

IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:)
)
PETITION FOR DECLARATORY ORDER) Docket No. 20-00024
BY ENGIE DEVELOPMENT, LLC)
)

PETITION TO INTERVENE

Herbert H. Slatery III, Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”), pursuant to Tenn. Code Ann. § 65-4-118, respectfully petitions the Tennessee Public Utility Commission (“TPUC” or “Commission”) to grant the Consumer Advocate’s intervention into this proceeding because consumers’ interests, rights, duties, or privileges may be determined or affected by the *Petition for Declaratory Order by ENGIE Development, LLC* (“*Petition*”). For cause, the Consumer Advocate would show as follows:

1. The Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118 to represent the interests of Tennessee consumers of public utility services by initiating and intervening as a party in any matter or proceeding before TPUC in accordance with the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 *et seq.*, and TPUC rules.

2. On February 18, 2020, ENGIE Development, LLC (“ENGIE”) filed its *Petition* requesting the Commission to issue a declaratory order holding that “private ownership of the Metro Nashville District Energy System (“Metro DES”) does not render it a ‘public utility’ within

the meaning of Tennessee statutes.”¹ ENGIE’s proposal would allow it to operate Metro DES without being subject to regulation by this Commission.

3. ENGIE plans to create a special purpose entity – ENGIE Nashville – to own and operate Metro DES. Like ENGIE, ENGIE Nashville will be a wholly owned indirect subsidiary of ENGIE S.A., a French company listed on the Brussels and Paris stock exchanges with operations around the world, including ownership interests in numerous energy-related subsidiaries.²

4. Historically, the Metropolitan Government of Nashville - Davidson County (“Metro”) has owned Metro DES, which has operated as a nonutility, and therefore not subject to regulation by this Commission, pursuant to Tenn. Code Ann. § 65-4-101(6).³ Metro DES provides heating and cooling services to 42 buildings in downtown Nashville.⁴

5. Metro determined to open a solicitation/procurement process, RFQ# 1044673, to determine the future of Metro DES. On March 22, 2019, Metro issued a notice of its intent to sell Metro DES to ENGIE.⁵

6. In the current *Petition*, ENGIE states that there is “a practical need for the declaratory order, as it will resolve uncertainty that may exist as to whether or not Metro DES has suddenly become a regulated public utility subject to rules, regulations[,] and ratemaking authority of the Commission.”⁶

7. ENGIE’s *Petition* asks the Commission to determine that Metro DES, as a matter of law, is not a public utility because Metro DES does not fall within the statutory framework for public utilities. Specifically, the *Petition* asserts that the system should not be determined by

¹ *Petition* at 1.

² *Id.* at 4.

³ *Id.* at 1.

⁴ *Id.* at 7.

⁵ *Id.* at 4-5.

⁶ *Id.* at 7.

TPUC to be in the “public use”⁷, that the heating and cooling services are not provided under a franchise⁸, and that “heat”, as used in the statute, does not necessarily create a public utility under Tennessee’s statutory scheme.⁹

8. ENGIE requests that TPUC “pursuant to Rule 1220-01-02-.02(5), decide not to open a contested case hearing and determine on its own motion that private ownership of Metro DES would not render it a ‘public utility’ within the meaning of Tennessee statutes”¹⁰ However, Rule 1220-01-02-.02(5), does not support ENGIE’s position and instead states as follows:

If the Commission determines, on its own motion, not to convene a contested case in response to a complaint or initial petition, the Commission shall enter an order dismissing the complaint or petition and state the basis of the Commission's action.

(Emphasis added).

9. In the alternative, ENGIE requests TPUC to “appoint a Hearing Officer and establish a 15-day notice period prior to an initial status conference and determine through a contested case process that private ownership of Metro DES would not render it a ‘public utility’ within the meaning of Tennessee statutes.”¹¹

10. Along with the above-referenced questions of law, corresponding questions of fact arise. For instance, the *Petition* asserts that current Metro DES customers do not want to be regulated and includes nine letters purportedly to that effect.¹² ENGIE also discusses numerous public policy arguments, including whether there is a benefit to the public, as well as to ENGIE’s current consumers, for the system being regulated.

⁷ *Id.* at 10-11.

⁸ *Id.* at 11.

⁹ *Id.* at 11-12.

¹⁰ *Id.* at 1.

¹¹ *Id.*

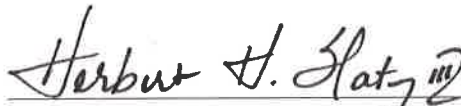
¹² *Id.* at 17; Attachment A.

11. The interests 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. § 65-5-101(6), and other relevant statutory and regulatory provisions, and (B) the review and analysis of the Petitioners' documentation, financial spreadsheets, and materials.

12. Only by participating as a party to this proceeding can the Consumer Advocate adequately carry out its statutory duty to represent the interests of Tennessee consumers.

Wherefore, the Consumer Advocate requests TPUC grant this *Petition to Intervene*.

RESPECTFULLY SUBMITTED,



HERBERT H. SLATTERY III
Attorney General and Reporter
State of Tennessee
B.P.R. No. 009077




DANIEL P. WHITAKER III
Assistant Attorney General
B.P.R. No. 035410
Office of the Tennessee Attorney General
Economic and Regulatory Section
Financial Division, Consumer Advocate Unit
P.O. Box 20207
Nashville, Tennessee 37202-0207
Telephone: (615) 532-9299
Facsimile: (615) 532-2910
Email: Daniel.Whitaker@ag.tn.gov

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:

This the 2nd day of March, 2020.



DANIEL P. WHITAKER III
Assistant Attorney General