

IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE 2013

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IN RE:

T.R.A. DOCKET ROOM

**AMENDED PETITION OF EMERSON
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**

DOCKET NO. 13-00017

MOTION TO CONFIRM THE CONSUMER ADVOCATE MAY PARTICIPATE IN THE HEARING

Robert E. Cooper, Jr., 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 requests the Tennessee Regulatory Authority (“TRA” or “Authority”) to confirm the Consumer Advocate may participate in the hearing in Docket No. 13-00017. This Motion is filed at the request of the Hearing Officer after TWSI indicated that it might object to the Consumer Advocate’s participation at the hearing.

BACKGROUND

The TRA granted the Consumer Advocate's Petition to Intervene filed on March 15, 2013 in Docket No. 13-00017 on April 2, 2013 (*Order Granting Consumer Advocate's Petition to Intervene* or "*Order*"). In the *Order*, the Hearing Officer summarized the substance of the Consumer Advocate's Petition to Intervene: (a) the Consumer Advocate has the statutory authority to intervene under Tenn. Code Ann. § 65-4-118; (b) the procedures related to

Certificates of Public Convenience and Necessity (“CCN”), including the cancellation or termination thereof, might affect ratepayers in the future; and (c) only by receiving notice and service of filings can the Consumer Advocate monitor the proceedings “and work adequately to protect the interests of consumers.” *See Order*, pg. 2.

In the *Order*, the Hearing Officer made a finding that “the legal rights and interests of Tennessee consumers may be determined in this proceeding.” *Order*, pg. 2. The *Order* places no conditions or limitations on the Consumer Advocate’s intervention. Neither Emerson Properties, LLC (“Emerson”) nor Tennessee Wastewater Systems, Inc. (“TWSI”) objected to or sought reconsideration of the Hearing Officer’s *Order*, including but not limited to the finding that the legal rights and interests of Tennessee consumers may be determined in this proceeding. Thus, the finding stands that consumers’ legal rights and interests may be determined in this proceeding; and, under Tennessee law, the Consumer Advocate is the party representing consumers pursuant to § 65-4-118.

MOTION

As an intervening party, the Consumer Advocate should have the opportunity to participate in the hearing, and in particular, cross-examine witnesses.¹ Emerson, the Petitioner, has no objections to the Consumer Advocate’s participation. TWSI, another party that petitioned for intervention,² has stated that it wants to see the Consumer Advocate’s cross-examination before it decides whether it will object. TWSI has provided the Consumer Advocate with no basis for objecting to its participation in the hearing other than it believes the Consumer Advocate does not at this time have the right to participate in the hearing. TWSI has not asserted that any of its rights will be infringed by the Consumer Advocate’s participation, nor has it

¹ The Consumer Advocate does not intend to put on a witness of its own.

² An order granting TWSI’s petition to intervene does not appear to be available on the TRA’s website, so TWSI’s intervention status could not be verified.

asserted that any rights that could be infringed are superior to the consumers' rights and interests that will be infringed by not being able to participate at the hearing. It appears that the objections TWSI has voiced to the Consumer Advocate thus far have solely been based on its interpretation of the Consumer Advocate's Petition to Intervene. But the *Order* granting the Consumer Advocate's intervention has no limitations or conditions on the Consumer Advocate's participation at the hearing.

The Consumer Advocate disagrees that it needs to show TWSI its cross-examination prior to the hearing in order to be able to participate at the hearing. This has never been required of another party and is not appropriate procedure. The Consumer Advocate also disagrees with TWSI's interpretation of the *Order* and the Consumer Advocate's Petition to Intervene since there is nothing expressly forbidding the Consumer Advocate's participation at the hearing; and to interpret the *Order* and Petition to Intervene as TWSI does attempts to prohibit the Consumer Advocate from fulfilling its statutory duty to represent the interests of consumers as well as invites inefficiencies in the intervention process when the effect on consumers is uncertain. TWSI may argue that it would have objected to the Consumer Advocate's Petition to Intervene had it known that the Consumer Advocate would be permitted to participate in the hearing. Even if TWSI would have objected and the TRA would have delayed ruling on the Petition to Intervene, such a decision would have only delayed the intervention until after testimony and other evidence was made available, which would increase the risk of inefficiencies in the process.

Even if the TRA is persuaded by TWSI's interpretation of the intervention, the statutes permit the Consumer Advocate to participate. The statute states the Consumer Advocate may "*participate or* intervene as a party in *any* matter or proceeding before the authority" Tenn.

Code. Ann. § 65-4-118(b)(1) (emphasis added). The legislature's use of "or" is disjunctive. Therefore, the Consumer Advocate has the statutory right to participate in this hearing.

The interests of justice outweigh any objections to the Consumer Advocate's participation at the hearing from TWSI, another party who sought intervention. First, to prohibit the Consumer Advocate's participation at the hearing would be to silence the voice of consumers in a case where the TRA has already made an undisputed finding that consumers' rights and interests may be determined in this proceeding. To silence an affected party based on the objections of another intervenor who has not claimed that its rights are infringed or even superior to the consumers' rights and interests is unfair and unjust. Second, the justice system favors the admissibility of evidence so tribunals can make fully informed, just decisions. The Consumer Advocate merely wants the opportunity to participate at the hearing. The witnesses may provide all the necessary information and thereby eliminate the need for the Consumer Advocate's cross-examination. But since the other parties are not representing consumers' interests, it is quite possible they will not seek the same information the Consumer Advocate needs to adequately represent consumers. The Consumer Advocate's participation at the hearing can only provide more information for the Directors to make their decision. Third, the TRA has often stated that it balances the interests of utilities and consumers. It cannot reasonably be disputed that prohibiting the Consumer Advocate from participating at the hearing flies in the face of balancing the interests of utilities and consumers. Fourth, prohibiting the Consumer Advocate from participating reads into the *Order* limitations and conditions that simply are not there. Fifth, TWSI will have the opportunity to object to any specific questions to its witness at the hearing. Finally, TWSI's objection to the Consumer Advocate's participation in this matter

raises serious concerns as to how TWSI will treat consumers if the TRA decides in favor of TWSI serving customers.

The testimony and other evidence in this case have strongly indicated that the outcome of this matter will affect the consumers' legal rights and interests. In addition to the testimony filed, a concerned consumer contacted the Consumer Advocate the afternoon of November 8, 2013 with additional information that may affect the consumers of Villages of Norris Lake's legal rights and interests.³ The Consumer Advocate believes that the witnesses may have information that may affect the outcome of this case (and therefore how consumers are affected) in addition to what is filed in the pre-filed testimony. Thus, the Consumer Advocate seeks the opportunity to participate in the hearing, including cross-examining witnesses, in order to represent the interests of consumers.

Moreover, the Consumer Advocate may have questions that need to be answered to enable it to complete the post-hearing brief. The parties have jointly agreed that the Consumer Advocate may file a post-hearing brief. *See Joint Proposed Procedural Schedule*, Docket No. 13-00017 (Sept. 16, 2013); *Order Establishing Procedural Schedule to Completion*, Docket No. 13-00017 (Sept. 16, 2013). While it is uncertain at this time whether the Consumer Advocate finds it necessary to file a post-hearing brief, there may be some questions requiring answers to prepare a post-hearing brief.

CONCLUSION

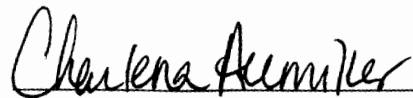
The Consumer Advocate should be allowed to participate in the hearing to the fullest extent of its statutory authority since, as the TRA found in the *Order*, the outcome of this case will likely affect the consumers' legal rights and interests; the Petitioner-Emerson does not object to the Consumer Advocate's participation; it is in the interests of justice and statutorily

³ This letter was later submitted to Chairman Allison by the consumer, Mr. Pat Perry, on November 13, 2013.

authorized to allow the Consumer Advocate's opportunity to participate in hearings where legal rights and interests may be affected; the *Order* does not expressly limit, condition, or otherwise forbid the Consumer Advocate's involvement at the hearing; the Consumer Advocate's participation at the hearing will not impair the orderly and prompt conduct of the proceedings; and such participation may be necessary to allow the Consumer Advocate to prepare a complete post-hearing brief to adequately represent the interests of ratepayers.

If TWSI responds with new objections that were not presented to the Consumer Advocate prior to the Hearing Officer's request for this Motion, the Consumer Advocate requests the opportunity to respond since it cannot defend its position against unknown objections.

RESPECTFULLY SUBMITTED,



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