

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 29, 2008

IN RE:)	
)	
REQUEST OF HC SEWAGE TREATMENT, LLC)	DOCKET NO.
FOR AUTHORITY ACTION PURSUANT TO LETTER)	08-00183
DATED SEPTEMBER 23, 2008)	

**ORDER REQUIRING FIRST BANK & TRUST COMPANY TO RELEASE FUNDS
SECURED BY HC SEWAGE TREATMENT, LLC'S LETTER OF CREDIT**

This matter came before Chairman Tre Hargett, Director Eddie Roberson, and Director Mary W. Freeman of the Tennessee Regulatory Authority ("TRA" or "Authority"), the voting panel assigned to this docket, at a show cause hearing held on October 13, 2008 to determine whether a claim should be made against the financial security of HC Sewage Treatment, LLC ("HC Sewage" or "Company") pursuant to TRA Rule 1220-4-13-.09.

BACKGROUND

HC Sewage operates a small wastewater treatment plant that serves two commercial customers in Hampton, Tennessee: Greeneville Oil & Petroleum, Inc. ("Greeneville") and Pizza Plus. HC Sewage was issued a Certificate of Public Convenience and Necessity ("CCN") in TRA Docket No. 00-00667.¹ In December of 2005, the TRA promulgated rules requiring wastewater service providers to obtain a bond or letter of credit as financial security. On March 7, 2006, HC Sewage filed with the Authority a Letter of Credit in the amount of \$20,000 issued by First Bank & Trust Company ("First Bank").² An Amendment to the Letter of Credit issued by First Bank on March 25, 2008 extends the Letter of Credit through March 2009.

¹ See *In re: Application of HC Sewage Treatment, LLC for a Certificate of Convenience and Necessity*, Docket No. 00-00667, *Initial Order Granting Certificate of Public Convenience and Necessity* (January 2, 2002).

² See First Bank & Trust Company Letter of Credit Number 2006-016 dated March 7, 2006 and Amendment to Irrevocable Standby Letter of Credit dated March 25, 2008, attached to this Order as Exhibit 1.

TRAVEL OF THIS DOCKET

On September 23, 2008, T. Arthur Scott, Jr., Esq., counsel for HC Sewage, sent Darlene Standley (Chief, TRA Utilities Division) a letter which states that HC Sewage “. . . is insolvent within the meaning of Rule 1220-4-13-.09 and is no longer able to continue the operation of the sole plant owned by the utility in Hampton, Tennessee.”³ The letter requests that the TRA “. . . appoint a receiver or take other appropriate action pursuant to Rule 1220-4-13-.11.” The letter further states that “. . . the plant will continue to be operated through October 10, 2008. At that point, no further funds will be provided by the Stricklands (the current owners of HC Sewage) to make up the operating loss and the power and the water will either have to be transferred to another person or terminated and the technical person will be dismissed.” Upon receipt of the September 23, 2008 letter, this docket was opened, and this matter was noticed on the September 26, 2008 agenda to be heard at the October 6, 2008 Authority Conference.⁴

At the regularly scheduled Authority Conference held on October 6, 2008, the General Counsel provided a report to the panel regarding the operational status of HC Sewage’s wastewater treatment facility. The General Counsel stated that an agreement in spirit had been reached between HC Sewage and Greeneville under which Greeneville would take over the operation of the utility, but the details of the transfer had not yet been finalized. Counsel for HC Sewage, who participated in the Authority Conference by telephone, confirmed that his client was in support of the transfer of the Company to Greeneville. Discussions between HC Sewage and Greeneville have been facilitated by attorneys of the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”). The Consumer Advocate appeared at the Authority Conference and agreed with the General Counsel’s assessment of the current situation. The Consumer Advocate stated that, in light of the time-sensitive nature of this situation, the Authority should empower the General

³ See Letter from T. Arthur Scott to Darlene Standley (September 23, 2008), attached to this Order as Exhibit 2.

⁴ HC Sewage currently has a rate case pending in TRA Docket No. 08-00126. The TRA opened a contested case in that docket at the September 22, 2008 Authority Conference. A proposed settlement agreement filed in that docket has been vigorously opposed by the two customers, who object to the size of the proposed rate increase. The Consumer Advocate intervened in that docket.

Counsel to take any necessary actions on behalf of the Authority to insure the continued operation of the wastewater treatment facility.

TRA Rule 1220-04-13-.09(1) directs the Authority to take appropriate action where good cause is shown. Under TRA Rule 1220-04-13-.09(2)(b) 3 and 4, good cause includes the “actual, threatened, or impending insolvency of a public wastewater utility” or the “actual or threatened abandonment of the utility by its owners or operators.” At the October 6, 2008 Conference, the panel found that the Company’s letter of September 23, 2008 demonstrates sufficient good cause under TRA Rule 1220-04-13-.09 to support remedial action by the Authority. Based upon good cause shown, the panel voted unanimously to authorize the General Counsel or his designee to act on behalf of the Authority to take whatever legal measures are necessary to ensure that HC Sewage complies with the Authority’s rules and that wastewater treatment service to customers of HC Sewage is not interrupted.

On October 7, 2008, the General Counsel, on behalf of the Authority, issued an *Order Requiring HC Sewage Treatment, LLC and First Bank & Trust Company to Appear and Show Cause Why the Tennessee Regulatory Authority Should Not Make a Claim Against HC Sewage Treatment, LLC’s Financial Security* (“*Show Cause Order*”). On the same day, a *Notice of Hearing* was issued by the Authority setting a public hearing in this matter on Monday, October 13, 2008 at 10:00 a.m. On October 10, 2008, the General Counsel received from First Bank a letter dated October 8, 2008 stating that First Bank does not contest the allegations in the *Show Cause Order* and “will comply with the terms and conditions of its Letter of Credit dated March 7, 2006 and extended March 25, 2008.”⁵

OCTOBER 13, 2008 HEARING

This matter was heard by the panel assigned to this docket at the duly noticed public hearing held on October 13, 2008. T. Arthur Scott, Jr., counsel for HC Sewage, participated in the hearing

⁵ See Letter from William H. Hayter, President & CEO, First Bank & Trust Company to J. Richard Collier, attached to this Order as Exhibit 3.

telephonically. The panel initially inquired into the operational status of wastewater facility. Mr. Scott stated that as of Friday, October 10, 2008, it appeared that all the arrangements had been made to avoid interruption in service and that he had no indication that there had been anything but smooth continuing operation since October 10, 2008. Mr. Scott further stated that HC Sewage does not object to the draw on the Letter of Credit. Mr. Scott represented that he understood that no funds from that draw on the Letter of Credit would be distributed to Greeneville until after Greeneville had formally taken over the operation of the facility and the transfer of the CCN had been approved.

The General Counsel stated that, based on his conversation on October 10, 2008 with the engineer who is certificated to operate the system, the engineer was continuing to operate the system, the electric utilities had been transferred to Greeneville and the engineer is working with Greeneville to arrange for payment for his services. The General Counsel further stated that he had been assured by the engineer that there would be no interruption in service during this transition.

In proceeding with the hearing, General Counsel provided an overview of the Authority's oversight of wastewater systems, particularly individual wastewater systems such as that operated by HC Sewage. The General Counsel summarized the actions of the Authority in opening a docket in 2004 and conducting a wastewater forum in conjunction with the Tennessee Department of Environment and Conservation ("TDEC") to develop joint policies regarding the permitting and operation of these systems. Of particular concern to the TRA and TDEC was the fact that customers must be able to rely on the continuity of these individual systems and this requires oversight to ensure that the financial condition and technical ability of these systems remain sound. In the event a system failed or an operator abandoned a system, there were no rules in place specifically to address the situation. Through the joint efforts of the TRA and TDEC, legislation was passed amending Tenn. Code Ann. § 65-4-201(e),⁶ which under subpart (e) empowered the Authority to promulgate rules to establish bonding and other means of financial security for wastewater systems and to enact

⁶ See 2005 Public Chapter 62.

certain requirements for the issuance of CCNs and the monitoring of wastewater systems after certification.⁷ These rules authorized the TRA to suspend or revoke a CCN, to require payment of certain of the utility's funds into a TRA account or to draw upon the financial security of the wastewater system. As a result of the adoption of these rules, the Authority is able to require wastewater systems operating in Tennessee to provide financial security to ensure continued operation in the event of insolvency or abandonment of the system.

The General Counsel stated that in this docket, HC Sewage provided a Letter of Credit in March of 2006, that had been renewed through March of 2009. The Authority received a letter dated September 23, 2008 in which the Authority was advised that HC Sewage was insolvent and could no longer operate the system. The Authority was asked by the Company to take "appropriate action" such that the system could remain in operation after October 10, 2008. The Authority found good cause at the October 6, 2008 Authority Conference for the TRA to move forward to take any action necessary. As a result the *Show Cause Order* was issued on October 7, 2008 with proper notice to HC Sewage, First Bank, the customers (Greeneville and Pizza Plus) and to all of the local government executives in the area and wastewater systems in the state. The General Counsel adopted the statements in the *Show Cause Order*, submitted the October 8, 2008 letter of First Bank and moved the *Show Cause Order* and the docket file into the record of this proceeding.

FINDINGS AND CONCLUSION

The panel found that the following statutes and rules provide authority to the TRA to initiate a show cause action for the purpose of making a claim against the Letter of Credit provided by First Bank to HC Sewage. In pertinent part, Tenn. Code Ann. § 65-4-201(e) 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.* [Emphasis supplied.]

⁷ Chapter 1220-4-13 of TRA Rules was initially promulgated as public necessity rules effective December 29, 2005 and then as permanent rules effective June 12, 2006.

TRA Rule 1220-4-13-.09 provides:

(1) Where a public wastewater utility through the actions of its owner(s), operator(s), or representative(s) demonstrates an unwillingness, incapacity, or refusal to effectively operate and/or manage the wastewater system(s) in compliance with these rules and Tennessee statutes, or the wastewater system(s) has been abandoned, the Authority shall take appropriate action based on good cause that may include suspension or revocation of a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or making a claim against the public wastewater utility's financial security.

(2) Good cause shall include, but is not limited, to the following . . .

(b) A finding by the Authority of . . .

3. Actual, threatened or impending insolvency of the public wastewater utility;

4. Actual or threatened abandonment of the public wastewater utility by its owners or its operators. . .

(3) In addition to the above, the Authority may consider one or more of the following in determining whether a public wastewater utility's CCN should be suspended or revoked, whether its wastewater utility funds should be forfeited and/or whether a claim should be made against its financial security:

(a) Whether, to the extent practicable, service to customers will remain uninterrupted under an alternative public wastewater utility or a designated third party capable of providing adequate wastewater service, including a trustee or receiver appointed by the appropriate court;

(b) Whether there are certain methods to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or whether there are no practicable methods to mitigate the financial consequences to customers; and

(c) Such other factors as the Authority deems relevant to the determination.

(4) Proceedings before the Authority for suspension or revocation of a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or *making a claim against the public wastewater utility's financial security* shall be conducted in accordance with Tenn. Code Ann. § 65-2-106 and after notice to the public wastewater utility and its surety, and an opportunity to be heard, unless the conduct of a public wastewater utility poses an imminent threat to the health or safety of the public. In such exigent circumstances, the Authority may order the summary suspension of the CCN and follow the procedures as set forth in Tenn. Code. Ann. § 4-5-320. (Emphasis supplied).

Tenn. Code Ann. § 65-2-106 empowers the Authority to “issue orders on its own motion citing persons under its jurisdiction to appear before it and show cause why the [A]uthority should not take such action as the [A]uthority shall indicate in its show cause order appears justified by preliminary investigation made by the [A]uthority under the powers conferred upon it by law.” Tenn. Code Ann. § 65-2-109 provides that the burden of proof in a show cause proceeding falls upon the party that is required to come forward to the Authority and show cause why the Authority should not proceed in a certain manner. In this instance, the *Show Cause Order* requires HC Sewage and First Bank to come forward and demonstrate why the TRA, under the facts presented, should not proceed to make a claim against the financial security of HC Sewage. Mr. Scott confirmed to the panel that HC Sewage does not oppose the action set forth in the *Show Cause Order*. By its letter dated October 8, 2008, First Bank has advised the Authority that First Bank is not in opposition to the TRA moving forward to require the funds under the terms of the Letter of Credit.

After hearing statements of counsel and reviewing the entire record in this docket, the Authority made the following findings:

1. The financial security required to be posted by Tenn. Code Ann. § 65-4-201(e) is for the purpose of ensuring the proper operation and maintenance of the wastewater utility.
2. HC Sewage’s financial security on file with the Authority is the irrevocable Letter of Credit in the amount of \$20,000 from First Bank & Trust Company dated March 7, 2006 and extended on March 25, 2008.
3. The Company’s September 23, 2008 letter to the Authority sets out that HC Sewage is insolvent and will cease to operate the wastewater plant as of October 10, 2008.
4. The Company’s notice of its plan to cease operations demonstrates HC Sewage’s “unwillingness, incapacity, or refusal to effectively operate and/or manage the wastewater system . . .” as set out under TRA Rule 1220-4-13-.09(1) and therefore triggers the Authority’s jurisdiction to take appropriate action based on good cause, including making a claim against the wastewater utility’s financial security.
5. The Company’s statement of insolvency and intent to cease operations as stated in its September 23, 2008 letter constitutes sufficient good cause pursuant to TRA Rule 1220-4-13-.09(1) to authorize the Authority to make a claim against HC Sewage’s \$20,000 Letter of Credit.

6. First Bank & Trust Company's letter dated October 8, 2008 stated that First Bank & Trust Company would not contest the allegations of the *Show Cause Order* and that it would comply with the terms and conditions of its Letter of Credit Number 2006-016.

Based upon the foregoing findings, the panel voted unanimously to require First Bank & Trust Company to pay over to the Tennessee Regulatory Authority the sum of \$20,000 secured by HC Sewage's Letter of Credit Number 2006-016 in order that the funds may be used to ensure the proper operation and maintenance of the wastewater system heretofore operated by HC Sewage.

IT IS THEREFORE ORDERED THAT:

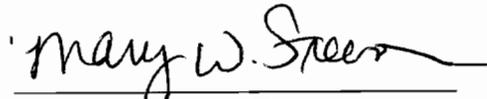
Upon the foregoing findings pursuant to TRA Rule 1220-4-13-.01, *et seq.*, First Bank & Trust Company shall release the \$20,000 secured by Letter of Credit Number 2006-016 and make such funds payable to the Tennessee Regulatory Authority upon receipt of a certified copy of this Order and the Letter of Credit Notice as specified in the second paragraph of the March 7, 2006 Letter of Credit and TRA Rule 1220-4-13-.08(2).



Tre Hargett, Chairman



Eddie Roberson, Director



Mary W. Freeman, Director



1185 N. State of Franklin Rd., 2nd Floor • Johnson City, TN 37604 • 423-282-3850

LETTER OF CREDIT

Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

REFERENCE: H C Sewage Treatment LLC

Company ID # 05-00105
Irrevocable Letter of Credit #: 2006-016
Effective Date: 3/7/06

2006 JUN 25 11:03
T.M. Belmont

Sir/Madam:

You have requested of The First Bank & Trust Company, hereinafter called the "Lender" that we establish an irrevocable letter of credit which will remain available on behalf of H C Sewage Treatment LLC, hereinafter the "Company" who has applied to the Tennessee Regulatory Authority (the "Authority") for authority to provide public wastewater services in the state of Tennessee. The purpose of this letter of credit is to secure payment of any monetary obligation imposed against the Company, its representatives, successors or assigns, in any contested case proceeding brought under Tenn. Comp. R & Regs. Chapter 1220-4-13 by or on behalf of the Authority.

We hereby establish and issue, in favor of the Authority, an irrevocable letter of credit in the amount of Twenty Thousand Dollars (\$20,000.00) lawful money of the United States of America. Upon entry of an Order that finds a monetary obligation pursuant to Chapter 1220-4-13, the Authority may draw upon this letter of credit, at any time and from time to time, by delivering a Letter of Credit Notice, substantially in the form set forth below ("Notice"), which Notice shall specify the amount (the "Draw Amount") to be drawn and the account (the "Bank Account") to which the Draw Amount should be delivered and shall be signed by an official designated and duly authorized by the Authority, to Lender at the address listed below, or to such other address as the Lender shall notify the Authority in writing by certified mail. Promptly after the delivery of each Notice, the Lender hereby covenants and agrees to deliver, by wire transfer of immediately available funds, the Draw Amount to the Bank Account.

This letter of credit shall be deemed automatically renewed without amendment for successive one-year periods and may be cancelled by the Lender by giving thirty (30) days advanced written notice by certified mail of such cancellation to the Authority and the Company, it being understood that the Lender shall not be relieved of liability that may have accrued under this letter of credit prior to the date of cancellation.

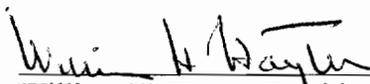
Failure to renew this letter of credit shall allow the Authority to draw upon it without the necessity of the Authority being required to hold a hearing concerning the Principal's operation or Certificate of Public Convenience and Necessity. In such an event and upon a directive from the Authority, the Lender hereby covenants and agrees to deliver by wire transfer of immediately available funds the maximum sum of this letter of credit to the Bank Account to enable the continued operation of the public wastewater utility.

The Lender hereby represents and warrants that it is qualified and authorized to issue this letter of credit and is a bank designated by the Treasurer of the State of Tennessee as an authorized depository bank for the deposit of state funds.

Except as otherwise expressly stated, this letter of credit is subject to the Uniform Customs and Practice for Documentary Credit (1993 Revision) International Chamber of Commerce Publication No. 500, or any revisions thereto.

Very truly yours,

The First Bank & Trust Company



William H. Hayter, President & Chief Executive Officer
1185 N. State of Franklin Road, Johnson City, TN 37604

APPROVAL AND ENDORSEMENT

This is to certify that I have examined the foregoing letter of credit and found the same to be sufficient and in conformity to law and that the same has been filed with the Tennessee Regulatory Authority, State of Tennessee, this _____ day of _____, 2006.

Name:

Title:



1185 N. State of Franklin Road, 2nd Floor • P.O. Box 4627 • Johnson City, TN 37602-4627 • 423-282-3850

**AMENDMENT TO
IRREVOLCABLE STANDBY LETTER OF CREDIT**

Applicant:

H C Sewage Treatment LLC
Company ID # 05-00105
Irrevocable Letter of Credit #: 2006-016
Effective Date: 3/7/06

Payable Through:

The First Bank and Trust Company
1185 N. State of Franklin Rd.
Johnson City, TN 37604

Beneficiary:

Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

We hereby amend our Letter of Credit Number 2006-016 to reflect the following change only. All other terms and conditions shall remain unchanged.

EXPIRATION DATE: March 7, 2009

Countersigned At **Johnson City, Tennessee**
This 25th day of March, 2008.

THE FIRST BANK AND TRUST COMPANY

A handwritten signature in black ink, appearing to read "S. M. U. B. C. I.", is written over a horizontal line.

Authorized Signature

T. ARTHUR SCOTT, JR.

Attorney at Law
130 Newmore Lane
Kingsport, TN 37664
423-288-7883 (phone)
888-224-1737 (fax)
tscott@chartertn.net
September 23, 2008

By facsimile (615-741-9934) and U.S. Mail

Ms. Darlene Standley, Chief
Utilities Division
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Re: HC Sewage Treatment, LLC

Dear Ms. Standley:

I represent the above wastewater utility. This letter is to advise you that my client is insolvent within the meaning of Rule 1220-4-13-.09 and is no longer able to continue the operation of the sole plant owned by the utility in Hampton, Tennessee. Further, my client requests that the Tennessee Regulatory Authority appoint a receiver or take other appropriate action pursuant to Rule 1220-4-13-.11. My client is specifically not invoking the provisions of Rule 1220-4-13-.10.

Currently, Jack and Joy Strickland are and have been for months funding a significant monthly shortfall in the operating income of the plant. In light of the delay in the rate case pending at the Tennessee Regulatory Authority (Docket No. 08-00126) due to the objection asserted by Greeneville Oil and Petroleum, Inc. and the resulting intervention by the Consumer Advocate Division of the Attorney General's Office, rate relief will not come soon enough to allow my client to survive without the personal injection of substantial additional funds by the Stricklands, which they are no longer willing to do.

My client, within the bounds of what is financially feasible, desires an orderly transition to another operator of the plant. To that end, the plant will continue to be operated through October 10, 2008 by my client. At that point, no further funds will be provided by the Stricklands to make up the operating loss and the power and water will either have to be transferred to another person or terminated and the technical person will be dismissed.

Exhibit 2

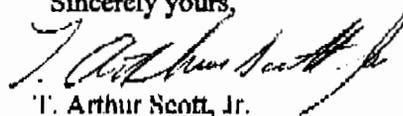
My client will assist the receiver or such other person appointed by the Authority in making the transition. Any requests for waivers of hearing or notice to accommodate this commitment should be directed to me.

Please understand that this action is being taken only after exploring every other feasible alternative. My client appreciates the Authority Staff who worked with it since February, 2008 to put together the streamlined rate case.

Discussions with representatives of Greeneville Oil and Petroleum, Inc. to have them take over the plant have not been successful. We have had discussions with a Tennessee Wastewater representative, Charles Pickney, and gave him free access to the technical person for preliminary due diligence. Unfortunately, while the plant could be incorporated into their operations, a significant amount of capital would have to be expended to bring it up to their requirements before they would take it over. My call last Friday to the attorney for Greeneville Oil & Petroleum, Inc. to broach whether his client would contribute to such capital as yet has not been returned.

We await further instructions from the Authority relative to notice to the customers and any requests to facilitate the transition to another operator.

Sincerely yours,



T. Arthur Scott, Jr.

BPR # 000749

cc: Mr. Jack Strickland
Ms. Joy Strickland
J. Richard Collier, General Counsel, Tennessee Regulatory Authority
Shilina Chatterjee Brown, Esq.
Vance Broemel, Assistant Attorney General, Consumer Advocate
and Protection Division

**First Bank
& Trust Company**

Member FDIC

P.O. Box 1000 • Abingdon, VA 24212 • 276-623-2323 • Fax: 276-628-5860

October 8, 2008

Via Certified and Regular Mail

J. Richard Collier, General Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

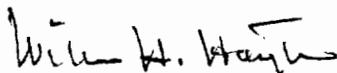
RE: Tennessee Regulatory Authority vs. HC Sewage Treatment, LLC
Docket No. 08-00183

Dear Mr. Collier:

Pursuant to the above referenced Order as it pertains to our Letter of Credit Number 2006-016 in the amount of \$20,000.00, please be advised The First Bank and Trust Company does not contest the allegation specified therein and will comply with the terms and conditions of its Letter of Credit dated March 7, 2006 and extended March 25, 2008.

This letter is being provided in lieu of personal appearance as permitted by your Order dated October 7, 2008.

Sincerely,



William H. Hayter
President & CEO

WHH/al

2008 OCT 10 PM 3:25
T.N.A. DOCKET ROOM