

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 28, 2015

IN RE:)	
)	DOCKET NO.
PETITION OF TENNESSEE WASTEWATER)	14-00136
SYSTEMS, INC. FOR APPROVAL OF CAPITAL)	
IMPROVEMENT SURCHARGE AND)	
FINANCING ARRANGEMENTS)	

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 December 8, 2014.

BACKGROUND

Pursuant to Tenn. Code Ann. §§ 65-5-101, 65-5-103, and 65-4-112, Tennessee Wastewater Systems, Inc. (“Tennessee Wastewater” or “TWSI”) filed a petition on November 18, 2014, seeking Authority approval of certain financing arrangements and surcharges for the purpose of funding certain repairs and capital improvements that it asserts are mandated by Tennessee Department of Environment and Conservation (“TDEC”) and necessary to protect public health and the environment.² Specifically, TWSI requests approval to secure a ten-year bank loan of up to \$725,000 in order to make certain repairs and capital improvements to its

¹ During the regularly scheduled Authority Conference held on December 1, 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.

² *Petition of Tennessee Wastewater Systems, Inc. for Approval of Capital Improvement Surcharges and Financing Arrangements* (November 18, 2014).

wastewater systems at Maple Green, Cedar Hill and Smoky Village.³ TWSI further seeks to implement a monthly surcharge of approximately \$3.27 to all TWSI customers for repayment of the loan.⁴ Finally, TWSI seeks to assess and charge a one-time fee to the property owners at Summit View Resort in order to expand the wastewater treatment system capacity at that site.⁵ In conclusion, TWSI states that, absent TRA approval of the loan and surcharges, it cannot make the repairs and capital improvements required by TDEC.⁶

PETITION TO INTERVENE

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.”⁷ 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 Tennessee Wastewater is a public utility regulated by the TRA that provides wastewater service to consumers in the state of Tennessee.⁸ The Consumer Advocate asserts that TWSI’s request for approval to secure certain financing arrangements, institute a monthly surcharge that will increase the monthly rates paid by all TWSI customers, and charge a one-time fee assessment to property owners in Summit View Resort, directly involves the legal interests of consumers.⁹ 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

³ *Id.* at 3-5.

⁴ *Id.* at 5-6.

⁵ *Id.* at 2-3.

⁶ *Id.* at 6.

⁷ *Petition to Intervene* (December 8, 2014).

⁸ *Id.* at ¶¶ 1 and 2.

⁹ *Id.* at ¶¶ 3 - 5.

therefore, that its *Petition to Intervene* should be granted.¹⁰

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 mandatory and permissive requests for 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.¹¹

Further, the UAPA provides that a Hearing Officer may, at any time, limit or impose conditions

¹⁰ *Id.* at ¶¶ 6.

¹¹ Tenn. Code Ann. § 4-5-310.

upon or otherwise modify an intervenor's participation in the proceedings.¹² 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.¹³

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. The instant proceeding is not subject to any particular statutory deadline and is yet in its early stages. Discovery has not formally commenced, nor has a hearing date been established. Thus, the Consumer Advocate appears to have been diligent in filing its request to intervene in the usual course. Therefore, the Hearing Officer considers the Consumer Advocate's *Petition to Intervene* 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

¹² Tenn. Code Ann. § 4-5-310(c) and (d).

¹³ Tenn. Comp. R. & Regs. 1220-01-02-.08.

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.¹⁴

Thus, 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.

In the instant proceeding, TWSI seeks approval to secure financing arrangements, i.e., indebtedness, to fund repairs and capital improvements to its wastewater systems at Maple Green, Cedar Hill, and Smoky Village. In order to repay this debt, TWSI further seeks to institute a monthly surcharge that will increase the monthly rates paid by all TWSI customers. Finally, to fund repairs and capital improvements to its Summit View Resort wastewater system, it seeks approval to charge a one-time fee to property owners being served by that system. Therefore, as TWSI's requests directly implicate the rates and charges that will be paid by the

¹⁴ Tenn. Code Ann. § 65-4-118(b)(1).

consumers and property owners that it serves, the Hearing Officer finds that there exists a sufficient factual basis upon which to find that legal rights or interests held by those property owners and consumers may be determined in this proceeding, and that, under Tenn. Code Ann. § 65-4-118, 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.” The petitioner in this matter, Tennessee Wastewater, has not filed a response or otherwise objected to the Consumer Advocate’s request to intervene in this matter. Therefore, given the nature of the proceeding, the promptness of the request to intervene, and lack of opposition thereto, the Hearing Officer finds that the Consumer Advocate’s intervention should not unduly delay or prejudice the administration of these proceedings.

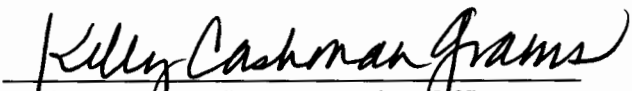
THEREFORE, upon due consideration, the Hearing Officer concludes that the legal rights, duties, privileges, immunities or other legal interest of the consumers and property owners of wastewater services provided by Tennessee Wastewater may be determined in this proceeding and that the Consumer Advocate qualifies under law as an intervenor for the purpose of representing those consumer interests. Further, that the Consumer Advocate’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 the Consumer Advocate’s *Petition 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