

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 6, 2015

IN RE:

**CARTWRIGHT CREEK, LLC, REQUEST
TO UTILIZE ALTERNATIVE FINANCIAL
SECURITY PURSUANT TO TENN. COMP.
R. & REGS. 1220-4-13-.07(5)**

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**DOCKET NO.
14-00034**

**ORDER DENYING REQUEST FOR
ALTERNATIVE FINANCIAL SECURITY**

This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones and Director Robin Bennett of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on August 11, 2014, to hear and consider the *Joint Petition for Alternate Security* ("Joint Petition") and accompanying *Agreement* filed by Cartwright Creek, LLC ("Cartwright Creek" or the "Company") and the Staff of the TRA Compliance Division acting as a Party ("Party Staff") (together, the "Parties") on April 1, 2014. In the *Joint Petition*, the Parties request approval of an alternative form of financial security for Cartwright Creek pursuant to TRA Rule 1220-4-13-.07(5).

BACKGROUND

In March 1975, the Tennessee Public Service Commission granted Cartwright Creek Utility Company the authority to provide wastewater services in Tennessee. Following certification, Cartwright Creek Utility Company operated a wastewater system in Williamson County, Tennessee. The TRA approved the transfer of the wastewater system from Cartwright

Creek Utility Company to Cartwright Creek, LLC on November 8, 2004.¹ Since that time, Cartwright Creek has expanded its service area in Williamson County.²

TRA Rule 1220-4-13-.07 requires regulated wastewater companies to “furnish to the Authority, prior to providing service to a customer, acceptable financial security using a format prescribed by the Authority.”³ 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” is to be provided in the form of a “bond issued by any duly licensed commercial bonding or insurance company authorized to do business in Tennessee” or an “irrevocable letter of credit issued by a financial institution acceptable to the Authority.”⁴ The Authority’s wastewater rules also give the Authority discretion to approve an alternative form of financial security upon petition by the utility, which must be filed with the Authority by May 1 of each year.⁵

Upon the promulgation of the TRA’s wastewater rules, on March 20, 2006, Cartwright Creek filed a *Petition* in TRA Docket No. 06-00062 for exemption from the financial security requirements. At the regularly scheduled Authority Conference held on April 3, 2006, the panel assigned to that docket instructed the Company to confer with TRA Staff to clarify Cartwright Creek’s proposal. Thereafter, a second Petition was filed, which again requested exemption

¹ See *In re: Petition of Cartwright Creek, LLC to Approve Alternative Form of Financial Security Under Rule 1220-4-13-.07*, Docket No. 11-00066, *Order Denying Petition and Ordering Cartwright Creek, LLC to Provide Security*, pp. 1-2 (October 5, 2011). Cartwright Creek is owned by Sheaffer International, L.L.C. (90%) and M.R.S., L.L.C. (10%). See *In re: Petition for Approval to Transfer Cartwright Creek Utility Company, Inc.’s Authority to Provide Wastewater Utility Services to Cartwright Creek, L.L.C.*, Docket No. 04-00307, *Petition to Transfer Authority to Provide Utility Services*, p. 2 (September 22, 2004).

² See *In re: Petition to Amend Cartwright Creek’s CCN and Petition to Intervene in Tennessee Wastewater Systems, Inc.’s Petition to Amend CCN*, Docket No. 04-00358, *Order Approving Petition to Amend Certificate of Public Convenience and Necessity* (July 13, 2005); *In re: Petition of Cartwright Creek, LLC to Amend Its Existing Certificate of Convenience and Necessity to Provide Service to the Stillwater Development in Williamson County*, Docket No. 07-00180, *Order Approving Petition to Amend Certificate of Public Convenience and Necessity* (November 19, 2007). See also *In re: Joint Petition of Cartwright Creek LLC and Waterbridge Development for Approval of Special Contract*, Docket No. 09-00173, *Order Granting Approval of Special Contract* (December 15, 2009).

³ Tenn. Comp. R. & Regs. 1220-4-13-.07(1).

⁴ Tenn. Comp. R. & Regs. 1220-4-13-.07(2)(a) and (3).

⁵ Tenn. Comp. R. & Regs. 1220-4-13-.07(5).

from the financial security rule, but established a \$300,000 construction escrow account, which was intended for “construction, and the upgrading, and repair of the system to a standard which will enable the Company to secure a bond or letter of credit in 2007.”⁶ The agreement contemplated that \$300,000 would be placed in the escrow account, with \$240,000 placed in the account by June 6, 2006, and the remaining \$60,000 by July 31, 2006. Under the proposal, any expansions of Cartwright Creek’s service area would require a minimum \$20,000 bond. At the regularly scheduled Authority Conference held on May 30, 2006, a majority of the panel in TRA Docket No. 06-00062 voted to approve the second Petition.⁷

Cartwright Creek subsequently satisfied its financial security requirements in 2007 by filing a \$240,000 Letter of Credit issued in favor of the Authority by Pinnacle National Bank, which was later increased to \$244,000. On April 27, 2011, Pinnacle National Bank notified the Authority that the Letter of Credit would not be renewed.⁸

On April 29, 2011, Cartwright Creek filed a petition requesting the Authority to approve an alternative form of financial security pursuant to TRA Rule 1220-4-13-.07(5). In the petition, Cartwright Creek stated that the members of the Company’s 90% owner, Sheaffer Wastewater Solutions, LLC, had been

forced to quickly comply with [wastewater financial security] regulations and posted a letter of credit for \$240,000.00. The ownership group of Cartwright Creek did not plan or budget for such a financial expenditure and experienced a cash flow problem because there was no way to obtain a letter of credit without cash to back the issuance of such letter of credit. Thus, Sheaffer’s members

⁶ See *In re: Petition of Cartwright Creek, L.L.C. for Exemption from Financial Security as Required by the Tennessee Regulatory Authority’s Proposed Wastewater Regulations*, Docket No. 06-00062, *Order Approving an Alternative Financial Security Arrangement*, p. 4 (February 22, 2007).

⁷ *Id.* at 5 and *Dissent of Director Ron Jones to the Order Approving an Alternative Financial Security Arrangement* (February 22, 2007).

⁸ See *In re: Petition of Cartwright Creek, LLC to Approve Alternative Form of Financial Security under Rule 1220-4-13-.07*, Docket No. 11-00066, *Notification by Pinnacle National Bank That Letter of Credit Will Not Be Renewed Past the July 1, 2011 Expiration Date* (May 19, 2011).

provided cash equity of \$240,000.00 to purchase a certificate of deposit at Pinnacle Bank and a letter of credit was issued.⁹

As an alternative financial security, the Company proposed (1) a \$20,000 Letter of Credit, (2) assignment of its accounts receivable and collection rights under all service agreements with its customers; and (3) a corporate guaranty of Cartwright Creek and its owner, Sheaffer Wastewater Solutions, LLC.¹⁰

At the regularly scheduled Authority Conference held on June 6, 2011, the panel in TRA Docket No. 11-00066 heard testimony from Mr. Bruce Meyer on behalf of Cartwright Creek. Mr. Meyer responded to questions from the panel and TRA Staff, and stated that the Company notified Pinnacle Bank that it did not want to renew the letter of credit.¹¹ Mr. Thomas Kolchowsky, Counsel for Cartwright Creek, indicated that the existing letter of credit would remain in place until the matter was resolved.¹² The panel then passed a motion directing the TRA Staff and the Company to work together to bring a joint proposal before the panel, either by the end of June 2011 or at the next Authority Conference.¹³

At the next Authority Conference on July 11, 2011, TRA Staff reported that no agreement had been reached with the Company. Mr. Kolchowsky, appearing by telephone, requested additional time to work out the details of an alternative. TRA Staff reported that Cartwright Creek had withdrawn its existing letter of credit despite the Company's assurances at the June 6, 2011 Authority Conference, and had thus had no financial security in place since July 1, 2011.¹⁴ Mr. Kolchowsky was asked whether the funds that had been withdrawn from the

⁹ *In re: Petition of Cartwright Creek, LLC to Approve Alternative Form of Financial Security under Rule 1220-4-13-.07*, Docket No. 11-00066, *Petition*, p. 3 (April 29, 2011).

¹⁰ *Id.* at 4.

¹¹ *In re: Petition of Cartwright Creek, LLC to Approve Alternative Form of Financial Security under Rule 1220-4-13-.07*, Docket No. 11-00066, *Order Denying Petition and Ordering Cartwright Creek, LLC to Provide Security*, p. 6 (October 5, 2011).

¹² *Id.*

¹³ *Id.* at 7.

¹⁴ *Id.* at 6-7.

Company's certificate of deposit were liquid and could be maintained as a form of interim security until the next Authority Conference scheduled for August 1, 2011. Mr. Kolchowsky agreed with this request and stated that the Company would provide a letter affirming its assent. Thereafter, the panel voted unanimously to place the matter on the August 1, 2011 Authority Conference, and instructed the TRA Staff and the Company to work together to reach an agreement. If no agreement could be reached, TRA Staff and the Company were to present their final best offers five days prior to the Conference.¹⁵

On July 15, 2011, TRA Staff filed a letter to Cartwright Creek in TRA Docket No. 11-00066 confirming a telephone conversation of July 13, 2011 in which Mr. Kolchowsky stated that negotiations between the Company and TRA Staff had come to an end. The letter further indicated that Mr. Kolchowsky had informed TRA Staff that Cartwright Creek did not intend to secure the \$244,000 through a certificate of deposit, a letter of credit or holding it in a special account. In essence, the letter stated, Cartwright Creek was refusing to follow the directive of the TRA that Cartwright maintain financial security while this proceeding is pending.¹⁶

At the regularly scheduled Authority Conference held on August 1, 2011, Mr. Kolchowsky, appearing telephonically, stated that the Company's offer had been rejected by TRA Staff and that Cartwright Creek had no security in place. Mr. Kolchowsky also confirmed that the Company had not obtained a letter from Pinnacle Bank stating that the funds previously described as being held liquid were still being kept available to provide interim security pending resolution of the issue.¹⁷ TRA Staff and Company representatives met again, outside the presence of the panel, prior to deliberations at Cartwright Creek's request. Following TRA Staff's report that no resolution had been reached, the panel considered the petition. A majority

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 8-9.

of the panel in Docket No. 11-00066 voted to deny Cartwright Creek's petition for alternative financial security and ordered the Company to file with the Authority a security bond or irrevocable letter of credit in the amount of \$350,799 no later than August 11, 2011.¹⁸

THE JOINT PETITION AND AGREEMENT

On April 1, 2014, the Parties filed the *Joint Petition* and accompanying *Agreement* in this docket requesting approval of an alternative financial security consisting of (1) an irrevocable Letter of Credit in favor of the TRA in the amount of \$20,000; (2) Cartwright Creek's agreement not to interfere with the TRA's access to funds from the Company's accounts in the event the TRA determines after a hearing that the TRA must assume control of Cartwright Creek or appoint a receiver; and (3) a list of all of the Company's customers, including the physical address where service is provided, the number of bedrooms at each address, the customers' mailing address for billing, the identity of and contact information for the water system providing water service to each customer, with quarterly updates to this information.¹⁹

In support of the *Joint Petition*, on August 7, 2014, Cartwright Creek filed *Supplemental Information in Support of Joint Petition*, which states that Mr. Bruce Meyer, on behalf of Cartwright Creek, contacted Pinnacle National Bank and was told on July 31, 2014, by a senior vice president, that "the bank would issue a letter of credit if the bank had a certificate of deposit for the same amount as the letter of credit."²⁰

FINDINGS AND CONCLUSIONS

At the regularly scheduled Authority Conference held on August 11, 2014, the panel conducted a Hearing in this matter, which was noticed by the Authority on August 1, 2014. At

¹⁸ *Id.* at 9-10.

¹⁹ *Agreement*, pp. 2-3 (April 1, 2014).

²⁰ *Supplemental Information in Support of Joint Petition*, p. 1 (August 7, 2014). The filing was not in the form of an affidavit, but later was supported by Mr. Meyer's testimony at the Hearing. See Transcript of Proceedings, p. 39 (August 11, 2014).

the Hearing, Mr. Henry Walker, Esq. of Bradley Arant Boult Cummings LLP, 1600 Division Street, Suite 700, Nashville, TN 37203, appeared on behalf of Cartwright Creek. Mr. Bruce Meyer, Operations Manager for Cartwright Creek, appeared as a witness for the Company in support of the *Joint Petition* and accompanying *Agreement*. No person sought to comment during the Hearing.

At the conclusion of the Hearing, the panel considered the evidence presented and found that the information concerning the financial and operational condition of the Company, and the information concerning the Company's efforts to comply with TRA Rule 1220-4-13-.07, was not sufficient to support that the proposed alternative financial security would serve the public interest. The Parties submitted no evidence concerning the Company's efforts to obtain a bond, nor any evidence that efforts to get a bond or letter of credit have been denied or limited to an amount less than the Company's gross annual revenue. Mr. Meyer only testified concerning Pinnacle Bank's stated requirements for a letter of credit, which were that the bank "would grant a letter of credit if [the Company] had ... the amount of funds equivalent to the letter of credit in the bank, in the deposit account."²¹ The evidence does not indicate, however, if the Company actually tried to get a letter of credit, contacted any other banks, or if its efforts were otherwise rejected. Although Mr. Meyer stated that the Company had "a net loss" the previous year, the Parties did not present any detailed information on the financial status of Cartwright Creek and how the Company's financial condition may have affected its ability to obtain financial security or its ability to comply with the TRA's rules.²² In addition, the Parties did not show any change of circumstance with the Company since the Authority rejected Cartwright Creek's proposed \$20,000 alternative financial security in 2011. Therefore, the panel voted unanimously to deny the *Joint Petition* and the *Agreement*.

²¹ Transcript of Proceedings, p. 39 (August 11, 2014).

²² *Id.* at 42.

The panel further directed Cartwright Creek to file within sixty (60) days proof of either a security bond or irrevocable letter of credit, in the form prescribed by TRA Rule 1220-4-13-.07, in the amount of at least \$440,147, which is the Company's gross annual revenue reported in its 2013 Annual Report, or in the alternative, another petition requesting approval of an alternative financial security. If Cartwright Creek chooses to file another petition requesting an alternative financial security, the panel directed the Company to include the following information to assist in the Authority's evaluation of whether the proposed alternative security is in the public interest:

- 1) Information, including all supporting documentation, related to the actions taken by Cartwright Creek since July 1, 2011 to comply with TRA Rule 1220-4-13-.07 and the Authority's *Order Denying Petition and Ordering Cartwright Creek, LLC to Provide Security* filed in TRA Docket No. 11-00066 on October 5, 2011;
- 2) Information, including all supporting documentation, related to Cartwright Creek's efforts since July 1, 2011 to obtain financial security in the amount of the Company's gross annual revenue, as well as the results of such efforts;
- 3) Information, including all supporting documentation, related to Cartwright Creek's efforts since July 1, 2011 to obtain financial security in any amount, as well as the results of such efforts;
- 4) If such proposed alternative financial security provides for an amount that is less than the Company's gross annual revenue reported in its 2013 Annual Report, information and analysis concerning whether the proposed amount is sufficient to cover the managerial, legal and operational costs of continuing wastewater utility services to Cartwright Creek's customers should the Authority need to assume control of the system and/or petition for the appointment of a receiver to assume control of the system;

- 5) If such proposed alternative security provides for an assignment of the Company's accounts receivable or the furnishing of customer account and billing records, information and analysis demonstrating how such assignment or records would reduce the amount of financial security otherwise required by the TRA's financial security rule;
- 6) Information concerning the present financial condition of the Company, including, but not limited to, information and analysis of its current assets, current liabilities, and cash flows by month for the preceding twelve (12) months;
- 7) Information concerning the present condition and state of repair or disrepair of Cartwright Creek's system, including, but not limited to, information and analysis of maintenance and repairs made to the system during the preceding twelve (12) months, and a projection of maintenance, repairs and upgrades that need to be made to the system during the next three (3) years;
- 8) Information concerning the status of Cartwright Creek's compliance with permitting requirements administered by the Tennessee Department of Environment and Conservation ("TDEC"), including, but not limited to, all communications between the Company and TDEC during the preceding twelve (12) months;
- 9) Information concerning whether any liquid assets or collateral are accessible to the Company that could be used to meet the Authority's financial security requirements on a temporary or permanent basis, including the sources of such assets or collateral;
- 10) Information concerning whether an escrow account or other reserve should be established, maintained, or monitored in order to assure the availability of funds that could be used to address any unanticipated financial or operational hardships,

including the various mechanisms or sources available to fund such an account or reserve; and

- 11) Any other information or analysis concerning the present operational and financial condition of Cartwright Creek's system, the availability of Company resources, the Company's access to capital and financial services markets, or any other information the Company deems pertinent to its request for alternative financial security.

The panel also noted that Cartwright Creek had failed to provide proof of financial security in violation of both TRA Rule 1220-4-13-.07 and the Authority's *Order Denying Petition and Ordering Cartwright Creek, LLC to Provide Security* filed in TRA Docket No. 11-00066 on October 5, 2011. Therefore, the panel directed Staff to review and report on the circumstances involving the Company's noncompliance and to furnish to the Authority an evaluation, report and recommendation concerning any penalties or sanctions for such noncompliance.

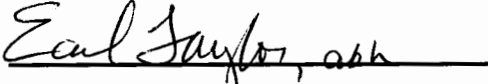
IT IS THEREFORE ORDERED THAT:

1. The *Joint Petition* and accompanying *Agreement* filed by Cartwright Creek, LLC and the Staff of the TRA Compliance Division, are denied.
2. Cartwright Creek shall file within sixty (60) days proof of either a security bond or irrevocable letter of credit, in the form prescribed by TRA Rule 1220-4-13-.07, in the amount of at least \$440,147, or in the alternative, another petition requesting approval of an alternative financial security. If Cartwright Creek chooses to file another petition requesting an alternative financial security, the Company shall include the information listed heretofore in this Order to assist in the Authority's evaluation of whether the proposed alternative security is in the public interest.

3. Staff of the TRA shall review and report on the circumstances involving the Company's noncompliance with TRA Rule 1220-4-13-.07 and the Authority's *Order Denying Petition and Ordering Cartwright Creek, LLC to Provide Security* filed in TRA Docket No. 11-00066 on October 5, 2011, and shall furnish to the Authority an evaluation, report and recommendation concerning any penalties or sanctions for such noncompliance.

Chairman Herbert H. Hilliard, Vice Chairman David F. Jones and Director Robin Bennett concur.

ATTEST:


Earl R. Taylor, Executive Director