

BEFORE THE TENNESSEE REGULATORY AUTHORITY

**NASHVILLE, TENNESSEE
October 21, 2015**

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

ORDER GRANTING CONSUMER ADVOCATE’S PETITION TO INTERVENE

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (“Authority” or “TRA”) during a status conference held with Tennessee Wastewater Systems, Inc. (“Tennessee Wastewater” or “TWSI”) and the Consumer Protection and Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) (collectively, the “Parties”) on October 6, 2015.

BACKGROUND

On August 5, 2015, Tennessee Wastewater Systems, Inc. (“Tennessee Wastewater” or “TWSI”) filed a *Petition of Tennessee Wastewater Systems, Inc. for Approval of Financing Arrangements* (“*Petition*”) requesting Authority approval of financing arrangements, which total \$221,171.30, related to the purchase of vehicles, heavy machinery, and land for use in the operations of the utility and as required by state regulation.¹ On September 14, 2015, the Authority panel assigned to this docket voted unanimously to convene a contested case proceeding and to appoint a hearing officer to prepare the matter for hearing.²

¹ *Petition* (August 5, 2015).

² *Order Convening a Contested Case and Appointing a Hearing Officer* (September 23, 2015).

PETITION TO INTERVENE & RELATED FILINGS

On August 21, 2015, the Consumer Advocate filed its *Petition to Intervene* asking 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.”³ 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.⁴ The Consumer Advocate asserts that through an increase in future rates consumers may ultimately bear the burden of these financing arrangements, which include three loans and one promissory note. Therefore, the legal interests of consumers are directly at issue in this proceeding.⁵ 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, that its *Petition to Intervene* should be granted.⁶

On August 28, 2015, Tennessee Wastewater filed a *Response to the Consumer Advocate’s Motion to Intervene*, in which it opposed the intervention on the grounds that filings made under Tenn. Code Ann. § 65-4-109 do not require a hearing and are not contested case proceedings.⁷ Thereafter, the Consumer Advocate filed its *Reply to TWSI’s Opposition to Consumer Advocate’s Petition to Intervene* (“Reply”) on September 11, 2015. In its *Reply*, the Consumer Advocate states that TWSI’s assertions are contrary to the language of Tenn. Code Ann. § 65-4-109 and the statutory scheme established in Tenn. Code Ann. § 4-5-102 concerning

³ *Petition to Intervene*, p. 1 (August 21, 2015).

⁴ *Id.* at ¶¶ 1 and 2.

⁵ *Id.* at ¶¶ 3 - 6.

⁶ *Id.* at ¶¶ 7.

⁷ *Response to the Consumer Advocate’s Motion to Intervene* (August 28, 2015).

hearings, and in TRA Rule 1220-1-2-.02, which recognizes the TRA's discretion to commence a contested case as to any matter within its jurisdiction.⁸ Further, the Consumer Advocate contends that it has broad statutory authority to intervene in any matter before the TRA under Tenn. Code Ann. § 65-4-118, and that its intervention in this case is proper because consumer interests are directly at stake.⁹

Also on September 11, 2015, Tennessee Wastewater filed its *Response to the Consumer Advocate's Reply to TWSI's Opposition to Consumer Advocate's Petition to Intervene* ("Response to Reply"). In its *Response to Reply*, TWSI noted that no rate increase or other assessment to the consumer is sought at this time, and that the Consumer Advocate's petition to intervene would be appropriate if and when it seeks recovery of these costs or a rate increase.¹⁰ In addition, TWSI contends that its request in this proceeding is separate and distinct from its request for approval of certain loans in Docket No. 14-00136, and that any statements made in that docket have no applicability to the instant case.¹¹ Finally, TWSI asserts that this is a simple matter that involves routine financial arrangements necessary for it to conduct its ordinary business, and, as such, it seeks a speedy resolution without further cost or delay.¹²

STATUS CONFERENCE

The status conference began as noticed in the Hearing Room on the Ground Floor of the Andrew Jackson State Office Building located at 500 Deaderick Street, Nashville, Tennessee. The parties in attendance were as follows:

Tennessee Wastewater - Jeff Ridsen, Esq., General Counsel, Adenus Group, LLC (the parent company of TWSI), 849 Aviation Parkway, Smyrna, TN 37167; and

⁸ *Reply*, pp. 1-2 (September 11, 2015).

⁹ *Id.* at 3.

¹⁰ *Response to Reply*, p. 1 (September 11, 2015).

¹¹ *Id.*

¹² *Id.* at 2.

Consumer Advocate - Erin Merrick, Esq., Assistant Attorney General, P.O. Box 20207,
Nashville, Tennessee 37202.

During the status conference, the Parties presented their positions and responded to the Hearing Officer's questions concerning the Consumer Advocate's *Petition to Intervene*.

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;
 - (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.¹³

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.¹⁴ 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.¹⁵

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

¹³ Tenn. Code Ann. § 4-5-310.

¹⁴ Tenn. Code Ann. § 4-5-310(c) and (d).

¹⁵ Tenn. Comp. R. & Regs. 1220-01-02-.08.

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.¹⁶

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 Tennessee consumers of public utility services 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, in accordance with Tenn. Code Ann. § 65-4-109, TWSI has stated that it seeks approval of certain loans and a promissory note to purchase vehicles, equipment, and land to be used the course of ordinary utility business and for necessary system operations. It has not requested a modification of rates in this proceeding, but Tennessee Wastewater has stated that it intends to seek recovery of its interest expense in a future proceeding, the timing of which has not yet been determined.¹⁷

¹⁶ Tenn. Code Ann. § 65-4-118(b)(1).

¹⁷ Tennessee Wastewater Responses to TRA Data Request Nos. 1 and 2 (September 3, 2015).

Upon consideration of the pleadings and arguments of the Parties, the Hearing Officer finds that there is no legal right, duty, privilege, immunity or other legal interest held by the consumers of the wastewater service provided by TWSI that will be determined in this proceeding, as required for intervention under Tenn. Code Ann. § 4-5-310(a). Nevertheless, as these expenses will be requested by TWSI in the future, the Hearing Officer further finds that allowing the Consumer Advocate to participate in a proactive examination of the proposed financing is appropriate and helpful to a determination of whether these arrangements are reasonable, made in accordance with law, and for a proper purpose. Under Tenn. Code Ann. § 65-4-118, the Consumer Advocate is qualified to represent the consumers' interests in such an examination of this matter before the Authority.

Procedural Due Process

Finally, both Tenn. Code Ann. §§ 4-5-310(a)(3) and 4-5-310(b) require that the Hearing Officer grant a petition for intervention upon determining that "the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing intervention." Tennessee Wastewater has objected to the Consumer Advocate's request to intervene on the grounds that this is a simple matter that does not require the Consumer Advocate's participation. Nonetheless, the Hearing Officer finds that the Consumer Advocate's intervention would not hinder the interests of justice nor unduly delay or prejudice the administration of these proceedings. Therefore, the Hearing Officer finds that intervention is appropriate under Tenn. Code Ann. § 4-5-310(b) and should be granted.

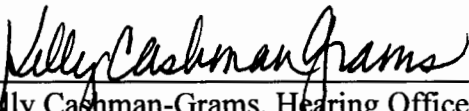
THEREFORE, upon due consideration, the Hearing Officer concludes that the Consumer Advocate's request to intervene is timely-filed and its intervention should not impair the interests of justice or the orderly and prompt conduct of the proceedings. For these reasons, the Hearing

Officer concludes that the Consumer Advocate's *Petition to Intervene* should be granted in accordance with Tenn. Code Ann § 4-5-310(b).

IT IS THEREFORE ORDERED THAT:

1) The *Petition to Intervene* filed by the Consumer Protection and Advocate Division of the Office of the Attorney General is granted.

2) The Consumer Protection and Advocate 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