

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 30, 2015

IN RE:

**PETITION OF TENNESSEE WASTEWATER
SYSTEMS, INC. FOR APPROVAL OF CAPITAL
IMPROVEMENT SURCHARGE AND
FINANCING ARRANGEMENTS**

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**DOCKET NO.
14-00136**

ORDER

This matter is before the Hearing Officer of the Tennessee Regulatory Authority (“Authority” or “TRA”) upon a *Petition to Intervene* filed by the Summit View Resorts Homeowners’ Association (“Summit View”) on June 2, 2015.

PETITION TO INTERVENE

In its *Petition to Intervene*, Summit View states that it is the designated homeowners’ association for all 37 lots located in Summit View Resorts and that Tennessee Wastewater Systems, Inc.’s (“TWSI”) provides wastewater utility services to Summit View Resorts. Furthermore, as a result of TWSI’s request to charge the Summit View property owners a one-time assessment in this proceeding, Summit View states that its “legal rights, duties, privileges, immunities, or other legal interests will be affected or determined by the outcome of this proceeding.” Finally, Summit View asserts that the interests of justice and orderly and prompt conduct of the proceedings will not be impaired by its intervention.¹

FINDINGS & CONCLUSIONS

Under Tenn. Code Ann. § 65-2-107, “All persons having a right under the provisions of

¹ *Petition to Intervene* (June 2, 2015).

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 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.²

The UAPA further provides that a Hearing Officer may, at any time, limit or impose conditions upon or otherwise modify an intervenor’s participation in the proceedings.³ Similarly, TRA Rule 1220-01-02-.08 directs that requests for intervention before the Authority are to be made and considered as follows:

² Tenn. Code Ann. § 4-5-310.

³ Tenn. Code Ann. § 4-5-310(c) and (d).

- (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.⁴

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. TWSI filed its petition in this matter on November 18, 2014, and the proceedings have commenced and been ongoing since that time. A Procedural Schedule has been established and amended by the Hearing Officer, and both TWSI and the Consumer Advocate have conducted discovery and filed pre-filed testimony. While nearing conclusion, the matter is still in the process of being prepared for a hearing and, although a target date is routinely identified and has been so identified in this case, a hearing date has not yet been finalized and noticed in this case.

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. As TWSI's requests in this proceeding directly implicate the rates and charges

⁴ Tenn. Comp. R. & Regs. 1220-01-02-.08.

that will be paid by the consumers that it serves, which include the Summit View property owners, the Hearing Officer finds that there exists a sufficient factual basis upon which to find that legal rights or interests held by Summit View may be determined in this proceeding.

Procedural Due Process

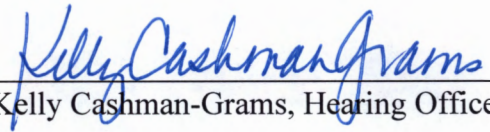
Finally, Tenn. Code Ann. 4-5-310(a)(3) requires that the Hearing Officer grant a petition for intervention only upon determining that “the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing intervention.” The petitioner in this matter, TWSI, has not filed a response or objected to Summit View’s request to intervene in this matter. Summit View should take note, however, that the bulk of discovery has already been conducted and pre-filed testimony has been filed, and that the proceedings will continue forward in due course. Therefore, given the nature of the proceeding and lack of opposition thereto, the Hearing Officer finds that Summit View’s intervention should not unduly delay or prejudice the administration of these proceedings.

THEREFORE, upon due consideration, the Hearing Officer concludes that the legal rights, duties, privileges, immunities or other legal interest of Summit View, which is a customer of the wastewater services provided by TWSI, may be determined in this proceeding. Further, that Summit View’s request to intervene is timely-filed and its intervention should not impair the interests of justice or the orderly and prompt conduct of the proceedings. For these reasons, the Hearing Officer concludes that Summit View’s *Petition to Intervene* should be granted.

IT IS THEREFORE ORDERED THAT:

- 1) The *Petition to Intervene* filed by Summit View Resorts Homeowners’ Association is granted.
- 2) Summit View Resorts Homeowners’ Association 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