

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

February 26, 2020

IN RE:)	
)	
JOINT PETITION OF TENNESSEE-AMERICAN)	DOCKET NO.
WATER COMPANY, AND THUNDER AIR, INC.)	20-00011
D/B/A JASPER HIGHLANDS DEVELOPMENT,)	
INC. FOR APPROVAL OF A PURCHASE)	
AGREEMENT AND FOR THE ISSUANCE OF A)	
CERTIFICATE OF CONVENIENCE AND)	
NECESSITY)	

ORDER GRANTING THE PETITION TO INTERVENE FILED BY THE
CONSUMER ADVOCATE

This matter is before the Hearing Officer of the Tennessee Public Utility Commission (“Commission” or “TPUC”) to consider the *Petition to Intervene* filed by the Consumer Advocate Unit in the Financial Division of the Office of the Attorney General (“Consumer Advocate”) on February 19, 2020.

RELEVANT BACKGROUND

On February 3, 2020, Tennessee-American Water Company (“TAWC” or the “Company”) and Thunder Air Inc. d/b/a Jasper Highlands Development, Inc. (“Thunder Air”) (together, the “Petitioners”) filed an *Expedited Joint Petition of Tennessee-American Water Company and Thunder Air, Inc. d/b/a Jasper Highlands Development Inc. for Approval of an Asset Purchase Agreement and for the Issuance of a Certificate of Convenience and Necessity* (“Joint Petition”). TAWC seeks approval of a purchase agreement for the water system owned by Thunder Air and

the issuance of a Certificate of Public Convenience and Necessity (“CCN”) to own and operate the system owned by Thunder Air and to serve the Thunder Air development.

CONSUMER ADVOCATE’S *PETITION TO INTERVENE*

On February 19, 2020, the Consumer Advocate filed a *Petition to Intervene* seeking to intervene in the docket pursuant to Tenn. Code Ann. § 65-4-118, which qualifies the Consumer Advocate to represent the interests of Tennessee consumers of public utility services in proceedings before the Commission. The Consumer Advocate states that this transaction is substantially the same as one previously filed in Docket No. 18-00099 that was withdrawn on February 14, 2019 by TAWC and Thunder Air. According to the Consumer Advocate, in the previous docket, the Petitioners sought approval of the purchase price used for setting rates of \$1,500,000, approval of TAWC’s Capital Riders surcharges being applied to Jasper Highlands consumers, and the grant of the CCN. In the current docket, the Consumer Advocate points out that the Petitioners are seeking approval of accounting and rate base treatments that reflect a purchase price of \$2,298,000. In addition, the Consumer Advocate states that “TAWC seeks to apply ‘all other rates and fees as authorized and applied to all other customers to the customers of Thunder Air, Inc. as well’, including ‘late fees, service activation fees, returned check fees, disconnections fees, the Capital Recovery Riders as approved by TPUC, and the PCOP Rider as appropriate.’”¹

According to the Consumer Advocate, TAWC and Thunder Air have requested expedited consideration of the *Joint Petition*, but “...additional investigation and discovery will be necessary to determine whether the proposed agreement, costs, and rate base treatment are appropriate and just and reasonable under Tennessee law.”² The Consumer Advocate maintains that the “interests

¹ *Petition to Intervene*, p. 2 (February 19, 2020).

² *Id.* at 3.

of consumers may be affected by determinations and orders made by TPUC with respect to (A) the interpretation, application, and implementation of Tenn. Code Ann. § 65-5-103(a), Tenn. Code Ann. § 65-5-103(d), and other relevant statutory and regulatory provisions, and (B) the review and analysis of the Petitioners' documentation, financial spreadsheets, and materials.”³ Further, the Consumer Advocate asserts that only by participating in this docket can it adequately represent the interests of Tennessee consumers.⁴ TAWC does not oppose the Consumer Advocate's *Petition to Intervene*.

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 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.⁵

³ *Id.*

⁴ *Id.*

⁵ Tenn. Code Ann. § 4-5-310.

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.⁶


Because TAWC seeks to purchase a new water system and obtain a CCN to serve a new area, which will require that rates be set, the Hearing Officer finds that there is sufficient factual basis to find that the legal rights or interests held by Tennessee consumers may be determined in this proceeding. THEREFORE, upon due consideration, the Hearing Officer concludes that the legal rights, duties, privileges, immunities or other legal interest of Tennessee public utilities 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, there is no opposition to its intervention, 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 Advocate Unit in the Financial Division of the Office of the Attorney General is granted. The Consumer Advocate Unit in the Financial

⁶ Tenn. Code Ann. § 65-4-118(b)(1).

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