8 Williamson County government about changing their view
9 of your so-called non-traditional plant?

10 MR. POWELL: The problem -- I can't
11 speak for the county. I don't know why they do what
12 they do. I do know that four or five years back the
13 county asked the TRA to come to a meeting. And their
14 concern was that what happens when a system fails or a
15 plant fails or an operator goes to Mississippi or who
16 knows where. They wanted to know what happens.

17 And it's a public meeting. And they
18 were discussing the bonds. And the TRA -- Richard
19 Collier was there with TRA. And they point-blank asked
20 him "what happens if a system fails?" And he said, "I
21 can't speak for the state or the TRA. It only speaks
22 to its orders." And so everybody on that Williamson
23 County Wastewater Board just throw up their hands and
24 say why -- you know, they're not getting any positive
25 feedback from the state. So someone has got to --

1 someone has got to communicate with them.

2 DIRECTOR HILL: What is the cost per
3 customer for this bonding that you now have that you
4 have in place?

5 MR. POWELL: I don't have our tariff
6 here. I wish I would have brought one of our sewer
7 bills because it's a line item on the sewer bill, but
8 I -- I don't see that.

9 DIRECTOR HILL: Are we talking --

10 MR. POWELL: It's about six, eight
11 bucks, something like that.

12 DIRECTOR HILL: For the bonding alone
13 per month?

14 MR. POWELL: Just for the Williamson
15 County, per household.

16 DIRECTOR HILL: And you have about a
17 hundred customers?

18 MR. POWELL: Ninety some. It's less
19 than a hundred.

20 DIRECTOR HILL: Thank you.

21 MR. POWELL: After the -- by the way,
22 why our bonds went from a million five down, Williamson
23 County changed some of their laws and the recession
24 hit. And so we -- so as we haven't built anything new,
25 these three and four-year terms that are on these bonds

1 are 80-percent build-outs, they have released the bonds
2 as the -- as their rates call for.

3 Now that the recession is over, and
4 we're building more lots, those bonds will go up. I
5 can tell you that presently our present bonds are
6 \$144,000 today for less than a hundred customers. By
7 the end of the year, for about 115 customers, I expect
8 15 or 20 people to move into the subdivision, our bonds
9 will be over \$5,295 per person.

10 DIRECTOR HILL: Per year?

11 MR. POWELL: At the end of this year,
12 yes.

13 DIRECTOR HILL: Thank you.

14 VICE CHAIRMAN HILLIARD: Couple other
15 questions. One, have you not provided copies of
16 letters of credit to TRA in the past to satisfy your
17 requirements of the TRA bond?

18 MR. POWELL: Yes. We didn't present
19 them all. We just presented a few to show that we were
20 over the requirements. In these other dockets, we
21 presented two bonds that total about 1.5 million.

22 VICE CHAIRMAN HILLIARD: No, I'm not
23 saying bonds. I said letter of credit.

24 MR. POWELL: It's the same thing. The
25 letter of credits -- we presented the letter of credits

1 that backed up bonds to the county for the same amount
2 of money. If you got a \$10,000 bond with the county,
3 you have to provide as back-up security for that bond a
4 \$10,000 letter of credit through a bank within a
5 50-mile radius of Williamson County.

6 That bank won't give the letter of
7 credit to back up that bond, unless it's cash secured.
8 I can do that in two different ways. I either put the
9 cash in the bank and they charge me one percent in an
10 interest rate, and they issue the letter of credit, or
11 I can tender securities. If I tender securities,
12 depending on the bank, if my stock is worth \$100, they
13 might say, well, I need \$150 worth of stock to equal \$1
14 worth of -- or \$100 worth of a letter of credit.

15 Do you see what I'm saying?

16 VICE CHAIRMAN HILLIARD: I understand
17 what you're saying. I had a little experience with
18 letters of credit.

19 MR. POWELL: Okay.

20 VICE CHAIRMAN HILLIARD: I spent 43
21 years in the banking business.

22 MR. POWELL: Well, good. Then you
23 understand. The bank is just not going to give a
24 letter of credit --

25 VICE CHAIRMAN HILLIARD: No.

1 MR. POWELL: -- to back up a bond
2 without security.

3 VICE CHAIRMAN HILLIARD: But --

4 MR. POWELL: So you have to put up cash
5 or securities.

6 VICE CHAIRMAN HILLIARD: I understand,
7 but I also know those are renewable annually?

8 MR. POWELL: Some of them are renewable
9 annually. Sometimes I pay a two-year fee.

10 VICE CHAIRMAN HILLIARD: All right.
11 When was the last time you provided us with a copy of
12 the letters of credit that back up the bonds?

13 MR. POWELL: Just a couple weeks ago.

14 VICE CHAIRMAN HILLIARD: When talking
15 to staff today, they did not have copies of it.

16 MR. POWELL: Well, it --

17 VICE CHAIRMAN HILLIARD: Do you have a
18 copy of it there?

19 MR. POWELL: In a data request, I -- I
20 don't know where that would be. That would be in our
21 third -- in our initial petition, we did supply a copy
22 of the letter of credit. It was 151,642, in our
23 initial petition, in part -- which is a copy here, and
24 it's in your records.

25 In the third or second response to

1 their data request, we have an email from williamson
2 County dated 11/20 of '13. It says: As discussed
3 early, here's a list of current letter of credits we
4 are holding on King's Chapel. There is one additional
5 4B that was approved November 24th that we are working
6 on posting that bond in the amount of 67,000. That has
7 been approved. I didn't realize that that letter of
8 credit was on here.

9 So we have a letter of credit from
10 williamson County. They've told the -- to me, and I
11 sent this as part of a data request to your staff, that
12 there's three -- currently three letters of credit,
13 67,500 on one, 65,000 on another, and \$12,000 on
14 another.

15 VICE CHAIRMAN HILLIARD: All right.
16 who can draw on those letters of credit in case of a
17 default?

18 MR. POWELL: williamson County.

19 VICE CHAIRMAN HILLIARD: what about the
20 TRA, can the TRA draw on those letters of credit?

21 MR. POWELL: No.

22 VICE CHAIRMAN HILLIARD: Okay.

23 MR. POWELL: But as I say, when you --
24 the TRA a few years ago understood that williamson
25 County can't do a thing with those dollars. They have

1 to give it to the state. They have to give it who --
2 whomever holds the SOP is the person that legally can
3 use that money to do anything, to operate the plant or
4 repair it.

5 VICE CHAIRMAN HILLIARD: Okay. Any
6 further questions from any of my fellow directors?

7 DIRECTOR HILL: I'd like about three
8 minutes to confer with counsel.

9 VICE CHAIRMAN HILLIARD: Okay. We'll
10 take a five-minute recess.

11 (Recess taken from 1:43 P.M. to
12 1:48 P.M.)

13 VICE CHAIRMAN HILLIARD: We're back in
14 session. I find that King's Chapel Capacity has not
15 met the burden of proof in this matter since no
16 evidence has been presented that the letters of credit
17 that meet Williamson County's bonding requirement for
18 the purpose of the continued operation of the public
19 wastewater utility as required by TRA Rule 1220-13-.7.
20 Therefore, I move that the petition be denied.

21 You still there, David?

22 DIRECTOR JONES: I am.

23 DIRECTOR HILL: I'm going to go ahead
24 and make the second on this one and just make a
25 statement. According to what I've received from the

1 record that in 2010 williamson County had sent
2 information to the TRA, which was of record in 2010,
3 that the letters of credit and bond, et cetera, that
4 williamson County had would not be used for the
5 operation of the system.

6 Now, that's the conclusion that the TRA
7 has still on record here with us. Therefore, I do
8 second this and vote aye. And I would encourage you to
9 find out if that is the case. And if it is, then at
10 that point you need to go ahead and take the
11 appropriate action.

12 MR. POWELL: I understand that
13 Mr. Hilliard said that we did not provide the letter of
14 credits to the staff here from -- is that your --

15 VICE CHAIRMAN HILLIARD: Right. I
16 checked with staff this morning. They did not have the
17 current letters of credit.

18 MR. POWELL: But you had the email from
19 williamson County that listed the letters of credit. I
20 don't -- do you -- if you've been in banking, you know.
21 I don't have copies of the letter of credits. They're
22 held by the county. I cannot -- I don't have copies of
23 that. I would have -- the county would have to give
24 you the letter of credits.

25 VICE CHAIRMAN HILLIARD: well --

1 MR. POWELL: All I can do is have the
2 list of the letter of credits, sir. So your opinion
3 that I haven't provided them is questionable.

4 VICE CHAIRMAN HILLIARD: It's not my
5 opinion. Based upon your request for the CCN, you were
6 supposed to provide a bond or either some other type of
7 security to back up that CCN. There's nothing you've
8 said today that's given me an indication that you've
9 done that. That letter of credit or bond would have to
10 be in favor of the TRA for the continued operation.

11 MR. POWELL: And so -- excuse me if I'm
12 out of order. However, the TRA found --

13 MS. STONE: Mr. Powell --

14 MR. POWELL: -- in multiple years --

15 MS. STONE: Mr. Powell, you are out of
16 order.

17 MR. POWELL: -- in multiple years that
18 the CCN --

19 MS. STONE: We're in deliberations and
20 please let the deliberations continue. Thank you.

21 VICE CHAIRMAN HILLIARD: I would
22 suggest that you get with staff after this meeting and
23 find out what you have to do to get in compliance and
24 so that can come back to the panel for us to look at it
25 again. To continue to debate it at this point is not

1 going to change anything. You've given us a lot of
2 information, but you have not answered the question
3 about what you've done to back up your CCN from the
4 security point of view. That's the bottom line. So
5 there's no --

6 MR. POWELL: I can tell you it remains
7 the same. The bonds remain the same. The issues are
8 the same.

9 DIRECTOR HILL: We need to hear it
10 from --

11 VICE CHAIRMAN HILLIARD: It's up to you
12 whether you want to get with staff and to work out this
13 issue so it can come back to us, but at this point, the
14 motion has been made. It has been seconded. We have
15 one aye.

16 David, where are you? Where's your
17 vote?

18 DIRECTOR JONES: I vote aye, as well.

19 VICE CHAIRMAN HILLIARD: All right.
20 Motion is carried.

21 MS. DILLON: Next we have Section 10,
22 Directors Bennett, Hilliard, and Jones.

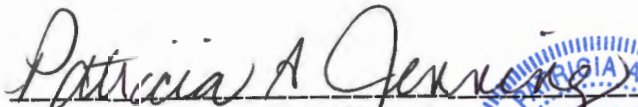
23 Docket No. 13-00154, Concord Telephone
24 Exchange, Inc.; TDS Telecom-Concord Telephone Exchange,
25 Inc.'s application to enter price regulation. Consider


REPORTER'S CERTIFICATE

I, Patricia A. Jennings, Licensed Court Reporter, Registered Professional Reporter, and Notary Public for the State of Tennessee, hereby certify that I reported the foregoing proceedings at the time and place set forth in the caption thereof; that the proceedings were stenographically reported by me; and that the foregoing proceedings constitute a true and correct transcript of said proceedings to the best of my ability.

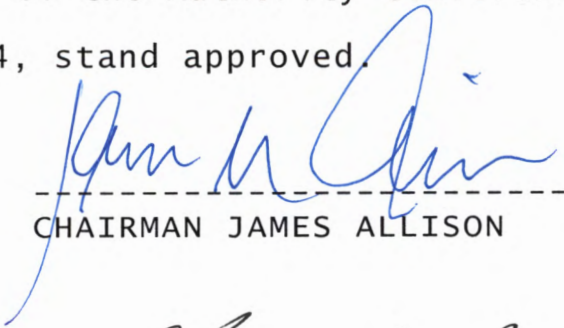
I FURTHER CERTIFY that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome or events of this action.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of office this 17th day of January, 2014.


PATRICIA A. JENNINGS, LCR, RPR
NOTARY PUBLIC, STATE OF TENNESSEE
LCR No. 200, Expires 6/30/2014
Notary Commission Expires 5/20/2014



Minutes of the Authority Conference of
Monday, January 13, 2014, stand approved.



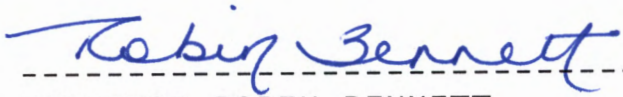
CHAIRMAN JAMES ALLISON



VICE CHAIRMAN HERBERT HILLIARD



DIRECTOR KENNETH C. HILL



DIRECTOR ROBIN BENNETT



DIRECTOR DAVID F. JONES