

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

November 8, 2018

IN RE:

PETITION TENNESSEE WASTEWATER SYSTEMS,  
INC., FOR APPROVAL OF A SPECIAL CONTRACT

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DOCKET NO.  
18-00037

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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") on the *Petition to Intervene* filed by the Consumer Protection and Advocate Division of the Office of the Tennessee Attorney General ("CPAD" or "Consumer Advocate").

**BACKGROUND**

On March 29, 2018, Tennessee Wastewater Systems, Inc. ("TWSI") filed a *Petition of Tennessee Wastewater Systems, Inc. for Approval of a Special Contract* ("Petition") pursuant to Commission Rule 1220-04-01-.07 seeking approval of a special contract with ABS Properties, LLC ("ABS") regarding the provision of wastewater service to a commercial property in Williamson County Tennessee.<sup>1</sup> The Consumer Advocate filed a *Petition Intervene* on April 10, 2018, and TWSI filed an *Objection to the Intervention of the Consumer Advocate and Protection Division* ("TWSI Objection"). The Consumer Advocate filed *The Consumer Advocate's Reply to Tennessee Wastewater Systems Inc.'s Objection to Petition to Intervene* ("Consumer Advocate Reply"), and TWSI requested that oral arguments be scheduled. The

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<sup>1</sup> *Petition*, p. 1 (March 29, 2018).

Hearing Officer held a Status Conference on August 8, 2018, in which the parties presented oral arguments on the Consumer Advocate's *Petition to Intervene*.

### ***POSITIONS OF THE PARTIES***

#### ***CONSUMER ADVOCATE'S PETITION TO INTERVENE***

In its *Petition to Intervene*, the Consumer Advocate seeks to intervene in these proceedings pursuant to Tenn. Code Ann. § 65-4-118, which qualifies the Consumer Advocate to intervene in proceedings before the Commission in order to represent the interests of Tennessee consumers of public utility services.<sup>2</sup> The Consumer Advocate states TWSI wants to tie ABS' commercial property to TWSI's existing Clovercroft Treatment Facility for the Clovercroft development due to its proximity. However, in order to accomplish this, the Consumer Advocate states that TWSI must install a connection line under a CSX railroad line.<sup>3</sup> According to the Consumer Advocate, CSX requires a \$5 million insurance policy for the easement and line installation, and ABS has agreed to pay the difference between the premium price for the installation and TWSI's current insurance policy.<sup>4</sup> The Consumer Advocate argues that "[w]hile the *Petition* addresses the commercial general liability coverage requirement, it does not address other insurance requirements listed in Exhibit B to the *Petition*. Additionally, TWSI, provides only one page of a fourteen page agreement with CSX in its attachment to the *Petition* so other terms and conditions set out in the agreement are unknown to the Commission and Consumer Advocate."<sup>5</sup>

The Consumer Advocate also raises concerns that TWSI states it is not selling capacity to ABS for its connection Clovercroft since Adenus Solutions Group, LLC ("Adenus") owns the

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<sup>2</sup> Tenn. Code Ann. § 65-4-118(b)(1) states, "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 commission 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>3</sup> *Petition to Intervene*, p. 2 (April 10, 2018).

<sup>4</sup> *Id.*

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

excess capacity at the system owned by TWSI.<sup>6</sup> However, according to the Consumer Advocate, TWSI has failed to provide a copy of the agreement between TWSI and Adenus resulting in Adenus owning the excess capacity.<sup>7</sup> The Consumer Advocate maintains that the “interests of consumers, including, without limitation, the terms and conditions of the agreement with CSX Transportation, Inc., the increase of commercial general liability insurance, and interest of TWSI’s existing consumers regarding Adenus’ ownership of the excess capacity of TWSI’s Clovercroft Treatment facility as set out in the *Petition*, may be affected by determination and orders made by the Commission in this matter.”<sup>8</sup>

### ***TWSI OBJECTION***

TWSI asks that the *Petition to Intervene* be denied because it fails to state any facts that show how this proceeding may impact the legal rights or interests of customers such that the Consumer Advocate would be allowed to intervene under Tenn. R. and Reg. 1220-1-2-.08. TWSI argues that the contract with CSX is a private agreement, and “CAD [Consumer Advocate] has not provided any factual basis to support a customer interest in the private agreement between TWS and the railroad or the special contract between TWS and ABS.”<sup>9</sup> TWSI argues that this is a standard agreement with only one additional provision added regarding the insurance. In addition, TWSI maintains that the Consumer Advocate has not stated any facts with particularity to show how consumers have an interest in the ownership of the excess capacity in the treatment facility since the developer paid for all of the capacity to serve the development.<sup>10</sup> Further, TWSI argues that excess capacity is a larger issues that does not need to be addressed in this docket.

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<sup>6</sup> *Id.* at 2-3.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.*

<sup>9</sup> *TWSI Objection*, p. 2 (April 17, 2018).

<sup>10</sup> *Id.*

### **CONSUMER ADVOCATE REPLY**

In the *Consumer Advocate Reply*, the Consumer Advocate maintains that its *Petition to Intervene* 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>11</sup> The Consumer Advocate points out that the single page provided of the multi-page contract between CSX and TWSI also contains three other insurance provisions that TWSI has not discussed in its filings. The Consumer Advocate contends that the purpose of the intervention is the “opportunity to ask questions, to have access to documents, and participate in the proceedings in meeting its duty and obligation to represent the Tennessee consumers.”<sup>12</sup>

With regard to the excess capacity issue, the Consumer Advocate explains that it is the “customers whose rates have paid for the continued operation and maintenance of a treatment facility and the alleged excess capacity, which surely gives customer an interest in that capacity.”<sup>13</sup> To address TWSI’s concerns about delaying this docket by addressing the complexities of the excess capacity issue in this docket, the Consumer Advocate suggests that the Commission open a separate docket to address the issue of excess capacity.

### **FINDINGS & CONCLUSIONS**

Tenn. Code Ann. § 4-5-310 establishes the following criteria for granting petitions to intervene:

(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

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<sup>11</sup> *Consumer Advocate Reply*, p. 3 (April 23, 2018).

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.*

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>14</sup>

Although it is not an automatic or absolute right to participate in proceedings before the Commission, Tenn. Code Ann. § 65-4-118(b)(1) provides a general basis for the qualification of the Consumer Advocate to be permitted to intervene as a party to represent the interests of Tennessee public utility consumers. It provides 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 commission 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>15</sup>

The Hearing Officer finds that there is a sufficient factual basis to find that the legal rights or interests held by those consumers may be determined in this proceeding. The contract between TWSI and CSX requires TWSI obtain an additional \$5 million insurance policy and also contains provisions requiring additional insurance requirements.

In addition, in Docket No. 18-00071, Staff Compliance Review of TWSI, one of the Staff's findings was related to the sale of excess capacity. The finding was based on the fact that

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<sup>14</sup> Tenn. Code Ann. § 4-5-310.

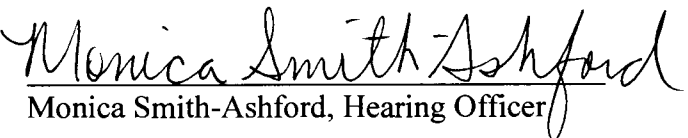
<sup>15</sup> Tenn. Code Ann. § 65-4-118(b)(1).

ratepayers pay for maintenance and improvements on a system but do not benefit from the sale of excess capacity once the system has been transferred to TWSI.<sup>16</sup> The Hearing Officer finds that similar issues may be present in this docket related to the sale of excess capacity by Adenus, and TWSI consumers certainly have a legal interest at stake. Based on these findings, the Hearing Officer determines that the facts in this docket indicate that TWSI utility consumers have an interest in these proceedings.

THEREFORE, upon due consideration, the Hearing Officer concludes that the legal rights, duties, privileges, immunities or other legal interest of Tennessee consumers may be determined in this proceeding. Further, the Hearing Officer finds that the Consumer Advocate qualifies under law as an intervenor for the purpose of representing those consumer interests, and its *Petition to Intervene* was timely-filed and 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:**

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

  
Monica Smith-Ashford, Hearing Officer

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<sup>16</sup> See *In Re: Tennessee Wastewater Systems, Inc. Staff Compliance Review for the Period January 1, 2016 Through June 30, 2017*, Docket No. 18-00071, *Order Approving Compliance Report of TPUC Utilities Division*, p. 10 (September 24, 2018).