

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

June 14, 2017

IN RE:

JOINT PETITION OF CARTWRIGHT CREEK, LLC  
AND ARRINGTON NATIONAL DEVELOPMENT, LLC  
FOR APPROVAL OF SPECIAL CONTRACT

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DOCKET NO.  
16-00097

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ORDER GRANTING CONSUMER ADVOCATE'S PETITION TO INTERVENE

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This matter is before the Hearing Officer of the Tennessee Public Utility Commission ("Commission" or "TPUC")<sup>1</sup> upon a *Petition to Intervene* filed by the Consumer Protection and Advocate Division of the Office of the Tennessee Attorney General ("Consumer Advocate") on May 18, 2017.

**BACKGROUND**

Cartwright Creek, LLC ("Cartwright Creek") is a public utility subject to the TPUC's jurisdiction providing wastewater service to residential communities in the State of Tennessee. On August 22, 2016, Cartwright Creek and Arrington National Development, LLC ("Arrington") filed a joint petition, pursuant to TPUC Rule 1220-04-01-.07, seeking Commission approval of a special contract between Cartwright Creek and Arrington regarding the provision of wastewater services to a development called Hideaway at Arrington, located in Williamson County, Tennessee.<sup>2</sup>

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<sup>1</sup> During the regularly scheduled Authority Conference held on March 13, 2017, 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.

<sup>2</sup> *Petition*, p. 1 (August 22, 2016).

## PETITION TO INTERVENE

In its *Petition to Intervene*, the Consumer Advocate asks that the Commission grant its request to intervene in this proceeding because “consumers may be adversely affected by the special contract....”<sup>3</sup> 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 Commission, and that Cartwright Creek is a public utility regulated by the TPUC that provides wastewater service to consumers in the State of Tennessee.<sup>4</sup> The Consumer Advocate asserts that the special contract for which approval is sought contains a provision that raises concerns with regard to the amount of connection fees charged to customers.<sup>5</sup> In conclusion, the Consumer Advocate contends that “only by participating in this proceeding can the Consumer Advocate work adequately to protect the interests of consumers...” and; therefore, its *Petition to Intervene* should be granted.<sup>6</sup>

## FINDINGS & CONCLUSIONS

Under Tenn. Code Ann. § 65-2-107, “All persons having a right under the provisions of the laws applicable to the commission 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 commission 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 Commission 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

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<sup>3</sup> *Petition to Intervene*, p.1 (May 18, 2017).

<sup>4</sup> *Id.* at 1-2.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 3.

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.<sup>7</sup>

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.<sup>8</sup> Similarly, TPUC Rule 1220-01-02-.08 directs that requests for intervention before the Commission 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.<sup>9</sup>

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<sup>7</sup> Tenn. Code Ann. § 4-5-310.

<sup>8</sup> Tenn. Code Ann. § 4-5-310(c) and (d).

<sup>9</sup> Tenn. Comp. R. & Regs. 1220-01-02-.08.

Finally, TPUC 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 TPUC 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 in its early stages, and 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 TPUC 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 commission.<sup>10</sup>

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 TPUC Rules, the Consumer Advocate may be permitted to intervene as a party for the purpose of representing those

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<sup>10</sup> Tenn. Code Ann. § 65-4-118(b)(1).

Tennessee consumers of public utility services that have legal rights or interests that may be determined in proceedings before the TPUC. 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 Commission proceeding.

In the instant proceeding, Cartwright Creek and Arrington jointly seek approval of a special contract that establishes wastewater services for a residential development in Williamson County, Tennessee, establishing consumer fees, including, but not limited to, connection fees and monthly service fees. As this matter directly implicates the rates and charges that will be paid by the consumers and property owners that Cartwright Creek 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 Commission.

### ***Procedural Due Process***

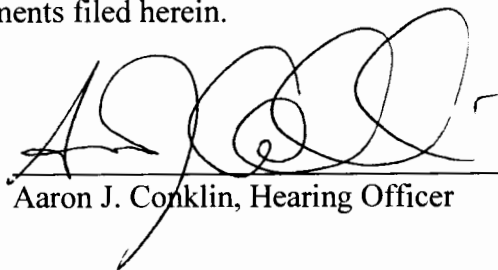
Finally, Tenn. Code Ann. § 4-5-310(a)(3) requires that the Hearing Officer grant a petition for intervention only upon determining that "the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing intervention." The joint petitioners in this matter, Cartwright Creek and Arrington, have 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 of wastewater services provided by Cartwright Creek in the Arrington residential development 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, 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 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.



Aaron J. Conklin, Hearing Officer