

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 18, 2014

IN RE:)	
)	DOCKET NO.
PETITION FOR APPROVAL OF NAME CHANGE FROM)	14-00048
BERRY'S CHAPEL UTILITY, INC. TO HARPETH)	
WASTEWATER COOPERATIVE)	

ORDER GRANTING CONSUMER ADVOCATE'S PETITION TO INTERVENE

This matter is before the Hearing Officer of the Tennessee Regulatory Authority ("Authority" or "TRA")¹ upon a *Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General ("Consumer Advocate") on September 3, 2014.

BACKGROUND

On April 18, 2014, Berry's Chapel Utility, Inc. ("Berry's Chapel") filed a request for approval to operate under the assumed name of Harpeth Wastewater Cooperative. In support of its request, Berry's Chapel provided a copy of its *Filing Acknowledgement* from the Secretary of State's Office, which indicates that the assumed name is effective as of April 15, 2014. On April 31, 2014, public comments were filed in the docket file on behalf of Legends Ridge Homeowners Association, Inc., whose members are consumers of services provided by Berry's Chapel, concerning the actions proposed by Berry's Chapel in this matter. On August 20, 2014, the Authority sent Berry's Chapel a request for information concerning its proposed

¹ During the regularly scheduled Authority Conference held on September 15, 2014, the voting panel of Directors assigned in this docket voted unanimously to convene a contested case proceeding and appoint General Counsel or her designee to act as Hearing Officer to handle any preliminary matters arising in the proceeding.

name change and decision to operate under the principles of a cooperative in a regulatory environment. On September 10, 2014, Berry's Chapel filed its responses to those requests.

PETITION TO INTERVENE

In its *Petition to Intervene*, the Consumer Advocate seeks to intervene in this docket pursuant to Tenn. Code Ann. § 65-4-118, which qualifies the Consumer Advocate to intervene in proceedings before the Authority for the purpose of representing the interests of Tennessee consumers of public utility services. Noting a potential for ambiguity and confusion about the legal status of the utility and that the legal and financial rights and obligations of customers may be affected by determinations made by the TRA in this docket, the Consumer Advocate asserts that its request for intervention should be granted so that it may represent the interests of the consumers served by Berry's Chapel. In conclusion, the Consumer Advocate states that only by participating in this proceeding can it work to adequately protect the interests of consumers.²

FINDINGS & CONCLUSIONS

TRA Rule 1220-01-02-.08 sets forth the ways in which requests to intervene in contested cases before the Authority are to be made and considered, as follows:

- (1) Petitions for intervention shall be granted in accordance with T.C.A. § 4-5-310 and T.C.A. § 65-2-107.
- (2) A petition for intervention shall set forth with particularity those facts that demonstrate that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Intervention may be denied or delayed for failure to provide such specific facts.
- (3) A petition for intervention shall be filed at least seven (7) days prior to the date of the contested case hearing.³

² *Petition to Intervene* (September 3, 2014).

³ Tenn. Comp. R. & Regs. 1220-01-02-.08.

In addition to its own Rules and statutes, contested case proceedings before the Authority are governed by the provisions of the Uniform Administrative Procedures Act (“UAPA”) found at Tenn. Code Ann. § 4-5-101, *et. seq.* As noted in the above Rule, the Authority shall grant petitions to intervene according to the standards provided under the UAPA, Tenn. Code Ann. § 4-5-310, and as provided in the Authority’s statutes at Tenn. Code Ann. § 65-2-107. Further, Tenn. Code Ann. § 4-5-310 establishes the following criteria for mandatory and permissive or discretionary intervention, 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.
- (b) The agency may grant one (1) or more petitions for intervention at any time, upon determining that the intervention sought is in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.⁴

In addition, the Hearing Officer may, at any time, limit or impose conditions upon an intervenor’s participation.⁵ Finally, 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 (7) days of service of the motion.

Under Tenn. Code Ann. § 4-5-310(a)(1) and TRA Rule 1220-01-02-.08(3), to be considered timely, a petition for intervention must be filed at least seven (7) days prior to the

⁴ Tenn. Code Ann. § 4-5-310.

⁵ Tenn. Code Ann. § 4-5-310(c).

date of the contested case hearing. Therefore, as the date for a hearing in this docket has not yet been established, the Hearing Officer considers the Consumer Advocate's *Petition to Intervene* timely-filed. Both Tenn. Code Ann. 4-5-310(a)(2) and TRA Rule 1220-01-02-.08(2) require that a petition to intervene state facts, with particularity, demonstrating a legal right or interest held by the petitioner that may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Tenn. Code Ann. § 65-4-118(b)(1), provides a general basis for the qualification of the Consumer Advocate as an intervenor for the purpose of representing those consumers of public utility services that have legal rights or interest that may be determined in a proceeding before the TRA, as follows:

The consumer advocate division has the duty and authority to represent the interests of Tennessee consumers of public utilities services. The division may, with the approval of the attorney general and reporter, participate or intervene as a party in any matter or proceeding before the authority or any other administrative, legislative or judicial body and initiate such proceeding, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the rules of the authority.⁶

Thus, subject to the approval of the Attorney General, and upon demonstrating compliance with the UAPA and the TRA's Rules, Tenn. Code Ann. § 65-4-118(b)(1) enables the Consumer Advocate to intervene as a party in proceedings before the TRA to represent the interests of the utility consumers. The statute does not, however, confer an automatic or absolute right upon the Consumer Advocate to participate in this or any other of the Authority's proceedings.

Finally, Tenn. Code Ann. 4-5-310(a)(3) requires that the Hearing Officer grant a petition for intervention only upon determining that "the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing intervention." Upon due consideration, the Hearing Officer finds that the *Petition to Intervene* is timely-filed, the

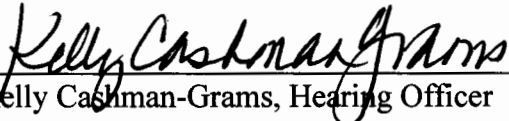
⁶ Tenn. Code Ann. § 65-4-118(b)(1).

Consumer Advocate qualifies as an intervenor under law, and that its intervention should not impair the interests of justice or the orderly and prompt conduct of the proceedings. In addition, Berry's Chapel has not filed a response or otherwise objected to the Consumer Advocate's request to intervene in these proceedings. For these reasons, the Hearing Officer finds that the Consumer Advocate's request to intervene should be granted.

IT IS THEREFORE ORDERED THAT:

1) The *Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Office of the Attorney General is granted.

2) The Consumer Advocate and Protection Division of the Office of the Attorney General may intervene and participate as a party in this proceeding and, as such, shall receive copies of any notices, orders, or other documents filed herein.



Kelly Cashman-Grams, Hearing Officer