

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

August 25, 2020

IN RE:)	
)	
PETITION OF CARTWRIGHT CREEK, LLC)	DOCKET NO.
REQUESTING APPROVAL OF PROPOSED)	19-00049
CAPITAL IMPROVEMENTS)	

ORDER

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, at a regularly scheduled Commission Conference held on June 15, 2020,¹ for consideration of the *Petition of Cartwright Creek, LLC Requesting Approval of Proposed Capital Improvements* (“*Petition*”) filed by Cartwright Creek, LLC (“Cartwright Creek” or the “Company”) on May 13, 2019.

BACKGROUND AND PETITION

Cartwright Creek is a public utility subject to the Commission’s jurisdiction, operating wastewater systems within designated service areas. On May 13, 2019, Cartwright Creek filed a *Petition* requesting authorization to spend up to \$550,000 from the Company’s tap fee account and

¹ Due to the state of emergency declared by Governor Bill Lee relative to the Coronavirus Disease 2019 (“COVID-19”) pandemic in Tenn. Exec. Order No. 14 on March 12, 2020, (superseded by Tenn. Exec. Order No. 15 on March 19, 2020 which was extended until June 30, 2020 in Tenn. Exec. Order No. 36 on May 12, 2020), the Commission Conference was held electronically via WebEx. The public health emergency places limitations on public gatherings and meetings in order to prevent the spread of COVID-19. In convening the Commission Conference electronically, the Commission relied upon Tenn. Exec. Order No. 16 (March 20, 2020), which was extended until June 30, 2020 by Tenn. Exec. Order No. 34 (May 6, 2020), and affirmed on the record that the electronic meeting was necessary to conduct the essential business of the agency and to protect the health, safety, and welfare of Tennesseans.

capital improvements surcharge account to rehabilitate selected areas of the utility's Grassland collection system.² Expenditure from either account requires prior Commission approval under the requirements of Commission Rule 1220-04-13-.07.³

Cartwright Creek states that the repairs and upgrades to the Grassland System are detailed in an engineering report from the Inflo Design Group ("IDG"). The IDG Report is attached to the Company's *Petition* in Docket No. 19-00034.⁴ Though the two accounts do not currently have enough money to fully fund the proposed rehabilitation project, the Company requests authorization to spend up to \$550,000 from the two accounts to perform the repairs and upgrades to the Grassland System recommended in the IDG Report.⁵

The Company requested that the Commission take administrative notice of the evidentiary record in Docket No. 19-00034.⁶ The Hearing Officer granted the request by a notice issued on September 20, 2019.⁷ No parties sought to intervene in this matter.

In support of its *Petition*, Cartwright Creek filed the testimony of Bruce Meyer, Operations Manager.⁸ 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

² *Petition*, p. 1 (May 13, 2019).

³ Tenn. R. & Regs. 1220-04-13-.07(7).

⁴ *Petition*, p. 1 (May 13, 2019).

⁵ *Id.* at 2.

⁶ *Motion to Take Administrative Notice* (August 13, 2019).

⁷ *Notice of Administrative Notice* (September 20, 2019).

⁸ Bruce Meyer, Pre-Filed Direct Testimony (May 19, 2020).

manholes; and, (3) additional wear of system resources resulting in premature failures of pumps and treatment equipment.⁹

Mr. Meyer also provides testimony supporting the *Petition*'s statements concerning the IDG Report's recommendations and the estimated cost of the comprehensive rehabilitation of the Grassland System. An infiltration expert, George Kurz, studied data from multiple investigations and concluded that one quadrant of the Grassland System caused most of the infiltration. Further, Mr. Meyer refers to his testimony in Docket No. 19-00034, in which he describes a letter from George Garden dated March 12, 2019 indicating that the Tennessee Department of Environment and Conservation ("TDEC") concurred with the conclusions contained both the Kurz report and IDG Report. Mr. Meyer states that the letter is attached as an Exhibit to his testimony in Docket No. 19-00034.¹⁰

Finally, Mr. Meyer's testimony asserts that approval of the Company's request 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.¹¹

THE HEARING

A Hearing on this matter was held on June 15, 2020, as noticed by the Commission on May 29, 2020. 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.

At the Hearing, counsel for the Company appeared and submitted the matter for consideration by

⁹ *Id.* at 1-2.

¹⁰ See *In re: Petition of Cartwright Creek, LLC to Increase Tap Fees to Address Environmental Issues Raised by the Tennessee Department of Environment and Conservation*, Docket No. 19-00034, Bruce Meyer, Pre-Filed Direct Testimony, Exhibit- March 12, 2019 Letter from George Garden (March 13, 2019).

¹¹ *Id.* at 3-4.

the Commission on the evidentiary record. Members of the public were given the opportunity to present comments to the panel. No members of the public sought recognition to do so.¹²

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

Cartwright Creek requests to spend up to \$550,000 from its tap fee account and capital improvements surcharge account to rehabilitate selected areas of the Grassland collection system. Funds in both of these accounts are held in escrow and earmarked for capital expenditures. Commission rules and orders concerning both of these accounts require the Company to obtain

¹² Transcript of the Hearing, p. 25 (June 15, 2020).

approval prior to expenditure.¹³ As of December 31, 2019, the balance of the capital improvements surcharge account was \$208,022.97 and the balance of the tap fee escrow account was \$88,682.67 for a total of \$296,705.64.

On August 13, 2019, Cartwright Creek filed a bid schedule from Insituform Technologies, LLC document and a contract for IDG to oversee the sewer rehabilitation project at a cost of \$165 per hour with a recommended budget of \$35,000.¹⁴ Subsequently, the Company filed an invoice from Insituform Technologies certifying work and requesting payment of \$223,589.53 for partial completion of the project due to work performed from the contract date of September 12, 2019 through November 30, 2019.¹⁵

Following cancellation of the January 2020 Commission Conference, Cartwright Creek issued the partial payment of \$223,589.53 from the escrow accounts “to ensure that the work continues until completion as required by TDEC.”¹⁶ The Company did not obtain Commission approval to make the payment prior to issuing the payment to Insituform Technologies. The payment depleted the escrow funds, leaving only \$73,116.11 in available funds. In addition, the Capital Improvement Surcharge expired at the close of December 2019 and the Company was authorized to commence collection of the surcharge during the June 15, 2020 Commission Conference. The Company has historically reported few new customers to which the tap fee is applied. Hence, the escrow account balances have not materially increased since the Company issued the payment to Insituform Technologies.

¹³ See Tenn. R. & Regs. 1220-04-13-.07(7). See also *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); *In Re: Joint Petition of Cartwright Creek and TRA Staff (as a Party) to Increase Rates and Charges*, Docket No. 16-000127, *Order Approving Rate Increase* (January 10, 2017); and *In Re: Petition of Cartwright Creek, LLC to Increase Tap Fees to Address Environmental Issues Raised by the Tennessee Department of Environment and Conservation*, Docket No. 19-00034, *Order Approving Increase of Tap Fee* (August 19, 2019).

¹⁴ *Cartwright Creek, LLC Lowest Bid and Contract* (August 13, 2019).

¹⁵ *Invoice to Cartwright Creek, LLC from Insituform Technologies, LLC* (January 3, 2020).

¹⁶ *Cartwright Creek, LLC Response to Staff Data Request No. 1* (January 17, 2020).

The Company's \$550,000 expenditure request is, therefore, a request to approve the \$223,589.53 payment to Insituform Technologies and a request for blanket authority to make an additional \$326,410.47 in capital expenditures from accounts that currently hold substantially less. In addition, the total amount of the estimated capital expenditures identified in the bid documents and contracts submitted is \$493,650, less than the \$550,000 total requested by the Company.

The voting panel found that although the \$223,589.53 payment to Insituform Technologies was made without prior Commission approval in violation of Commission rules and orders, the reason for the disbursement, payment to a contractor for work performed to remediate long-standing infiltration problems causing environmental concerns in the Grassland System, fits squarely within the purpose of the escrow accounts. If the request had been submitted according to proper process and procedure, it is of the type that would likely achieve approval. Therefore, the panel voted unanimously to ratify and approve the partial payment of \$223,589.53 to Insituform Technologies for refurbishment work at the Grassland facility. The panel also directed the Company to adhere to the appropriate preauthorization procedures as outlined in Commission rules and orders and advised that failure to do so may result in denial of future disbursement requests.

Further, the panel found that the \$223,589.53 payment to Insituform Technologies significantly depleted the escrow accounts, and the escrow account balances are materially insufficient to pay the remaining estimated costs of completing the refurbishment project. The Company has not provided a detailed proposal that demonstrates a plan for use of available escrow funds which would be used to finish the requested capital improvements. Therefore, the panel unanimously voted to deny the Company's request for blanket authority to spend up to \$550,000 from the escrow accounts to fund the proposed capital improvements. In addition, the panel

directed the Company to re-petition the Commission for authorization to spend from the escrow accounts as planning and work continues and escrow balances increase over time.

Finally, the panel directed Commission Staff to examine the deposits, disbursements, and balances in the tap fee and account and capital improvements surcharge account, as well as any attendant issues that may arise during such examination. Commission Staff is directed to file a report of the escrow examination in this docket.

IT IS THEREFORE ORDERED THAT:

1. The *Petition of Cartwright Creek, LLC Requesting Approval of Proposed Capital Improvements* is approved in part and denied in part;

2. Cartwright Creek, LLC's payment of \$223,589.53 to Insituform Technologies is approved;

3. Cartwright Creek, LLC's request for authority to spend up to \$550,000 from the escrow accounts to fund the proposed capital improvements is denied;

4. Cartwright Creek, LLC is directed to adhere to the appropriate preauthorization procedures as outlined in Commission rules and orders. Failure to follow the appropriate preauthorization procedures for escrow expenditures may result in denial of future disbursement requests;

5. Commission Staff is directed to examine the deposits, disbursements, and balances in the tap fee and account and capital improvements surcharge account and any attendant issues that may arise during such examination. Commission Staff shall file a report of the escrow examination in this docket.

6. 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.

7. 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.

Chair Robin L. Morrison, Commissioner Herbert H. Hilliard, and Commissioner David F. Jones concur. None dissenting.

ATTEST:

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

Earl R. Taylor, Executive Director