

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION**

**NASHVILLE, TENNESSEE**

<b>IN RE:</b>	)	
	)	<b>DOCKET NO. 20-00024</b>
<b>PETITION FOR DECLARATORY ORDER</b>	)	
<b>BY ENGIE DEVELOPMENT, LLC</b>	)	

---

**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 March 2, 2020.

**RELEVANT BACKGROUND**

On February 18, 2020, ENGIE Development, LLC (“ENGIE”) filed a *Petition for Declaratory Order* (“*Petition*”) requesting determine that private ownership of the Metro Nashville District Energy System (“Metro DES”) would not render the system a public utility within the meaning of Tenn. Code Ann. § 65-4-101(6). ENGIE’s *Petition* seeks to determine whether transfer of the Metro DES from the Metropolitan Government of Nashville and Davidson County (“Metro”) to an affiliate of ENGIE would result in a public utility subject to the regulatory and supervisory jurisdiction of the Commission.

## CONSUMER ADVOCATE'S *PETITION TO INTERVENE*

On March 2, 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 interest of Tennessee consumers of public utility services in proceedings before the Commission. The Consumer Advocate maintains that, “[t]he 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.”<sup>1</sup>

Further, the Consumer Advocate asserts that only by participating in this docket can it adequately represent the interests of Tennessee consumers.<sup>2</sup> ENGIE does not oppose the Consumer Advocate’s *Petition to Intervene*.

In addition, the Hearing Officer issued a *Notice of Filing Deadline for Petitions to Intervene* (“*Notice*”) on March 5, 2020. The *Notice* established a deadline of March 17, 2020 for all requests to intervene in this docket. No other requests to intervene have been filed.

## FINDINGS AND CONCLUSIONS

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

- (a) The administrative judge or hearing office 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;

---

<sup>1</sup> *Petition to Intervene*, p. 4 (March 2, 2020).

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

(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 the 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>3</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>4</sup>

Because determining whether a transfer of the Metro DES from Metro to an affiliate of ENGIE would establish in a public utility subject to the regulatory and supervisory jurisdiction of the Commission and could effect the rates and operating regulations for the consumers of Metro DES services, the Hearing Officer finds that there is a sufficient factual basis to find that the legal rights or interest held by those consumers may be determined in this proceeding.

---

<sup>3</sup> Tenn. Code Ann. § 4-5-310 (2015).

<sup>4</sup> Tenn. Code Ann. § 65-4-118(b)(1) (2015).

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 the law as an intervenor for the purpose of representing those consumer interests, there is no opposition to its intervention, its *Petition to Intervene* was timely filed, and the Consumer Advocate's *Petition to Intervene* should not impair the interests of justice or the orderly and prompt conduct of the proceedings. For these reasons, the Hearing Officer determines 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 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