

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 27, 2015

IN RE:

PETITION OF TENNESSEE WASTEWATER SYSTEMS,) DOCKET NO.
INC. TO AMEND THEIR CCN TO EXPAND ITS) 15-00025
SERVICE AREA TO INCLUDE A PORTION OF)
WILLIAMSON COUNTY IN TENNESSEE, KNOWN AS)
THE ENCLAVE AT DOVE LAKE)

ORDER GRANTING, IN PART AND DENYING, IN PART AMENDED REQUEST FOR
OFFICIAL NOTICE

This matter is before the Hearing Officer of the Tennessee Regulatory Authority (“Authority” or “TRA”) on the *Amended Request for Official Notice* (“*Amended Request*”) filed by the Consumer Advocate and Protection Division of the Office of the Attorney General (“CAPD” or “Consumer Advocate”) on July 8, 2015.

AMENDED REQUEST

In its *Amended Request*, the Consumer Advocate requests that the TRA take official notice of the record in TRA Docket No. 14-00006, the Transcript of Proceedings at the Authority Conference held on August 11, 2014, and the record in TRA Docket No. 14-00136.¹ According to the Consumer Advocate, “these records and transcript may be relevant to resolve one or more issues that may be presented by the Consumer Advocate or other parties in this matter.”² The Consumer Advocate states “[t]he Administrative Procedures Act (“APA”) § 4-5-313(6)(A)(ii) explicitly provides that official notice may be taken of “[t]he record of other proceedings before

¹ *Amended Request*, p. 1 (July 8, 2015).

² *Id.*

the agency.’ Likewise, APA § 4-5-313(1) provides that agencies ‘shall admit and give probative effect to evidence admissible in a court.’” Further, the CAPD explains that “[u]nder the rules of evidence, court records are properly subject to judicial notice.”³

RESPONSE TO MOTION OF CONSUMER ADVOCATE’S AMENDED REQUEST FOR OFFICIAL NOTICE

On July 15, 2015, TWSI filed a *Response to Motion of Consumer Advocate’s Amended Request for Official Notice* (“*TWSI Response*”) objecting to the *Amended Request* because the “Consumer Advocate has not specified the ‘facts or material’ which the agency is being asked to notice,” and therefore, the *Amended Request* does not comply with the requirements of Tenn. Code Ann. § 4-5-313.⁴ TWSI argues that “the Consumer Advocate’s broadly worded motion does not provide either adequate notice to the parties or a sufficient legal basis for the agency to rely upon the noticed material. Since the motion does not ask the agency to take notice of ‘specific facts or materials’ it must be denied.” Further, TWSI argues that “comments made during deliberations that are not incorporated into the Authority’s written order have no legal significance. Since such comments are not part of ‘the record of other proceedings before the agency,’ such comments do not fall under T.C.A. 4-5-313(6)(A)(ii) and are not admissible under the ‘official notice’ statute.”⁵ For these reasons, TWSI maintains that the *Amended Request* should be denied.

FINDINGS AND CONCLUSIONS

Tenn. Code Ann. §4-5-313(6) provides:

(6)(A) Official Notice may be taken of:

- (i) Any fact that could be judicially noticed in the courts of this state;
- (ii) The record of other proceedings before the agency;

³ *Id.* (quoting *State v. Lawson*, 291 S.W.3d 864, 869-70 (Tenn. 2009)).

⁴ *TWSI Response*, pp. 1-2 (July 15, 2015).

⁵ *Id.* at 2-3.

- (iii) Technical or scientific matters within the agency's specialized knowledge; and
- (iv) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

(B) Parties must be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in part on facts or material noticed, of the specific facts or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the facts or material so noticed.

In addition, Tenn. Code Ann. § 65-2-109(2) provides that in all contested cases “[a]ll evidence, including records and documents in the possession of the authority of which it desires to avail itself, shall be offered and made a part of the record in the case,”

The Hearing Officer finds that Tenn. Code Ann. § 4-5-313(6)(ii) specifically allows the Authority to take official notice of “the record of other proceedings before the agency,” and the Authority has done so many times in previous dockets.⁶ In fact, in TRA Docket No. 13-00017, TWSI actually requested that the Authority take official notice of an entire docket rather than certain portions of a docket as requested by the Consumer Advocate in that docket.⁷ Further, Tenn. Code Ann. § 65-2-109(2) authorizes the Authority to take official notice of any document in the possession of the Authority, thus, the transcript of the proceedings is proper for official notice. The Hearing Officer also finds that the dockets and transcript for which the Consumer Advocate seeks official notice are relevant to the issues in this docket. For these reasons, the

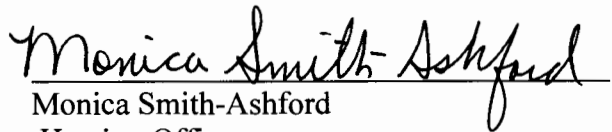
⁶ See, e.g., *In re: Petition of Atmos Energy Corporation to Establish an Annual Rate Review Mechanism Pursuant to Tenn. Code Ann. § 65-5-103(d)(6)*, TRA Docket No. 14-00081, *Notice of Official Notice* (September 24, 2015) (official notice taken of the full administrative record in Authority Docket No. 12-00064, *In re: Petition of Atmos Energy Corporation for a General Rate Increase*); *In re: Petition of Atmos Energy Corporation to Revise Performance Based Ratemaking Mechanism Rider in Tariff*, TRA Docket No. 13-00111, *Order Granting Joint Motion for Official Notice & Notice Taking Official Notice of Record of Proceedings in Prior Dockets* (October 25, 2013) (official notice taken of the record of several prior TRA dockets).

⁷ See *In re: Amended Petition of Emerson Properties, LLC, for Revocation of Certificate of Public Convenience and Necessity held by Tennessee Wastewater Systems, Inc., for the Portion of Campbell County, Tennessee, known as The Villages of Norris Lake, Pursuant to Tenn. Code Ann. 65-4-201*, TRA Docket No. 13-00017, *Motion to Strike Portion of Advocate's Brief or to File this Response*, pp. 2-3 (January 6, 2014).

Hearing Officer grants, in part and denies, in part the CAPD's *Amended Request*. The Hearing Officer will take official notice of the records in TRA Docket Nos. 14-00006 and 14-00136. The Hearing Officer also takes official notice of the Transcript of the Proceedings of the August 11, 2014 Authority Conference, but official notice is limited to the portion of the transcript pertaining to Docket No. 14-00006. In addition, the Consumer Advocate is directed to file in the docket file the specific portions of the Transcript of Proceedings of which it requests the Authority to take official notice.

IT IS THEREFORE ORDERED THAT:

1. The *Amended Request for Official Notice* filed by the Consumer Advocate and Protection Division of the Office of the Attorney General on July 8, 2015 is granted, in part and denied, in part.
2. Official Notice is taken of the record in TRA Docket No. 14-00006 and the record in TRA Docket No. 14-00136.
3. Official Notice is taken of the portion of the Transcript of Proceedings of the August 11, 2014 Authority Conference pertaining to TRA Docket No. 14-00006.
4. The Consumer Advocate and Protection Division of the Office of the Attorney General shall file in this docket the portion of the Transcript of Proceedings of the August 11, 2014 Authority Conference for which is it seeking official notice.


Monica Smith-Ashford
Hearing Officer