

IN THE TENNESSEE PUBLIC UTILITY COMMISSION  
AT NASHVILLE, TENNESSEE

IN RE:	)	
	)	
PETITION OF TENNESSEE	)	
WASTEWATER SYSTEMS, INC.,	)	DOCKET NO. 18-00037
FOR APPROVAL OF A SPECIAL	)	
CONTRACT	)	
	)	

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THE CONSUMER ADVOCATE'S REPLY  
TO TENNESSEE WASTEWATER SYSTEMS, INC.'S  
OBJECTION TO PETITION TO INTERVENE

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Comes now the Consumer Protection and Advocate Division of the Tennessee Attorney General's Office (Consumer Advocate) and files this Reply to the Tennessee Wastewater Systems, Inc.'s (TWSI or Company) Opposition to the Consumer Advocate Division's Motion to Intervene (Opposition). In support of its Petition to Intervene (Intervention) and in response to the Opposition, the Consumer Advocate submits the following:

I. **THE DUTY AND OBLIGATION OF THE TENNESSEE ATTORNEY  
GENERAL'S OFFICE TO REPRESENT TENNESSEE CONSUMERS IN ANY  
MATTER.**

In its Opposition, TWSI argues that its *Petition of Tennessee Wastewater Systems, Inc., for Approval of a Special Contract* (Petition) is such a "routine matter"<sup>1</sup> that the Tennessee Public Service Commission (TPUC or Commission) should handle the review and approval itself without the input of customers.<sup>2</sup> While TWSI recognizes the Consumer Advocate has the duty and authority to represent the interests of Tennessee consumers of public utility services, TWSI

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<sup>1</sup> TWSI does not define what a "routine matter" is or provide a citation to definition.

<sup>2</sup> Opposition at p. 2.

proposes to limit the Consumer Advocate to “non-routine matters” before the Commission.<sup>3</sup> Without agreeing with TWSI’s characterization of the present matter as “routine”, the Consumer Advocate disagrees with TWSI’s proposed limitation on intervention. The statutory language is clear that the Consumer Advocate, with the permission of the Attorney General and Reporter, is fully authorized to “participate or intervene as a party in **any matter or proceeding** before the Authority [sic] or any other administrative, legislative, or judicial body” in accordance with the Uniform Administrative Procedures Act (UAPA) and Authority [sic] rules.<sup>4</sup> The statute places no limitations on the Consumer Advocate’s participation.

By not intervening in this matter, the Consumer Advocate might even be viewed as abrogating its responsibility under the law:

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 (sic) 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 (sic).<sup>5</sup>

The word “may” in this statute confers discretion on the Attorney General to determine the proceedings in which the Consumer Advocate should participate. While TWSI may not think Tennessee consumers have an interest in a so-called “routine matter” like this one, the Consumer Advocate does not take its duties and obligations to Tennessee consumers lightly and carefully considers the matters in which it intervenes. A deliberative review occurred in this Docket, and the Attorney General has given his approval to intervene.

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<sup>3</sup> *Id.* citing Tenn. Code Ann. § 65-4-118.

<sup>4</sup> Emphasis added. *Id.* § 65-4-118(b)(1).

<sup>5</sup> Tenn. Code Ann. § 65-4-118(b)(1).

Without intervention, the Consumer Advocate would not be able to fully participate in these proceedings or be able to appeal a decision of the Commission that it believes is adverse to consumers, nor would it be able to represent consumer interests if TWSI was to appeal a decision of the Commission.<sup>6</sup> Therefore, in denying the Consumer Advocate's Intervention, the Commission would be denying a voice to the consumers affected in this proceeding and who the Consumer Advocate has the statutory duty and authority to represent.

## **II. THE CONSUMER ADVOCATE'S PETITION TO INTERVENE IS SUFFICIENTLY DETAILED.**

The Consumer Advocate contends its Intervention is sufficiently detailed and need not be exhaustive or overly detailed in order to be granted; it need only set forth the interests of the parties in a manner that is sufficient for the hearing officer to make a determination.<sup>7</sup> Additionally, the Consumer Advocate maintains consumers have a specific interest in this proceeding and it has properly given notice to TWSI as to why the Consumer Advocate's Intervention is necessary.

### **A. The Agreement Between Tennessee Wastewater Systems, Inc. and CSX Railroad.**

In its Opposition, TWSI states that no customer interest exists since ABS Properties, LLC (ABS) has agreed to pay the difference in the premium cost between the "existing policy and the one required under the CSX agreement."<sup>8</sup> However, in its Intervention the Consumer Advocate raises concerns about three other insurance requirements<sup>9</sup> set out in single page of a multi-page

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<sup>6</sup> While TWSI states that it will not provide service to this potential customer if the Commission does not approve the contract, TWSI may make a different decision depending on the specifics of a Commission's order. *See Objection*, p. 3, ¶2.

<sup>7</sup> *See* Tenn. Code Ann. § 4-5-310, which requires only that the petition state "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." The Consumer Advocate's enabling statute, Tenn. Code Ann. § 65-4-118, does not place any requirements on the petition to intervene.

<sup>8</sup> Opposition at p. 3, ¶2.

<sup>9</sup> Intervention at p. 2, ¶6 and n. 6. In footnote 6, the Consumer Advocate listed three additional insurance requirements: "(1) Statutory Worker's Compensation and Employer Liability Insurance of available limits of not less than one million dollars; (2) Business Automobile Liability Insurance with available limits of not less than one million dollars;

contract provided in TWSI's initial filings.<sup>10</sup> TWSI has not addressed these three other insurance requirements in its three filings with the Commission to date.<sup>11</sup> The Consumer Advocate's concerns regarding the three additional insurance requirements is not simply idle curiosity. Rather, it is based on the belief that these requirements may have monetary consequences to customers. For example, TWSI states it will be installing a sewer line under the CSX railroad.<sup>12</sup> If this is factual, it would follow that TWSI will conduct construction operations within 50 feet of an "operated railroad track(s)."<sup>13</sup> As such, TWSI or its contractors are required to procure and maintain Railroad Protective Liability Insurance.<sup>14</sup> Again, TWSI has not addressed the requirement of Railroad Protective Liability Insurance, including the cost of this coverage, in any of its three filings to date.<sup>15</sup>

TWSI argues in its Opposition that its agreement with CSX is a "private agreement" and not of interest to its customers. To support this argument, TWSI states the Consumer Advocate has failed to provide any factual basis to "support a customer interest in the private agreement."<sup>16</sup> As explained in the previous paragraphs, the Consumer Advocate contends it has provided sufficient factual basis to support customer interest in the agreement provided in TWSI's Petition. It appears, however, that TWSI may also be arguing the Consumer Advocate is required to provide a factual basis for an argument regarding the other 13 pages of the agreement not provided in its filings with the Commission. It is true the Consumer Advocate does not have specific factual

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and (3) if certain conditions are met, Railroad Protective Liability Insurance." *Id.* at n. 6 citing Exhibit B sections 10.1(i), (iii)-(iv) and 10.5 of *Petition of Tennessee Wastewater Systems, Inc., for Approval of a Special Contract* (Petition).

<sup>10</sup> In addition to the Petition, TWSI filed Direct Testimony of Charles Hyatt in support of its Petition.

<sup>11</sup> See Opposition, Petition, and Direct Testimony of Charles Hyatt.

<sup>12</sup> Opposition at p.1, ¶2.

<sup>13</sup> Petition, Exhibit B, section 10.5.

<sup>14</sup> *Id.*

<sup>15</sup> See Opposition, Petition, and Direct Testimony of Charles Hyatt.

<sup>16</sup> Opposition at p. 3, ¶2.

details regarding pages of the agreement it has not seen. Considering the Consumer Advocate has already identified concerns regarding additional insurance requirements not previously identified by TWSI in its filings, it is also possible that other pages of the agreement may contain provisions or requirements that may be of concern to the Consumer Advocate. This is the purpose of the intervention by the Consumer Advocate -- the opportunity to ask questions, to have access to documents, and participate in the proceedings in meeting its duty and obligation to represent Tennessee consumers.

**B. The Sale of Excess Capacity of Tennessee Wastewater Systems, Inc.'s Treatment Facility.**

As with the agreement with CSX, TWSI argues customers do not have an interest in the excess capacity of the treatment facility.<sup>17</sup> However, it is the customers whose rates have paid for the continued operation and maintenance of a treatment facility with the alleged excess capacity, which surely gives customers an interest in that capacity. Furthermore, despite customers covering the cost of these expenses, TWSI asserts the excess capacity is owned by one of its affiliates with the sale proceeds flowing to that affiliate and not TWSI where it would be regulated income and therefore of benefit to the customers. With such a situation, questions arise that include, but are not limited to, how customers are being compensated for their continued support in the operation and maintenance of the excess capacity of the treatment facility; how TWSI's books reflect the compensation for customers; and what are the terms and conditions between TWSI and its affiliate(s) regarding excess capacity at this treatment facility. In spite of TWSI's assertion to the contrary, the Consumer Advocate asserts that the ownership and sale of wastewater capacity, excess or otherwise, is a regulated transaction.

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<sup>17</sup> Opposition at pp. 3-4.

The Consumer Advocate is cognizant of TWSI's concerns regarding a delay in a resolution in this Docket adversely impacting service to a potential customer. To address this concern but allowing for appropriate time and discovery on the complexities associated with the issue of excess capacity, the Consumer Advocate suggests the Commission open a separate docket on the issue of excess capacity. Accordingly, customers have an interest in such a transaction.

### III. CONCLUSION

As explained above, the Consumer Advocate has provided both the factual basis for its intervention as well as the legal bases for intervention under both its enabling statute<sup>18</sup>, and the provisions governing intervention under the UAPA.<sup>19</sup> For the reasons stated here and in the initial petition, the Consumer Advocate's Petition to Intervene should be granted.

RESPECTFULLY SUBMITTED,

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DATE: April 23, 2018

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<sup>18</sup> Tenn. Code Ann. § 65-4-118.

<sup>19</sup> Tenn. Code Ann § 4-5-310.

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:

Jeff Riden  
General Counsel  
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This the 23<sup>rd</sup> day of April 2018.

Karen H Stachowski  
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