

intervene. This proposition is untenable and contrary to the nature of proceedings before this Commission. The Company asserts that the audit is an objective, ministerial function² “not dependent on a comprehensive fact-investigation,”³ and, therefore, the Consumer Advocate’s intervention is “premature.”⁴ However, such assertions are of no relevance to the question of whether the Petition should be granted. The degree of rigor with which certain accounting principles are observed is not controlling. Rather, the necessary considerations are clearly articulated in the applicable statute. TENNESSEE CODE ANNOTATED § 4-5-310 provides in pertinent part:

(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 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.

In this docket, the Commission may grant the Consumer Advocate’s Petition under either TENN. CODE ANN. § 4-5-310(a) or (b).

² *Id.*

³ *Id.* ¶ 8. That an audit docket was opened concerning the use or misuse of escrow funds by the Company suggests *prima facie* that at least some “fact-investigation” has occurred.

⁴ *Id.* ¶ 6.

Here, subsection (a)(1) is satisfied because the Petition was submitted in writing and a hearing in the matter has not yet been scheduled.

Subsection (a)(2) is satisfied in two ways: First, the Petition specifically states that “[t]he interests of consumers served by Superior Wastewater, including but not limited to the funding and the Company’s management of the reserve/escrow account, may be affected by determinations and orders made by the Commission,”⁵ which adequately “demonstrate[es] that the petitioner’s legal rights, duties, privileges, immunities or other interests may be determined in the proceeding.”⁶

Second, and as set forth in the Petition, TENN. CODE ANN. § 65-4-118 grants the Consumer Advocate “the duty and authority to represent the interests of Tennessee consumers of public utilities services.” Indeed, the Consumer Advocate “may, with the approval of the attorney general and reporter, participate or **intervene** in any matter pending before the commission.”⁷ The phrase “under any law” in TENN. CODE ANN. § 4-5-310(a)(2) of course includes the statute that created the Consumer Advocate Division, TENN. CODE ANN. § 65-4-118. Thus, the Consumer Advocate qualifies as an intervenor by statute.

Moreover, both subsections (a)(3) and (b) are satisfied because the Consumer Advocate’s intervention is in the interest of justice, as intervention gives a voice to the consumers who fund the very escrow account at issue in this docket. As further articulated below, the Consumer

⁵ *Petition to Intervene* ¶ 5, TPUC Docket No. 21-00086 (Oct. 5, 2022) (hereinafter “*Petition*”).

⁶ TENN. CODE ANN. § 4-5-310(a)(2). Note that the threshold is merely a demonstration that a petitioner’s interest (here, the interest of consumers represented by the petitioner) *may* be affected. This was stressed by the Commission’s predecessor, the Tennessee Regulatory Authority: “If a petitioner meets this burden, it is inappropriate to consider the issue of whether a petitioner’s legal rights, duties, privileges, immunities or other legal interests *will* be determined in the proceeding prior to the hearing on the merits.” *Order Granting Petition to Intervene* at 3, TRA Docket No. 03-00329 (July 9, 2004) (available at <http://share.tn.gov/tra/orders/2003/0300329ac.pdf>).

⁷ TENN. CODE ANN. § 65-4-118 (emphasis added).

Advocate's participation will not impair the "orderly and prompt conduct"⁸ of the proceeding. Accordingly, this Commission has substantial bases to grant the Consumer Advocate's Petition. The Company's Objection provides no legitimate argument against the Petition's satisfaction of the statutory criteria or the adequacy or accuracy of the Petition.

In addition, the Company's recent responses to discovery in Docket No. 22-00087, which is a staff-assisted rate case to determine the Company's rates, further highlights that the Consumer Advocate's intervention is proper and in the interests of justice.⁹ In a series of requests for admission, the Consumer Advocate inquired into how the Company had utilized escrow funds.¹⁰ For example, the Consumer Advocate asked the Company to "[a]dmit that Superior Wastewater did not obtain authorization from [TPUC] for the withdrawal or use of escrow funds between 2019 and 2022."¹¹ The Company responded, "Objection. This issue is currently being considered in Docket 21-00086 and as such, it is irrelevant in this Docket and not calculated to lead to discoverable information."

While this discovery objection lacks any merit, it demonstrates that the Company is seeking to have its cake and eat it too. The Company in Docket No. 22-00087 points to this docket as the proper place to consider escrow-related issues while simultaneously arguing in this docket that there are no factual issues warranting the Consumer Advocate's participation. But the Company is incorrect, and the interests of justice strongly favor the Consumer Advocate's intervention.

⁸ TENN. CODE ANN. §§ 4-5-310(a)(3), (b).

⁹ *Superior Wastewater System, LLC's Response to Second Discovery Request of the Consumer Advocate*, TPUC Docket No. 22-00087 (Dec. 9, 2022).

¹⁰ *Id.* at 8–9.

¹¹ *Id.* at 9.

II. Intervention Will Not Cause Unnecessary Delay.

The Objection nakedly asserts that “[i]f the intervention is granted, it will certainly cause an unnecessary delay in the completion of the Audit and resolution of the issues.”¹² It is in no way clear that intervention “will certainly cause an unnecessary delay.” The Consumer Advocate would note that the last filing in the docket, before the Petition, was a discovery response from the Company dated February 10, 2022.¹³ Although the parties to the docket may have engaged in activity related to the docket, no publicly visible activity had occurred for approximately eight months before the Consumer Advocate filed its Petition on October 5, 2022.

Additionally, on October 21, 2022, the hearing officer ordered the Company to obtain counsel by November 4, 2022.¹⁴ A letter of representation was not filed until December 2, 2022¹⁵—almost a month after the ordered date. The Company finally filed its Objection on December 9, 2022, sixty-five days after the Consumer Advocate’s Petition was filed. Although all desire the prompt resolution of the issues pertaining to this docket, the Consumer Advocate’s intervention will not cause unnecessary delay or otherwise inhibit the progress of this proceeding.

¹² Objection ¶ 7.

¹³ Response to TPUC Staff’s Second Discovery Request of December 8, 2021, TPUC Docket No. 21-00086 (Feb. 10, 2022).

¹⁴ Order Requiring Superior to Obtain Counsel, TPUC Docket No. 21-00086 (Oct. 21, 2022). This order also reiterated:

[T]he Hearing Officer stated in his Order in TPUC Docket No. 08-00202 that “. . . because Mr. Powell is not an attorney, his participation does not allow him to perform any act that requires the professional judgment of a lawyer.” Mr. Powell was mailed a copy of the Attorney General’s letter and should be aware of the Order issued in Docket No. 08- 00202, as well as other Hearing Officer filings in Docket Nos. 17-00120, 20-00109, and 21-00001 requiring Superior to obtain counsel.

Id. at 2.

¹⁵ Letter from Farris Bobango, PLC to Chairman Herbert H. Hilliard, TPUC Docket No. 21-00086 (Dec. 2, 2022).

III. The Consumer Perspective Is Valuable in This Docket.

Finally, the Company argues that because “the Commission and Party Staff are uniquely experienced and capable of making a determination regarding the interpretation, application, and implementation of Commission Rules,” the Consumer Advocate “will provide nothing of value to this proceeding.”¹⁶ Such comments provide nothing of value in deciding the issue at hand and concerning downplay the Consumer Advocate’s important role in Commission proceedings.

The statutory considerations regarding intervention are articulated above and ignored by the Company. The Consumer Advocate, by intervening in this docket, is fulfilling its legislative duty to advocate consumers located in the King’s Chapel community, are directly affected by the subject matter of this docket.¹⁷ Participating as a party to the proceeding is the only way the Consumer Advocate can fulfill its statutory duty to “represent the interests of Tennessee consumers of public utilities services.”¹⁸ The role of the Consumer Advocate is distinct from (and carries different obligations than that of) the Commission. The Consumer Advocate’s participation in this docket will provide a necessary consumer perspective and will not hinder any proceeding.

CONCLUSION

The Commission should grant the Consumer Advocate’s Petition.

¹⁶ *Objection* ¶ 9.

¹⁷ The Commission itself has recognized that “the Consumer Advocate is the only party that represents the interests of customers.” *Legislative Report: Consumer Advocate Division Study*, 2 (Dec. 1, 2021) (available at <https://www.capitol.tn.gov/Archives/senate/112GA/committees/LtGovReports/2021/2021-12-01-TPUC%20CAD%20Transfer%20Report.pdf>). Further, in establishing the Consumer Advocate, the Legislature “gave an independent voice to customers in regulatory and judicial proceedings that decide a utility’s prices and service practices, which they would otherwise not have.” *Id.* at 8.

¹⁸ TENN. CODE ANN. § 65-4-118.

Respectfully submitted,

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This the 14th day of December 2022.

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