

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

September 4, 2018

IN RE:

CARTWRIGHT CREEK, LLC, REQUEST
TO UTILIZE ALTERNATIVE FINANCIAL
SECURITY

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DOCKET NO.
18-00066

ORDER APPROVING PETITION FOR ALTERNATIVE FINANCIAL SECURITY

This matter came before Chair Robin L. Morrison, Commissioner Herbert H. Hilliard and Commissioner David F. Jones of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, during the regularly scheduled Commission Conference held on July 23, 2018, for hearing and consideration of the *Petition for Alternative Financial Security* (“*Petition*”) filed on June 6, 2018 by Cartwright Creek, LLC (“Cartwright Creek” or the “Company”).

BACKGROUND AND PETITION

On June 6, 2018, Cartwright Creek filed its *Petition* with the Commission seeking approval of the Company’s posting of alternative financial security pursuant to TPUC Rule 1220-04-13-.07(5). In its *Petition*, Cartwright Creek, requests the approval of a bond in the amount of \$120,000 as a form of alternative security.¹ The *Petition* alleges that financial security of \$120,000 would be approximately 21% of the Company’s total service revenue of \$582,670, which would be substantially more than the 11% coverage the Commission approved in 2015 and 2016 and consistent with the percentage amount approved for Tennessee Wastewater Systems, Inc. in Docket No. 18-00053.² Along with its

¹ *Petition*, p. 1 (June 6, 2018).

Petition, the Company pre-filed direct testimony of Bruce Meyer, the Company's Operations Manager. Mr. Meyer stated in his pre-filed testimony that in Docket Nos.15-00052 and 17-00035,³ the Commission determined that the Company could not obtain financial security at the level required under the current rule due to the utility's distressed financial condition, and the Commission agreed in those dockets to accept the Company's proposal to provide a \$50,000 security bond as alternative financial security.⁴ Mr. Meyer testified that after deducting developer income and tap fees, the utility's service revenue has increased from \$476,351 in 2016 to \$582,670 in 2017, and this improvement in the utility's financial situation is due in part to the increase in rates the Commission approved in January 2017 in Docket No 16-00127.⁵

According to Mr. Meyer, the costs of operating the Company on a temporary basis for two months would be approximately \$75,000.⁶ Mr. Meyer testified that the proposed financial security would be more than sufficient to cover costs of operating the utility on a temporary basis and would be a significant increase in the amount approved as financial security past two years.⁷ Mr. Meyer further testified as a result of a staff-assisted rate case, the Company was authorized in Docket 16-00127, to increase its service rates in January 2017,⁸ the increase in service rates raised annual service revenue by more than \$94,000 or 21%.⁹

² *Petition*, p. 2 (June 6, 2018).

³ 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.15-00052, *Order Approving Petition for Alternative Financial Security* (Aug. 17, 2016); *In re: Cartwright Creek, LLC Request to Utilize Alternative Financial Security*, Docket No.17-00035, *Order Approving Petition for Alternative Financial Security* (Dec. 5, 2017).

⁴ Bruce Meyer, Pre-Filed Direct Testimony, p.2 (June 6, 2018).

⁵ *Id.* at p. 2

⁶ *Id.* at p. 3

⁷ *Id.*

⁸ See *In re: Joint Petition of Cartwright Creek, LLC and TRA Staff (As a Party) to Increase Rates and Charges*, Docket No.16-00127, *Order Approving Rate Increase* (January, 10, 2017).

⁹ Compare service revenues reported in the 2017 annual report of \$539,846 with service revenues reported in 2016 of \$445,345.

A financial security of \$120,000 would be a \$70,000 increase to the current security amount and would constitute approximately 16.4% of annual gross revenue, which is a significant improvement to the approximate 11% coverage approved by the Commission in 2016 and 2017.

STANDARD FOR AUTHORITY APPROVAL

Tenn. Code Ann. § 65-4-201(e) (2017) provides:

The commission 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 commission 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 TPUC Rule 1220-04-13-.07(2), a public wastewater utility must furnish proof of financial security to the Commission 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 TPUC 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 Commission 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 Commission.

THE HEARING

The Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on July 23, 2018, as noticed by the Commission on July 13, 2018. 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 Commission for approval of alternative financial security under TPUC 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 of \$120,000 is in the public interest and consistent with Commission Rule 1220-04-13-.07(5). The Company has provided information that its \$120,000 alternative security amount would be a \$70,000 increase to the current security amount and would constitute approximately 16.4% of annual gross revenue, which is a significant improvement to the approximate 11% coverage approved by the Commission in 2016 and 2017.

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 June 8, 2018 by Cartwright Creek, LLC is granted.
2. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen days from the date of this Order.

3. Any person who is aggrieved by the Commission'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.

Chair Robin L. Morrison, Commissioner Herbert H. Hilliard and Commissioner David F. Jones concur.

ATTEST:

A handwritten signature in cursive script, appearing to read "Earl Taylor", written in black ink.

Earl R. Taylor, Executive Director