

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 18, 2015

IN RE:)	
)	DOCKET NO.
PETITION OF HAMMERLAND UTILITIES, INC.)	14-00124
FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO PROVIDE)	
WASTEWATER SERVICE IN TENNESSEE)	

**ORDER GRANTING PETITIONS TO INTERVENE FILED BY THE
RIVER TRACE II PROPERTY OWNERS AND THE CONSUMER ADVOCATE**

This matter is before the Hearing Officer of the Tennessee Regulatory Authority (“Authority” or “TRA”) upon the petitions to intervene filed by the River Trace II Property Owners (“Property Owners”) on April 16, 2015, and the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) on May 27, 2015.

BACKGROUND

On November 6, 2014, Hammerland Utilities, Inc. (the “Utility” or “Hammerland Utilities”) filed its Petition seeking a Certificate of Public Convenience and Necessity to operate a wastewater collection and disposal system in a portion of Stewart County, Tennessee, known as River Trace II.¹ The developer of the River Trace II property, Hammerland, Inc. (the “Developer” or “Hammerland”), is a subsidiary of Elmhurst Chicago Stone, Inc. of Elmhurst, Illinois.² River Trace II was originally platted for 39 lots, but over the years has grown to

¹ *Petition* (November 6, 2015).

² *Id.* at 4.

encompass at least 44 homes and an 8-unit condominium site.³ River Trace II currently has an existing community sewer system built to serve 18 home sites and Hammerland has received the approval of the Tennessee Department of Environment and Conservation (“TDEC”) to enlarge the existing system to serve an additional 18 homes. Nevertheless, following a problem with the sewer system and in order to meet certain TDEC requirements, the Developer elected to replace the existing sewer facilities with a decentralized system that will consist of a recirculating sand filter and drip field disposal.⁴ The Utility will operate the existing system, construct the proposed sewage treatment works, will assume ownership of the new sewer system, and be responsible for all future management and maintenance.⁵ It is anticipated that a new sewer system will cost approximately \$250,000 and serve 50 units.⁶

PETITIONS TO INTERVENE

River Trace II Property Owners

In their Petition to Intervene, the Property Owners seek to intervene in this proceeding because their “interests, rights, duties or privileges may be determined or affected by the proceeding.”⁷ In support of their request, the Property Owners state that despite a Restraining Order issued in the Stewart County Chancery Court on February 26, 2013, which prohibits the sale or transfer of the existing sewer property, Hammerland deeded the property to Hammerland Utilities on May 14, 2014.⁸ In addition, they assert that the Developer and Lake Associates misrepresented the sale of properties in River Trace II by claiming that a sewer system existed

³ *Id.* at 4 and 5..

⁴ *Id.* at 5.

⁵ *Id.* at 6.

⁶ *Id.* at 8.

⁷ *River Trace II Property Owners Petition to Intervene* (April 16, 2015). The River Trace II owners identified in the petition are Jeffery Garton, Jeanne Faith-Garton, Rick Faith, Penny Faith, Paul Kamke, Sherri Kamke, Terry Faith, and Penny Faith. On July 17, 2015, Counsel for the River Trace II Property Owners, Thomas M. Stanley, filed a Notice of Appearance in the docket file.

⁸ *River Trace II Property Owners Petition to Intervene*, p. 1 ¶ 1 (April 16, 2015).

prior to lot purchases and failed to inform property owners that there would be building restrictions regarding the number of bedrooms.⁹ The Property Owners assert that Hammerland Utilities' CCN application requests approval to provide sewer service only, but does not address the provision of both public water and sewer services as is set forth in a Homeowners Association document.¹⁰ Finally, if approved, the Property Owners assert that the sewer system creates significant concerns and potential expense to property owners that was not identified or negotiated prior to their purchase.¹¹ For these reasons, the Property Owners ask that their Petition to Intervene be granted.

Consumer Advocate

In its *Petition to Intervene*, the Consumer Advocate asks that the Authority grant its request to intervene in this proceeding because “consumers’ interests, rights, duties or privileges may be determined or affected by the proceeding.”¹² In support of its request, the Consumer Advocate states that it is authorized under Tenn. Code Ann. § 65-4-118 to represent the interests of Tennessee consumers of public utility services in proceedings before the Authority, and that Hammerland Utilities is a public utility regulated by the TRA that owns and operates a sewer system serving the River Trace II property development in Stewart County, Tennessee.¹³ The Consumer Advocate asserts that the Utility’s petition for a CCN outlines its proposed growth to serve 52 total residential units, a resort hotel with 160 total units, a restaurant, a recreation center, a commercial center of up to 100,000 square feet, and a marina. This growth would require two treatment facilities to handle the volume of sewage flow.¹⁴ In addition, that the Utility’s petition

⁹ *Id.* at 1-2, ¶¶ 2 and 4.

¹⁰ *Id.* at 2, ¶ 3.

¹¹ *Id.* at 2, ¶ 5.

¹² *Petition to Intervene* (May 27, 2015).

¹³ *Id.* at 1, ¶¶ 1 and 2.

¹⁴ *Id.* at 2, ¶ 4.

includes a proposed rate schedule establishing a \$6500 tap fee for homes up to three bedrooms, and addition \$1000 tap fee per additional bedroom, connection charges, and a lump sum monthly fee.¹⁵ Finally, the Consumer Advocate refers to the allegations contained in the petition to intervene filed by the Property Owners.¹⁶ In conclusion, the Consumer Advocate contends that, “only by participating in this proceeding can it adequately carry out its statutory duty to represent the interests of Tennessee consumers” and, therefore, requests that its *Petition to Intervene* be granted.¹⁷

FINDINGS & CONCLUSIONS

Under Tenn. Code Ann. § 65-2-107, “All persons having a right under the provisions of the laws applicable to the authority to appear and be heard in contested cases as defined in this chapter shall be deemed parties to such proceedings for the purposes of this chapter. In addition, the authority may upon motion allow any interested person to intervene and become a party to any contested case.” Along with its own statutes and rules, contested case proceedings before the Authority are governed by the provisions of Tenn. Code Ann. § 4-5-101, *et seq.*, known as the Tennessee Uniform Administrative Procedures Act (“UAPA”). Tenn. Code Ann. § 4-5-310 establishes the following criteria for considering requests for mandatory and permissive 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

¹⁵ *Id.* at 2, ¶ 5.

¹⁶ *Id.* at 2-3, ¶ 7.

¹⁷ *Id.* at 3, ¶ 9.

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.¹⁸

Further, the UAPA provides that a Hearing Officer may, at any time, limit or impose conditions upon or otherwise modify an intervenor's participation in the proceedings.¹⁹ Similarly, TRA Rule 1220-01-02-.08 directs that requests for intervention 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.²⁰

Finally, TRA Rule 1220-1-2-.06 requires any party opposing a motion in a contested case to file and serve a response to the motion within seven (7) days of service of the motion.

Timeliness

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

¹⁸ Tenn. Code Ann. § 4-5-310.

¹⁹ Tenn. Code Ann. § 4-5-310(c) and (d).

²⁰ Tenn. Comp. R. & Regs. 1220-01-02-.08.

The instant proceeding is not subject to any particular statutory deadline, is yet in its early stages, and a date for the hearing has not been established. Thus, the Hearing Officer considers the petitions to intervene filed by both the Property Owners and the Consumer Advocate timely-filed.

Content & Requisite Showing

Tenn. Code Ann. 4-5-310(a)(2) and TRA Rule 1220-01-02-.08(2) require that a petition to intervene state particular facts that demonstrate a legal right or interest held by the petitioner 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 intervening party to represent the interests of Tennessee public utility consumers, 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.²¹

According to the statute, with the approval of the Attorney General and upon satisfaction of the requisite showing for intervention under the UAPA and the TRA's Rules, the Consumer Advocate may be permitted to intervene as a party for the purpose of representing those Tennessee consumers of public utility services that have legal rights or interests that may be determined in proceedings before the TRA. Tenn. Code Ann. § 65-4-118(b)(1) provides for the Consumer Advocate's qualification as an intervenor under law, but in no way confers upon the Consumer Advocate an automatic or absolute right to participate in any particular Authority proceeding.

²¹ Tenn. Code Ann. § 65-4-118(b)(1).

In the instant proceeding, Hammerland Utilities seeks approval and certification to construct, own, and operate a wastewater system for the purpose of providing service to the residents of River Trace II and others, as its planned growth demands. As the Utility's petition involves issues relating to the provision of service and rates, the Hearing Officer finds that there exists a sufficient factual basis upon which to find that legal rights or interests held by Tennessee public utility consumers, and in particular, by the Property Owners who are customers, might be determined in this proceeding. And further, under Tenn. Code Ann. § 65-4-118, that the Consumer Advocate is qualified to represent those interests before the Authority.

Procedural Due Process

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." Although it was permitted additional time in which to do so, Hammerland Utilities has not filed a response or otherwise objected to the intervention requests filed by either the Property Owners or the Consumer Advocate in this matter. Given the nature of this proceeding, the promptness of the request to intervene, and the lack of opposition to the petitions to intervene, the Hearing Officer finds that neither the Property Owners, nor the Consumer Advocate's intervention should unduly delay or prejudice the administration of these proceedings.

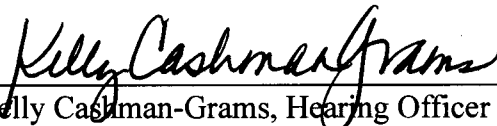
THEREFORE, upon due consideration, the Hearing Officer finds that the legal rights, duties, privileges, immunities or other legal interests of Hammerland Utilities' customers may be determined in this proceeding, and that the Consumer Advocate qualifies under law as an intervenor for the purpose of representing those consumer interests. Further, the Hearing Officer finds that both the Property Owners' and the Consumer Advocate's petitions to intervene are

timely-filed and that their interventions should not impair the interests of justice or the orderly and prompt conduct of the proceedings. For these reasons, the Hearing Officer concludes that the petitions to intervene filed by the Property Owners and the Consumer Advocate should be granted.

IT IS THEREFORE ORDERED THAT:

1) The *River Trace II Property Owners Petition to Intervene* is granted. Accordingly, on behalf of the River Trace II Property Owners, Counsel may participate and represent those specified property owners as a party in this proceeding and is entitled to receive copies of any notices, orders, and other documents filed in the docket file.

2) The Consumer Advocate and Protection Division of the Office of the Attorney General's *Petition to Intervene* is granted. In accordance with its intervention, the Consumer Advocate and Protection Division of the Office of the Attorney General may participate as a party in this proceeding and is entitled to receive copies of any notices, orders, and other documents filed in the docket file.



Kelly Cashman-Grams, Hearing Officer