

IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE:)
)
SHOW CAUSE PROCEEDING AGAINST) DOCKET NO. 14-00041
TENNESSEE WASTEWATER SYSTEMS,)
INC., FOR MATERIAL NON-)
COMPLIANCE AND/OR VIOLATION OF)
TENN. R. & REGS. 1220-04-13, *et seq.*)

CONSUMER ADVOCATE'S REPLY TO THE PARTY STAFF'S OBJECTION TO THE
INTERVENTION OF THE CONSUMER ADVOCATE AND PROTECTION DIVISION

The Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") submits for filing this Reply to the TRA Party Staff's objection to the Consumer Advocate's Petition to Intervene in the Show Cause Docket.

- A. The TRA Party Staff does not deny that the outcome of this Show Cause docket necessarily impacts consumers interests and it is the Consumer Advocate's statutory "duty and authority to represent the interest of Tennessee consumers of public utilities services."**

This Show Cause presents many issues of first impression, including but not limited to interpreting statutes and rules. The TRA Party Staff does not deny that the outcome of this Show Cause docket will necessarily affect consumer's rights presently and in the future. Instead, the TRA Party Staff argues without support that the "Authority is responsible for ensuring the public good." *Objection*, ¶12. While this sounds like a strong argument, upon further examination, it fails to show why the Consumer Advocate should not be allowed to participate. First, it should be noted that "the public good" is not mentioned in the statutes at all. Nevertheless, it can be implied for immediate purposes that the legislature did not want any entity—the TRA, its party staff, utilities, or the Consumer Advocate—to knowingly try to take actions or make decisions

that would result in bad things to the public. Second, “the public good” is highly subjective. The TRA Party Staff’s definition of what is the public good may be different than the Consumer Advocate’s definition. Moreover, the TRA Party Staff’s thoughts about what is good for the public may be different than what the Authority ultimately decides is the “public good.” The admittance of the Consumer Advocate as a party to allow it to submit its position only allows more information to assist the Authority in making its decision.

It is not only the Consumer Advocate’s authority, but it is its *duty*, to represent the interests of Tennessee consumers. The Consumer Advocate is not arguing that it needs to be involved in every show cause proceeding. The interests of consumers are necessarily affected by the outcome of *this* Show Cause proceeding. Consequently, the Consumer Advocate’s submitted its petition to intervene so it can perform its statutory duty to participate in the matter.

No one has denied that this case is one of first impression and its outcome necessarily affects Tennessee consumers’ present and future rights. This alone is grounds for the Consumer Advocate intervention. Tenn. Code Ann. § 4-5-310. The interpretations of statutes and rules that are likely to occur in this case will not only affect the present rights of the property owners of The Villages, but it will also affect the rights and interests of all Tennessee consumers regarding procedures related to CCNs in the future.

B. The TRA Party Staff’s interpretation of Tenn. Code Ann. § 65-2-106 that no other party is entitled to participate merely because issues are decided in a show-cause docket could lead to an unconstitutional application of the law and should therefore be rejected.

The Consumer Advocate has been granted intervention in other show cause dockets. The TRA Party Staff contends without support that no party other than the utility and the party staff is entitled to participate in show cause dockets that do not affect rates. The Authority properly admits the Consumer Advocate as a party when show-cause dockets affect rates because the

matter necessarily affects the consumers' rights and the public interest. The statutes do not preclude other parties if issues in a show cause will affect the public interest or the rights of other persons and entities. Indeed, the constitutionality of any statute that would preclude the admittance of a party whose rights or interests are necessarily affected would be highly questionable. Since canons of statutory interpretation require interpretations that are constitutional, the TRA Party Staff's argument that "the Show cause statute does not contemplate third party intervention when the only issue is whether there has been a violation of the law" (*Objection*, ¶ 8) should be rejected since such interpretation could lead to an application of the law that would be unconstitutional. If these issues were occurring in a docket that was not a show cause docket, the TRA Party Staff would have no argument against the participation of the Consumer Advocate. Cloaking critical decisions in a show-cause docket should not preclude affected parties from intervention.

C. The statutory requirements for intervention have been met by the Consumer Advocate.

The legislature has delegated the duty and authority to the Consumer Advocate—not the TRA Party Staff—to represent consumers' interests with the Attorney General's approval. Tenn. Code Ann. § 65-4-118(b)(1). The Attorney General has approved the Consumer Advocate's Petition to Intervene. This statutory duty and authority delegated to the Consumer Advocate by the legislature is for "*any* matter or proceeding before the authority" Tenn. Code Ann. § 65-4-118(b)(1). The legislature did not make exceptions for show cause proceedings in its delegated authority and duty to the Consumer Advocate. If the legislature did not limit such duty and authority, the Authority should not imply such limitation.

D. So long as consumers' rights are being protected, the Consumer Advocate is committed to cooperating with the other parties to being prepared to present this case to the Authority on June 13, 2014, if the Authority is available.

There is simply no evidence that the Consumer Advocate's participation will delay this proceeding. Indeed, the current 5-month delay in the proceeding of moving the hearing from February to June is over the Consumer Advocate's objection to TWSI's Motion to Continue. The TRA Party Staff cannot point to any actions by the Consumer Advocate that have delayed this matter or the related matter in Docket No. 13-00017. It should be noted that the Order clarifying that the Hearing Officer was limiting the Consumer Advocate's participation occurred on November 20, 2013, just 5 days before the hearing.¹ The Consumer Advocate purposely did not file a petition for full intervention after the Hearing Officer's Order in Docket No. 13-00017 so as to not delay any proceedings. This matter has been delayed through no fault of the Consumer Advocate, and the TRA Party Staff has failed to show how the Consumer Advocate's involvement will delay the proceeding. Therefore, the TRA Party Staff's concerns that the Consumer Advocate will delay this proceeding are unfounded.

The Consumer Advocate has no intention of delaying matters so long as the public interest is being served; rather, the Consumer Advocate is eager to see this matter resolved. While the Consumer Advocate wants a say in scheduling when such schedule would preclude its participation, the Consumer Advocate will make every effort to work with the existing schedule and does not foresee any issues at this time. The Consumer Advocate has no intention of obstructing the resolution of this matter.

¹ The lateness of the Order clarifying the Consumer Advocate's role was not a result of the Authority's action or inaction. Rather, the Order was timely to TWSI's objections raised for the first time to the Consumer Advocate on November 12, 2013.

CONCLUSION

The Consumer Advocate requests the Hearing Officer overrule the objection of the TRA Party Staff and grant the Consumer Advocate's Petition to Intervene.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

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

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This the 24 day of April, 2014.


Charlena Aumiller