

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 17, 2016

IN RE:

CARTWRIGHT CREEK, LLC, REQUEST TO  
UTILIZE ALTERNATIVE FINANCIAL SECURITY  
PURSUANT TO TENN. COMP. R. & REGS  
1220-4-13-.07(5) (2015)

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DOCKET NO. 15-00052

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ORDER APPROVING PETITION FOR ALTERNATIVE FINANCIAL SECURITY

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This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on June 20, 2016, for hearing and consideration of the *Petition for Alternative Financial Security* (“*Petition*”) filed on May 1, 2015 by Cartwright Creek, LLC (“Cartwright Creek” or the “Company”).

**BACKGROUND AND PETITION**

On May 1, 2015, Cartwright Creek filed its *Petition* with the Authority seeking approval of the Company’s posting of alternative financial security pursuant to TRA Rule 1220-04-13-.07(5). On April 26, 2016, Cartwright Creek filed a surety bond in the amount of \$50,000 from Aegis Security Insurance Company, an insurance company authorized to do business in the state of Tennessee.<sup>1</sup> According to Cartwright Creek’s *Petition* and supporting documentation, the Company’s total income for 2014 was \$471,945.07, but it incurred a net operating loss for the

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<sup>1</sup> *Surety Bond in the Amount of \$50,000*, p. 1 (April 26, 2016).

year in the amount of \$58,656.34.<sup>2</sup> The form of the bond the Company submitted differed slightly from the exact form prescribed by TRA Rule 1220-04-13-.08.

Prior to the filing of this *Petition*, the Authority twice denied the Company's requests for alternative financial security, in TRA Docket Nos. 11-00066 and 14-00034.<sup>3</sup> Also, the Authority's Compliance Division instituted a show cause proceeding against the Company in TRA Docket No. 15-00124 for failure to obtain and maintain financial security.<sup>4</sup>

In its *Petition*, Cartwright Creek states that the \$50,000 amount of its proposed bond is an amount sufficient to cover its operating expenses for approximately six weeks.<sup>5</sup> Additionally, the Company filed with its *Petition* responses to the questions ordered by the Authority in TRA Docket No. 14-00034.<sup>6</sup> The Company stated that it had approached a local insurance agent and First Tennessee Bank and neither would assist in providing the bond or letter of credit in the amount requested by the Authority.<sup>7</sup> Cartwright Creek also provided a letter from Cincinnati Insurance Company denying its request for a bond due to a lack of financial capital.<sup>8</sup>

The Company provided a list of annual expenses and determined that \$19,773.55 in monthly expenses is required to operate the company on a monthly basis.<sup>9</sup> The \$19,773.55 calculation did not include any salary and benefits for the operations manager, attorney fees, state government fees, property taxes, liability, facility or worker's compensation insurance

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<sup>2</sup> *Petition for Alternative Financial Security*, at Exhibit 3, pp. 1-2 (May 1, 2015) (hereinafter *Petition*).

<sup>3</sup> 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* (October 5, 2011); and *In re: Cartwright Creek, LLC. Request to Utilize Alternative Financial Security Pursuant to Tenn. Comp. R. & Regs. 1220-4-13-.07(5)*, Docket No. 14-00034, *Order Denying Request for Alternative Financial Security* (January 6, 2015).

<sup>4</sup> See *In re: Show Cause Proceeding Against Cartwright Creek, LLC for Violations of the Statutes and Rules Regulating Wastewater Utilities*, Docket No. 15-00124, *Order Appointing a Hearing Officer* (January 20, 2016).

<sup>5</sup> *Petition*, p. 1 (May 1, 2015).

<sup>6</sup> See *In re: Cartwright Creek, LLC, Request to Utilize Alternative Financial Security Pursuant to Tenn. Comp. R. & Regs. 1220-4-13-.07(5)*, Docket No. 14-00034, *Order Denying Request for Alternative Financial Security*, pp. 8-10 (January 6, 2015).

<sup>7</sup> *Petition*, at *Responses to Data Requests*, pp. 1-2 (May 1, 2015).

<sup>8</sup> *Id.* at Exhibit 1.

<sup>9</sup> *Id.* at Exhibit 2.

premiums, or any type of maintenance or emergency maintenance.<sup>10</sup> In addition, the Company states in its *Petition* that as part of the proposed alternative financial security, it will provide for the assignment of its account information and would allow the TRA immediate access to manage its receivables and payments in the event such action was necessary.<sup>11</sup> The Company further states that it has no assets or collateral accessible to meet the financial security requirements.<sup>12</sup>

On June 2, 2016, the Company filed pre-filed testimony as well as an updated response to Question 8 in the Order issued in TRA Docket No. 14-00034. The Company representative, Bruce Meyer, stated in his pre-filed testimony that the \$50,000 surety bond amount is enough to pay the out-of-pocket expenses of the utility for two months.<sup>13</sup> He further stated that due to its financial condition, Cartwright Creek cannot obtain a bond or letter of credit in an amount equal to the Company's annual revenue and that a number of financial institutions were contacted to obtain a financial security under affordable terms but none was found.<sup>14</sup> Mr. Meyer further stated that the Company is in the beginning stages of a rate case and that if financial relief is granted, then the Company may be able to increase the bond amount if its financial situation is improved.<sup>15</sup>

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

Tenn. Code Ann. § 65-4-201(e) (2015) provides:

The authority shall direct the posting of a bond or other security by a public utility providing wastewater service or for a particular project proposed by a public utility providing wastewater service. The purpose of the bond or other security shall be to ensure the proper operation and maintenance of the public utility or project. The authority shall establish by rule the form of such bond or other security, the circumstances under which a bond or other security may be required,

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<sup>10</sup> *Id.* at Exhibits 2 and 3.

<sup>11</sup> *Id.* at Response to #5.

<sup>12</sup> *Id.* at Response to #9.

<sup>13</sup> Bruce Meyer, *Pre-Filed Direct Testimony*, p. 1 (June 2, 2016).

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

<sup>15</sup> *Id.* at 1-2.

and the manner and circumstances under which the bond or other security may be forfeited.

Pursuant to TRA Rule 1220-04-13-.07(2), a public wastewater utility must furnish proof of financial security to the Authority in the amount of 100% of its gross annual revenue or \$20,000, whichever is greater. However, financial security in an alternative form to that above may be provided pursuant to TRA Rule 1220-04-13-.07(5), which states:

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.

#### **THE HEARING**

The Hearing in this matter was held before the voting panel of Directors during the regularly scheduled Authority Conference on June 20, 2016, as noticed by the Authority on June 10, 2016. Participating in the Hearing were:

Cartwright Creek, LLC – Henry M. Walker, Esq., Bradley, Arant, Boult, Cummings, LLP, 1600 Division Street, Suite 700, Nashville, Tennessee 37203 and Bruce Meyer, Operations manager, Cartwright Creek, LLC, 800 Roosevelt Road, Building A-120, Glen Ellyn, Illinois 60137.

During the Hearing, Mr. Meyer ratified, then summarized his pre-filed testimony and was subject to questioning before the panel. There were no intervening parties to the proceeding. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

## **FINDINGS AND CONCLUSIONS**

In its *Petition*, Cartwright Creek has asked the Authority for approval of alternative financial security under TRA Rule 1220-04-13-.07(5). Based on a review and consideration of the pleadings, pre-filed testimony and the entire administrative record, the panel found that the proposed alternative security is in the public interest and consistent with Authority Rule 1220-4-13-.07(5) because:

It appears the Company has made reasonable efforts to obtain financial security for the full amount required by TRA rules, but due to its distressed financial condition, it appears unable to do so on affordable terms. Further, although the amount of the proposed bond only equals approximately 11% of the Company's gross annual revenues, the amount of the bond is acceptable in this case. The Company has provided information that its \$50,000 alternative security amount would provide sufficient funds to operate the company on a temporary basis for two months.

Finally, the form of the bond Cartwright Creek has obtained is not identical to that prescribed for wastewater utilities under TRA Rule 1220-04-13-.08. However, the bond form was developed in consultation with TRA Staff and is satisfactory under Tenn. Code Ann. § 65-4-201(e) and TRA Rule 1220-04-13-.07. The panel found that the bond form is in substantial compliance with the rules and is sufficient to meet statutory and regulatory requirements. Based on these findings, the panel voted unanimously to approve Cartwright Creek's *Petition*.

### **IT IS THEREFORE ORDERED THAT:**

1. The *Petition for Alternative Financial Security* filed on May 1, 2015 by Cartwright Creek, LLC is granted.

2. 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.

3. 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 Kenneth C. Hill concur.**

**ATTEST:**



**Earl R. Taylor, Executive Director**