

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

August 19, 2019

IN RE:)	
)	
PETITION OF CARTWRIGHT CREEK, LLC TO)	DOCKET NO.
INCREASE TAP FEES TO ADDRESS)	19-00034
ENVIRONMENTAL ISSUES RAISED BY THE)	
TENNESSEE DEPARTMENT OF)	
ENVIRONMENT AND CONSERVATION)	

ORDER APPROVING INCREASE OF TAP FEE

This matter came before Commissioner Herbert H. Hilliard, Commissioner John Hie, and Commissioner David Jones of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, at a regularly scheduled Commission Conference held on July 15, 2019, for consideration of the *Petition of Cartwright Creek, LLC to Increase Tap Fees to Address Environmental Issues Raised By the Tennessee Department of Environment and Conservation* (“*Petition*”) filed by Cartwright Creek, LLC (“Cartwright Creek” or the “Company”) on March 13, 2019.

BACKGROUND, PETITION, AND TRAVEL OF THE CASE

Cartwright Creek is a public utility subject to the Commission’s jurisdiction, operating wastewater systems within designated service areas. On March 13, 2019, Cartwright Creek filed a *Petition* seeking to increase its tap fee for new customers from \$5,000 to \$10,000.¹

¹ *Petition*, p. 1 (March 13, 2019).

The Commission set the current tap fee of \$5,000 in TPUC Docket No. 09-00056.² In its *2009 Rate Case Order*, the Commission required the Company to book tap fees as revenue and to place the tap fees received in an escrow account dedicated for system repairs and upgrades. Expenditure of funds from this escrow account required preapproval of the Commission.³

The Commission authorized Cartwright Creek to charge a Capital Improvements Surcharge of \$7.50 per month, in addition to the service rates and charges, for a period of thirty-six (36) months, commencing on January 1, 2017.⁴ These funds collected pursuant to this surcharge were directed to be deposited into a separate bank account, the expenditure of such funds requiring Commission approval and limited to future infrastructure system improvements.⁵ As of December 31, 2018, the escrow account from this surcharge had a balance of approximately \$139,000.⁶

In Docket No. 17-00061, the Commission authorized the Company to utilize \$45,100 from the tap fees escrow account to repair a leak at the wastewater treatment tank at the Company's Grasslands System and to hire an engineering firm to conduct an infiltration investigation of the Grasslands System.⁷ At the time of the *2018 Order*, the tap fee escrow account contained \$95,000.⁸

The engineering firm hired utilizing funds approved in the *2018 Order*, Inflo Design Group ("IDG"), issued a report recommending a comprehensive rehabilitation of selected areas

² *In re: Petition of Cartwright Creek, LLC To Change And Increase Rates And Charges*, Docket No. 09-00056, *Order Approving Settlement Agreement And Determining Contested Issues* (March 2, 2010) ("*2009 Rate Case Order*").

³ *2009 Rate Case Order*, p. 9 (March 2, 2010).

⁴ *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*, p. 3 (January 10, 2017) ("*2017 Rate Case Order*").

⁵ *2017 Rate Case Order*, p. 6 (January 10, 2017).

⁶ *Petition*, p. 3 (March 13, 2019).

⁷ *In re: Petition of Cartwright Creek, LLC For Approval To Use Escrow Funds*, Docket No. 17-00061, *Order Approving Petition*, p. 4 (January 3, 2018) ("*2018 Order*").

⁸ *2018 Order*, p. 3 (January 3, 2018). *See also* *Petition*, p. 2 (March 13, 2019).

of the system at an estimated cost of approximately \$505,800 (“IDG Report”).⁹ On January 15, 2019, the Tennessee Department of Environment and Conservation (“TDEC”) issued a “Notice of Violation,” citing the Company for excessive nitrogen flowing into the Harpeth River from the Grassland System.¹⁰ The Company was ordered to submit a plan addressing the corrective action with regard to current violations and prevention of future violations. Upon meeting and sharing the IDG Report with TDEC staff, both Cartwright Creek and TDEC agreed that the most reasonable and cost-effective manner to address the violations and prevent future violations is to “comprehensively rehabilitate selected areas” of the Grassland System as recommended in the IDG Report.¹¹ However, in its *Petition*, Cartwright Creek alleges that it does not have sufficient escrow account funds or net revenue from operations to pay for the recommended rehabilitation.¹² The Company requests that the tap fee be increased from \$5,000 to \$10,000 in its *Petition*. The Company further requests that money collected from the increased tap fees be placed in its escrow account and be used to pay for the Grassland System rehabilitation.¹³

On April 2, 2019, the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) filed a *Petition to Intervene*.¹⁴ The intervention of the Consumer Advocate was subsequently granted by the Hearing Officer.¹⁵ Following the submission of discovery and Pre-Filed Testimony pursuant to a procedural schedule, the parties prepared for a hearing.

⁹ *Petition*, p. 2 and Exh. A, p. 16 (March 13, 2019).

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.* at 3.

¹³ *Id.* at 3-4.

¹⁴ *Petition to Intervene* (April 2, 2019).

¹⁵ *Order Granting the Petition to Intervene Filed by the Consumer Advocate* (May 1, 2019).

POSITIONS OF THE PARTIES

Cartwright Creek filed the testimony of Bryce Meyer, Operations Manager, in support of its *Petition*.¹⁶ Mr. Meyer testifies that the Grassland System is experiencing groundwater and rainwater infiltration problems in the aging underground collection system serving the wastewater treatment facility. Moderate rainfall events increase the flow to the treatment system to levels beyond its design flow of 250,000 gallons per day, and intense or long rain events can increase flow to more than three times the design flow rate. Mr. Meyer states that the infiltration of groundwater and rainwater causes three problems in the system: (1) decreased treatment efficiency resulting in discharge exceeding the facility's discharge permit; (2) overflows of sewage from manholes; and, (3) additional wear of system resources resulting in premature failures of pumps and treatment equipment.¹⁷

Mr. Meyer also provides testimony supporting the *Petition's* statements concerning the IDG Report and recommendations and the estimated cost of the comprehensive rehabilitation of the Grassland System. Further, Mr. Meyer states that George Garden of TDEC, through a letter dated March 12, 2019 attached as an Exhibit to Mr. Meyer's testimony, that TDEC concurs with the infiltration study findings and encourages the Company to pursue the rehabilitation work recommended by the IDG Report.¹⁸

Finally, Mr. Meyer's testimony asserts that an increase in tap fees would allow the Company to have funding to make necessary repairs to the Grassland System quickly. Completion of the repairs would substantially reduce infiltration, which would result in a reduction in the number of overflows and instances of discharges beyond its permit. An increase

¹⁶ Bruce Meyer, Pre-Filed Direct Testimony (March 13, 2019).

¹⁷ *Id.* at 1-2.

¹⁸ *Id.* at 3.

of the tap fee to \$10,000 would compare favorably to \$10,000 tap fee charged by the City of Brentwood to residences outside its city limits.¹⁹

The Consumer Advocate submitted the testimony of Alex Bradley, Accounting & Tariff Specialist. Mr. Bradley's testimony is a general concurrence with the Company with regard to the need for increased tap fees.²⁰ Mr. Bradley states that the record indicates that the Grassland System is in serious need of capital improvements and/or repairs. He further testifies that an increase of the tap fee to \$10,000 would align the Company's tap fee with those charged by the City of Brentwood and the City of Franklin.²¹ Mr. Bradley concludes that, "the Consumer Advocate believes it is the responsibility of the utility owner(s) to make necessary system improvements. However, in this situation we do not see a path forward to complete the necessary upgrades/repairs without ratepayer funding."²²

Mr. Bradley further states that, departing from positions taken in previous cases treating tap fees as revenues, the accounting treatment for future tap fee receipts should: (1) be recorded "into a distinct escrow account to ensure the purpose of the funding is specifically identified and utilized for its intended purpose;" and, (2) commencing from the date of the order in this docket, be recorded as a regulatory liability in order to reflect ratepayer funding of the needed capital improvements.²³ Such accounting treatment is necessary to protect ratepayers from double recovery of the revenue requirement under either the operating margin or rate-of-return approach to rate setting. Therefore, Mr. Bradley recommends recognition of the tap fees as a regulatory

¹⁹ *Id.* at 3-4.

²⁰ Alex L. Bradley, Pre-Filed Direct Testimony, p. 2 (May 15, 2019).

²¹ *Id.* at 3.

²² *Id.*

²³ *Id.* at 4.

liability, to be amortized over the expected life of the underlying capital improvements, and used as an offset to the revenue requirement in the Company's next rate case.²⁴

On June 11, 2019, the Consumer Advocate filed a letter stating that the joint position of the parties is that there are no contested issues and that the "matter should be resolved in favor of the positions set forth in Cartwright Creek's *Petition*, consistent with the Pre-Filed Testimony of the Parties, including recommendations set forth in Mr. Bradley's testimony."²⁵

THE HEARING

A Hearing on this matter was held on July 15, 2019, as noticed by the Commission on July 3, 2019. Participating in the Hearing were the following parties:

Cartwright Creek, LLC – Henry Walker, Esq., Bradley Arant Boult Cummings, LLP, 1600 Division Street, Suite 700, Nashville, TN 37203.

Consumer Advocate Unit in the Financial Division –Karen Stachowski, Esq., Office of the Tennessee Attorney General and Reporter, P.O. Box 20207, Nashville TN 37202-0207.

At the Hearing, the panel heard testimony from Company witness, Bruce Meyer. Mr. Meyer testified concerning the need for repairs at the Grassland System due to infiltration, the TDEC violations, the insufficiency of current escrow monies to fund the repairs, and the ability of the tap fee increase to complete funding of the necessary repairs.²⁶ Mr. Bradley, the Consumer Advocate witness, was available for questions. In addition, members of the public were given the opportunity to present comments to the panel. No members of the public sought recognition to do so.²⁷

²⁴ *Id.* at 5-6.

²⁵ *Letter to Chairperson Morrison from Karen H. Stachowski, Consumer Advocate* (June 11, 2019).

²⁶ Transcript of Hearing, pp. 17-19 (July 15, 2019).

²⁷ *Id.* at 19-20.

STANDARD FOR COMMISSION APPROVAL

Tenn. Code Ann. § 65-5-101 provides, in pertinent part:

(a) The Tennessee public utility commission has the power after hearing upon notice, by order in writing, to fix just and reasonable individual rates, joint rates, tolls, fares, charges or schedules thereof, In fixing such rates, joint rates, tolls, fares, charges or schedules, or commutation, mileage or other special rates, the commission shall take into account the safety, adequacy and efficiency or lack thereof of the service or services furnished by the public utility.

In addition, with regard to specific rates or charges of a public utility, such as the tap fees at issue in this matter, Tenn. Code Ann. § 65-5-103, in pertinent part, states:

(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 commission 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 the same. In determining whether such increase, change or alteration is just and reasonable, the commission shall take into account the safety, adequacy and efficiency or lack thereof of the service or services furnished by the public utility. ... It shall be the duty of the commission to approve any such increase, change or alteration upon being satisfied after full hearing that the same is just and reasonable.

FINDINGS AND CONCLUSIONS

The Commission has jurisdiction to set the rates of public utilities operating in the State of Tennessee.²⁸ Cartwright Creek is a public utility which was originally granted a Certificate of Public Convenience and Necessity (“CCN”) in 1975 (then known as Cartwright Creek Utility Company (“CCUC”)), said CCN being transferred to Cartwright Creek, LLC upon its acquisition

²⁸ Tenn. Code Ann. §§ 65-4-101(6); 65-4-104; 65-5-101, *et seq.*

of CCUC and approval by the Commission in Docket No. 04-00307.²⁹ Cartwright Creek's current tap fee of \$5,000 was established in the Company's 2009 rate case.³⁰ At the time of the *2009 Rate Case Order*, the tap fee established was comparable to the highest tap fee in the local area of service, which was charged by the City of Brentwood at the rate of \$5,000.³¹

Based upon the representation of the parties, the panel found that there are no contested issues to consider. Tap fees are currently collected and held in an escrow account dedicated to repairs and upgrades to the wastewater system. The Commission noted that the Grassland collection system experiences significant groundwater and infiltration issues, which contributed to environmental violations cited by TDEC. The IDG Report, the funding of which was authorized by the Commission's *2018 Order*,³² recommended a comprehensive rehabilitation in certain selected areas of the collection system in order to address the infiltration issues. The panel further found that TDEC officials encouraged the comprehensive rehabilitation described in the IDG Report, indicating that such action would be an effective plan to address and correct the environmental concerns caused by infiltration and would improve the efficiency of the downstream treatment plant. For these reasons, the panel found that the proposed increase in tap fees would address infiltration issues in the wastewater system, thereby increasing the system's safety, adequacy, and efficiency. Further, the panel found that the proposed increase is reasonable in comparison to the tap fees charged by the City of Brentwood and the City of Franklin, and in consideration of the significant increase in the value of land and homes in the Grassland area since the tap fee was set at \$5,000 nearly ten years prior to this case. Under these

²⁹ *In re: Petition for Approval to Transfer Cartwright Creek Utility Company, Inc.'s Authority to Provide Wastewater Utility Services to Cartwright Creek, LLC*, Docket No. 04-00307, *Order Approving Transfer of Authority* (December 10, 2004).

³⁰ *In re: Petition of Cartwright Creek, LLC to Change and Increase Rates and Charges*, Docket No. 09-00056, *Order Approving Settlement Agreement and Determining Contested Issues* (March 2, 2010) ("*2009 Rate Case Order*").

³¹ *2009 Rate Case Order*, p. 7 (March 2, 2010).

³² *2018 Order* (January 3, 2018).

circumstances, the Company's proposed tap fee was found to be just and reasonable. Therefore, the panel voted unanimously to approve the Company's proposed increase of tap fees, setting the tap fee at \$10,000.

The panel also considered the accounting treatment proposed by the Consumer Advocate, to which the Company agreed. The panel concurred with Mr. Bradley's testimony that continuing to book tap fees as revenue could result in a double recovery of costs from ratepayers who pay the tap fee, as it does not recognize any offset to rate base for investments funded by tap fees for ratemaking purposes. Hence, customers paying for capital improvements through tap fees would also pay for recovery of depreciation and return factors related to these capital improvements through monthly service rates. Such payment of capital costs for investments not funded by the utility is unfair and detrimental to the ratepayer.

The accounting method adopted in the *2009 Rate Case Order* was reasonable at that time due to the size and more static nature of the Company, making tap fees insignificant to ratemaking calculations at that time. However, since 2009, Company revenues have more than tripled and the number of customers has significantly increased and is projected to continue increasing in future months, making tap fees much more material to ratemaking calculations today. Therefore, the panel found that Cartwright Creek should alter the accounting method to the more traditional approach with regard to tap fees, specifically classifying and reporting the fees in its books and records as Contributions in Aid of Construction ("CIAC") in accordance with the Uniform System of Accounts ("USOA"), rather than operating revenue.³³ Utilizing this method will allow ratemaking calculations to offset capital additions funded by customer tap fees

³³ "The USOA provides that money, services or property that represents an addition to the utility, which is provided at no cost to the utility by any person or governmental entity, and is utilized to offset acquisition, improvement or construction costs of the utility's property, facility or equipment used to provide public utility services shall be recorded as CIAC." National Association of Regulatory Utility Commissioners, *Uniform System of Accounts for Class A Wastewater Utilities*, p. 92 (1996).

and their associated depreciation and return factors, in order to ensure the Company does not receive cost recovery for investments not funded by the Company.

While the Consumer Advocate recommends that tap fees be recorded into a district escrow account in order to ensure funds are specifically identified and utilized for the repairs and upgrades identified in the Company's *Petition*, the panel found such earmarking to be unnecessary, as the Commission, in its *2009 Rate Case Order*, required tap fees to be recorded in a separate escrow account designated for system repairs and upgrades and that the Company obtain Commission approval prior to expenditure of funds from the escrow account.³⁴ Retaining these accounting requirements for future tap fees will ensure that such funds are dedicated to Commission approved capital improvement projects and is consistent with TPUC rules requiring such treatment.³⁵ Therefore, the panel voted unanimously that all existing and future-collected tap fees shall be recorded and maintained in a separate escrow account to be dedicated to wastewater system repairs, rehabilitations, and upgrades, or for such other purposes as the Commission may authorize pursuant to TPUC Rule 1220-04-13-.07. The panel also unanimously voted to require the Company to file a petition requesting Commission approval prior to expenditure of funds from the escrow account.

IT IS THEREFORE ORDERED THAT:

1. The *Petition of Cartwright Creek, LLC to Increase Tap Fees to Address Environmental Issues Raised by the Tennessee Department of Environment and Conservation* is approved;
2. Cartwright Creek, LLC's tap fee is increased from \$5,000 to \$10,000;
3. Cartwright Creek, LLC is directed to book all tap fees collected in the future as

³⁴ *2009 Rate Case Order*, p. 8 (March 2, 2010).

³⁵ See Tenn. Comp. R. & Regs. 1220-04-13-.07(7).

Contributions in Aid of Construction in accordance with the Uniform System of Accounts;

4. Cartwright Creek, LLC is directed to reclassify the current balance of tap fees held in escrow as Contributions in Aid of Construction in its books;

5. Cartwright Creek, LLC shall record and maintain all existing and future-collected tap fees in a separate escrow account to be dedicated to wastewater system repairs, rehabilitations, and upgrades, or for such other purposes as the Commission may authorize pursuant to Tenn. Comp. R. & Regs. 1220-04-13-.07;

6. Cartwright Creek, LLC shall file a petition requesting the preapproval of the Commission before any funds may be expended from the escrow account.

7. Any party 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.

8. Any party 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.

Commissioner Herbert H. Hilliard, Commissioner John Hie, and Commissioner David Jones concur. None dissenting.

ATTEST:



Earl R. Taylor, Executive Director