

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 22, 2016

IN RE:)
)
PETITION OF KING'S CHAPEL CAPACITY, LLC) **DOCKET NO. 15-00127**
TO POST ALTERNATIVE FINANCIAL SECURITY)

**ORDER APPROVING, IN PART, AND DENYING, IN PART,
THE PETITION OF KING'S CHAPEL CAPACITY, LLC
TO POST ALTERNATIVE FINANCIAL SECURITY**

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 March 14, 2016, for hearing and consideration of the *Petition of King's Chapel Capacity, LLC to Post Alternative Financial Security* (the "*Petition*") filed on December 21, 2015 by King's Chapel Capacity, LLC ("King's Chapel" or the "Company").

BACKGROUND AND PETITION

On December 21, 2015, King's Chapel filed its *Petition* with the Authority seeking approval of the Company's posting of alternative financial security, along with other requests related to bonding requirements and active matters in other dockets. On March 4, 2016, King's Chapel filed a surety bond in the amount of \$86,000 from Lexon Insurance Company, an insurance company authorized to do business in the state of Tennessee. This bond was not signed by any authorized representative of King's Chapel, but was signed by the surety.¹ The

¹ *Provider's Surety Bond* (March 4, 2016).

bond amount is approximately 79% of King's Chapel's gross annual revenue of \$108,512.² Its form also differs slightly from the bond form, which is prescribed by Authority rule in TRA Rule 1220-04-13-.08.

Additionally, the *Petition* requests to deduct bond surcharge revenues of approximately \$23,000 from total revenues of approximately \$109,000 in order to arrive at the alternative bonding amount of \$86,000.³ Further, the *Petition* requests to permanently exempt bond surcharge revenues so that the Company may avoid an annual alternative security filing and to include this exemption in the TRA's pending proposed wastewater rules which are the subject of Docket No. 14-00104.⁴ Finally, the *Petition* requests that the Authority rule that King's Chapel has met all financial security requirements and dismiss Docket Nos. 14-00007 and 14-00158.⁵

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, 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:

² *Petition of King's Chapel Capacity, LLC to Post Alternative Financial Security*, p. 1 (December 21, 2015).

³ *Id.* at 2.

⁴ *Id.* at ¶ 2.

⁵ *Id.*

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.

Finally, TRA Rule 1220-04-13-.07(1) requires that public wastewater utilities provide proof of financial security using a format prescribed by the Authority, which can be found at TRA Rule 1220-04-13-.08.

THE HEARING

The Hearing in this matter was held before the voting panel of Directors 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.

During the Hearing, Mr. Novak 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*, King's Chapel has asked the Authority for approval of alternative financial security under TRA Rule 1220-04-13-.07(5) as well as other requests related to bonding requirements and other related pending dockets. The Authority finds as follows:

First, although the amount of the proposed bond only equals approximately 79% of the Company's gross annual revenues, the amount of the bond is sufficient and acceptable in this case. The primary goal of the Authority's financial security rule as relates to public wastewater utilities is to ensure sufficient funds are available in the event that a wastewater system fails or becomes insolvent. King's Chapel contends that it should not be required to provide financial security on existing bond surcharges and, for the purposes of this *Petition*, the Authority agrees. Accordingly, the panel found that the alternative bond amount of \$86,000 is sufficient and in the public interest.

Second, the form of the bond King's Chapel 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. Further, the Authority finds that the bond form is in substantial compliance with the rules and is sufficient to meet statutory and regulatory requirements. Approval of the bond amount and form as granted in this Order is conditioned upon the Company's submission of a signed and fully executed bond, in the amount and form approved by this Order.

With regard to King's Chapel's requests to permanently exempt bond surcharges from its financial security requirement and to include this exemption in the pending wastewater rules in Docket No. 14-00104, the Authority finds that these requests should be denied. The Company may not permanently deduct bond surcharges from its financial security requirements and, as such, must adhere to the annual alternative security filing requirements found in TRA Rule 1220-04-13-.07(5). Accordingly, the Authority finds that King's Chapel's next annual alternative security filing, should it require an alternative security, must be filed no later than May 1, 2017.

Furthermore, King's Chapel's request for a bond surcharges exemption to be included in the pending wastewater rules in Docket No. 14-00104 is denied, for the purposes of this *Petition*, but may still be considered for the purposes of rulemaking.

Finally, King's Chapel's request to dismiss Docket Nos. 14-00007 and 14-00158 is denied. Those dockets are assigned to separate voting panels and will be duly considered and acted upon by those assigned panels.

IT IS THEREFORE ORDERED THAT:

1. The *Petition of King's Chapel Capacity, LLC to Post Alternative Financial Security* filed on December 21, 2015 by King's Chapel Capacity, LLC is approved, in part, and denied, in part.

2. The alternative form and amount of the bond proposed by King's Chapel Capacity, LLC are approved, contingent upon the filing of a signed and fully executed bond, in the alternative form and amount prescribed herein.

3. King's Chapel Capacity, LLC's request to permanently exempt bond surcharges from its financial security requirement is denied, and the Company must continue to comply with the annual filing requirements found in TRA Rule 1220-04-13-.07(5). In the event that King's Chapel Capacity, LLC requires an alternative financial security in the future, its request must be submitted no later than May 1 of each year, beginning May 1, 2017.

4. King's Chapel Capacity, LLC's request to have a bond surcharges exemption included in the pending wastewater rules in Docket No. 14-00104 is denied. This denial, however, does not preclude the Authority from considering such an exemption in rulemaking or future dockets.

5. King's Chapel's Capacity, LLC's request that Docket Nos. 14-00007 and 14-00158 relating to the Company's compliance with the financial security requirement be dismissed as part of this docket is denied.

6. 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.

7. 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