IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE:	)	
	)	**DOCKET NO. 14-00007**
SHOW CAUSE PROCEEDING AGAINST KING'S CHAPEL CAPACITY, LLC, FOR ALLEGED VIOLATIONS OF WASTEWATER UTILITY LAWS & TRA RULES	)	

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, the Consumer Advocate submits the following:

1. Consumer Interest In This Docket Is Readily Apparent, And The Authority Has Been Reasonably Notified Of The Necessity For The Consumer Advocate's Intervention.

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 consumers may be adversely affected by actions taken in this matter by King's Chapel Capacity ("King's Chapel"). Petition to Intervene at ¶ 3. The Petition to Intervene also stated that the alleged violations of wastewater laws may

require customer refunds and that only by participating in this docket can the Consumer Advocate work adequately to protect the interests of consumers. *Id.* at ¶¶ 3, 5. In its January 23, 2014, Memorandum Requesting Appointment of a Hearing Officer ("Party Staff Memorandum"), the TRA Party staff asserted that King's Chapel's alleged violations of wastewater laws "may require customer refunds." Party Staff Memorandum, page 1.

TRA Party Staff contends that the Consumer Advocate's Petition to Intervene insufficiently articulates how this docket affects consumers. The Consumer Advocate maintains that it has adequately stated the consumer interest. 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 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.

[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.

2. This Show Cause Docket Is A Contested Case Within The Meaning Of The UAPA And Is An Appropriate Matter For Consumer Advocate Intervention.

The Consumer Advocate maintains that the proceeding in this Docket No. 14-00007 is a contested case subject to the provisions of the Uniform Administrative Procedures Act ("UAPA"). The TRA has previously stated that a show cause docket is a contested case.[2] The UAPA, which is specifically designed to govern procedures for contested cases involving administrative agencies, provides as follows:

> "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.

Tenn. Code Ann. § 4-5-102(3). Under Tenn. Code Ann. § 65-4-118, the Consumer Advocate has the duty and authority to represent the interests of Tennessee consumers of public utility services. 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 and duties of King's Chapel but also its customers. If a utility engages in wrongdoing that may require a customer refund, the pecuniary interest of the customers is necessarily implicated.

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[2] *Initial Order Denying Consumer Advocate's Petition to Intervene, p. 10, In re: Show Cause Proceeding Against Tennessee Wastewater Systems, Inc. For Material Non-Compliance And/Or Violations of State Law And/Or Tenn. R. & Regs. §§ 1220-04-13, et seq.*, Docket No. 14-00041, May 1, 2014.

As stated above, the Party Staff's Memorandum in this docket specifically refers to this consumer interest. Furthermore, the TRA Party Staff may attempt to enter into a settlement agreement with King's Chapel 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.

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.[3]

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

[3] *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.

not accept the settlement,[4] thereby agreeing with the Consumer Advocate that the settlement should be rejected. These cases demonstrate the importance of Consumer Advocate participation when consumer interests are at stake.

In citing these examples of rejected settlements or resolutions, the Consumer Advocate would stress that it is not criticizing the TRA Directors, Advisory Staff or Party Staff. The point is simply that the administrative hearing process of the TRA, as with all agencies, benefits from input from all interested parties. The Party Staff undoubtedly thought the settlements were reasonable. Fortunately, from the Consumer Advocate's point of view, the TRA Directors rejected the settlements. However, the Consumer Advocate believes even though the right result was achieved, the process benefited or would have benefited from participation by the Consumer Advocate.

In *Berry's Chapel Show Cause*, Docket No. 11-00065, the Consumer Advocate did participate and its participation shaped the issues for decision. In *TWSI Show Cause*, Docket No. 14-00041, the Consumer Advocate could only file an amicus brief. Direct participation by the Consumer Advocate and a review of the proposed resolution before the hearing by the TRA Directors may have oriented its presentation and/or led to a resolution acceptable to all parties and the Directors.

Party Staff claims that the show cause statute does not "contemplate third party intervention when the only issue is a violation of the law." First, most substantive statutes do not expressly state that a party may intervene, yet

[4] *See Transcript of Authority Conference*, November 25, 2013.

interventions are routinely granted by various tribunals and courts.[5] Intervention is a procedural matter, either permissive or a matter of right, that is considered in reference to the substantive statute or other law that gives rise to a cause of action. *See* Tenn. Code Ann. § 4-5-310, § 65-4-118; Tenn. R. Civ. P. 24; Fed. R. Civ. P. 24. Generally, statutes and rules that provide for intervention into a proceeding stand on their own and do not state that intervention can occur only in certain types of actions. *Id.* Second, it should be noted that the UAPA provisions governing intervention make no exception for cases involving a violation of the law.

Finally, the alleged violation of the law by King's Chapel is not the only issue in this case. Party Staff explicitly stated that "these violations [of laws regulating wastewater utilities] may require customer refunds." Party Staff Memorandum, page 1. Therefore, the violations of the laws and customer refunds are inextricably intertwined and full intervention by the Consumer Advocate is warranted.

3. The TRA Party Staff's 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

[5] For instance, in the matter of *Rate Payers of DeKalb Utility District v. DeKalb Utility District*, Secretary of State Docket No. 54.01-118603A, a contested case was initiated pursuant to the UAPA and the substantive statute allowing a government agency, the Utility Management Review Board (UMRB), to hear the matter. Tenn. Code Ann. § 7-82-102 allows the customers of a utility district (as opposed to a private utility company) to petition the UMRB for a review of rates and services upon a petition containing the signatures of at least ten (10) percent of the customers of the utility district. The UMRB may adjust the rates of the utility district if the rates are not reasonable. Nowhere in Tenn. Code Ann. § 7-82-102 is intervention by a third party "contemplated." However, the administrative law judge ("ALJ") presiding over the case allowed the City of Smithville to intervene. A copy of the ALJ's order granting intervention is attached as EXHIBIT 2. The matter of intervention was not raised on appeal and the decision of the UMRB was upheld. A copy of the Chancery Court order is attached as EXHIBIT 3.

sufficient to represent the interests of consumers and that participation by the Consumer Advocate is unnecessary. Objection at ¶ 13. The TRA may in fact be responsible for ensuring the public good. The "public good" referred to by the TRA is not a legally defined term and is open to multiple interpretations. The interest of a utility is part of the public good, as the utility provides necessary services to the public. Furthermore, the interests of the utility may be at odds with the interests of the consumer and, as the case currently stands, only the utility is represented by counsel. Finally, 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. The legislature was aware of the Authority's powers and duties when it enacted this statute, but it still authorized without limitation the participation or intervention of the Consumer Advocate in proceedings before the Authority. 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 ¶13. 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 advocate for itself. There is, however, no one to advocate for the consumer interest in this proceeding if the Consumer Advocate does not intervene.

Furthermore, the "plenary powers" of the TRA described by Party Staff in its Objection as a reason to prevent the Consumer Advocate's intervention refer to the TRA's substantive powers over a utility with regard to its regulatory authority, such as its power to set rates, not to the Authority's power over its contested case procedures, which are governed by the UAPA. 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 and its underlying purpose, which is "to clarify and bring uniformity to the procedure of state administrative agencies and judicial review of their determinations." *Id.* (internal quotations and citations omitted).

Party Staff of the TRA appears to assert that the Authority is somehow vested with powers not in line with the UAPA, referring to the "plenary powers" of the Authority to a conduct a contested case proceeding by labeling it an "enforcement action" that it may conduct as it sees fit, without consideration for the broader statutory scheme of the laws governing Tennessee administrative agencies and their actions. However, the case cited by TRA Party Staff in support of its position regarding the Authority's "plenary powers," *Tennessee Cable Television Association v. Tennessee Public Service Commission*, 844 S.W.2d 151 (Tenn. Ct. App. 1992),

specifically describes the nature of the Authority's powers in the context of the regulatory act of rate-making. *Tennessee Cable*, 844 S.W.2d at 159.

This makes sense as the Authority is vested with the power to regulate utilities, and it should be granted broad discretion to carry out its substantive duties. However, the holding in this case cannot be extended to state that the Authority has "plenary power" over the administrative agency contested case procedures, which apply to the TRA through the UAPA. This position is analogous to asserting the Authority has "plenary power" to promulgate administrative rules without following the procedure governed by the UAPA, which is a power that, to the Consumer Advocate's knowledge, no state agency in Tennessee has and is a position that the TRA would have difficulty in legally justifying. *See* Tenn. Code Ann. § 4-5-201 *et seq.* Nor can the holding be extended to the issue of Consumer Advocate intervention as that issue was not at all involved in that case. Party Staff's reliance on *Tennessee Cable* is further undermined upon noting that the case specifically discusses the Authority's rate-making powers and the Consumer Advocate is routinely allowed to intervene in rate-setting cases because the pecuniary interest of the consumer is obvious.

4. The Consumer Advocate Qualifies As An Intervenor In This Docket Under The UAPA, And The Interests of Justice Will Not Be Impaired By the Consumer Advocate's Intervention.

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.

The Consumer Advocate has met the three requirements of Tenn. Code Ann. § 4-5-310(a) because (1) its Petition is timely; (2) its "legal interest may be determined" and it 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."

King's Chapel, the respondent utility in this docket, filed a response on December 8, 2014, stating it has no objection to the Consumer Advocate's Petition to Intervene. Therefore, this proceeding will not be delayed by King's Chapel's opposition to the Consumer Advocate's involvement. Furthermore, if granted intervention, the Consumer Advocate will adhere to all procedural schedules and other guidelines issued by the Authority.

Finally, it is well-established that contested cases are not strictly bound by the rules of evidence but allow evidence to be admitted "if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." Tenn. Code. Ann § 4-5-313 (1). The statute specifically governing the admission of evidence in matters before the TRA contains this same language. Tenn. Code Ann. § 65-2-109. This

statutory language demonstrates that the law encourages contested case proceedings before the TRA to be flexible and allow for information to be considered, and by analogy, parties to be represented, without having to bear the burden of court rules and procedures, and to provide for fair and transparent administrative proceedings, as consistent with the purpose of the UAPA, as discussed above.

TRA Director James Allison has recognized the need for certain contested case proceedings before the Authority to be "inclusive," as noted during the panel's discussion of the Consumer Advocate's Petition to Intervene in *TWSI Show Cause*, Docket No. 14-00041, on May 5, 2014. Although the panel denied the Consumer Advocate's Petition to Intervene in that docket, where the facts were different from the docket at issue now, Director Allison, who was the Chairman at the time the Petition was considered, stated that "as a general matter, I think proceedings like this need to be inclusive, as opposed to exclusive, and if the Consumer Advocate feels like they need to be involved here, then we should probably accommodate that." A portion of the transcript with these comments is attached as EXHIBIT 4.

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

RESPECTFULLY SUBMITTED,

RACHEL A. NEWTON (BPR #022960)
Assistant Attorney General
Consumer Advocate and Protection Division
P.O. BOX 20207
Nashville, Tennessee 37202-0207
(615) 741-8727
(615) 741-1026 – FAX
Rachel.Newton@ag.tn.gov

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:

Richard Militana, Esq.
Michelle McGill, Esq.
109 Holiday Court, Suite B-5
Franklin, TN 37067
Attorneys for King's Chapel Capacity

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

This the 11 day of Dec, 2014.

Rachel Newton

Rachel A. Newton

EXHIBIT 1

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: *Complaint of US LEC of Tennessee, Inc. against Electric Power Board of Chattanooga*

Docket No. 02-00562

PETITION OF BELLSOUTH TELECOMMUNICATIONS, INC.
FOR LEAVE TO INTERVENE

BellSouth Telecommunications, Inc., pursuant to T.C.A. §4-5-310 and T.C.A. §65-2-107, petitions the Tennessee Regulatory Authority (the "Authority") for leave to intervene in the above-captioned proceeding, and in support thereof states as follows:

1. Petitioner, a Georgia Corporation authorized to conduct and conducting a public utility business in the state of Tennessee, is engaged in furnishing exchange telephone service and intrastate (long distance) intraLATA telephone service in the state of Tennessee subject to the jurisdiction of the Authority and pursuant to T.C.A. §65-4-101 and T.C.A. §65-5-201, *et seq.*

2. Petitioner competes directly against the Electric Power Board of Chattanooga in Chattanooga and has an interest in this case.

3. Petitioner's legal interests may be determined in the proceedings and Petitioner's interests will not be adequately represented unless the Authority allows the Petitioner to intervene.

4. Allowing Petitioner to intervene will not impair the interests of justice or the orderly and prompt conduct of these proceedings.

5. Petitioner respectfully requests that it be granted leave to intervene and participate as a party in the above-captioned proceeding.

WHEREFORE, Petitioner prays:

1. That it be permitted to intervene in this proceeding and participate as a party.

2. That Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

Guy M. Hicks
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

CERTIFICATE OF SERVICE

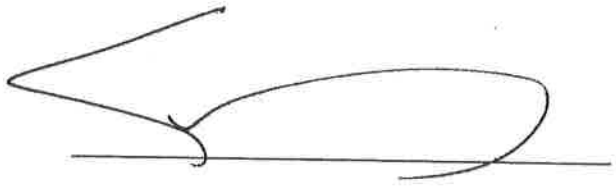
I hereby certify that on May 23, 2002, a copy of the foregoing document was served on the parties of record, via the method indicated:

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

Henry Walker, Esquire
Boult, Cummings, et al.
414 Union Street, #1600
Nashville, TN 37219-8062

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

William C. Carriger, Esquire
Strang, Fletcher
One Union Sq., #400
Chattanooga, TN 37402



BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 12, 2002

IN RE:		
COMPLAINT OF US LEC OF TENNESSEE, INC. AGAINST ELECTRIC POWER BOARD OF CHATTANOOGA	)	**DOCKET NO. 02-00562**

ORDER GRANTING PETITION OF BELLSOUTH TELECOMMUNICATIONS, INC. FOR LEAVE TO INTERVENE

On May 23, 2002, BellSouth Telecommunications, Inc.("BellSouth") filed the *Petition of BellSouth Telecommunications, Inc. for Leave to Intervene* (the "*Petition*") in this matter. According to the *Petition*, BellSouth furnishes exchange telephone service and intrastate intraLATA telephone service in Tennessee subject to the jurisdiction of the Tennessee Regulatory Authority. BellSouth states that it "competes directly against the Electric Power Board of Chattanooga in Chattanooga and has an interest in this case."[1] BellSouth further states that its "legal interests may be determined in the proceedings and [its] interests will not be adequately represented unless the Authority allows [it] to intervene."[2] No person has objected to BellSouth's *Petition*.

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions for intervention:

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[1] *Petition of BellSouth Telecommunications, Inc. for Leave to Intervene*, May 23, 2002, p. 1.
[2] *Id.*

4-5-310. Intervention

(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.

The Hearing Officer finds that BellSouth's *Petition* complies with the requirements of Tenn. Code Ann. § 4-5-310. The interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention. Pursuant to Tenn. Code Ann. § 4-5-310, BellSouth's *Petition* is granted.

IT IS THEREFORE ORDERED THAT:

BellSouth Telecommunications, Inc. is hereby given leave to intervene and receive copies of any notices, orders or other documents herein.

Jonathan N. Wike

Jonathan N. Wike, Hearing Officer

IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE:	)	
TENNESSEE WATER SERVICE, INC.	)	**DOCKET NO. 09-00017**
PETITION FOR RATE INCREASE	)	

PETITION TO INTERVENE

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 petitions the Tennessee Regulatory Authority ("TRA" or "Authority") to convene a contested case and grant the Consumer Advocate's intervention into this proceeding on behalf of the public interest because consumers may be adversely affected by the petition of Tennessee Water Service, Inc. ("Tennessee Water Service") in which Tennessee Water Service is seeking a rate increase. 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 proceedings before the Authority in accordance with the Uniform Administrative Procedures Act and Authority Rules.

2. Tennessee Water Service is a public utility regulated by the Authority providing water service to approximately 564 customers in Sevier County Tennessee.

3. On January 30, 2009, Tennessee Water Service filed in the Authority a Petition of Tennessee Water Service, Inc. to Change and Increase Certain Rates and Charges. If the

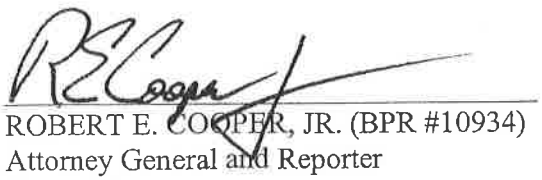
Authority were to approve the petition of Tennessee Water service rates would be increased approximately 70%.

4. Additional investigation and discovery will be needed to determine whether such a rate increase is warranted.

5. 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 convene a contested case proceeding and grant the Petition to Intervene.

RESPECTFULLY SUBMITTED,



ROBERT E. COOPER, JR. (BPR #10934)
Attorney General and Reporter
State of Tennessee

Vance L. Broemel

VANCE L. BROEMEL (BPR #11421)
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
(615) 741-8733

Dated: February March 2, 2009.

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:

Christopher J. Ayers
Hunton & Williams LLP
421 Fayetteville Street
Suite 1400
Raleigh, North Carolina 27601

J. Keith Coates
Woolf, McClane
P.O. Box 900
Knoxville, Tennessee 37901-0900

This the March 2 day of February, 2009.

Vance L. Broemel
VANCE L. BROEMEL

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 6, 2009

IN RE:	)	
	)	
PETITION OF TENNESSEE WATER SERVICES, INC. TO CHANGE AND INCREASE CERTAIN RATES AND CHARGES	)	**DOCKET NO. 09-00017**
	)	

ORDER GRANTING APPLICATION TO APPEAR *PRO HAC VICE*, GRANTING PETITION TO INTERVENE, AND ESTABLISHING PROCEDURAL SCHEDULE

These matters came before the Hearing Officer at the April14, 2009 Status Conference. Included with the Petition filed on January 30, 2009 are Christopher J. Ayers' *Application to Appear Pro Hac Vice* ("Application") and a letter of recommendation from J. Keith Coates, Jr., a member in good standing of the Tennessee Bar. Pursuant to Rule 19 of the Rules of the Supreme Court of Tennessee, TRA Rule 1220-1-2-.04(7) and for good cause shown, Mr. Ayers' Application is granted.

A *Petition to Intervene* ("Petition") by the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") was filed on March 2, 2009. No response to that Petition was filed, and Tennessee Water Services, Inc. ("TN Water") lodged no objection at the Status Conference, therefore the Hearing Officer granted the Consumer Advocate's *Petition to Intervene*, without objection.

Prior to the Status Conference, TN Water and the Consumer Advocate proposed to the Hearing Officer the following procedural schedule, which subject to limited modifications (below), is hereby approved and adopted:

May 6, 2009	**First round of discovery requests**[1]
June 3, 2009	**Response to first round of discovery requests**
June 24, 2009	**Consumer Advocate Direct Testimony**
July 8, 2009	**TN Water Rebuttal Testimony**
July 15, 2009	**Pre-hearing Conference**
July 29, 2009	**Hearing on the Merits**

The Pre-hearing Conference will be set by the Hearing Officer and the Hearing will be set by the panel; a specific notice will announce the precise dates and times. If a discovery dispute arises, the parties are admonished to attempt to resolve it, and if a resolution can not be reached, then a motion to compel shall be filed with the Authority, and the Hearing Officer shall resolve such dispute at a specially set status conference.

IT IS THEREFORE ORDERED THAT:

1. Christopher J. Ayers' *Application to Appear Pro Hac Vice* is granted.

2. The *Petition to Intervene* filed on March 2, 2009 by the Consumer Advocate is granted.

3. The procedural schedule is established as stated herein.

4. All filings are due no later than **2:00 p.m.** on the dates indicated in the procedural schedule. One copy of all discovery requests, objections and responses shall be filed with the Authority.

Gary Hotvedt, Hearing Officer

[1] If more than the allotted number of first round discovery requests as permitted by rule are served and filed, a motion for permission to exceed the allotment provided by rule shall accompany such request(s), and unless an objection is timely lodged, such motion will be deemed granted.

BELLSOUTH

BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

Guy M. Hicks
General Counsel
615 214 6301
Fax 615 214 7406

May 23, 2002

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Complaint of US LEC of Tennessee, Inc. against Electric Power Board of Chattanooga*
Docket No. 02-00562

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Petition for Leave to Intervene. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH/jej

Enclosure

447598

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE: AT&T PETITION FOR REGULATORY EXEMPTION PURSUANT TO TCA 65-5-108 **DOCKET 08-00192**

PETITION TO INTERVENE BY TISPA, INC.

COMES NOW Tennessee Internet Service Provider Association, Inc (TISPA), pursuant to 65-2-107 and TCA 4-5-310 and Rule 1220-1-2-.08, and seeks to intervene and participate in this proceeding to preserve and protect any rights it may have respecting the Petition of AT&T seeking deregulation of all services bundled with "broadband" services in all Rate Centers, and all services whether so bundled or not in Rate Centers 3, 4, and 5. TISPA is an association of Internet Service Providers and Competitive Local Exchange Carriers operating under certificates of need in Tennessee, are users of the streets and rights of way, and who provide and/or offer services to customers in the areas into which AT&T seeks deregulation. No prejudice to any party will result from granting this petition.

WHEREFORE, PREMISES CONSIDERED, TISPA respectfully requests that the TRA grant its petition to intervene.

Respectfully submitted,

Paul F. Rieg, Attorney

BPR 011114
PO Box 1692
Jackson, TN 38302-1692
(731) 554-9235

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing on the parties listed below by placing same in the US Mail, postage prepaid, this the 22nd day of October, 2008 to:

Guy Hicks and Joella Phillips, 333 Commerce, Suite 2101, Nashville, TN 37201 and Lisa Foshee, 675 W. Peachtree Street, Suite 4300, Atlanta, GA 30369

Paul F. Rice, Attorney for TISPA

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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IN RE:	)	
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PETITION FOR REGULATORY EXEMPTION	)	**DOCKET NO. 08-00192**
PURSUANT TO T.C.A. §65-5-108(b) TO INCREASE	)	
REGULATORY PARITY AND MODERNIZATION	)	

PETITION OF TW TELECOM OF TENNESSEE LLC FOR LEAVE TO INTERVENE

---

tw telcom of tennessee llc ("twtc" or "Petitioner"), by and through its undersigned counsel, hereby petitions the Tennessee Regulatory Authority ("Authority") for leave to intervene pursuant to Tenn. Code Ann. § 4-5-310. In support of this petition, twtc respectfully states the following:

1. twtc is a competitive local exchange carrier providing telecommunications services in Tennessee under the jurisdiction of the TRA.

2. In its Petition, AT&T Tennessee ("AT&T") requests the Tennessee Regulatory Authority ("TRA") exempt certain subscriber services from regulation pursuant to Tenn. Code Ann. § 65-5-108(b). In addition, AT&T requests complete exemption from TRA regulation for all currently regulated services in AT&T's Intrastate Service Tariffs, including the General Subscriber Services Tariff and Private Line Services Tariff.

3. Twtc moves to intervene in this matter in order to ensure that its interests are represented. As a certified telecommunication service provider, twtc's legal rights, duties, privileges, immunities, may be affected or determined by the outcome of this proceeding, and Petitioner's interest or other legal interests or responsibilities will not be adequately represented unless allowed to intervene.

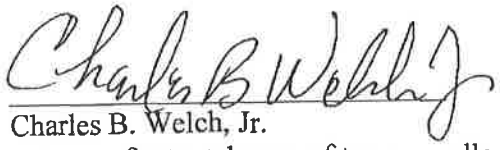
4. twtc believes its Petition for Intervention is warranted and is being filed more than seven (7) days prior to the hearing of this matter.

5. The Petitioner's participation will not impair the interests of justice or the orderly prompt conduct of the Authority's proceeding.

WHEREFORE, twtc, respectfully requests that it be granted leave to intervene and participate in this proceeding with all attendant rights and responsibilities, including but not limited to the right to participate in any and all pre-hearing conferences, to produce and cross examine witnesses, to seek data requests and other discovery, and to file motions, briefs, testimony, and/or comments in order to assist the Authority's deliberations and otherwise protect the interests of twtc and the public interest. Additionally, Petitioner requests to receive copies of any notices, orders or any other documents filed herein, and have such other, further and general relief as the justice of their cause entitle them to receive.

Respectfully submitted,

FARRIS MATHEWS BOBANGO PLC

By: 

Charles B. Welch, Jr.
Attorney for tw telecom of tennessee llc
618 Church Street, Suite 300
Nashville, Tennessee 37219
(615) 726-1200

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing Petition to Intervene has been sent by United States mail, postage pre-paid, to the following parties of record:

Guy M. Hicks
Joelle Phillips
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201

This 23RD day of October, 2008.

Charles B. Welch, Jr.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 4, 2008

IN RE:	)	
	)	
PETITION OF AT&T TENNESSEE FOR REGULATORY EXEMPTION PURSUANT TO T.C.A. 65-5-108(B) TO INCREASE REGULATORY PARITY AND MODERNIZATION	)	**DOCKET NO. 08-00192**

ORDER GRANTING PETITIONS TO INTERVENE AND ESTABLISHING A PRELIMINARY PROCEDURAL SCHEDULE

At a regularly scheduled Authority Conference held on November 10, 2008, Director Eddie Roberson, Director Sara Kyle, and Director Mary W. Freeman of the Tennessee Regulatory Authority ("Authority" or "TRA"), the panel assigned to this docket, voted unanimously to convene a contested case proceeding and to appoint General Counsel or his designee as Hearing Officer for the purpose of preparing this matter for hearing, including handling preliminary matters and establishing a procedural schedule to completion. This matter is before the Hearing Officer, upon filings by the parties, to consider petitions to intervene and to establish an issues list and a procedural schedule.

TRAVEL OF CASE

On October 9, 2008, BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T" or the "Company") filed its *Petition for Regulatory Exemption Pursuant to T.C.A. § 65-5-108(b) to Increase Regulatory Parity and Modernization* ("*Petition*") in which the Company seeks relief from the regulatory requirements in Part 1 of Tenn. Code Ann. Title

65, Chapter 5. AT&T alleges that the services it is seeking to exempt "are subject to overwhelming competition through both inter-modal technologies and also through traditional telecommunications technology."[1]

On October 22, 2008, a petition to intervene was filed by the Competitive Carriers of the South, Inc. ("CompSouth"). On October 23, 2008, petitions to intervene were filed by TW Telecom of Tennessee, LLC ("TW Telecom") and Tennessee Internet Service Provider Association, Inc. ("Tennessee Internet"). NuVox Communications, Inc. ("NuVox") filed a petition to intervene on October 24, 2008. On November 3, 2008, the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") filed a petition to intervene.

A *Notice of Status Conference* was issued on November 10, 2008, setting a Status Conference for Monday, November 24, 2008 to establish an issues list and a procedural schedule. The Notice provided that any interested party desiring to participate in the Status Conference should file a petition to intervene not later than November 17, 2008, and that petitions to intervene filed by that date would be considered at the Status Conference. The Notice also stated that the discovery between the parties and the issuance of a protective order would be matters for discussion during the Status Conference. On November 17, 2008, the Tennessee Cable Telecommunications Association ("TCTA") filed a petition to intervene.

[1] *Petition for Regulatory Exemption Pursuant to T.C.A. § 65-5-108(b) to Increase Regulatory Parity and Modernization*, p. 7 (October 9, 2008).

STATUS CONFERENCE

The Status Conference was convened on November 24, 2008. In attendance at the Status Conference were the following parties represented by counsel:

AT&T – Guy Hicks, Esq. and Joelle Phillips, Esq., 333 Commerce Street, Nashville, TN 37201;

Consumer Advocate and Protection Division - Vance Broemel, Esq., Office of the Attorney General, 425 5th Ave. N, John Sevier Building, P.O. Box 20207, Nashville, TN 37202;

CompSouth and NuVox Communications – Henry M. Walker, Esq., Boult, Cummings, Conners & Berry, PLC, 1600 Division Street, Suite 700, P.O. Box 340025, Nashville, TN 37203;

TW Telecom and TCTA – Charles B. Welch, Jr., Esq., Farris Mathews Bobango PLC, 618 Church Street, Suite 300, Nashville, TN 37219; and

Tennessee Internet – Paul F. Rice, Esq., P.O. Box 1692, Jackson, TN 38301.

Also participating in the Status Conference telephonically were Susan Berlin on behalf of NuVox and Doug Nelson on behalf of Sprint, which is a member of CompSouth.

Petitions to Intervene

At the outset of the Status Conference, the Hearing Officer addressed the petitions to intervene. Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

> (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 the 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.

Under TRA Rule 1220-1-2-.06, any party opposing a motion in a contested case must file and serve a response to the motion within seven days of service of the motion. No party or person filed an objection to or opposed the intervention requests in this docket.

Applying the standards set forth in Tenn. Code Ann. § 4-5-310(a), the Hearing Officer granted the petitions of CompSouth, TW Telecom, Tennessee Internet, NuVox, TCTA and the Consumer Advocate.

Issues List

Because of the nature of this proceeding, the Hearing Officer proposed that the parties consider entering into stipulations as to those services for which there is no question that sufficient competition exists to exempt them from regulation. The parties agreed to pursue stipulations to remove certain services from consideration in this proceeding. A discussion then ensued regarding the formation of a list of issues for resolution in this docket. The Hearing Officer proposed that certain benchmarks or standards be established by which to measure whether services should be deregulated. Establishing these benchmarks at the commencement of this action would help frame the discovery and pre-filed testimony that will follow. After discussion, the Hearing Officer determined that the parties propose certain issues to be determined before moving forward with a complete procedural schedule. It was decided that AT&T will submit a list of proposed issues initially, after which the Intervenors would respond to AT&T's proposals and provide their lists of proposed issues. As a part of its filing, AT&T will propose a test that it would use in determining whether competition exists.[2]

[2] AT&T will also respond to the Hearing Officer's question regarding whether the requested exemption will have an impact on state universal service requirements.

Preliminary Procedural Schedule

After discussion with the parties, the Hearing Officer established the following preliminary procedural schedule for the entry of a protective order and the development of an issues list:

December 2, 2008	**Parties to submit agreed Protective Order or submit separate proposed protective orders.**
December 4, 2008	**AT&T to file with the Authority a list of proposed issues and circulate to the Intervenors a list of proposed stipulations.**
December 11, 2008	**Intervenors to file with the Authority a list of proposed issues.**
December 11, 2008	**Parties to file with the Authority stipulations as to the deregulation of any services, rate groups or exchanges and customer classes.**

All filings with the Authority are due by 4:00 p.m. on the date of filing.

Protective Order

In addressing the entry of a Protective Order, AT&T stated that this case would involve a "substantial amount of competitively sensitive information." The Hearing Officer directed the parties to work together to submit an agreed protective order and suggested that the parties review protective orders entered in other TRA dockets to serve as a model. The parties agreed to submit a proposed protective order to the Hearing Officer or individually to submit proposed protective orders by December 2, 2008. On December 2, 2008, AT&T submitted a proposed protective order to which all parties except the Consumer Advocate have agreed. On December 3, 2008, the Consumer Advocate requested an opportunity to respond to the filing and comments made by AT&T on December 2, 2008. The Consumer Advocate further requested that its response be due on December 9, 2008.

IT IS THEREFORE ORDERED THAT:

1. CompSouth, TW Telecom, Tennessee Internet, NuVox, TCTA and the Consumer Advocate are granted leave to intervene and receive copies of any notices, orders or other documents herein.

2. The preliminary Procedural Schedule, set forth in this Order, is in full force and effect.

3. The Consumer Advocate shall respond by December 9, 2008 to AT&T's comments and the proposed protective order filed on December 2, 2008. Afterward, the Hearing Officer will proceed to enter a Protective Order.

J. Richard Collier

Richard Collier, Hearing Officer

EXHIBIT 2

BEFORE THE UTILITY MANAGEMENT REVIEW BOARD
STATE OF TENNESSEE

IN THE MATTER OF:	
RATE PAYERS OF THE DEKALB UTILITY DISTRICT, PETITIONERS,	**DOCKET NO: 54.01-118603A**
VS.	
THE DEKALB UTILITY DISTRICT, RESPONDENT.	

ORDER

This matter comes for consideration upon the motion of the City of Smithville, Tennessee to intervene in this contested case hearing. Respondent opposes Smithville's motion to intervene, but the original Petitioners have not responded to Smithville's motion. This is an action initiated by Petitioners pursuant to T.C.A. §7-82-102, which grants the Board the "authority to review rates charged **and** services provided by public utility districts."

Smithville's motion demonstrates the disposition of this case may, as a practical matter, affect Smithville's interests. The factual issues asserted by Smithville are intertwined with Petitioners' assertions. Finally, Smithville's participation will not "render the hearing unmanageable or interfere with the interests of justice and the orderly and prompt conduct of the proceeding." Accordingly, Smithville's motion to intervene should be granted without restriction.

It appears the issue of a conflict of interest has been raised concerning the Branstetter firm's representation of Respondent in this proceeding, and also, the Tennessee Association of

Utility Districts of which Smithville is a member. This issue is not a proper consideration in determining whether to grant Smithville's motion to intervene. No motion to disqualify the Branstetter firm is pending before the undersigned. It is noted that if there is a conflict it may exist regardless of whether Smithville is permitted to intervene. The parties are referred to the Tennessee Board of Professional Responsibility for guidance on this issue. If either party believes this to be a legitimate issue, guidance should be sought immediately to avoid delay of this hearing.

IT IS THEREFORE ORDERED that Smithville's motion to intervene is granted, and Smithville shall have the right to participate in this hearing without restriction.

Entered this 6TH day of FEBRUARY 2013.

Steve R. Darnell
Administrative Law Judge

EXHIBIT 3

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY

RATEPAYERS OF THE DEKALB UTLITY DISTRICT, Petitioners, vs. THE DEKALB UTILITY DISTRICT, Respondent.	)	No. 13-1101-III

MEMORANDUM AND ORDER AFFIRMING BOARD'S DECISION AND DISMISSING PETITON FOR JUDICIAL REVIEW

This case arises out of the decision of The DeKalb Utility District to build its own water treatment plant so that it can not only deliver but also be the source of water to its customers. This is a break with the past as for the last 50 years the District has purchased the water it delivers to its customers from the City of Smithville who owns and operates a water treatment facility. The District is by far the City's largest water purchaser.

This case was filed by Ratepayers of the District who contest it building a new plant, asserting that their rates will increase, and that the new plant is unnecessary and wasteful as the City of Smithville has plentiful capacity now and into the future, and good source water.

The forum the Petitioners selected was an administrative one. The Petitioners filed their claim for relief with the Utility Management Review Board ("UMRB"). It is invested by the Legislature with the power to "review rates charged and services

provided by public utility districts." TENN. CODE ANN. § 7-82-102(a)(1). After conducting a contested case hearing, the UMRB ruled against the Petitioners and did not halt the District from building its own plant.

Pursuant to Tennessee Code Annotated section 4-5-322, the Petitioners have appealed the UMRB decision to this Court.

The Petitioners seek for this Court to review these issues:

1. "Did the UMRB err by failing to consider, pursuant to Tenn. Code Ann. § 7-82-102, the appropriateness of the DUD [the District] expanding its 'services provided' to include the construction of a separate, duplicative, unnecessary water treatment facility and thereby violate a statute and/or follow an unlawful procedure?"

2. Did the UMRB err because its ruling is not supported by material evidence in the record?

3. Did the UMRB follow an unlawful procedure by failing to let the affected ratepayers in attendance at the contested case hearing in Smithville, Tennessee be heard in a public hearing?"

Petitioner's Brief, November 27, 2013, "Issues Presented" at 5.

After considering the record, argument of counsel and the law, the Court dismisses the Petition For Judicial Review. The Court determines that the UMRB performed its duty correctly and provided the review required by the statute; the UMRB's decision is not unsupported by substantial and material evidence; and the UMRB did not engage in unlawful procedure. The facts of record and law on which the Court bases its decision follow.

Facts of Record

The facts established by the record are aptly and accurately summarized in the briefs of the parties and excerpted herein.

For 50 years The DeKalb Utility District (the "District") has supplied its customers with water purchased from the City of Smithville (the "City"). The District is the City's largest customer, purchasing 68% of the water produced by the City.

In May of 2012, the District voted to no longer obtain its water from the City and to itself supply the water by constructing its own water treatment facility. The District's expansion will directly impact the City who will lose more than two-thirds of its customer base with the very likely consequence of raising rates on remaining customers.

For several years the District had obtained studies regarding construction of its own plant. From these, the District concluded that over a 23-year period it would save millions of dollars and have autonomy over its water supply.

Undisputedly the City has plentiful availability of water to supply the District's customer base now and into the future. This redundancy, the Petitioners assert, should be

halted. To that end the Petitioners protested construction of the new plant to the District. It denied relief, and on May 24, 2012, the District voted to proceed with the new plant.

Shortly after the District's vote, the City hired a public relations firm to organize a campaign in opposition, and to acquire enough ratepayer signatures to file a petition under Tennessee Code Annotated section 7-82-102(a)(1). That statute authorizes review by UMRB of rates charged and services provided upon a petition signed by 10% of a district's ratepayers. The public relations firm published a website and collected signatures. The City paid for the website, paid the public relations firm $5,000 per month for its services, and agreed to pay the firm a $25,000 "bonus" if the firm succeeded in stopping construction of the water treatment facility.

Where no other such statutory petition drive had ever before been successful, this one was. More than 1,000 water customers—well over the required 10 percent—signed. On July 24, 2012, the petition was filed by the ratepayers of the District requesting that the UMRB review the District's May 24, 2012 decision to build a water treatment facility, and to find that the District "acted wrongly in approving the financing of the construction of a redundant water treatment facility in DeKalb County and in its resulting expansion and rate decision."

By order entered October 24, 2012, the UMRB declined to review the District's decision to construct a water treatment facility, stating that such a review was beyond the agency's jurisdiction, but ordered that it would conduct a contested case hearing to review the implications of the new plant on rates.

On November 9, 2012, and prior to any requested intervention by the City in the contested case, counsel entered a notice of appearance for both the Petitioners and the City. On the same day, a complaint was filed by the Petitioners. On November 28, 2012, the District filed its answer. On December 3, 2012, the UMRB entered another order explaining again that the agency did not have jurisdiction to review or overturn the District's business decision to construct a water treatment facility, and that the agency's review would be confined to the rates charged by the District. On January 3, 2013, the City moved to intervene, which motion was granted.

The contested case hearing was held on April 4, 2013. As a preliminary matter, the administrative law judge advised the UMRB that its order declaring that it had no jurisdiction to review the business decision of the District was procedurally improper, was therefore void, and that UMRB would have to address again the jurisdictional question at the hearing.

The contested case hearing was conducted in accordance with the Uniform Administrative Procedures Act. Testifying were nine witnesses: a customer of the District, an expert on utility rates, an accountant, a consulting engineer, the secretary/treasurer for the City of Smithville, an expert on cost analysis, a member of the District Board, the General Manager of the District, and a consulting engineer for the District. At the close of the proof, the Petitioners asked the UMRB to stop the construction of the water treatment facility and order that the contractual relationship between the District and the City continue.

In its Final Order, the UMRB: (1) declined to consider the appropriateness of the District's decision to build a water treatment facility and declined to require continued contracting by the District with the City for water, and (2) confined its consideration to whether the District's current and projected water rates were reasonable, and whether they were sufficient to cover the District's costs. The UMRB found that the rates being charged and that will be charged by the District were and are reasonable and sufficient under the circumstances; that Petitioners failed to meet their burden under a preponderance of the evidence; and the UMRB dismissed the Petition.

This Petition For Judicial Review of the Final Order of the UMRB followed.

Statutory Scheme

The briefs and arguments of counsel inform the Court that the applicable statute, Utility District Law of 1937, Tennessee Code Annotated sections 7-82-101 *et seq.* (the "Act"), was enacted to, in part, enable rural and remote areas of Tennessee to have access to reasonably priced utilities. The method the Legislature used was to create utility districts. The Act covers the creation of the utility districts, their operation and powers, as well as audits, setting rates, the use of bonds and notes for financing, multi-county districts and purchasing procedures.

In 1987 the Legislature created and added to the Act the Utility Management Review Board ("UMRB") to oversee and regulate the districts.

Part 7 of the Act is devoted entirely to the UMRB, with other UMRB provisions interspersed among the other parts of the Act.

Analysis

Issue 1

As quoted above at page 2, the Petitioners' first issue is the scope of the UMRB's review under Tennessee Code Annotated section 7-8-102. The Petitioners assert the UMRB conducted its review too narrowly in this case.

The context of Issue 1 is the Petitioners' construction of the Act and expectation at the time of submission to the UMRB of the petition signed by 10% of the ratepayers that "the UMRB would engage in substantive review and oversight of the advisability of DUD's [the District] decision to dramatically expand its services by constructing a duplicative water treatment facility that would increase water rates for its customers when there was more than sufficient capacity available from the same water source." *Petitioner's Brief* at 6-7.

Yet, in a preliminary October 2012 order and in the June 5, 2013 Final Order, the UMRB concluded it did not have the authority to address the Petitioners' concerns about the decision to build a new plant except to the extent it impacted rates. Accordingly, the issues the UMRB convened the contested case hearing on were whether: (1) the current rates charged by the District were unreasonable and (2) were the rates to be charged by the District for future services unreasonable. June 5, 2013 *Final Order* at p. 2.

This scope of review is too narrow, the Petitioners argue, by the plain text of UMRB's review powers stated in section 7-82-102(a)(1): "[T]here is hereby granted to

the utility management review board the authority to review rates charged and services provided by public utility districts." The District's decision to expand and construct its own plant, the Petitioners assert, is "services provided" and, therefore, reviewable under section 7-82-102(a)(1) by the UMRB.

In determining the meaning of "services," as used in section 7-82-102(a)(1), the Court sees that the term is not defined by the Act.

Searching for other places in the regulatory scheme where "services" appears, the Court finds that the term is used is Tenn. Comp. R. & Reg. R. 1715-01-.05(3)(c). It refers to "services" in the context of customers having complaints in the ordinary course of business, regarding availability of services, their quality and charges for services.

Other guidance as to the scope of the term "services" in the context of this case is the role and duties the Legislature vested in UMRB in the Act. As argued by UMRB, the Legislature did not provide general, broad powers. It was event-specific in the Act as to the UMRB's role and powers. The events specified in the Act for UMRB intervention are these:

- review "any decision of any utility under § 7-82-402," which requires districts to hear protests of water rates and provide for adjustment of customer complaints, Tenn. Code Ann. § 7-82-702(7);
- remove members of a utility district board after a contested case, Tenn. Code Ann. § 7-82-702(13);
- address vacancies on a utility district board after a contested case, Tenn. Code Ann. § 7-82-702(14);

- review the justness and reasonableness of a utility district's requirement that a customer or developer build utility systems to be dedicated to the utility district, Tenn. Code Ann. § 7-82-702(19);

- investigate a district's compliance with state and federal law with the assistance of the Tennessee department of environment and conservation and the comptroller of the treasury, Tenn. Code Ann. § 7-82-709; and

- intervene in a district's affairs when the district becomes financially distressed, Tenn. Code Ann. § 7-82-704.

As well as these very specific events which trigger UMRB intervention, the Act is also specific at section 7-82-706, entitled "Legislative Intent," that the purpose of the UMRB is to act for the public welfare and to further the self-sufficiency of the utility districts:

> In carrying out [the Act], the [UMRB] shall be deemed to be acting for the public welfare and in furtherance of the general assembly's intent that utility districts be operated as self-sufficient enterprises.

The Court must also take into account in analyzing this area of law that it is to defer to an agency's interpretation of its own rules, and consider and respect an agency's statutory interpretation, particularly in regard to doubtful or ambiguous statutes. *Pickard v. Tennessee Water Quality Control Board*, 2013 WL 6623553 *9 (Tenn. S. Ct. 2013). In this case, it is the UMRB's interpretation of the Act and its rules that the Petitioners' challenge of redundancy to the new plant is reviewable by the UMRB only as it impacts rates.

In addition to these sources of law, the Court, in determining if the UMRB erred in the scope of review it conducted, also considered the facts. The Petitioners frame the

review issue in terms of the new facility being "unnecessary" (*see* "Issues Presented" p. 5 of *Petitioner's Brief)* and "the appropriateness of the DUD [the District] expanding its services to include the construction of . . . a duplicative water treatment facility that would increase rates for its customers when there was more than sufficient capacity available from the same water source" (*Petitioner's Brief* at 6-7). These are not, though, the full facts the UMRB had before it.

A reading of the Transcript reveals that balanced against redundancy were these competing business strategies:

- the District's autonomy, that it would not be dependent upon the City for its water supply (Contested Case Hearing Exhibit 5, R. at 152), if it constructed a new facility;
- in the long term (6-23 years) the new plant will yield great savings for the District ratepayers,
- in the short term the current and proposed rates are reasonable and will cover the cost of expansion.

These facts were established by the District through expert testimony: Tom Janney, the certified public accountant for the District, and Terry Mitchell, a utility rate consultant and CPA of Jackson Thornton Utility Consultants, quoted in detail *infra* at 14-23 in the analysis of Issue 2 regarding substantial and material evidence.

The significance of their testimony to the term "services" of section 7-82-102(a)(1) is that the UMRB was not presented with a case of pure redundancy but one where redundancy is accompanied by benefits of autonomy and rate savings. Viewed through this lens, the Court concurs with UMRB that the Petitioners sought for the UMRB to override business strategy of the District. Judging a business decision is not

consistent with the role of the UMRB set out in the statutory scheme, analyzed above, of circumscribed and event-specific duties. As explained by the UMRB in its brief:

> This clear expression of legislative intent does not provide, or even suggest, that the General Assembly intended that the UMRB have the power to review a district's business decision to purchase a capital asset and substitute its business judgment for that of the district. To the contrary, the statute emphasizes that utility districts should be *self-sufficient*, and the UMRB is tasked with helping assure their autonomy. The UMRB conducted the contested case hearing with this responsibility in mind: the UMRB reviewed the reasonableness of the DUD's current and projected rates and the capacity of the rates charged to cover the DUD's costs. Based on the evidence presented, the UMRB determined that the rates were satisfactory on both counts. Final Order. (Record at 110-116).

In light of the plain language of Tenn. Code Ann. § 7-82-706, Petitioner's claim that the UMRB erred when it "read its regulatory powers so narrowly as to say that it can only consider whether the rate being charged is sufficient to pay for the cost of the proposed water treatment plant and never examine the reasonableness of the underlying decision to construct the facility itself" makes no sense. Brief, at 12. The General Assembly expressly intended for the UMRB to focus on *sufficiency*. Tenn. Code Ann. § 7-82-706. As a result, the UMRB's lawful review of a district's decision—in this case, the DUD's determination of its current and projected water rates—ended when the agency was satisfied that the DUD's decision was *sufficient* to cover the expenses of the district as well as *reasonable* in light of the expenses. The UMRB was not required to conduct a more searching inquiry into whether the *underlying* decision was "necessary," or as Petitioners specifically requested, that the DUD "acted wrongly" in deciding to construct its own water treatment facility. Indeed, had the UMRB reviewed and decided the "necessity" of a new water treatment facility compared to the alternative of purchasing water from the City of Smithville, such an act would have undermined the General Assembly's intent that the DUD be self-sufficient and make that decision for itself. *See* Tenn. Code Ann. § 7-82-706.

Moreover, as a matter of public policy, it is inconceivable the General Assembly intended Section 102(a)(1) to authorize, and indeed require, the UMRB to review the appropriateness of the business decisions made by utility districts acting pursuant to their statutory powers. There are 185 utility districts in the State of Tennessee. Each utility district is empowered to conduct, operate, and maintain a system for the furnishing of

> water and other services, and each district has the authority to carry out this purpose through construction or improvement to such systems. Tenn. Code Ann. § 7-82-302(a)(1). In support of this power, each utility district has the power to make and enter into contracts, incur debts, and the power to fix, maintain, collect, and revise rates and charges for any service. Tenn. Code Ann. § 7-82-302(a)(4)-(6). Each utility district is also vested with all powers necessary and requisite for the accomplishment of its purpose. Tenn. Code Ann. § 7-82-306.

Brief Of The Utility Management Review Board, January 8, 2014, at 13-15.

Lastly as to Issue One, there is one other point the Court must address. Although not as prominent and less developed in the briefs, there is the aspect of the Petitioners' argument that the redundancy of plants will have a negative impact on the City's ratepayers and drive their rates up. This concern, the Court concludes, does not come within the scope of the UMRB's review.

First, the City is not a public utility district under the auspices of the UMRB so the City's utility issues do not precisely come within the UMRB's authority. Secondly, that the UMRB's purpose is "advising utility district[s] in the area of utility management," and as stated in section 7-82-706, to insure that "the utility districts be operated as self-sufficient enterprises," limit the UMRB to overseeing utility districts within the confines of assuring a district's self-sufficiency. Under the Act, the UMRB is not invested by statute with regional duty or authority to assure utility districts along with other water providers are using resources efficiently. The UMRB has distinctly itemized duties and powers only with reference to utility districts. It is not charged by the statute to make

regional decisions except as to individual utility districts or consolidation of utility districts.

From the foregoing analysis, the Court concludes that UMRB did not err in the scope of review it conducted in this matter, and did not violate the statute or procedure in (1) deciding that the District's decision to construct the new plant was reviewable by the UMRB only to the extent of impact on rates, and (2) declining to review the District's business decisions that the benefits of autonomy and savings outweighed utility redundancy. Accordingly, on this issue, the Court rules against the Petitioners.

Issue 2

2. "Did the UMRB err because its ruling is not supported by material evidence in the record?" *Petitioner's Brief* "Issues Presented" at 5.

On this issue, the Petitioners do not precisely challenge the substantiality and materiality of the evidence. Instead, they tag back to Issue 1 and challenge that the scope of the UMRB's review did not examine the necessity of a new plant:

> In the June 5, 2013 Final Order, the UMRB indentified in its "Issues for Determination" section the issue of "[a]re the projected rates to be charged by Dekalb for future services unreasonable?" June 5, 2013 Order at p. 2. The UMRB then concluded that "[t]he Petitioners failed to prove by a preponderance of the evidence that either the current rates charged by Dekalb are unreasonable or that the projected rates to be charged by Dekalb for future services are unreasonable." Id. However, the June 5, 2013 Order goes on to acknowledge the "significant capital expenditures that must be paid by the Ratepayers" as well as the additional operating and maintenance costs for the service expansion. Id. at 3. It also acknowledges the dramatic price increase that must be paid by the Ratepayers. However, it fails to

> examine the necessity of these expenditures. Rather, it determines the "reasonableness" of rates charged and services provided based solely upon the sufficiency of the rate to cover the debt service and operating cost of the proposed expenditure. *Id.* As such, the UMRB's decision that the "rates charged and services provided" by DUD is not supported by material evidence.

Petitioners' Brief, November 27, 2013, at 10-11.

To the extent that some of the foregoing is a challenge to the substantiality and materiality of the evidence, the Court rules against the Petitioners on this issue.

At the contested case hearing, the testimony of Tom Janney, the certified public accountant who provides services to the District, and Terry Mitchell, a utility rate consultant and CPA from Jackson Thornton Utility Consultants established that:

- The rates currently charged by the District and the rates to be charged are reasonable.
- The rates that would be charged to the ratepayers of the District would be substantially less over time than the rates that would be required from continued water purchase from the City. There will be significant cost savings: year 6—$60,000 savings; year 10—$30,000 savings; year 15—$3,462,000 savings; year 20—$7.6 million savings; year 23—$11.5 million savings.

This evidence was unrebutted and not detracted from by cross examination or the testimony of the Petitioners' witnesses.

Quoted below is a representative sampling of the testimony of the experts beginning with Terry Mitchell:

> Q. Looking at the chart that Mister—that Counsel had you go through, at what point, taking your assumptions into—into play, Mr. Mitchell, will it clots less per one thousand gallons for the DeKalb Utility District to produce water as opposed to buying water from the City?

A. Well, what I—what I tried to do is capture the cost of purchasing versus the cost of producing. And if you'll look on my—on Exhibit One, I've created what I call—About the middle of the page—a cumulative difference, deficit versus overage, okay? And what—I started out in 2015 showing that there would be an added cost of $115,000 if we produced the water versus purchase the water.

In 2016, it increased by another $76,000, or increased the cumulative deficit to 192,000. And I ran that all the way out and, starting in 2018, that flips where we're producing water at $2.87 per thousand and paying 2.88 per thousand to Smithville, again, using those assumptions. And it starts to work into the favor of producing water versus buying water. And, actually, by the year 2037, using these numbers, the cost of water would have been 11.5-million dollars less if we produce water, as opposed to continue to purchase water, again, using these assumptions.

Q. So in the year 2018, if you look at the cost per thousand gallons, in your analysis, it will be cheaper for the District to produce water as opposed to buying the water?

A. Yes, sir.

Q. And if you look at the cumulative of what they have spent in buying water versus producing it, there will be a—for lack of a better term—a break-even point in the year 2021?

A. That is correct.

Q. In your professional opinion, to a reasonable degree of certainty, what is the most cost—cost-effective means for the DeKalb Utility District to meet the future water-supply needs of its customers, Mr. Mitchell?

A. Well, I—I—I think as you manage a water utility, you have to look at a 30-year window, or so, because we have to make investments to be able to produce water effectively and efficiently, not just for five to ten years, but 30 years out. And really, the business cycle of a utility, of a water utility, is 30-year cycle.

We look at this, we've taken it out all the way out to 2037—I think, which was Mr. Janney's numbers, and it's clear from my analysis and the numbers that I used from Mr. Janney and, again, using Mr.

Warren's reports on the price of water from Smithville, that we'd be—the customers of D.U.D. would be benefitted over—by 2037 to the tune of almost eleven-and-a-half million dollars, if we produce water as opposed to purchase water.

Q. And you were asked a few minutes ago based on—about an assumption or about your knowledge of a ten-year contract proposal, five years at a certain figure and five more years at a certain figure; do you remember that testimony—

A. Yes I do.

Q. —when you were asked that question?

A. Yes I do.

Q. Do utility district boards base their future plans and their—their expectations and their—the needs of their customers on a ten-year plan?

A. No, sir. Again, I—My years of working with utilities, and in light of the fact that we have to make major investments to meet the needs of our—not only our existing customers but our future customers, every utility has to have a long-term plan in place, and that long-term plan is typically around 30 years.

Q. Did you formulate a opinion, Mr. Mitchell, or a recommendation to the District following your analysis of the data that you put in your report on whether they should move forward with the building of the 3,000,000-gallon-per-day water treatment plan?

A. I think—My professional opinion actually states that, in fact, it would be to their benefit—to the customers' benefit of the DeKalb Utility District if they built their own water plant.

* * * *

Q. And, Mr. Mitchell, even if you factor in that there can a change or variance in those assumptions, such as the customer growth rate; inflation; the rate increase percentage, do you have an opinion on whether it would be the most reasonable course for the District to build a water treatment plant and produce their own water, as opposed to buying it from the City?

A. Based on the information provided to me it, again, would be my professional opinion that D.U.D. would be—and the customers of D.U.D. would be better served by building their own water plant.

Q. And even if you take your chart and somehow the assumptions have changed, where at the end of 20 or 30 years, there is no—it—it becomes flat and there's no cost savings for the District, is it—do you have an opinion on whether it would still be the most reasonable and efficient means for the District to build a water plant?

A. Well, I've got a simple analogy that I've used many times with many utility districts with which we work, and that is if your—if you have and you own your own water plant, you control your water supply; if you do not, it's—it's an—it's a simple analysis of rent versus own. As long as I'm tied to Smithville, I'm renting their water plant and what they ask me to pay for it. If I own my own water plant, I control my own water supply. And I suspect under the new contract that they're even talking about, there's minimum take requirements, where we have to pay for—pay for a minimum amount of water, whether we buy it or don't buy it. And there's probably also a maximum amount of water that we can take under that contract. And if that's the case, D.U.D.'s gonna be hemmed in by the limitations in that contract.

* * * *

Q. Mr. Mitchell, again, even through the assumptions and the numbers may change, does that change your opinions and recommendations of the District building a plant versus buying water?

A. No, sir, it does not.

Q. And you talk—The question was asked about maintenance costs not being included. Again, if you add some number for a brand-new water treatment plan, does that change your opinions or recommendations over the District?

A. Well, again, looking at the 22-some-odd years that we've got here, the savings that I show, based on the assumptions used, are 11-and-a-half-million dollars to the benefit of the customers of D.U.D. I

don't know that we'd spend 11-and-a-half-million dollars in extra maintenance costs.

Transcript at 98-104; 110-111.

Quoted below is a representative sampling of the expert testimony of CPA Tom Janney:

Q. If you would, on the page that says "DeKalb Utility District Scenarios," just briefly describe what each of those scenario—what those numbers mean. . . .

(WHEREUPON, the continuation of Mr. Janney's testimony is found in Volume II, Page 145.)

A. The top page?

There are seven different scenarios that I wanted to give to the commissioners. They assume different rates of customer growth, different rates of increases by the City of Smithville in its water—what its charging for water and, also, different rates of inflation. And then it also shows the break-even year when the plant would begin to pay for itself and it also shows, basically, my famous 23 cumulative years of savings.

Q. And the break-even point is where it is more economical for the DeKalb Utility to produce water than purchase it from Smithville?

A. Yes.

Q. And of those various scenarios, which one did you believe, in your opinion as a C.P.A. and consultant who's done work for utility districts, that you believe was the most reasonable and appropriate scenario to be considered?

A. The Scenario A I put in bold, and that's what I felt was a very reasonable projection.

Q. And if the projections were borne out, what would be the cumulative savings to the District by producing its own water or purchasing its water over a 23-year period?

A. Nine-million-thirty-nine-thousand-five-hundred-thirty-dollars.

Q. And you also considered other scenarios and different, for example, customer growth rates?

A. Yes, I did.

Q. If you would, turn to the second to last page, I think it's Page 13 on the one that's in the binders, it's titled "Active Customer Rate Growth," do you see that?

A. Yes, sir.

Q. If you would, just explain to the Board how you calculated these various rates and why you feel that an average growth rate for inclusion in your commended option is 3.13 percent?

A. Well, I got the customers, the active meter—metered customers going all the way back to 1974, and I listed them all on a spreadsheet and I took the difference between the beginning customers and the ending customers, and I did an average growth rate since 1974. And then I also did average growth rates from the—in the decade of the 1970s, the decade of the 1980s, the decade of the '90s and the decade of the 2000s.

Q. And that's—The decade in 2000 generated a 3.13 percent growth rate?

A. That's correct.

Q. And that's annual growth rate?

A. Yes, sir.

Q. Were you here and heard Mr. Mitchell testify that he had looked at the last three years of water sales—or water purchased from Smithville by the DeKalb Utility District and that the average growth per year was about 3.15 percent?

A. I believe that's what he said, yes.

Q. Are you comfortable in your opinion, to a reasonable degree of certainty as an accountant, that an average growth rate for your projected 3.13 percent is appropriate?

A. Yes.

Q. But you did also consider other growth rates—

A. Yes, sir.

Q. —is that correct?

A. Yes, sir.

Q. Such as a 1.5-percent growth rate?

A. Yes.

Q. And you do know—do you know whether that's the rate that was included in the Rural Development plans that Rural Development had anticipated a 1.5-percent growth rate in its projections?

A. You know, I don't—I'm not familiar with that.

Q. What is the end result after 23 years if it turns out that the customer base only grows 1.5 percent?

A. Well, that's scenario B. And the savings over 23 years is 2,058,795.

Q. And what is the rate—To count—And that also includes a 2.5-percent annual increase in the Smithville water rate?

A. That's correct.

* * * *

Q. You have been asked quite a bit about "well, what happens if this projection is off or that projection if off." Do you have an opinion, based upon your expertise, as to whether—even if the growth rate's only 1.5 percent and Smithville doesn't increase its water rate significantly, whether it is in the best interest of the DeKalb Utility District to either purchase water or to build its own water plant?

A. I believe that the District cannot continue to look at five-, ten-year time frames. Mr. Mitchell's correct. In my opinion, it takes a 30-, 40- even 50-year time frame to look at the feasibility of a water plant. And I think it's the same scenario as renting versus buying. The District never knows what its rates are gonna be.

Q. So it would be your opinion that even if you had to include some maintenance costs because the depreciation did not cover those maintenance costs for a new plant as it aged, that it would still be in the best interest financially for the DeKalb Utility District to build its own water treatment plant?

A. Yes, sir.

* * * *

Q. Mr. Janney, looking at what—the document I just handed you, would you explain what that document represents?

A. Well, this is basically the same spreadsheet that I use in my—in the earlier exhibit. And I updated this for a starting rate from the City of Smithville, 2.67, which was their cost pulled from the Warren report.

Q. And what—what factors have you included for a growth rate of increase of Smithville water and inflation on this chart?

A. Well, I did two-and-a-half percent rate increase in water in water rates, I put inflation at three percent and I—and in this scenario, the customer growth rate of 3.13 percent.

Q. And based upon the cost-of-service study that Mr. Warren prepared for the City of Smithville stating that it would cost them $2.67 to produce a thousand gallons of water, including that figure and using a rate of increase of 2.5 percent annually, and a three-percent inflation rate over 23 years, what is the difference in cost to the City—to the DeKalb Utility District for producing its own water versus purchasing water from the City of Smithville?

A. The savings for DeKalb Utility District are 17,862,465.

Q. Is it your opinion that if the City of Smithville started at the rate of 2.67, that the $17,000,000 figure would be a reasonable savings?

A. That would be reasonable.

* * * *

Q. Mr. Janney, if you would, explain to us what the document I have just handed you represents? (Document passed to the Witness.)

A. Well, this is basically the same spreadsheet, and I changed some assump—I guess the main—the main assumption I changed was the—I guess the customer growth rate of 1.5 percent.

Q. And if the customer growth rate was 1.5 percent over the 23-year period based upon the starting rate of 2.67 and increased annually of 2.5 percent of the water rate from Smithville and a three-percent inflation rate for the operation of the plant, what is the projected cost savings over the 23-year period?

A. Eight—eight-million-eight-hundred-ninety-one-thousand even.

Q. And do you have any reason to ever suspect that the customer growth rate for the DeKalb Utility District will average less than 1.5 percent over three years?

A. I have no reason to believe that won't continue.

* * * *

Q. And you have heard—You've been here for testimony that the City of Smithville has contemplated offering to—a new water service contract with the DeKalb Utility District at a rate of $2.20 for the first five years and then $2.40 for the last five years; are you aware of that?

A. I believe that was in the paper.

Q. And if the City of Smithville charged the DeKalb Utility District a flat rate of $2.30 per thousand gallons and did not increase that rate for 23 years, it stayed $2.30 per thousand until the year 2037, have you calculated the different to the—to the DeKalb Utility District between purchasing from the City of Smithville at 2.30 rate per thousand as opposed to producing its own water?

A. Yes.

Q. And what is the savings that would accrue to the DeKalb Utility District over that period of time based upon that 2.—$2.30 water rate?

A. One-million-eight-hundred-thirteen-thousand-two-forty-eight.

Q. Based upon all these various scenarios, what is your opinion concerning the benefits to the DeKalb Utility District of building its own water plant as opposed to the benefit to the DeKalb Utility District continuing to purchase the water from Smithville?

A. Well, I think you can tell by all these different possibilities that the District is very—It's not ever certain what their rates are gonna be from their one and only supplier. If they have their own plant, they can control their own costs and control their own destiny and operate in the best—That's my opinion—and operate in the best interest of their customers.

Q. And it is your opinion that it's in the best interest of the customers of the DeKalb Utility District for the District to build a water treatment plant?

A. Yes, sir.

Q. And even if some of these projections change, the labor costs are too low, the electricity costs should be a dime higher per thousand gallons, do you have an opinion, even if there is some give and take in those projections, that at the end of the day, they don't turn out to be exactly what we anticipated—or the District anticipated, do you still have the same opinion that it's in the best interest of the District to build a water treatment plant?

A. Yes, I do.

Transcript at 136, 145-148, 150-151, 160-166.

Having determined on Issue 1 that the UMRB appropriately limited its scope of review to the implications of the new plant on rates, the Court determines on Issue 2 that

there is substantial and material evidence to support the UMRB's conclusions about the effect of the new plant on rates.

Issue 3

3. "Did the UMRB follow an unlawful procedure by failing to let the affected ratepayers in attendance at the contested case hearing in Smithville, Tennessee be heard in a public hearing?" *Petitioner's Brief* "Issues Presented" at 5.

The Petitioners' position is that ratepayers at attendance at the hearing should have been permitted to "give public comment" in the "format of a legislative hearing." *Petitioners' Brief* at p. 11. On this issue, also, the Court rules against the Petitioners, adopting the argument and authorities of the District and UMRB:

- No prejudice has been demonstrated, as required by Tennessee Code Annotated section 4-5-322, as the ratepayer comments the Petitioners assert should have been allowed are cumulative of the testimony of the witnesses called by the Petitioners during the contested case hearing or were waived as Petitioners could have been called to testify as witnesses.

- Rule 1715.01-.05(3)(a)5, the authority cited by the Petitioners requiring public comment and a legislative format, is not mandatory but elective and alternative, "If it deems appropriate, the Board may hold an open hearing" in reviewing rate petitions.

- The alternative used by UMRB in this case of convening a contested case hearing under the Uniform Administrative Procedures Act as per Tennessee Code Annotated section 7-8-102(a)(4), must be in public view, Tennessee Code Annotated section 4-5-312(d) but does not require a call for public comment.

Conclusion

Having ruled against the Petitioners on each of the issues presented for judicial review, it is ORDERED that the Final Order of the Utility Management Review Board is affirmed, and the Petition for Judicial Review is dismissed with prejudice with court costs taxed to the Petitioners.

Ellen Hobbs Lyle

ELLEN HOBBS LYLE
CHANCELLOR

cc: Bill Purcell
Jason Holleman
Vester Parsley

Keith Blair
C. Dewey Branstetter, Jr.

C. Scott Jackson
M. Jason Hale

Rachel Newton

RULE 58 CERTIFICATION
A Copy of this order has been served by U. S. Mail upon all parties or their counsel named above.

CS 2/25/14
Deputy Clerk and Master Date
Chancery Court

EXHIBIT 4

The consumers of this case do need a representative here. We respectfully request that you admit or grant our petition to intervene under 4-5-310(a) as mandatory intervention because we meet all the requirements here. Thank you.

CHAIRMAN ALLISON: Thank you. Let's take about a five-minute break.

(Recess taken from 2:10 P.M. to 2:18 P.M.)

CHAIRMAN ALLISON: Everybody back with us? We're all set? Fellow directors, do you have any questions for the parties?

DIRECTOR JONES: I do not.

DIRECTOR HILL: None. None, Mr. Chairman.

CHAIRMAN ALLISON: I want to ask this question. I think I heard you, but you might have snuck in a weasel word or two. I want to make sure we don't. If the Consumer Advocate is granted the right to participate here, are you committed to moving this forward on the schedule that's been established?

MS. AUMILLER: Yes, Your Honor.

CHAIRMAN ALLISON: Period?

MS. AUMILLER: Period.

CHAIRMAN ALLISON: This one's given me

some trouble, and I've had a difficult time kind of making up my mind what I want to do on it. And I'm saying this to kind of forewarn my fellow directors a little bit, but as a general matter, I think proceedings like this need to be inclusive, as opposed to exclusive, and if the Consumer Advocate feels like they need to be involved here, then we probably should attempt to accommodate that.

Now, I'm not going to get into whether you have the right to always participate and whether this thing here is because of the code citation you cited at the very end or not, but I am prepared to make a motion, unless some of my fellow directors want to speak up and comment before I get to that point.

DIRECTOR HILL: Mr. Chairman, if I may, I am sympathetic to the position that the Consumer Advocate takes, and I certainly have a lot of respect for the work that the Consumer Advocates do. However, if I may express an opinion before we get into discussion on the motion, I would suggest that my view of it is that this is between the two parties for the show cause purpose or for the purpose of show cause.

I do not see in the code, nor I would trust neither does the Consumer Advocate see in the code, an absolute right of the Consumer Advocate to