

BEFORE THE TENNESSEE REGULATORY AUTHORITY

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

**OBJECTION TO THE INTERVENTION OF THE**  
**CONSUMER ADVOCATE AND PROTECTION DIVISION**

Comes now the Tennessee Regulatory Authority ("TRA" or the "Authority") staff participating as a party ("Party Staff") who respectfully requests that the Authority deny the Consumer Advocate and Protection Division's ("CAD") request that the Directors overturn the Hearing Officer's decision and allow the CAD to intervene in this matter. In support thereof Party Staff would show as follows:

**I. Statement of Facts**

1. Docket No. 13-00017, was a dispute between Emerson Properties, LLC and Tennessee Wastewater Systems, Inc. ("TWSI") over whether TWSI's CCN for the Villages at Norris Lake should be terminated.
2. Neither TWSI nor any other utility system currently offers waste water treatment service to the Villages at Norris Lake.
3. The CAD was allowed an extremely narrow intervention in Docket No. 13-00017.<sup>1</sup>
4. The Authority issued an Order initiating this Show Cause proceeding on March 25, 2014<sup>2</sup>. On April 14, 2014, the Authority reconsidered that Order and determined that the Show Cause proceeding should continue and instructed the Hearing Officer to "expedite this process and set a target hearing date of June 16, 2014."<sup>3</sup> Party Staff and TWSI have committed to being prepared to present this case to the Authority on June 10, 2014, if the Authority is available.

<sup>1</sup> *Pre-Hearing Order*, November 20, 2013, Docket No. 13-00017

<sup>2</sup> *Order Initiating Show Cause Proceeding Against Tennessee Wastewater Systems, Inc.*

<sup>3</sup> Transcript of the April 14, 2014, Authority Conference, p. 47

5. On April 22, 2014, the CAD sought intervention in this Show Cause proceeding. The CAD's intervention makes no assurances that they can agree to a timely resolution of this matter or will commit to being prepared to go to hearing on June 10, 2014.
6. On April 24, 2014, the Hearing Officer conducted a hearing on the CAD's Petition to Intervene. TWSI and Party Staff had objected to the CAD's intervention upon multiple grounds. At the conclusion of the hearing the Hearing Officer denied the Petition to Intervene.
7. On April 28, 2014, the CAD appealed the Hearing Officer's decision in voluminous fashion.

## **II. Statement of Position**

8. Party Staff would assert this is a civil enforcement action against TWSI for violations of the law.
9. The only parties that are entitled under the law to participate in a Show Cause docket that does not affect utility rates are Party Staff appointed by the TRA and the respondent utility. The statute allows the Authority "to issue orders on its own motion citing persons under its jurisdiction to appear before it and show cause why the authority should not take such action as the authority shall indicate in its show cause order..."<sup>4</sup>
10. The Show cause statute does not contemplate third party intervention when the only issue is whether there has been a violation of the law.
  - a. The Consumer Advocate has stated no basis for intervention as required by statute
11. The essential question before the Authority is whether the CAD's originating statute gives them carte blanche to intervene in any contested case that they wish to intervene in without regard to whether they assert a claim or identify legal rights or duties that are at issue in the case.
12. The originating statute states that they **may** petition the Authority to intervene **when** the "interests of Tennessee consumers of public utility services" are at issue in a given docket.<sup>5</sup> This is not a right to blanket intervention.

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<sup>4</sup> Tenn. Code Ann. §65-2-106

<sup>5</sup> Tenn. Code Ann. §65-4-118

13. Logically, if the CAD must petition for intervention then they are not automatically a party to all proceedings before the Authority. Instead they must show that they are acting to represent the interests of consumers of Tennessee public utility services.
14. In the present case the CAD has given no specific basis for intervention. They have failed to identify which public utility consumers they are acting on behalf of or how their intervention will assist any public utility consumers. Instead all they have done is raise vague and unspecified concerns about unknown harm to unidentified consumers. This simply is not sufficient basis for intervention. The CAD's petition is nothing but a generalized assertion of interests that could be made in any case before the TRA. Without a showing a specific claim or interest the CAD has no legal basis to intervene in this case.
15. Without a substantive basis for intervention allowing their intervention in this case raises the very real specter that they will only cause confusion and delay.
  - b. The Authority is granted all the necessary statutory authority to resolve this civil enforcement action without 3<sup>rd</sup> party intervention
16. The TRA is authorized to exercise "practically plenary authority over the utilities within its jurisdiction."<sup>6</sup> This broad grant of authority empowers the TRA to conduct an enforcement action relying upon counsel employed by the Authority for that purpose.
17. It is the Authority that is responsible for ensuring the public good. The mission of the Authority is "to promote the public interest by balancing the interests of utility consumers and providers...."<sup>7</sup>
18. An enforcement action is most basic example of the Authority fulfilling its role in enforcing the law for the public good.

### **III. Conclusion**

19. Absent a clear basis for intervention no party should be granted intervention in an Authority show cause proceeding.
20. The CAD has failed to articulate what interests or claims it is seeking to protect by intervening.
21. The TRA through Party Staff is empowered to act to protect the public interest before the Authority in show cause proceedings.

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<sup>6</sup> *Tenn. Cable Television Assoc. v. Tenn. Public Service Comm.* 844 S.W.2d 151, 159 (Tenn. Ct. App., 1992).

<sup>7</sup> Tennessee Regulatory Authority Mission Statement

WHEREFORE, Party Staff respectfully requests that the Authority deny the CAD's appeal of the Hearing Officer's denial of their Petition to Intervene.

Respectfully submitted,



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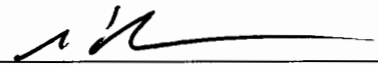
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that I have served a copy of the foregoing document on the following persons by U.S. Mail:

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This the 1<sup>st</sup> day of May, 2014.

  
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Shiva K. Bozarth