

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

August 25, 2020

IN RE:

**PETITION OF CARTWRIGHT CREEK,
LLC TO EXTEND CAPITAL
IMPROVEMENTS SURCHARGE**

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**DOCKET NO.
19-00097**

ORDER APPROVING EXTENSION OF SURCHARGE

This matter came before Vice Chair Kenneth C. Hill, Commissioner Herbert H. Hilliard, and Commissioner John Hie of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on June 15, 2020,¹ for consideration of the *Petition of Cartwright Creek, LLC to Extend Capital Improvements Surcharge* (“*Petition*”) filed by Cartwright Creek, LLC (“Cartwright Creek” or the “Company”) on October 21, 2019.

BACKGROUND AND PETITION

Cartwright Creek is a public utility subject to the Commission’s jurisdiction, operating wastewater systems within designated service areas. In Docket No. 16-00127, the Commission approved a Capital Improvements Surcharge of \$7.50 per month as part of a staff assisted rate case. Cartwright Creek was authorized to collect the Capital Improvements Surcharge for a period

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 Order No. 14 on March 12, 2020, (superseded by Tenn.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.

of thirty-six (36) months, commencing January 1, 2017. 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.²

On October 21, 2019, Cartwright Creek filed a *Petition* seeking to extend the Capital Improvements Surcharge, as it is scheduled to expire at the end of 2019. In its *Petition*, Cartwright Creek alleges that the surcharge will provide funding for necessary repairs and improvements to the Grasslands System. The Grasslands System is in need of improvements to address environmental issues. Cartwright Creek also states in its *Petition* that it agrees to adopt overspending protections that were approved for Tennessee Wastewater Systems, Inc. in Docket No. 16-00096.³ In support of its *Petition*, Cartwright Creek filed the testimony of Bruce Meyer, Operations Manager.⁴

On October 29, 2019, the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) filed a *Petition to Intervene*.⁵ The intervention of the Consumer Advocate was subsequently granted by the Hearing Officer.⁶ Following the exchange of discovery and Pre-Filed Testimony, the parties prepared for a hearing.

POSITIONS OF THE PARTIES

Cartwright Creek filed the testimony of Bryce Meyer, Operations Manager, in support of its *Petition*.⁷ In his Pre-Filed Testimony, Mr. Meyer states that the Grassland facility was constructed in the 1970’s and needs significant upgrades and replacement. The Company and Commission Party Staff (“Party Staff”) jointly proposed the \$7.50 Capital Improvements

² *In Re: Joint Petition of Cartwright Creek, LLC and TRA Staff (as a Party) to Increase Rates and Charges*, Docket No. 16-0127, *Order Approving Rate Increase* (January 10, 2017).

³ *Petition*, p. 1 (October 21, 2019).

⁴ Bruce Meyer, Pre-Filed Direct Testimony, p. 3 (October 21, 2019).

⁵ *Petition to Intervene* (October 29, 2019).

⁶ *Order Granting the Petition to Intervene Filed by the Consumer Advocate* (November 6, 2019).

⁷ Bruce Meyer, Pre-Filed Direct Testimony (October 21, 2019).

Surcharge in Docket No. 16-00127 for the Grassland projects. Mr. Meyer further testifies that the Company needs approximately \$4 million for the plant replacement and upgrade projects at the Grassland facility. The balance in the Capital Improvements Surcharge account, which is maintained separately from other funds, is \$189,028.00. The Company's escrow balance is \$148,083.00.⁸ Mr. Meyer states that an extension of the Capital Improvements Surcharge for a period of thirty-six (36) months is needed in order to secure funds needed for the Grassland projects. Further, the Company agrees to the adoption of the "Overspending Protection" provisions approved by the Commission in Docket No. 16-00096.⁹ In addition, Mr. Meyer affirms that the Company agrees to the Consumer Advocate's request that the Commission open a docket for the purpose of monitoring the Company's long-term plan to replace the Grassland treatment system and how the project is financed.¹⁰

The Consumer Advocate submitted the testimony of David N. Dittmore, Financial Analyst. Mr. Dittmore testifies that the Consumer Advocate supports the extension of the Capital Improvement Surcharge with qualification. After summarizing Cartwright Creek's 2019 docket activity, Mr. Dittmore states that the Company is the subject of a Director's Order and Assessment by the Tennessee Department of Environment and Conservation ("TDEC") for violations of its State Operating permit for the Grassland System. In addition, while Cartwright Creek is working with TDEC on a settlement agreement, a Notice of Violation ("NOV") asserts that the Inflow and Infiltration ("I/I") is in such dire condition that foreign objects enter into the influent stream. TDEC states that the I/I must be corrected prior to addressing any other system issues. Mr. Dittmore

⁸ *Id.* at 3-4.

⁹ *In re: Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements for the Wastewater Systems Located at Maple Green and Cedar Hill in Robertson County, and at Smoky Village Subdivision in Sevier County, Tennessee*, Docket No. 16-00096, *Stipulation and Settlement Agreement* (July 25, 2017) ("2016 TWSI Docket").

¹⁰ Bruce Meyer, Pre-Filed Direct Testimony, pp. 4-5 (October 21, 2019).

states that the Company's surcharge and escrow balances are insufficient to correct the I/I deficiencies, but the Company has requested funding for the project in Docket No. 19-00049, currently pending. Mr. Dittmore testifies that due to the urgency and significant environmental need, continuation of the Capital Improvements Surcharge is the best opportunity to implement the I/I project quickly.¹¹

Mr. Dittmore discusses other repairs and upgrades identified by the Company in its 2019 dockets totaling \$291,000. With some of these projects potentially needing to be addressed in the near future, and the condition and estimated cost of the Grassland System requiring immediate attention, Mr. Dittmore asserts that it is time to put a plan in place to address the replacement of the Grassland facility.¹² The Consumer Advocate and the Company both request that the Commission open a new docket for the purpose of determining a long-term plan and its financing to replace the Grassland facility. The Consumer Advocate also agrees with the Company's request to adopt the "Overspending Protection" provision approved in Docket No. 16-00096. Because regular reports from the utility are helpful in understanding the various projects of the Company and assist in the timely discussion of the parties, the Commission should adopt an Overspending Protection process specific to Cartwright Creek.¹³

Mr. Dittmore also indicates that the Company made an adjusting entry to all of the owner's equity to debt in order to place minority and primary owners on an equal footing for the disposition of any proceeds should the Company be sold. The Consumer Advocate expressed concern regarding the lack of transparency of this adjustment and its compliance with state law.¹⁴ Finally, Mr. Dittmore agrees that the surcharge should be extended subject to the terms and conditions

¹¹ David N. Dittmore, Pre-Filed Direct Testimony, pp. 4-8 (November 19, 2019).

¹² *Id.* at 8-10.

¹³ *Id.* at 10-11.

¹⁴ *Id.* at 11-12.

approved the by the Commission in Docket No. 16-000127. He recommends that funds collected from the surcharge be placed in a separate account and only used for the identified system improvements at the Grassland System and recorded to its own regulatory account.¹⁵

On June 4, 2020, 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. Dittimore’s testimony...,” and waiving summaries of the experts’ Pre-Filed testimony.¹⁶

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.

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 Consumer Advocate provided a summary of the joint position of the parties. Further, the Consumer Advocate’s witness, David Dittimore, 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.¹⁷

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,

¹⁵ *Id.* at 12-13.

¹⁶ *Letter to Chairperson Morrison from Karen H. Stachowski, Consumer Advocate* (June 4, 2020).

¹⁷ Transcript of Hearing, pp. 39-43 (June 15, 2020).

... . 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 Capital Improvements Surcharge 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.¹⁸ 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 of CCUC and approval by the Commission in Docket No. 04-00307.¹⁹

Based upon the record and the representation of the parties, the panel found that there are no contested issues to consider and voted unanimously to approve the *Petition* subject to the terms

¹⁸ Tenn. Code Ann. §§ 65-4-101(6); 65-4-104; 65-5-101, *et seq.*

¹⁹ *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).

and conditions set forth in the Consumer Advocate's testimony. Cartwright Creek and the Consumer Advocate agree that the \$7.50 Capital Improvements Surcharge should be extended for a period of thirty-six (36) months. Further, Cartwright Creek accepts the recommendations of the Consumer Advocate as set forth in the Pre-Filed Testimony of David Dittmore. The voting panel found that extension of the Capital Improvements Surcharge is just and reasonable and in the public interest.

As agreed upon by the parties, the panel found that the Capital Improvements Surcharge is subject to the following terms and conditions:

- a. The Surcharge shall automatically and without further action of the Commission terminate immediately after the thirty-sixth (36th) month of collection of the \$7.50 monthly charge per customer;
- b. Notwithstanding the foregoing, the Commission, in the exercise of its discretion, may terminate the Capital Improvements Surcharge upon the issuance of a termination order;
- c. The funds collected under the Capital Improvements Surcharge, as well as all cash contributions in aid of construction received by Cartwright Creek during the thirty-six (36) month collection period of the Capital Improvements Surcharge, shall be deposited and held in a separate FDIC insured state authorized interest-bearing bank account ("Capital Account") from which funds shall not be expended without Cartwright Creek seeking and obtaining from the Commission (in a specified amount and for a specified purpose), prior to expenditure of such funds, an order by the Commission specifically authorizing the expenditure of such funds in a

specified amount and for a specified purpose; provided, however, that in exigent circumstances requiring expenditures of funds from the Capital Account, Cartwright Creek may expend funds from such account after obtaining the required approval in accordance with the exigent circumstances procedures described below. The Commission order authorizing expenditure(s) of funds from the Capital Account shall state the purpose(s) and amount(s) of such expenditure(s), and may impose additional restrictions upon such expenditure(s) in the discretion of the Commission;

- d. If, in the reasonable view of Cartwright Creek, exigent circumstances exist requiring the use of funds held in the Capital Account, Cartwright Creek shall, prior to the expenditure of such funds, seek approval of the Chief of the Commission's Utilities Division or his/her designee by submitting a letter request to the TPUC (in a specified amount and for a specified purpose) with appropriate support and documentation for the request, including without limitation an explanation of how any amount requested was calculated;
- e. Cartwright Creek will clearly and conspicuously state on each bill sent to its customer the Capital Improvements Surcharge for capital improvements as a separate line item; and
- f. Cartwright Creek shall file with the TPUC on the 10th business day of the month after the end of each calendar quarter a report on the balance in the Capital Account, including copies of the bank statements for such account

for the prior three (3) month period, and the expenditure(s) of any amount(s) from such account. Upon request, Cartwright Creek shall provide additional information related to the Capital Account, including documentation supporting deposits to and withdrawals from such account.

In addition, the parties agreed to adopt overspending protections as generally set forth in the *Stipulation and Settlement Agreement* filed in Docket No. 16-00096. The overspending protection language in that matter contains specifics applicable to Tennessee Wastewater Systems, Inc. construction projects, but also contains general principles setting spending triggers, required accounting procedures, and required filings.²⁰ The panel directed the parties to draft and file in this docket agreed overspending protections specific to Cartwright Creek's Grassland System projects.

The panel noted that the long-standing problems with inflow and infiltration at the aging Grassland System are well documented and in need of major repair. In response to TDEC order, Cartwright Creek has worked with TDEC to develop plans to address the system's problems. The panel recognized that the funds collected through the Capital Improvements Surcharge and the Company's escrow surcharge will not be sufficient to cover the estimated cost to fully repair the system. Therefore, the panel voted unanimously to open a docket for the purpose of developing a long-term plan for funding the replacement or refurbishment of the Grassland facility.

IT IS THEREFORE ORDERED THAT:

1. The *Petition of Cartwright Creek, LLC to Extend Capital Improvements Surcharge* is approved;
2. Cartwright Creek, LLC's Capital Improvements Surcharge of \$7.50 per month is

²⁰ 2016 TWSI Docket, pp. 10-12 (July 25, 2017).

extended for thirty-six (36) months subject to the terms and conditions set forth herein;

3. Cartwright Creek, LLC and the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General are directed to file in this docket Agreed Overspending Protections relative to the Grassland System;

4. Cartwright Creek, LLC shall file a petition requesting the preapproval of the Commission before any funds may be expended from the Capital Improvements Surcharge account;

5. A new docket shall be opened for the purpose of developing a long-term plan for funding the replacement or refurbishment of the Grassland facility;

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.

Vice Chair Kenneth C. Hill, Commissioner Herbert H. Hilliard, and Commissioner John Hie. None dissenting.

ATTEST:



Earl R. Taylor, Executive Director