

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

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

BRIEF OF TENNESSEE WASTEWATER SYSTEMS, INC.

Tennessee Wastewater Systems, Inc. ("TWSI") joins in the brief filed by the Party Staff asking the Tennessee Regulatory Authority to affirm the decision of Hearing Officer Kelly Cashman-Grams denying the petition of the Consumer Advocate to intervene in the above-captioned proceeding. TWSI also relies on the arguments raised in the "Objection to Intervention of the Consumer Advocate and Protection Division" filed by TWSI on April 24, 2014. Finally, in light of the findings and conclusions in the Hearing Officer's Order issued May 1, 2014, TWSI submits the following additional points.

Argument

This is a "civil enforcement proceeding" (Order, 18). Those three words do not appear anywhere in the seventeen-page appeal brief filed by the Advocate. The reason the Advocate never acknowledges that this is an agency enforcement proceeding is that the case law is clear: third parties do not have the right to intervene under T.C.A. § 4-5-310 in an agency enforcement proceeding. As the Court of Appeals said, "[O]ur independent research has failed to uncover any legal authority for the proposition that citizens with generalized grievances . . . must be permitted

to participate as a party in an enforcement proceeding" brought by a government regulatory agency. Wood v. Metropolitan Nashville, 196 S.W.3d 152 (Tenn. Ct. App. 2005) (emphasis added). In other words, there is no case law—and none cited by the Advocate—supporting the Advocate's claim that the future consumers of wastewater service, whose interests the Advocate is statutorily empowered to represent, have a "legal interest" in the outcome of this enforcement proceeding. Therefore, the Advocate cannot meet the requirement for intervention described in T.C.A. § 4-5-310(a)(2).¹

The Advocate's alternative argument is that, even if the Advocate does not meet the "legal interest" requirement of T.C.A. § 4-5-310(a)(2), the Advocate is nevertheless statutorily entitled to intervene under T.C.A. § 65-4-118.

This argument has been heard before and was most recently addressed by Hearing Officer Cashman-Grams in Docket 13-00017. In a "Pre-Hearing Order" issued November 20, 2013, the Hearing Officer concluded that the Advocate's argument that T.C.A. § 65-4-118 "confers upon it a statutory right" to intervene "is erroneous" and that the Advocate's "reading of the statute in this matter is incorrect and deviates from the statute's clear language and long-standing application." Order, at 4. She held that when the Advocate files a petition to intervene, "the requirements, criteria, and procedures established in [T.C.A. § 4-5-310] must be satisfied." Order, at 6.

The Advocate did not appeal the Hearing Officer's Order in that docket and in the two sentences devoted to raising this argument again suggests no reason why the Authority should depart from its "long-standing application" of T.C.A. § 65-4-118.

¹ The Advocate's brief devotes only seven sentences (twelve lines of type) to the argument that "consumers' legal interests are affected" by this proceeding and never says what those "legal interests" are. The Hearing Officer found that the Advocate's assertion that consumers have a "legal interest" in this proceeding "appears tenuous." Order, at 16.

For these reasons, the Hearing Officer's Order denying the Advocate's Petition to Intervene should be denied.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: 

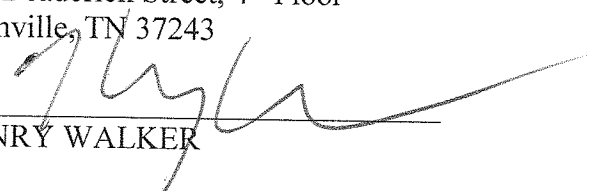
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of May, 2014, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

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