

STATE OF TENNESSEE

Office of the Attorney General



HERBERT H. SLATERY III
ATTORNEY GENERAL AND REPORTER

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February 26, 2015

Monica.Smith-Ashford, Esq.
Hearing Officer
c/o Sharla Dillon
Dockets & Records Manager
Tennessee Regulatory Authority
502 Deaderick Street, 4th Floor
Nashville, TN 37243

In Re: Show Cause Proceeding Against Laurel Hills Condominiums Property Owners Association for Alleged Violations of Tenn. Code Ann. 65-4-201, 65-4-301(A), 65-5-102, 65-4-101, And/Or 65-4-103, And 65-4-115, Docket No. 12-00077.

Dear Ms. Smith-Ashford:

Enclosed are an original and four (4) copies of the *Request of the Consumer Advocate and Protection Division of the Attorney General's Office for Permission for Interlocutory Review*.

These documents are being sent electronically this same date and to the parties of record. Please file in the above-referenced docket. Thank you.

Best regards,

A handwritten signature in blue ink that reads "Rachel Newton".

Rachel Newton
Assistant Attorney General

Enclosures:

cc: Shiva Bozarth, Esq.
Benjamin Gastel, Esq.
Melanie Davis, Esq.

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:)	
)	
SHOW CAUSE PROCEEDING)	
AGAINST LAUREL HILLS)	
CONDOMINIUMS PROPERTY OWNERS)	DOCKET NO. 12-00077
ASSOCIATION FOR ALLEGED)	
VIOLATIONS OF TENN. CODE ANN.)	
65-4-201, 65-4-301(A), 65-5-102, 65-4-101)	
AND/OR 65-4-103, AND 65-4-115)	

**REQUEST OF THE CONSUMER ADVOCATE AND PROTECTION DIVISION
OF THE ATTORNEY GENERAL'S OFFICE
FOR PERMISSION FOR INTERLOCUTORY REVIEW**

Comes now the Consumer Advocate and Protection Division of the Tennessee Attorney General's Office ("Consumer Advocate") and requests permission from the Hearing Officer of the Tennessee Regulatory Authority ("TRA" or "Authority") for an interlocutory review of the Hearing Officer's denial of the Consumer Advocate's Petition to Intervene.

The Authority's rules allow for an interlocutory review of the decision of a Hearing Officer pursuant to Tenn. Comp. R. & Regs. § 1220-1-2.06(6). On February 4, 2015, the Hearing Officer issued an order denying the Consumer Advocate's Petition to Intervene in this docket. The Consumer Advocate submits that it has established the required criteria for intervention in this proceeding. In support of its Request, the Consumer Advocate incorporates by reference its Petition to Intervene and its Replies to the Objections of TRA Party Staff and the Respondent utility Laurel Hills. The aforementioned documents are attached as Exhibit A. In the Order Denying the Consumer Advocate's Petition to Intervene, the Hearing Officer concluded that that the interests of justice and the orderly and prompt conduct of the proceedings would be impaired by the Consumer Advocate's intervention. The Consumer Advocate submits that this conclusion

is not supported by the record in this docket. As stated in its Replies, the Consumer Advocate does not intend to file any discovery requests or delay the progress of this docket in anyway. The Consumer Advocate has reviewed the procedural schedule filed in this docket on February 25, 2015, and it will comply with all deadlines contained therein.

TRA rules state that “[p]ermission for an interlocutory review shall not be unreasonably withheld.” Tenn. Comp. R. & Regs. § 1220-1-2.06(6). A Petition to Intervene by the Consumer Advocate has been denied by a Hearing Officer in only one prior docket, in the matter of *In Re Show Cause Proceeding Against Tennessee Wastewater Systems, Inc., For Material Non-Compliance And/Or Violation Of Tenn. R. & Regs. 1220-04-13, et seq.*, Docket No. 14-0041. In the Initial Order Denying the Consumer Advocate’s Petition to Intervene, the Hearing Officer granted the Consumer Advocate permission for review to the presiding panel of the Authority pursuant to Tenn. Comp. R. & Regs. § 1220-1-2.06(6).

The Consumer Advocate submits that its request for interlocutory review is reasonable, and respectfully seeks permission from the Hearing Officer for an interlocutory review by the Authority panel of the Hearing Officer’s order.

Respectfully submitted,

Herbert H. Slatery III
Tennessee Attorney General and Reporter



Rachel A. Newton (BPR #022960)
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Consumer Advocate and Protection Division
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply was served via U.S.

Mail or electronic mail upon:

Benjamin Gastel, Esq.
Branstetter, Stranch, & Jennings
227 Second Avenue N
Fourth Floor
Nashville, TN 37201
Attorney for Laurel Hills Property Condominium Owners Association

Shiva Bozarth, Esq.
Chief of Compliance
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Melanie Davis, Esq.
Kizer & Black
329 Cates Street
Maryville, TN 37801

This the 26 day of Feb, 2015.



Rachel A. Newton

EXHIBIT

A

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE

IN RE: *)	
)	
SHOW CAUSE PROCEEDING AGAINST)	
LAUREL HILLS CONDOMINIUMS PROPERTY)	
OWNERS ASSOCIATION FOR ALLEGED)	DOCKET NO. 12-00077
VIOLATIONS OF TENN. CODE ANN 65-4-201,)	
65-4-301(A), 65-5-102, 65-4-101 AND/OR 65-4-103,)	
AND 65-4-115)	

PETITION TO INTERVENE

Herbert H. Slatery III, Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118, respectfully petitions the Tennessee Regulatory Authority ("TRA" or "Authority") to grant the Consumer Advocate's intervention into this proceeding because consumers' interests, rights, duties or privileges may be determined or affected by the proceeding. For cause, Petitioner would show as follows:

1. The Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118 to represent the interests of Tennessee consumers of public utilities services by initiating and intervening as a party in any matter or proceeding before the Authority in accordance with the Uniform Administrative Procedures Act ("UAPA"), Tenn. Code Ann. § 4-5-101 *et seq.*, and Authority rules.

2. Laurel Hills Condominium Property Owners Association, Inc. ("Laurel Hills") owns and operates a small water distribution system in Cumberland County,

Tennessee within the development known as Renegade Mountain. Laurel Hills is the property owners association for the timeshare units of the Laurel Hills timeshare condominium complex.

3. Tenn. Code Ann. § 4-5-102(3) of the UAPA provides that:

“Contested case” means a proceeding, including a declaratory proceeding, in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing.

4. The Consumer Advocate maintains that the proceeding in this Docket No. 12-00077 is a contested case.

5. The Consumer Advocate further maintains that consumers have an interest in this proceeding.

6. Tenn. Code Ann. § 4-5-310(a) (“Interventions”) of the UAPA provides as follows:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

- (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
- (2) The petition states facts demonstrating that the petitioner’s legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
- (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

7. The Consumer Advocate maintains that it has met the three requirements of Tenn. Code Ann. § 4-5-310(a) because (1) the Petition is timely; (2) the Petitioner's "rights, duties, privileges, immunities or other legal interest may be determined" and the Petitioner also qualifies as an Intervenor under Tenn. Code Ann. § 64-5-118; and (3) the "interests of justice and the prompt conduct of the proceedings shall not be impaired".

8. On April 10, 2012, Laurel Hills filed the Petition in Docket No. 12-00030 asking that the TRA grant it a Certificate of Public Convenience and Necessity ("CCN") to operate its water distribution system.

9. The TRA denied Laurel Hills' Petition for a CCN in Docket No. 12-00030. In addition, the TRA opened a new docket, Docket No. 12-00077, and issued an *Order Requiring Laurel Hills Condominiums Property Owners Association To Appear And Show Cause Why A Cease And Desist Order And Civil Penalties & Sanctions Should Not Be Imposed Against It For Violations Of State Law*. ("Show Cause Docket"), July 17, 2012.

10. In the Order opening the Show Cause Docket, the TRA ordered Laurel Hills to appear before the Authority to show cause why the TRA should not issue a cease and desist order and impose civil penalties and sanctions against it for the following violations of law:

1) Operation of a public utility without a Certificate of Public Convenience and Necessity ("CCN") in violation of Tenn. Code Ann. § 65-4-201;

2) Failure to pay an annual inspection fee in violation of Tenn. Code Ann. § 65-4-301(a);

- 3) Failure to file a tariff in violation of Tenn. Code Ann. § 65-5-102;
- 4) Charging rates not approved by the Authority in violation of Tenn. Code Ann. § 65-5-101 and/or 65-5-103; and,
- 5) Withholding or refusing to provide service to customers in violation of Tenn. Code Ann. § 65-4-115.

Show Cause Order at 1.

11. These alleged violations of laws directly affect the interests and rights of customers of Laurel Hills, particularly charging unauthorized rates and withholding service.

12. The TRA Party Staff may enter a settlement agreement with Laurel Hills in this proceeding. If such a settlement is adverse to consumers' interests and if the Consumer Advocate is not allowed to intervene as a party, its ability to contest such an adverse settlement agreement would be impaired.

13. Laurel Hills appealed the TRA's decision to deny its request for a CCN to the Tennessee Court of Appeals, Appeals Docket No. M2013-01392-COA-12-CV. On April 14, 2014, the Court of Appeals denied Laurel Hills appeal.

14. Laurel Hills then filed a Rule 11 Application for Permission to Appeal to the Tennessee Supreme Court. The Application was denied October 15, 2014.

15. Subsequent to the denial of the Application for Permission to Appeal, the TRA Party Staff filed a Renewed Motion to Initiate Proceedings in the Show Cause Docket, October 21, 2014.

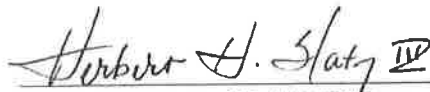
16. At a status conference before the Hearing Officer in the Show Cause Docket on November 20, 2014, a hearing date of January 15, 2014 was set.

17. If granted intervention, the Consumer Advocate will adhere to the procedural schedule. Furthermore, the Consumer Advocate does not intend to file any discovery requests.

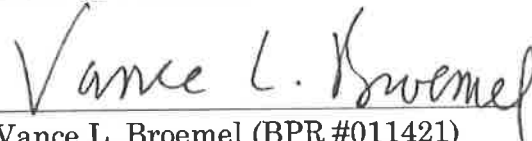
18. Only by participating in this proceeding can the Consumer Advocate work adequately to protect the interests of consumers.

WHEREFORE, Petitioner respectfully asks the Authority to grant the Petition to Intervene.

RESPECTFULLY SUBMITTED,



HERBERT H. SLATTERY III (BPR #09077)
Attorney General and Reporter
State of Tennessee



Vance L. Broemel (BPR #011421)
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Dated: December 8, 2014

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition to Intervene was served via U.S. Mail or electronic mail upon:

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227 Second Avenue North
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Jean Stone, General Counsel
Tennessee Regulatory Authority
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Nashville, TN 37243

This the 8th day of December 2014


VANCE L. BROEMEL

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:)	
)	
SHOW CAUSE PROCEEDING)	
AGAINST LAUREL HILLS)	
CONDOMINIUMS PROPERTY OWNERS)	DOCKET NO.
ASSOCIATION FOR ALLEGED)	12-00077
VIOLATIONS OF TENN. CODE ANN.)	
65-4-201, 65-4-301(A), 65-5-102, 65-4-101)	
AND/OR 65-4-103, AND 65-4-115)	

**REPLY OF THE CONSUMER ADVOCATE AND PROTECTION DIVISION
OF THE ATTORNEY GENERAL'S OFFICE
TO THE PARTY STAFF'S OBJECTION TO PETITION TO INTERVENE**

Comes now the Consumer Advocate and Protection Division of the Tennessee Attorney General's Office ("Consumer Advocate") and files this reply to the Objection of the Party Staff of the Tennessee Regulatory Authority ("TRA" or "Authority") to the Consumer Advocate's Petition to Intervene in this matter. In support of its Petition to Intervene and in response to the Party Staff's Objection to Intervention Requests ("Objection"), the Consumer Advocate submits the following:

1. Consumers Have A Clear Interest In This Docket, And The Authority Has Been Properly Notified Of The Necessity For The Consumer Advocate's Intervention In This Contested Case Proceeding.

The Consumer Advocate maintains that consumers have an interest in this proceeding and that it has properly given notice to the Authority as to why Consumer Advocate intervention is necessary. In its Petition to Intervene, the Consumer Advocate noted that the alleged violations of the law by Laurel Hills Condominium

Property Owners Association (“Laurel Hills”) “directly affect the interests and rights of customers of Laurel Hills in this proceeding, particularly charging unauthorized rates and withholding service.” Petition to Intervene at ¶ 11. The Consumer Advocate also noted the specific facts that led to the conclusion that consumers have an interest in this docket, namely the allegations set forth in the *Order Requiring Laurel Hills Condominiums Property Owners Association to Appear and Show Cause Why a Cease and Desist Order and Civil Penalties and Sanctions Should Not Be Imposed Against It for Violations of State Law* (“Show Cause Order”) issued on July 17, 2012. *Id.* at ¶ 10. Also, the Consumer Advocate noted the legal bases for intervention under both its enabling statute, Tenn. Code Ann. § 65-4-118, and the provisions governing intervention under the Uniform Administrative Procedures Act (“UAPA”), Tenn. Code Ann. § 4-5-310. Thus, the Petition to Intervene outlines the consumer interest in this proceeding from both legal and factual perspectives.

Although the Consumer Advocate contends that its Petition to Intervene is sufficiently detailed, a petition to intervene need not be exhaustive or overly detailed in order to be granted; it need only set forth the interests of the parties in a manner that is sufficient for the hearing officer to make a determination.¹ The Authority has granted intervention to the Consumer Advocate and other parties whose petitions to intervene contained less detail than the Consumer Advocate’s Petition to Intervene

¹ See Tenn. Code Ann. § 4-5-310, which requires only that the petition state “facts demonstrating that the petitioner’s legal rights, duties, privileges, immunities, or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law.” The Consumer Advocate’s enabling statute, Tenn. Code Ann. § 65-4-118, does not place any requirements on the petition to intervene.

in this docket. As examples, petitions to intervene and orders granting the petitions for the following dockets are attached as EXHIBIT 1: *In Re Complaint of US LEC of Tennessee, Inc., Against Electric Power Board of Chattanooga*, Docket No. 02-00562; *In Re Tennessee Wastewater Service, Inc., Petition to For Rate Increase*, Docket No. 09-00017; *In Re Petition for Regulatory Exemption Pursuant to T.C.A. § 65-5-108(b)*, Docket No. 08-00192.

The Consumer Advocate has the duty and authority to represent the interests of Tennessee consumers of public utility services in any matter or proceeding before the Authority or any other administrative, legislative, or judicial body. Tenn. Code Ann. § 65-4-118(b)(1). The statute places no limitations on the Consumer Advocate's participation. This show cause docket affects not only the legal rights of Laurel Hills but also its customers. If a utility engages in wrongdoing of the type alleged by TRA Party Staff, the consumer interest is necessarily implicated. There is nothing speculative about the Consumer Advocate's duty to represent the consumers who have potentially been harmed by Laurel Hills. Charging unauthorized rates and refusing to provide service to customers are clearly matters of interest to consumers, not just issues between the TRA and Laurel Hills. Therefore it is proper for the Consumer Advocate to intervene in this matter because its enabling statute gives it the authority to represent the interests of Tennessee consumers of public utilities services. By not intervening in this matter, the Consumer Advocate might even be viewed as abrogating its responsibility under the law.

The consumer advocate division has the duty and authority to represent the interests of Tennessee consumers of public utilities services. The

division may, with the approval of the attorney general and reporter, participate or intervene as a party in any matter or proceeding before the authority or any other administrative, legislative or judicial body and initiate such proceeding, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the rules of the authority.

Tenn. Code Ann. § 65-4-118(b)(1). The word “may” in this statute confers discretion on the Attorney General to determine the proceedings in which the Consumer Advocate should participate. The Attorney General has given his approval to intervene into this docket. It has been argued in other proceedings before the Authority that the “may” in this statute is permissive with respect to the TRA, but the structure of the statute does not support this position. In terms of statutory construction, the only other word that could be substituted for “may” would be “shall,” which would have demanded that the Consumer Advocate intervene in all proceedings before the Authority if it received approval from the Attorney General to do so. The permissive aspect of the statute refers to the discretion of the Attorney General, not other parties or agencies.

Without intervention, the Consumer Advocate would not be able to fully participate in these proceedings or be able to appeal a decision that is adverse to customers, nor would it be able to represent consumer interest if Laurel Hills were to appeal a decision of the Authority. If the TRA were to deny the Consumer Advocate’s Petition to Intervene, the TRA would be denying a voice to the very consumers affected in this proceeding and who the Consumer Advocate has the statutory duty and authority to represent.

The need for representation of Consumer Advocate interests has recently been demonstrated by settlement agreements or attempts at resolution which were entered into by TRA Party Staff and the respondent utility, but were rejected by the Authority. For example, in the matter of *In re Show Cause Proceeding Against Tennessee Wastewater Systems, Inc., For Material Non-Compliance And/Or Violation of Tenn. R. 1220-04-13, et seq.*, (“TWSI Show Cause”), Docket No. 14-00041, the TRA Party Staff did not call for the revocation of a utility’s Certificate of Convenience and Necessity (“CCN”), but instead attempted its own resolution of the case. The attempted resolution was rejected by the Authority panel.²

Similarly, in *In re Investigation As To Whether A Show Cause Order Should Be Issued Against Berry’s Chapel Utility, Inc., And/Or Lynwood Utility Corporation For Violation Of TRA Rule And Tennessee Statutes, Including But Not Limited To, Tenn. Code Ann. §§ 65-4-112, 65-4-113, 65-4-201, And 65-5-101*, (“Berry’s Chapel Show Cause”) Docket No. 11-00065, the TRA Party Staff and the utility entered into a settlement agreement but the Consumer Advocate opposed it. The TRA panel then did not accept the proposed resolution.³ These cases demonstrate the importance of Consumer Advocate participation when consumer interests are at stake. The Consumer Advocate stresses that by citing these cases it is not criticizing the TRA Directors, Advisory Staff or Party Staff.

² See *Order Revoking Tennessee Wastewater Systems, Inc.’s Amendment to Its Certificate of Convenience and Necessity For A Portion of Campbell County Known As Villages At Norris Lake*, August 11, 2014.

³ See *Transcript of Authority Conference*, November 25, 2013.

2. The TRA Party Staffs Specific Objections Are Insufficient to Deny The Consumer Advocate's Petition To Intervene.

In its Objection to the Consumer Advocate's Petition to Intervene, TRA Party Staff cites the Authority's mission statement in support of its assertion that "[i]t is the Authority that is responsible for ensuring the public good," implying that this is sufficient to represent the interests of consumers and that participation by the Consumer Advocate is unnecessary. Objection at ¶ 5. The acceptance of the position that the Authority's involvement is sufficient to represent the interests of consumers would render Tenn. Code Ann. § 65-4-118 a nullity. Under this statute, it is the "duty and authority" of the Consumer Advocate to represent the interests of Tennessee consumers of public utilities.

The TRA's mission statement, as stated by TRA Party Staff, is "to promote the public interest by balancing the interests of utility consumers and providers," implying that this charge to balance interests obviates the need for consumer representation. Objection at ¶ 5. Thus, Party Staff essentially admits that this docket involves the interest of consumers. Furthermore, it should be noted that Party Staff argues that it is the role of the Authority to "balance" the interest of utility consumers and providers. However, the utility provider is a party to this proceeding and is able to argue for itself. There is, however, no one to represent the consumer interest in this proceeding if the Consumer Advocate does not intervene.

In its Objection, Party Staff contends that if it enters into a settlement with Laurel Hills, then that would be the appropriate time to consider Consumer Advocate intervention. Objection at ¶ 14. This position is simply impractical as a procedural

matter. If intervention were considered at the point a settlement is proposed, the progression of this docket would come to a halt. First, the Authority would have to consider the Consumer Advocate's petition to intervene, and there may be a need for one or more hearings regarding the matter. Also, if granted intervention at this point, the Consumer Advocate would likely have to meet with the parties, perhaps multiple times, in order to obtain the information that led to the proposed settlement. As is the case with many settlement agreements, some significant information would likely be exchanged in an informal setting such as a meeting between the two parties, instead of in the form of documents filed as a matter of public record.

Therefore, not only would the Authority's consideration of any settlement proposal be delayed by requiring the Consumer Advocate to wait to intervene, consumers would be at a disadvantage in the proceedings because the Consumer Advocate may find itself in the position of evaluating a settlement proposal without all the information considered in entering into the agreement. The Consumer Advocate is not only authorized to participate as a party, but it makes much more sense from a practical and policy perspective for the Consumer Advocate, TRA Party Staff, and Laurel Hills to be on the same page as early in the process as possible. In its Petition to Intervene, the Consumer Advocate stated that it will comply with all procedural schedules issued by the Authority and it does not intend to file any discovery requests. Petition to Intervene at ¶ 17. Therefore, the interests of the TRA and Laurel Hills in a prompt and orderly proceeding will not be impaired.

Party Staff asserts that the TRA is vested with “practically plenary authority over the utilities within [the TRA’s] jurisdiction” and that such a “broad grant of authority empowers the TRA to conduct an enforcement action relying upon counsel employed by the Authority for that purpose.” Objection at ¶ 4. Party Staff cites *Tenn. Cable Television Ass’n v. Tenn. Public Service Comm’n*, 844 S.W.2d 151 (Tenn. Ct. App. 1992) in support of its position. The Authority does have broad discretion to carry out its substantive duties, such as setting rates, as discussed in *Tenn. Cable*. However, the holding in this case cannot be extended to state that the Authority has the same power over the administrative agency contested case procedures, which apply to the TRA through the UAPA. Nor can the holding be extended to the issue of Consumer Advocate intervention, as that issue was not at all involved in that case.

The General Assembly intended for the UAPA to apply to all administrative agencies unless they were specifically exempted. *Mid-South Indoor Horse Racing, Inc., v. Tennessee State Racing Commission*, 798 S.W.2d 531, 536 (Tenn. Ct. App. 1990). The TRA is not exempt from the UAPA. Therefore, it is incumbent on the Authority to conduct its proceedings in accordance with the UAPA, which allows intervention in contested cases such as this show cause proceeding. Tenn. Code Ann. § 4-5-310.

Party Staff claims that the show cause statute does not “contemplate third party intervention when the only issue is a violation of the law.” Objection at ¶ 3. However, the show cause statute, Tenn. Code Ann. § 65-2-106, expressly provides that “show cause proceedings shall otherwise follow the provisions of this chapter

with reference to contested cases.” Furthermore, Tenn. Code Ann. § 65-2-107 expressly contemplates intervention in contested cases, as does the UAPA and the Consumer Advocate’s enabling statute. Tenn. Code Ann. §§ 4-5-310, 65-4-118. None of the statutes referenced in this paragraph make an exception for cases involving a violation of the law.

For the reasons stated here and in the initial petition, the Consumer Advocate’s Petition to Intervene should be granted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Rachel Newton", is written over a horizontal line.

RACHEL A. NEWTON (BPR #022960)
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Rachel.Newton@ag.tn.gov

DATE: January 22, 2015

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing Reply was served
via U.S. Mail or electronic mail upon:

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Branstetter, Stranch, & Jennings
227 Second Avenue N
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Attorney for Laurel Hills Property Condominium Owners Association

Shiva Bozarth, Esq.
Chief of Compliance
Tennessee Regulatory Authority
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Melanie Davis
Kizer & Black Attorneys, PLLC
329 Cates Street
Maryville, TN 37801

This the 22 day of Jan, 2015.



Rachel A. Newton

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:

**SHOW CAUSE PROCEEDING
AGAINST LAUREL HILLS
CONDOMINIUMS PROPERTY OWNERS
ASSOCIATION FOR ALLEGED
VIOLATIONS OF TENN. CODE ANN.
65-4-201, 65-4-301(A), 65-5-102, 65-4-101
AND/OR 65-4-103, AND 65-4-115**

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**DOCKET NO.
12-00077**

**REPLY OF THE CONSUMER ADVOCATE AND PROTECTION DIVISION
OF THE ATTORNEY GENERAL'S OFFICE
TO RESPONDENT LAUREL HILLS' OBJECTION TO PETITION TO INTERVENE**

Comes now the Consumer Advocate and Protection Division of the Tennessee Attorney General's Office ("Consumer Advocate") and files this Reply to the Respondent's Opposition to the Consumer Advocate Division's Petition to Intervene ("Opposition"). In support of its Petition to Intervene and in response to the Opposition of Laurel Hills Condominiums Property Owners Association ("Laurel Hills"), the Consumer Advocate submits the following:

1. Consumers Have A Clear Interest In This Docket, And Laurel Hills Has Been Properly Notified Of The Necessity For The Consumer Advocate's Intervention In This Contested Case Proceeding.

The Consumer Advocate maintains that consumers have a specific interest in this proceeding and that it has properly given notice to Laurel Hills as to why Consumer Advocate intervention is necessary. In its Petition to Intervene, the Consumer Advocate noted that the alleged violations of the law by Laurel Hills "directly affect the interests and rights of customers of Laurel Hills in this proceeding,

particularly charging unauthorized rates and withholding service.” Petition to Intervene at ¶ 11. The Consumer Advocate also noted the particular facts that led to the conclusion that consumers have an interest in this docket, namely the allegations set forth in the *Order Requiring Laurel Hills Condominiums Property Owners Association to Appear and Show Cause Why a Cease and Desist Order and Civil Penalties and Sanctions Should Not Be Imposed Against It for Violations of State Law* (“Show Cause Order”) issued on July 17, 2012. *Id.* at ¶ 10. Also, the Consumer Advocate noted the legal bases for intervention under both its enabling statute, Tenn. Code Ann. § 65-4-118, and the provisions governing intervention under the Uniform Administrative Procedures Act (“UAPA”), Tenn. Code Ann § 4-5-310. Thus, the Petition to Intervene outlines the consumer interest in this proceeding from both legal and factual perspectives.

Although the Consumer Advocate contends that its Petition to Intervene is sufficiently detailed, a petition to intervene need not be exhaustive or overly detailed in order to be granted; it need only set forth the interests of the parties in a manner that is sufficient for the hearing officer to make a determination.¹ The Authority has granted intervention to the Consumer Advocate and other parties whose petitions to intervene contained less detail than the Consumer Advocate’s Petition to Intervene in this docket. As examples, petitions to intervene and orders granting the petitions

¹ See Tenn. Code Ann. § 4-5-310, which requires only that the petition state “facts demonstrating that the petitioner’s legal rights, duties, privileges, immunities, or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law.” The Consumer Advocate’s enabling statute, Tenn. Code Ann. § 65-4-118, does not place any requirements on the petition to intervene.

for the following dockets are attached as EXHIBIT 1: *In Re Complaint of US LEC of Tennessee, Inc., Against Electric Power Board of Chattanooga*, Docket No. 02-00562; *In Re Tennessee Wastewater Service, Inc., Petition to For Rate Increase*, Docket No. 09-00017; *In Re Petition for Regulatory Exemption Pursuant to T.C.A. § 65-5-108(b)*, Docket No. 08-00192.

The Consumer Advocate has the duty and authority to represent the interests of Tennessee consumers of public utility services. Tenn. Code Ann. § 65-4-118. The Consumer Advocate, with the permission of the Attorney General and Reporter, is fully authorized to “participate or intervene as a party in any matter or proceeding before the [A]uthority or any other administrative, legislative, or judicial body” in accordance with the UAPA and Authority rules. *Id.* § 65-4-118(b)(1). The statute places no limitations on the Consumer Advocate’s participation.

This show cause docket affects not only the legal rights of Laurel Hills but also its customers. If a utility engages in wrongdoing of the type alleged by TRA Party Staff, the consumer interest is necessarily implicated. There is nothing speculative about the Consumer Advocate’s duty to represent the consumers who have potentially been harmed by Laurel Hills. Charging unauthorized rates and refusing to provide service to customers are clearly matters of interest to consumers, not just issues between the TRA and Laurel Hills. Therefore it is proper for the Consumer Advocate to intervene in this matter because its enabling statute gives it the authority to represent the interests of Tennessee consumers of public utilities services. By not

intervening in this matter, the Consumer Advocate might even be viewed as abrogating its responsibility under the law.

The consumer advocate division has the duty and authority to represent the interests of Tennessee consumers of public utilities services. The division may, with the approval of the attorney general and reporter, participate or intervene as a party in any matter or proceeding before the authority or any other administrative, legislative or judicial body and initiate such proceeding, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the rules of the authority.

Tenn. Code Ann. § 65-4-118(b)(1). The word “may” in this statute confers discretion on the Attorney General to determine the proceedings in which the Consumer Advocate should participate. The Attorney General has given his approval to intervene into this docket. It has been argued in other proceedings before the Authority that the “may” in this statute is permissive with respect to the TRA, but the structure of the statute does not support this position. In terms of statutory construction, the only other word that could be substituted for “may” would be “shall,” which would have demanded that the Consumer Advocate intervene in all proceedings before the Authority if it received approval from the Attorney General to do so. The permissive aspect of the statute refers to the discretion of the Attorney General, not other parties or agencies.

Without intervention, the Consumer Advocate would not be able to fully participate in these proceedings or be able to appeal a decision of the Authority that it believes is adverse to consumers, nor would it be able to represent consumer interests if Laurel Hills were to appeal a decision of the Authority. Therefore, in denying the Consumer Advocate its Petition to Intervene, the TRA would be denying

a voice to the very consumers affected in this proceeding and who the Consumer Advocate has the statutory duty and authority to represent.

The need for representation of Consumer Advocate interests has recently been demonstrated by settlement agreements or attempts at resolution that were entered into by TRA Party Staff and the respondent utility, but were rejected by the Authority. For example, in the matter of *In Re Show Cause Proceeding Against Tennessee Wastewater Systems, Inc., For Material Non-Compliance And/Or Violation of Tenn. R. 1220-04-13, et seq.*, (“TWSI Show Cause”), Docket No. 14-00041, the TRA Party Staff did not call for the revocation of a utility’s Certificate of Convenience and Necessity (“CCN”), but instead attempted its own resolution of the case. The attempted resolution was rejected by the Authority panel.²

Similarly, in *In Re Investigation As To Whether A Show Cause Order Should Be Issued Against Berry’s Chapel Utility, Inc., And/Or Lynwood Utility Corporation For Violation Of TRA Rule And Tennessee Statutes, Including But Not Limited To, Tenn. Code Ann. §§ 65-4-112, 65-4-113, 65-4-201, And 65-5-101* (“Berry’s Chapel Show Cause”), Docket No. 11-00065, the TRA Party Staff and the utility entered into a settlement agreement opposed by the Consumer Advocate. The TRA panel then did not accept the settlement.³ These cases demonstrate the importance of Consumer Advocate participation when consumer interests are at stake. However, by citing

² See *Order Revoking Tennessee Wastewater Systems, Inc.’s Amendment to Its Certificate of Convenience and Necessity For A Portion of Campbell County Known As Villages At Norris Lake*, August 11, 2014.

³ See *Transcript of Authority Conference*, November 25, 2013.

these cases, the Consumer Advocate stresses that it is not criticizing the TRA Directors, Advisory Staff, or Party Staff.

2. Laurel Hills' Specific Objections Are Insufficient To Deny the Consumer Advocate's Petition To Intervene.

In its Opposition to the Consumer Advocate's Petition to Intervene, Laurel Hills cites a section of Tenn. Code Ann. § 65-2-106 in support of its position that the Consumer Advocate should not be allowed to intervene. Opposition at ¶ 3. Laurel Hills contends that "only one party: the Respondent" is contemplated in this show cause proceeding because the TRA "functionally acts as a prosecutor of this civil enforcement proceeding and no other entity can assume that role." *Id.* Laurel Hills claims that its position is "consistent with Tennessee law on similar enforcement actions brought by other agencies." *Id.* at ¶ 4. In support of this argument, Laurel Hills cites *State v. Brown and Williamson Tobacco Corp.* 18 S.W.3d 186 (Tenn. 2000).

The show cause statute, Tenn. Code Ann. § 65-2-106, expressly provides that "show cause proceedings shall otherwise follow the provisions of this chapter with reference to contested cases" and Tenn. Code Ann. § 65-2-107 expressly contemplates intervention in contested cases. Intervention in contested cases is also allowed under the UAPA, at Tenn. Code Ann. § 4-5-310, and by the Consumer Advocate's enabling statute, Tenn. Code Ann. § 65-4-118.

The Consumer Advocate does not attempt to assume any role other than its statutorily defined role as a representative of the interests of consumers of public utility services in Tennessee. This show cause docket is a contested case proceeding governed by the UAPA, and labeling it a "civil enforcement action" does not make it

something other than what it is. Under the UAPA, the TRA is an administrative agency, not a law enforcement agency or other entity that is designed to bring actions outside the realm of the UAPA. The UAPA defines an agency as a “state board, commission, committee, department, officer, or any other unit of state government authorized or required by any statute or constitutional provision to make rules or to determine contested cases.” The statute governing exemptions from the UAPA, Tenn. Code Ann. § 4-5-106, does not exclude the Authority or show cause proceedings.

Furthermore, the holding of *Brown and Williamson* does not apply to this proceeding. It is distinguishable from this show cause proceeding in several ways. First, the case in *Brown and Williamson* was an action brought by the State of Tennessee through the Attorney General in a chancery court, not an action initiated by an administrative agency that is subject to the UAPA. Furthermore, the substantive statutes giving rise to the suit in *Brown and Williamson* were the Tennessee Consumer Protection Act and the Tennessee Trade Practices Act. Actions under these statutes are not contested cases under the UAPA, and neither the State of Tennessee nor the Attorney General is an administrative agency as defined by the UAPA. Therefore, the holding of this case cannot be extended to apply to contested case proceedings before an administrative tribunal such as the TRA.

Consumer Advocate intervention will not impede Laurel Hills’ “full opportunity to defend the action” as contended by the Respondent. Opposition at ¶ 5. Laurel Hills provides no support for this statement other than its effort to characterize this proceeding as something other than a contested case. The Consumer

Advocate will not attempt to impede Laurel Hills' defense of the allegations brought by the TRA. In fact, the Consumer Advocate is very interested in hearing the responses to these allegations because they involve wrongdoing against customers of Laurel Hills, whose interests the Consumer Advocate has the statutory duty and authority to represent. Finally, as previously stated, the Consumer Advocate does not intend to file any discovery requests and will comply with all procedural schedules issued by the Authority.

For the reasons stated here and in the initial petition, the Consumer Advocate's Petition to Intervene should be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply was served
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