

IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE:)
)
AMENDED PETITION OF EMERSON) DOCKET NO. 13-00017
PROPERTIES, LLC FOR REVOCATION OF)
CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY HELD)
BY TENNESSEE WASTEWATER)
SYSTEMS, INC. FOR THE PORTION OF)
CAMPBELL COUNTY, TENNESSEE,)
KNOWN AS THE VILLAGES OF NORRIS)
LAKE, PURSUANT TO TENN. CODE ANN.)
§ 65-4-201)

CONSUMER ADVOCATE'S RESPONSE TO THE MOTION TO STRIKE PORTIONS
OF THE ADVOCATE'S BRIEF OR TO FILE THIS RESPONSE

The Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") submits for filing this Response to the Motion to Strike Portions of the Advocate's Brief or to File this Response.

The Consumer Advocate opposes the Motion to Strike Portions of the Advocate's Brief or to File This Response ("Motion to Strike") for the following reasons:

A. References to the Public Comments Are Part of the Background of the Case Even If They Are Not Part of the Testimony Record and Should Not Be Stricken.

Tennessee Wastewater has moved to strike all statements in the Consumer Advocate's Post-Hearing Brief that make reference to public comments. The statements at issue are part of the portion of the Brief entitled "Background". The Consumer Advocate maintains the public

comments are indeed part of the background of the case even if they are not testimony; accordingly, the statements should not be stricken.

At most, and accepting Tennessee Wastewater's arguments at face value, Tennessee Wastewater is entitled to a ruling that the statements at issue are not part of what it refers to as the "evidentiary record." The Consumer Advocate is not conceding the point about evidentiary record but maintains that the proper remedy, based on the arguments presented by Tennessee Wastewater, is simply a ruling that the statements are not part of the "evidentiary record." Accordingly, the statements at issue should not be stricken.

If Tennessee Wastewater's argument that references to public comments should be stricken is accepted, that would completely negate the value of public comments. Tennessee Wastewater may not like the fact that residents of the Villages voiced their unhappiness with Tennessee Wastewater's failure to provide service for years but that does not mean that these comments are not part of the background of the case.

B. Most of the Statements Subject to the Motion To Strike Are Supported by the Record of Testimony and Questions by the Directors and, Therefore, Should Not Be Stricken.

Most of the statements that are subject to the Motion to Strike are supported by both the public comments and the testimony record or questions by the Directors. In certain cases, the statements were followed by references to both public comments and testimony; these statements are clearly not subject to striking. Accordingly, there is no ground for striking these statements.

Following is a list of each statement subject to the Motion to Strike, with the corresponding support in the testimonial record.

1. Post-Hearing Brief at 7: “In addition, Emerson has stated it intends to build the system and give it to the non-profit homeowners’ association serving its members in the Villages.” Tr. 18, 74.

Testimony of Mr. Potter: “I’m going to turn over the actual plan itself, or the deed to the plant, to the HOA.” Tr. 74.

Thus, as indicated in the Post-Hearing Brief, this statement is also supported by testimony at p.74.

2. Post-Hearing Brief at 8: “There is a sewer system that is eight to ten weeks away from completion and serving the Villages, weather permitting.” Tr. 7.

Testimony of Mr. Potter: “Less than two months, good weather permitting. Weather is always a factor.” Tr. 84.

3. Post-Hearing Brief at 8: “The value of the lots, which are 80-90% less than what they were pre-bankruptcy and continued to lose value for years after bankruptcy, will remain devalued until the sewer system is completed.” Tr. 20-24.

No direct reference in testimony.

4. Post-Hearing Brief at 8: “Owners who build on their property are faced with the burden of paying for expensive pump-and-haul services.” Tr. 25-29.

Director Hill: I have one question. Would that septic system -- is that basically being used as a cesspool, where it’s pumped out on a regular basis or that -- that sort of thing? Is that how it’s --

Ms. Strait: It’s pumped out, yes.

Director Hill: So, basically, it just becomes a holding tank and --

Ms. Strait: Yes, it is a holding tank. And when more people come and visit us, then it’s a cost factor, you know.

Director Hill How often do you have to have it pumped?

Ms. Strait: Once a month with all of -- with everybody coming down, and then here at Christmas --

Director Hill: Excuse me just a second.

Ms. Strait: So here with Christmas coming and grandkids and our kids coming down, I'm not sure what this next month is going to cost us, so . . .

Director Hill: What does a pump cost? \$125? \$200?

Ms. Strait: Three -- well --

Director Hill: \$300?

Ms. Strait: \$320 I think was the last one. And if it's full-full, it's 370.

Director Hill: Okay. And that's a monthly kind of thing for you --

Ms. Strait: Yes.

Tr. 28-29

5. Post-Hearing Brief at 8: "Economic development of this community is at a standstill pending a solution to the problem of who may provide utility service." Tr. 7-24.

Testimony of Mr. Potter:

But then we really wanted to wait until the development was completed before we did any kind of sales efforts, because nobody wants -- you know, having gone through the downturn, in the middle of the downturn -- you know, this was a bankrupt property and nobody wants to buy property that's not complete -- completed with working utilities and wastewater and roads and everything. So we thought it was in our best interest just to wait until it was officially completed.

And so we never sold another lot. We never really resumed any sales efforts. You know, it just -- we -- we went through this process and we just kept going through this process, and we just decided we wouldn't sell anything. And Jim, who is a real estate agent, he solicited me a few times, but, you know, I just told him we're not selling anything until this is completely done.

Tr. 90.

6. Post-Hearing Brief at 8: “The lot owners suffer losses both personally and financially awaiting the completion of the system and have a personal interest in who provides their sewer system.” Tr. 7-24.

No direct reference in testimony.

7. Post-Hearing Brief at 9: “Emerson, with the support of the HOA and its members (Tr. 4-18), has stated that it would like to move forward with completing the system and not use TWSI to provide wastewater service and, therefore, has filed this action requesting the TRA to revoke TWSI’s CCN.” Tr. 52-53.

Testimony of Mr. Potter.

We stopped when TDEC said that we -- after they got the ruling, TDEC said, “You need to cease and desist,” but it was because we had not provided them a perpetual easement or land rights for a new utility, CJU. We did that. They asked us to provide that for them. We showed them the recorded perpetual easement where the wastewater treatment plant was going to be for CJU. They, after that, said that we could resume work. We chose not to because of this pending hearing, and so that’s why we’re here. We’re going to wait and see what the result of this is.

And then the one, last thing I’ll say to wrap up is after the Chancery Court ruling, in fairness to the HOA, I told Pat, I said, “You should probably reach out to Tennessee Wastewater just to see, on your own merit, if you want to move forward with them. I’m not going to force you to do that, you know. You need to decide. It’s your community.”

And Pat did meet with Tennessee Wastewater, and he walked away from that meeting the same way I did. We didn’t want to move forward, though. We were going to move forward trying to get the permit revoked, and that’s why we’re here.

Tr. 52-53

Thus, as indicated in the Post-Hearing Brief, this statement is also supported by testimony at p.52-53.

C. References to TRA Docket No. 06-00077 Are Proper Because It Is Well-Established That the TRA May Take Notice of Its Own Actions.

In addition to moving to strike all statements in the Post-Hearing Brief based on public comments, Tennessee Wastewater has also asked to strike references to TRA Docket No. 06-00077. However, it is well-established, and Tennessee Wastewater even acknowledges, that the “Authority has the right to take notice of information from Authority’s own records, including the nineteen pages from TRA Docket No. 06-00077 attached to the Advocate’s brief.” Motion to Strike at 2. Accordingly, Tennessee Wastewater’s Motion to Strike references to TRA Docket No. 06-00077 should be denied.

Tennessee Wastewater argues that because the Consumer Advocate was limited in its scope of cross-examination, it should also be limited in its arguments in the Post-Hearing Brief. Motion to Strike at 2. There is, however, nothing in the Hearing Officer’s orders that limits what can be set forth in the Post-Hearing Brief.

Furthermore, contrary to Tennessee Wastewater’s arguments, references to the TRA’s own action in TRA Docket No. 06-00077 are not “new evidence.” Motion to Strike at 2. As shown above, these references are the kind of evidence the TRA may use. Thus, even if the Consumer Advocate was limited in cross-examination and may have been prohibited from asking questions of witnesses using TRA Docket No. 06-00077, this limitation does not apply to the Post-Hearing Brief.


It is apparent that Tennessee Wastewater is using its objection to references to TRA Docket No. 06-00077 as an attempt to get its arguments regarding that docket before the Authority in lieu of a reply brief. The Hearing Officer’s schedule, however, did not provide for a

reply brief. Thus, Tennessee Wastewater's arguments about TRA Docket No. 06-00077 are obviously improper but the Consumer Advocate does not intend to file a Motion to Strike the Motion to Strike.

CONCLUSION

For the foregoing reasons, the Tennessee Wastewater Motion to Strike should be denied.

RESPECTFULLY SUBMITTED,


VANCE L. BROEMEL (BPR #011421)

Senior Counsel
Office of the Attorney General and Reporter
Consumer Advocate and Protection Division
P. O. Box 20207
Nashville, TN 37202-0207
(615) 741-8733

Dated: 9 January, 2017

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:

C. Mark Troutman, Esq.
Troutman & Troutman, P.C.
P.O. Box 757
LaFollette, TN 37766
(423) 566-6001

Henry Walker, Esq.
Bradley Arant Boult Cummings, LLP
1600 Division Street, Suite 700
Nashville, TN 37203
615-252-2363

This the 9th day of January, 2014.

Vance L. Broemel
Vance L. Broemel