

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)
)
PETITION OF TENNESSEE WASTEWATER)
SYSTEMS, INC. FOR APPROVAL TO)
AMEND ITS RATES AND CHARGES) **DOCKET NO. 08-00202**
)

**RESPONSE OF TENNESSEE WASTEWATER SYSTEMS, INC.
TO THE ISSUES LIST OF KING'S CHAPEL**

Tennessee Wastewater Systems, Inc. ("TWS" or the "Company") files this response to the issues list submitted by King's Chapel Capacity, LLC ("King's Chapel") on December 17, 2008.

Summary

King's Chapel failed to comply with the Hearing Officer's instructions to file an "issues list." Instead, King's Chapel filed a short letter saying only that it has "concerns [that] are mostly general in nature" about this rate case and refers to a non-existent "TWS' cost of service study." The only "issue" mentioned in the letter is a non-specific reference to "TWS' use of affiliates in order to shield regulated operations and revenues from TRA jurisdiction." Even that reference to the affiliates of TWS is inaccurate. The "regulated operations and revenues" of TWS are not "shielded" from the TRA. To the contrary, all of the expenses and revenues associated with the regulated operations of TWS, including payments to affiliates, are fully set forth in the company's rate case and in data responses provided to the Consumer Advocate Division and the TRA Staff.

Rather than following the instructions of the Hearing Officer, King's Chapel has filed what amounts to a Petition for Reconsideration, asking the Hearing Officer to reverse his earlier

ruling which granted King's Chapel's petition to intervene pursuant to T.C.A. § 4-5-310(b) but limited the Company's participation in accordance with the limitations set forth in T.C.A. § 4-5-310(c)(1) and (2). Those limitations also take into account the fact that King's Chapel is not represented by counsel but by Mr. John Powell as the company's corporate representative. The Hearing Officer ruled that Mr. Powell would not be allowed access to confidential financial information filed by TWS although such information would be provided, subject to a protective order, to counsel for King's Chapel. The Hearing Officer also stated that while Mr. Powell would be allowed to file an issues list, he would not be permitted to engage in activities which would constitute the unauthorized practice of law. Mr. Powell essentially asks the Hearing Officer to reverse all of these rulings. TWS objects.

Discussion

No one apparently disputes the Hearing Officer's ruling that King's Chapel lacks any legal interest in the outcome of this docket and therefore has no right to intervene. Although King's Chapel claimed during the prehearing conference on December 8 that it could assist the Consumer Advocate Division and the TRA Staff in representing the public interest, both the Consumer Advocate Division and the TRA Staff joined TWS in arguing that King's Chapel has no statutory right to participate in this case. As TWS said during the hearing, TWS believes that King's Chapel's principal motivation for intervention is to harm TWS by delaying or defeating any rate increase and by obtaining confidential financial information that can be used against TWS in some manner. King's Chapel has engaged in similar tactics against TWS in the past, falsely accusing the Company of various "abuses." See TRA 05-00016 (dismissed by the TRA upon its own motion, February 17, 2008) and docket 05-00062 (dismissed over the objection of King's Chapel, February 5, 2008).

Despite this history, the Hearing Officer allowed King's Chapel to intervene, not as a matter of right but as a matter of agency discretion, and imposed certain restrictions upon Mr. Powell's participation. The Hearing Officer explained that he would grant the limited intervention because the stand-alone wastewater treatment industry is relatively new to Tennessee and that information about the operations of another provider could help the Authority better understand the business. The Hearing Officer urged Mr. Powell to retain counsel, held that Mr. Powell himself would not be given access to confidential information, and directed Mr. Powell to submit by December 17 a list of the issues he intended to raise. Finally, the Hearing Officer said that he would not allow Mr. Powell to engage in the unauthorized practice of law or impair the orderly and prompt conduct of this case.

Mr. Powell told the Hearing Officer on December 8 that it would take at least ten days to prepare an issues list. Based on that request and despite the urging of TWS that this matter be expedited, the Hearing Officer gave Mr. Powell until December 18 to file his list. No list was filed. On December 18, Mr. Powell delivered to the TRA a page-and-a-half letter containing no more information than he had orally provided on December 8.

As discussed above, the letter does not list any specific issues but says that King's Chapel has "general" concerns about the expenses of TWS. Despite the Hearing Officer's ruling that Mr. Powell would not be allowed access to proprietary financial data except through counsel, Mr. Powell reiterates his claim that he needs to see the confidential financial records of TWS because of his "significant questions and concerns" regarding TWS.¹ He never mentions hiring

¹ Mr. Powell's letter also states that King's Chapel is not a competitor of TWS and, therefore, that Mr. Powell should be able to have access to confidential financial information of TWS. To be sure, King's Chapel provides wastewater service only to customers in one residential suburb which Powell himself developed. He has no other experience in the wastewater treatment business. King's Chapel may, however, compete with TWS for the right to serve other developments. Mr. Powell himself said at the pre-hearing conference that he had been contacted by developers who were interested in using King's Chapel, rather than TWS, to provide wastewater service.

an attorney nor describes any of those "significant questions and concerns" other than TWS' "use of affiliates in order to shield regulated operations and revenues from TRA jurisdiction." As explained earlier, Mr. Powell apparently does not understand that the regulated expenses and revenues of TWS, including all expenses paid to affiliate companies, have been fully disclosed, subject to appropriate confidentiality protections, to the Consumer Advocate Division and the TRA Staff.²

At bottom, Mr. Powell's allegations about the use of affiliates by TWS appear to be an attempt to resurrect the same baseless charges he made nearly four years ago in Docket 05-00016. TWS responded strongly to those allegations which, as TWS said at the time, Mr. Powell knew to be untrue. See Answer of Tennessee Wastewater Systems, Docket 05-00016, March 11, 2005. The parties subsequently signed a settlement agreement in which Mr. Powell agreed to withdraw his complaint. When Mr. Powell took no action to comply with that provision of the settlement, the TRA dismissed the complaint upon its own motion. Order of January 17, 2008. He is presumably barred by the settlement agreement and by res judicata from raising those same complaints a second time.

Furthermore, whether or not Mr. Powell has any interest in serving other areas, his history of making unfounded accusations against TWS indicates that he may want to gain access to confidential financial information of TWS in order to use the information against the Company in other ways.

² Mr. Powell also does not seem to understand that it is not unusual for regulated entities, especially utilities that are part of a larger organization, to operate primarily through the assistance of affiliates. See, for example, TRA Docket 03-00438, "Application of Jackson Energy Authority," pre-filed rebuttal testimony of Dwight Work at p. 5:

Q: Mr. Barta has criticized JEA because the Telephone Business unit has no employees. Do you see this as a problem?

A: No, I do not. The Telephone Business Unit will receive the allocation of fully distributed costs of employees in the regulated divisions of JEA. . . .

In conclusion, it is apparent that Mr. Powell's participation in this case is not going to contribute to the TRA's understanding of this industry and that his principal reasons for intervening are to delay the proceedings and to go on a "fishing expedition" into the confidential financial records of TWS. It is also apparent that, unless King's Chapel retains counsel, Mr. Powell's further participation in this case is likely to conflict with state laws prohibiting the unauthorized practice of law.

At the end of his "issues list," Mr. Powell asks that the Hearing Officer reconsider his December 8 ruling concerning Mr. Powell's petition to intervene. TWS joins in that request. Instead of allowing Mr. Powell to participate as a party, subject to certain limitations, the Hearing Officer should deny altogether the petition to intervene. Mr. Powell should be allowed, as any member of the public is, to comment orally or in writing on the rate case. But he has shown through his actions that he should not be allowed to continue participating as a party to this case. He has no new or unique issues to raise and has demonstrated that he is not able (or not willing) to follow the Hearing Officer's instructions.

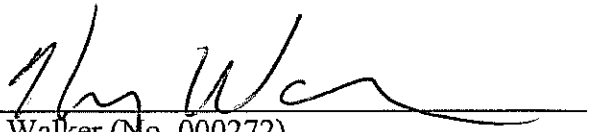
Finally, it should be noted that Mr. Powell's "issues list" states that copies of his letter were mailed to two members of the Tennessee legislature, neither of whom is a party to this case. This appears to be an effort to solicit a communication from those legislators to the TRA Directors concerning the merits of this case. Such a communication might well violate the prohibition against ex parte contacts. See T.C.A. § 4-5-304(c). Any attorney who did what Mr. Powell has done would likely be subject to disciplinary action. This action provides a final reason, if one is needed, why Mr. Powell should not be allowed to continue representing King's Chapel as a party in this docket.

Conclusion

Based upon Mr. Powell's failure to comply with the Hearing Officer's instructions, his apparent intent to delay these proceedings and engage in the unauthorized practice of law, and his lack of any legal right to participate as a party in this case, the Hearing Officer should reconsider his decision and deny the petition to intervene filed by King's Chapel.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

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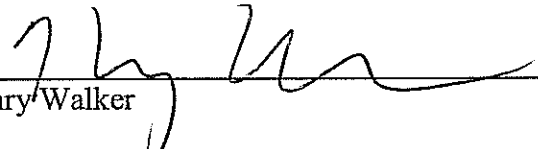
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by placing it in the U.S. Mail, First Class, postage prepaid, on the following counsel of record, this the 19th day of December, 2008.

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