

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**April 22, 2016**

<b>IN RE:</b>	)	
	)	
<b>TARIFF FILING OF KINGS CHAPEL</b>	)	<b>DOCKET NO. 14-00158</b>
<b>CAPACITY TO TRUE-UP BONDING COSTS</b>	)	
<b>(TARIFF NO. 20140176)</b>	)	

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**ORDER APPROVING TARIFF**

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This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones and Director Robin L. Morrison of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on March 14, 2016, for hearing and consideration of the Proposed Tariff Filing filed on December 15, 2014 and the Amended Proposed Tariff Filing filed on March 4, 2016 by King’s Chapel Capacity, LLC (“King’s Chapel” or the “Company”).

**BACKGROUND**

By order entered on October 13, 2014, in Docket No. 14-00007, King’s Chapel was required to appear and show cause why the Authority should not take action against it for violation of state law and Authority rules relating to obtaining and filing proof of financial security.<sup>1</sup> On December 12, 2014, King’s Chapel filed a tariff in that docket intended to true-up bonding costs related to a pass-through charge to customers for recovery of such costs.<sup>2</sup> On

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<sup>1</sup> See *In re: Show Cause Proceeding Against King’s Chapel Capacity, LLC, for Alleged Violations of Wastewater Utility Laws and TRA Rules* (hereinafter *Show Cause Proceeding*), 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 Violations of State Law and TRA Rules*, p. 8 (October 13, 2014).

<sup>2</sup> *Show Cause Proceeding, Tariff Filing of King’s Chapel Capacity to True-Up Bonding Costs (Tariff No. 21040176)*, p. 2 (December 12, 2014).

December 15, 2014, the bond true-up tariff was refiled into the instant docket, and by order entered on January 26, 2015, Docket No. 14-00007 was held in abeyance pending resolution of this docket.<sup>3</sup> The tariff had an effective date of December 1, 2014.<sup>4</sup>

During the regularly scheduled Authority Conference held on January 12, 2015, the Panel found that additional information was needed to properly review and evaluate the proposed tariff changes and voted unanimously to suspend King's Chapel's proposed tariff for sixty (60) days from February 1, 2015, and to appoint General Counsel or her designee as Hearing Officer in order to prepare this matter for hearing before the panel.<sup>5</sup> On February 11, 2015, the Consumer Protection and Advocate Division of the Office of the Attorney General and Reporter ("Consumer Advocate") filed a *Petition to Intervene* in this matter, which was granted by the Hearing Officer in an order dated February 19, 2015. Thereafter, the Parties engaged in discovery, and the proposed tariff was suspended several more times by the Hearing Officer.

Finally, on March 4, 2016, King's Chapel filed its Amended Proposed Tariff Filing and Support Documentation which included a tariff that trues-up the Company's bonding costs from February 2009 through May 2015 and has an effective date of April 1, 2016.<sup>6</sup>

#### **STANDARD FOR AUTHORITY APPROVAL**

Tenn. Code Ann. § 65-5-103(a) (2015) provides:

(a) When any public utility shall increase any existing individual rates, joint rates, tolls, fares, charges, or schedules thereof, or change or alter any existing classification, the authority shall have power either upon written complaint, or upon its own initiative, to hear and determine whether the increase, change or alteration is just and reasonable. The burden of proof to show that the increase, change, or alteration is just and reasonable shall be upon the public utility making

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<sup>3</sup> *Show Cause Proceeding, Order Holding Docket in Abeyance Pending Resolution of King's Chapel's Tariff to True-Up Bonding Costs in Docket No. 14-00158*, p. 6 (January 26, 2015).

<sup>4</sup> *Show Cause Proceeding, Tariff Filing of King's Chapel Capacity to True-Up Bonding Costs (Tariff No. 21040176)*, p. 2 (December 12, 2014).

<sup>5</sup> *Order Suspending Tariff for Sixty (60) Days and Appointing a Hearing Officer*, p. 1 (January 14, 2015).

<sup>6</sup> *Proposed Tariff Filing and Support Documentation*, p. 1 (March 2, 2016).

the same. In determining whether such increase, change or alteration is just and reasonable, the authority shall take into account the safety, adequacy and efficiency or lack thereof of the service or services furnished by the public utility.

## **POSITION OF THE PARTIES**

### **KING'S CHAPEL**

King's Chapel's expert witness, William H. Novak, stated in his pre-filed testimony that the tariff filed in this docket on December 15, 2014, trues-up bonding costs from the implementation of the surcharge in February 2009 through September 2014.<sup>7</sup> He further stated that eight different bonds were in effect at various times during the true-up period, with amounts ranging from \$77,000 to \$276,355.<sup>8</sup> Since the Authority approved an interest rate of 7.95% in Docket No. 08-00069 to be applied to money set aside by the utility for securing bonds, Mr. Novak explains that the total bond costs in effect each month during the period were multiplied by that rate to arrive at the amount of monthly interest.<sup>9</sup> The actual monthly interest was then divided by the actual monthly customers to get the actual monthly bonding cost per customer.<sup>10</sup> Next, the actual monthly bonding cost per customer was subtracted from the approved monthly bonding surcharge of \$18.60 to get the net charge per customer that was either over or under-recovered.<sup>11</sup> The over or under-recovered monthly customer charge was then multiplied by the total number of customers to get the total monthly over or under-recovered bond surcharge, which were accumulated for the true-up period.<sup>12</sup> According to Mr. Novak, the result of these calculations shows an over-recovery of actual bonding costs of \$9,667 at the end of the true-up period ending September 2014.<sup>13</sup>

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<sup>7</sup> *Expert Testimony of William H. Novak on Behalf of King's Chapel Capacity*, p. 3 (August 25, 2015).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

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

Mr. Novak testified that he made pro-forma adjustments to include two new bonding requirements that took effect after the end of the true-up period – an \$82,500 bond effective in December 2014, and a \$157,720 bond effective in the first quarter of 2015.<sup>14</sup> Mr. Novak testified that applying the 7.95% interest rate to these pro-forma bonding requirements resulted in current bond pass-through costs of \$28,359.<sup>15</sup> Netting this amount with the \$9,667 over-recovery results in a net pro-forma bond pass-through cost of \$18,692. The combined effect of Mr. Novak’s calculations is to reduce the current monthly bond surcharge from \$18.60 to \$14.16.<sup>16</sup>

During the pendency of this docket, the Company altered its proposed security amount from \$20,000 to \$86,000.<sup>17</sup> This amount reflects the Company’s most recent revenue filing minus the amount of revenue attributed to bond cost recovery.<sup>18</sup> Based on the Company’s updated calculations reflecting the \$86,000 security amount and updated information concerning customer counts and billing data, the Company calculated the new monthly bond surcharge to be \$9.55, as reflected in its Amended Proposed Tariff filed on March 4, 2016.<sup>19</sup>

#### CONSUMER ADVOCATE

The Consumer Advocate offered no witness testimony in this case. In its *Petition to Intervene*, it notes that the bonding costs at issue are recovered from customers and that the tariff filing itself refers to a true-up to charges paid by customers.<sup>20</sup> As such, the Consumer Advocate

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<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 5-6.

<sup>17</sup> See *In re: Petition of King’s Chapel Capacity, LLC to Post Alternative Financial Security*, Docket No. 15-00127, *Petition of King’s Chapel Capacity, LLC to Post Alternative Financial Security*, p. 1 (December 21, 2015).

<sup>18</sup> *Id.*

<sup>19</sup> *Proposed Tariff Filing and Support Documentation*, p. 2 (March 2, 2016).

<sup>20</sup> *Petition to Intervene*, p. 2 (February 11, 2015).

argued that this docket involves the issue of whether refunds should be made to customers and, if so, the amount of those refunds.<sup>21</sup>

### **THE HEARING**

The Hearing in this matter was held before the voting panel during the regularly scheduled Authority Conference on March 14, 2016, as noticed by the Authority on March 4, 2016. Participating in the Hearing were:

King's Chapel Capacity, LLC – Charles B. Welch Jr., Esq., Farris Bobango PLC, 618 Church Street, Suite 300, Nashville, Tennessee 37219 and William H. Novak, Expert Witness, WHN Consulting, 19 Morning Arbor Place, The Woodlands, Texas 77381.

Consumer Protection and Advocate Division – Vance L. Broemel, Esq., Office of the Attorney General and Reporter, Post Office Box 20207, Nashville, Tennessee 37202

During the Hearing, Mr. Welch moved Mr. Novak's pre-filed testimony into the record and Mr. Novak was subject to questioning before the panel. The Consumer Advocate declined cross examination of Mr. Novak. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

### **FINDINGS AND CONCLUSIONS**

Conditioned upon the Authority's approval of the alternative security requested in Docket No. 15-00127, the panel voted unanimously to approve the Company's calculations and methodology supporting the true-up of bonding costs for the period of February 2009 through May 2015 as set forth in King's Chapel's Amended Proposed Tariff filed March 4, 2016. The panel found that the appropriate amount of the pass-through charge to recover bonding costs going forward should be \$9.55 per month as reflected in the amended tariff, effective April 1, 2016.

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<sup>21</sup> *Id.*

Pursuant to TRA Rule 1220-4-13-.07(7)(b)(2), the Company should file tariffs to true-up its recovery of security costs on or before July 1 of each year with the proposed tariff to become effective August 1 of that year. This proposed tariff must specify the amount of security in place, the updated monthly rate adjustment to be billed to customers and the percentage rate increase this represents. Due to the timing of the approval of the current amended tariff, the Company's next true-up tariff filing is due July 1, 2017 and should cover the period of June 1, 2015 through May 31, 2017, with a proposed tariff effective on August 1, 2017. Approval of the Amended Proposed Tariff in this docket is conditioned upon King's Chapel's filing of a signed and fully executed bond with the Authority, in the form and amount as ordered by the voting panel in Docket No. 15-00127.

**IT IS THEREFORE ORDERED THAT:**

1. The Amended Proposed Tariff to true-up bonding costs proposed by King's Chapel Capacity, LLC, filed on March 4, 2016, is approved with an effective date of April 1, 2016. This approval is conditioned upon the Authority's approval of the alternative security requested in Docket No. 15-00127 and King's Chapel's filing of a signed and fully executed bond, in the form and amount as ordered in that docket.
2. King's Chapel Capacity, LLC shall file its next true-up tariff to adjust bonding costs on or before July 1, 2017, to true-up the Company's bonding costs from June 1, 2015 to May 31, 2017 and, in accordance with TRA Rule 1220-4-13-.07(7)(b)(2), the tariff must specify the amount of security in place, the updated monthly rate adjustment to be billed to customers and the percentage rate increase represented.
3. After July 1, 2017, King's Chapel Capacity, LLC shall file annual true-up tariffs in accordance with TRA Rule 1220-4-13-.07(7)(b).

4. Any person who is aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

5. Any person who is aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

**Chairman Herbert H. Hilliard, Vice Chairman David F. Jones and Director Robin L. Morrison concur.**

**ATTEST:**



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**Earl R. Taylor, Executive Director**