

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 7, 2015

IN RE:)	
)	DOCKET NO.
PETITION OF EAGLES NEST, LLC TO)	15-00047
REQUIRE LAUREL HILLS CONDOMINIUMS)	
ASSOCIATION, INC. TO PERMIT CONNECTION)	
TO WATER SYSTEM TO EAGLES NEST, LLC'S)	
PROPERTY ON RENEGADE MOUNTAIN)	

ORDER GRANTING CONSUMER ADVOCATE'S PETITION TO INTERVENE

This matter is before the Hearing Officer of the Tennessee Regulatory Authority ("Authority" or "TRA") upon a *Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General ("Consumer Advocate") on May 14, 2015.

BACKGROUND

On April 22, 2015, Eagles Nest, LLC ("Eagles Nest") filed a petition asserting that Laurel Hills Condominiums Association, Inc. ("Laurel Hills") has improperly denied its request for water service, and asks the Authority to order Laurel Hills to allow Eagles Nest to connect to its utility water system for the purpose of receiving service.¹ According to its *Petition*, Eagles Nest is a Nevada limited liability company that owns real property, which it intends to develop into residential parcels, in the development known as Renegade Mountain in Cumberland County, Tennessee. Laurel Hills is an uncertificated water utility regulated by the TRA that is

¹ *Petition of Eagles Nest, LLC to Require Laurel Hills Condominiums Association, Inc. to Permit Connection to Water System to Eagles Nest, LLC's Property on Renegade Mountain ("Petition")* (April 22, 2015).

providing water service to the Renegade Mountain community pursuant to the TRA's April 18, 2013 Order in TRA Docket No. 12-00030.²

In its *Petition*, Eagles Nest asserts that no alternative source of water is reasonably available and that its request for connection to the water system does not constitute an extension of the system, but rather, is a new connection in the usual course of business of the operation of the water system.³ Further, Eagles Nest states that despite its attempts to reach agreement, Laurel Hills has refused to allow it to connect to its water system, and asserts that that this refusal constitutes a denial of service in violation of TRA Rule 1220-04-03-.19.⁴ Finally, Eagles Nest states that it is willing and able to pay the required connection fees and regular monthly charges, and that without Laurel Hills' water service it cannot complete the development of its property.⁵

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."⁶ In support of its request, the Consumer Advocate states under Tenn. Code Ann. § 65-4-118 it is authorized to represent the interests of Tennessee consumers of public utility services in proceedings before the Authority.⁷ Further, that, pending divestment, Laurel Hills is a public water utility regulated by the TRA that

² In its *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System*, issued on April 18, 2013 in TRA Docket No. 12-00030, the TRA found that Laurel Hills did not satisfy the statutory qualifications to obtain a Certificate of Public Convenience and Necessity, ordered Laurel Hills to divest ownership of the utility assets, and to maintain safe and adequate service pending the sale. After exhausting its appeals of the TRA's decision and despite its attempts to secure a new owner and transfer the property, Laurel Hills continues to own and operate the water system. See TRA Docket Nos. 12-00030 and 12-00077 for a complete history and current status of the ownership and operation of the water system currently held by Laurel Hills.

³ *Petition*, p. 1 ¶ 2.

⁴ *Id.* at p. 3 ¶¶ 9-12.

⁵ *Id.* at p. 3 ¶ 10 and p. 4 ¶ 13.

⁶ *Petition to Intervene* (May 14, 2015).

⁷ *Id.* at p. 1 ¶ 1.

provides service to the area in which Eagles Nest's property is situated and that Eagles Nest has no other water source is reasonably available to it.⁸ Finally, the Consumer Advocate states that Laurel Hills has failed to comply with the TRA's April 18, 2013 Order and TRA Rule 1220-04-03-.19 in refusing to provide service in the usual course of operating the public water system and failing to promptly and properly notify Eagles Nest of its reasons for denial of service.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 therefore, asks that its *Petition to Intervene* 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 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;

⁸ *Id.* at, p. 1 ¶ 2 and p. 2 ¶ 5.

⁹ *Id.* at pp. 2-3 ¶¶ 6-9.

¹⁰ *Id.* at p. 3 ¶¶ 10-11.

- (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 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

¹¹ Tenn. Code Ann. § 4-5-310.

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

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

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, is yet in its early stages, and a hearing date has not been established. Thus, 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 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

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.

¹⁴ Tenn. Code Ann. § 65-4-118(b)(1).

In the instant proceeding, Eagles Nest is a property owner within the Renegade Mountain community development but is located in an adjacent area that is not currently receiving service from the Laurel Hills water system. After being refused service, Eagles Nest now asks the TRA to order Laurel Hills to allow it to connect to the water system for the purpose of receiving water service. As the issue presented involves whether or not a particular consumer is entitled to service and, if so, has been improperly denied that service, 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 Eagles Nest, a potential consumer of utility water service, may be determined in this proceeding. And further, that under Tenn. Code Ann. § 65-4-118, the Consumer Advocate is qualified to represent that interest 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.” Neither the Petitioner/Complainant Eagles Nest nor the Respondent Laurel Hills filed a response or otherwise objected to the Consumer Advocate’s request to intervene in this matter.¹⁵ Thus, given the nature of the proceeding, promptness of the request to intervene, and the 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 finds that the legal rights, duties, privileges, immunities or other legal interest of Eagles Nest, a property owner and potential customer within the designated service area of Laurel Hills, may be determined in this

¹⁵ During a Status Conference held with the Parties on August 6, 2015, Eagles Nest and Laurel Hills each stated that it had no objection to the Consumer Advocate’s intervention in these proceedings.

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 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