

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 5, 2013

IN RE:

**PETITION OF EMERSON PROPERTIES, LLC FOR
DECLARATORY RULING**

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**DOCKET NO.
13-00017**

ORDER ON FEBRUARY 26, 2013 STATUS CONFERENCE

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the “Authority”) during a status conference held on February 26, 2013, to consider the issues to be addressed in the proceeding.

BACKGROUND & PROCEDURAL HISTORY

On January 16, 2013, Emerson Properties, LLC (“Emerson”) filed with the Authority a *Petition of Emerson Properties, LLC for Declaratory Ruling* (“*Petition*”). Emerson is the owner of the real property known as the Villages at Norris Lake Subdivision, which it purchased, on or about February 11, 2009, from the Villages at Norris Lake, LLC, the bankrupt debtor, in bankruptcy proceedings held in the U.S. Bankruptcy Court for the Middle District of Florida.¹ Tennessee Wastewater Systems, Inc. (“TWSI”) holds a Certificate of Public Convenience and Necessity (“CCN”), granted by the Authority in Docket No. 06-00277 on April 11, 2007, to provide wastewater service to the Villages at Norris Lake.² In its *Petition*, Emerson requests that

¹ *Petition*, p. 1, ¶ 3, and Collective Exhibit One (January 16, 2013).

² *Id.* at pp. 1-2, ¶ 4; see also *In re: Petition of Tennessee Wastewater Systems, Inc. to Amend Its CCN to Expand Its Service Area to Include a Portion of Campbell County in Tennessee, Known as Villages at Norris Lake*, Docket No. 06-00277, *Order Approving Petition to Amend Certificate of Public Convenience and Necessity* (April 11, 2007).

the Authority convene a contested case proceeding and terminate TWSI's CCN, and any rights and privileges attached therewith, to serve the Villages at Norris Lake.³

During a regularly scheduled Authority Conference held on February 13, 2013, the voting panel assigned to the docket voted unanimously to appoint General Counsel or her designee as Hearing Officer to determine whether to accept the *Petition*, convene a contested case proceeding, and, if accepted, prepare the matter for hearing before the panel.⁴ On February 14, 2013, TWSI filed a *Petition to Intervene* requesting to participate in the docket.⁵ Upon confirming the availability of the parties, the Hearing Officer issued a *Notice of Status Conference* setting a status conference with the parties on February 26, 2013.⁶

FEBRUARY 26, 2013 STATUS CONFERENCE

The Status Conference began as noticed in the Hearing Room on the Ground Floor of the Tennessee Regulatory Authority at 460 James Robertson Parkway, Nashville, Tennessee. The parties in attendance were as follows:

For Emerson:

C. Mark Troutman, Esq., Troutman & Troutman, 124 Independence Lane, P.O. Box 757, LaFollette, Tennessee 37466;

For TWSI:

Henry Walker, Esq., Bradley, Arant, Boulton, Cummings, LLP, 1600 Division Street, Suite 700, Nashville, Tennessee 37203.

During the status conference, the Hearing Officer initiated a discussion concerning the action or relief being requested of the Authority in Emerson's *Petition*. During this discussion, Emerson confirmed that it seeks to have the CCN held by TWSI, which authorizes TWSI to serve the Villages of Norris Lake in Campbell Co., canceled and/or revoked. Because Emerson

³ *Petition* (January 16, 2013).

⁴ *Order Appointing a Hearing Officer* (February 19, 2013).

⁵ *Petition to Intervene* (February 14, 2013).

⁶ *Notice of Status Conference* (February 20, 2013).

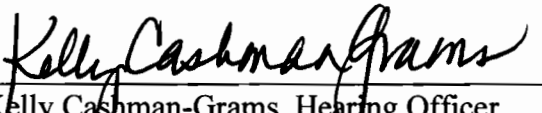
seeks specific action against a particular utility's interests and authority to operate, and does not pose any questions concerning the validity, applicability, or interpretation of a statute, rule, or order of the Authority, which is essential for the Authority's acceptance of a petition for declaratory ruling under Tenn. Code Ann. §§ 65-2-104 and 4-5-223 and TRA Rule 1220-1-2-.05(1), the *Petition* is not properly framed as a request for a declaratory ruling but, instead, a complaint. Acknowledging a statement set forth in a footnote to its *Petition to Intervene*, TWSI agreed that the form of Emerson's petition is more appropriately that of a complaint. Thereafter, Emerson conceded that its request is not consistent with a relief that may be granted in a declaratory ruling and agreed to file an amended petition for relief under Tenn. Code Ann. § 65-4-201 by Friday, March 1, 2013.

Therefore, the Hearing Officer found that, upon the timely and proper filing of Emerson's amended petition, the matter should proceed as a contested case proceeding and be prepared for a hearing before the panel. In accordance with TRA Rule 1220-1-2-.03, TWSI shall have thirty (30) days after service of an amended petition to file an Answer in the docket file. In addition, as agreed during the status conference, the parties will file a joint proposed procedural schedule to completion, and proposed protective order, if needed, for the Hearing Officer's consideration.

IT IS THEREFORE ORDERED THAT:

1. Emerson Properties, LLC, shall file an amended petition and/or complaint for relief under Tenn. Code Ann. § 65-4-201, thereby replacing its *Petition of Emerson Properties, LLC for Declaratory Ruling*, by **March 1, 2013**.
2. Upon the filing of an amended petition, consistent with the preceding Ordering Clause, the docket shall be conducted as a contested case proceeding and prepared for a hearing before the voting panel.

3. The parties shall file a joint proposed procedural schedule to completion, and a proposed protective order, if needed, for the consideration of the Hearing Officer **on or before April 1, 2013.**



Kelly Cashman-Grams, Hearing Officer