

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION OF TENNESSEE)	
WASTEWATER SYSTEMS, INC.,)	DOCKET NO. 15-00071
FOR APPROVAL OF LOANS)	
)	

**REPLY TO TWSI'S OPPOSITION TO CONSUMER ADVOCATE'S
PETITION TO INTERVENE**

The Consumer Protection and Advocate Division¹ of the Office of the Attorney General ("Consumer Advocate") filed a *Petition to Intervene* ("*Petition*") in this matter pursuant to Tenn. Code Ann. § 65-4-118 on the grounds that consumers may ultimately bear the burden of Tennessee Wastewater Systems, Inc.'s, ("TWSI" or "Company") loans though increased rates, which is a direct consumer interest. TWSI has requested that the Tennessee Regulatory Authority ("TRA") approve financing arrangements, totaling new debt obligations of \$221,171.30, pursuant to Tenn. Code Ann. § 65-4-109. TWSI opposed the Consumer Advocate's *Petition* in its August 28, 2015, *Response to Consumer Advocate's Motion to Intervene*, summarily arguing that a § 65-4-109 filing "does not require a hearing and is not a contested case proceeding." Not only does § 65-4-109 fail to support the Company's position, but also the Company's assertion is contrary to Tennessee's statutory scheme: the determinants of a contested case are established in the Uniform Administrative Procedures Act ("UAPA") at § 4-5-102 and in TRA Rule 1220-1-2-.02. Finally, Tenn. Code Ann. § 65-4-118 gives the Consumer Advocate express authority to intervene in *any*

¹ Please note that this name has changed from "Consumer Advocate and Protection Division" to "Consumer Protection and Advocate Division."

matter. TWSI's objection is therefore unfounded and the Consumer Advocate's *Petition* should be granted.

First, TWSI's statement that a § 65-4-109 filing does not provide for a hearing contravenes the language of the statute. The statute reads as follows: "It shall be the duty of the authority *after hearing* to approve any such proposed issue . . ." (emphasis added). Consequently, TWSI's contention that its filing "does not require a hearing" is incorrect and lacks any statutory basis.

Second, TWSI's claim that filings under § 65-4-109 are not contested case proceedings diverges from Tennessee's statutory scheme as established in the UAPA and the TRA Rules. UAPA § 4-5-102(3) defines a contested case as "a proceeding, including a declaratory proceeding, in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing." The corresponding commentary section confirms that "[t]here is no doubt that this chapter applies to the public service commission,"² which is now the TRA. Here, TWSI's right, duties, or privileges, as well as those of consumers, under § 65-4-109 must be determined after a TRA hearing, as explained above. Moreover, TRA Rule 1220-1-2-.02(1) recognizes that the TRA "may commence a contested case at any time with respect to any matter within its jurisdiction." Notably, the TRA's Final Conference Agenda for September 14, 2015, includes consideration of convening a contested case and appointing a hearing officer in this Docket. Convening a contested case proceeding for a filing under § 65-4-109 is entirely proper.

Third, even if this matter were not a contested case, the Consumer Advocate has the authority to intervene in any matter and can accordingly do so here. Tenn. Code Ann. § 65-4-118 states that the Consumer Advocate can "participate or intervene as a party in *any matter or*

² Tenn. Code Ann. § 4-5-102, *Uniform Administrative Procedures Act*, at 223 (vol. 2A, 2015).

proceeding before the authority.” Not only is this proceeding before the TRA, but also the Consumer Advocate has broad, statutory authority to intervene.

Consumer Advocate intervention is proper here because direct consumer interests are at stake. Per § 65-4-118, the Consumer Advocate “has the duty and authority to represent the interests of Tennessee consumers of public utilities services.” This Docket directly implicates consumer interests because the Company will ultimately seek recovery of loan expenses through rates.³ Although TWSI stated that it will not seek to modify rates in this proceeding, but will instead wait for a future rate proceeding,⁴ its rebuttal testimony in Docket 14-00136 makes clear that the Company’s ability to access loan funding is contingent upon the TRA’s approval of the rate increase.⁵ TWSI is emphatic that it cannot obtain a loan from a bank unless the TRA approves consumer rates to cover loan repayment.⁶ The Company’s position would be significantly compromised if they now contend that the loans at issue in this Docket do not implicate increased consumers rates. Rather, the requested approval of loans here affects consumers’ interests because, by the Company’s own admission, increased rates are the gateway to loans.

Based on the foregoing reasons, the TRA should convene a contested case proceeding and grant the Consumer Advocate’s *Petition*.

³ Petition of TWSI for Approval of Financing Arrangements, *Data Response*, Answer 3 (Sept. 3, 2015).

⁴ *Id.* at Answers 2-3.

⁵ Petition of TWSI for Approval of Capital Improvement Surcharges and Financing Arrangements, *Rebuttal Testimony of Fred Howell*, TRA Docket 14-00136 at 2-3 (Aug. 19, 2015); Petition of TWSI for Approval of Capital Improvement Surcharges and Financing Arrangements, *Rebuttal Testimony of Charles Hyatt*, TRA Docket 14-00136 at 3 (Aug. 19, 2015).

⁶ Petition of TWSI for Approval of Capital Improvement Surcharges and Financing Arrangements, *Rebuttal Testimony of Fred Howell*, TRA Docket 14-00136 at 2-3 (Aug. 19, 2015); Petition of TWSI for Approval of Capital Improvement Surcharges and Financing Arrangements, *Rebuttal Testimony of Charles Hyatt*, TRA Docket 14-00136 at 3 (Aug. 19, 2015).

RESPECTFULLY SUBMITTED,



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Dated: Sept 10, 2015.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

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This the 10th day of Sept, 2015.


Erin Merrick