

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:)
)
PETITION OF TENNESSEE) **DOCKET NO. 15-00025**
WASTEWATER SYSTEMS, INC.)
TO AMEND ITS CERTIFICATE)
OF CONVENIENCE AND NECESSITY)

**OPPOSITION OF TENNESSEE WASTEWATER TO
CONSUMER ADVOCATE'S PETITION TO INTERVENE**

Tennessee Wastewater Systems, Inc. ("TWSI") files this response in opposition to the Petition to Intervene filed March 18, 2015 by the Consumer Advocate and Protection Division of the Attorney General ("CAPD" or "Advocate").

Background

TWSI, the state's largest provider of decentralized wastewater services, is currently authorized to provide wastewater services at 128 developments in Tennessee. In this docket, TWSI seeks a certificate of convenience and necessity to provide service at a new development in Williamson County called "The Enclave at Dove Lake," which is designed for approximately 165 homes. As shown in the application, the developer has signed a "Letter of Understanding" with TWSI and the project manager has signed a letter requesting that TWSI provide wastewater service for the development. The design for the proposed treatment system has been submitted to the Tennessee Department of Environment and Conservation ("TDEC") for approval. The TDEC application (an exhibit to TWSI's application) shows that the treatment system was

designed by Mark P. Lee, a registered engineer with SEC, Inc., Site Engineering Consultants, in Murfreesboro, Tennessee.¹

Argument

The CAPD is statutorily authorized to represent "the interests of Tennessee consumers of public utilities service." T.C.A. § 65-4-118(b). In order to intervene as a matter of right in this proceeding, the Advocate must "set forth with particularity those facts that demonstrate" that "the legal rights, duties, privileges, immunities or other legal interests" of those consumers "may be determined in the proceeding." TRA Rule 1220-1-2-.08(2); T.C.A. § 4-5-310(a)(2).

This is an application to provide service at a yet-to-be-built subdivision. There are no "consumers of public utilities service" who will be affected by the Authority's decision. In similar cases, the Authority has denied, in whole or in part, petitions to intervene where the would-be intervenor had no legal interest at stake. The Authority should deny this Petition for the same reason.

In Docket 08-00202, TWSI filed a petition to increase its rates. Another wastewater utility, King's Chapel Capacity ("KCC"), sought to intervene in the case, arguing that the rates charged by TWSI would "potentially impact the other people in the wastewater industry." See "Initial Order" issued January 22, 2009, at pp. 6-7. Finding that KCC had no "legally protected interest" in the outcome of TWSI's rate case, the TRA Hearing Officer denied KCC's petition to intervene as a matter of right under T.C.A. § 4-5-310(a).

In Docket 11-00181 (March 4, 2013), a telephone company applied for a certificate to offer service to inmates at jails and correctional facilities in Tennessee. A competing carrier,

¹ SEC, Inc. has designed decentralized wastewater treatment systems at over thirty-three developments, primarily in Rutherford County, serving over 4,200 homes. See www.sec-civil.com/stepsystem.htm. Mr. Lee, who was hired by the developer, is also the principle design engineer of decentralized wastewater systems for the Consolidated Utility District of Rutherford County.

Pay-Tel Communications, petitioned to intervene, arguing in part that the Authority should not issue a certificate because the applicant had "misled the TRA" in its responses to Staff data requests and had secretly partnered with a billing company that had been sanctioned in five states and was "well known among inmate telephone service providers because of its record of illegal and improper conduct." "Petition for Reconsideration Based on New Evidence" filed October 12, 2012, pp. 1-3. Despite those allegations, the Authority affirmed the Hearing Officer's decision denying Pay-Tel's claim that it was entitled to intervene as a matter of right to challenge the applicant's qualifications. The Authority did, however, instruct its staff to "launch an informal investigation" into the allegations Pay-Tel had raised. "Final Order" (March 4, 2013) at 7 and footnote 27.

Finally, in Docket 14-00041, a "Show Cause Proceeding" initiated by the Authority against TWSI, the Authority denied a petition to intervene filed by the Advocate. Despite the Advocate's argument that the "legal interests" of "present and future consumers" would be "affected by the Authority's determinations" in the case, the TRA affirmed the Hearing Officer's ruling that the Advocate did not meet the "legal interest" requirement of T.C.A. § 4-5-310(a). "Order Denying Petition to Appeal and Affirming the Initial Order of the Hearing Officer" (June 4, 2014) at 1-3. The Authority also found the CAPD must meet the same criteria for intervention set forth in T.C.A. § 4-5-310(a) as other parties and that "TWSI is accountable to the TRA and not to other third parties for its actions or lack thereof." *Id.*, at 4.

As these rulings demonstrate, the CAPD does not have a statutory right to intervene in this docket unless "the consumers of public utilities services" whom the Advocate represents have a "legal interest" in whether TWSI's application is granted or denied. It is not sufficient for the Advocate to talk about impacts on "future consumers," as the Advocate did in Docket 14-

00041, or to raise questions about the applicant's qualifications and compliance with state law, as Pay-Tel argued in Docket 11-00181. To qualify to intervene as a matter of right, the intervenor has to have a direct interest in the case. Here, the only other interested person is the developer of the subdivision, and he seeks service from TWSI. It is undisputed that no one represented by the Advocate has a legally protected interest in whether the TRA approves the application. Therefore, the CAPD has no legal right to intervene.

The Advocate's Petition to Intervene does not discuss whether the Advocate has a legal right to intervene under T.C.A. § 4-5-310(a). Instead, the Petition describes at great length (ninety-nine pages, including exhibits) issues which are now before the Authority in Docket No. 14-00136, a petition filed by TWSI to increase rates to make repairs at four treatment systems. In sum, the Advocate questions whether TWSI "has the managerial, financial and technical capability to take on a new project at this time" and whether "TWSI should be allowed to use the proposed technology at the new site in light of problems at other sites." Petition to Intervene, at 1-2.

These issues are both misguided and, for the reasons discussed above, irrelevant. Over the last twenty-two years, the TRA has found that TWSI is qualified to own and operate wastewater treatment systems at 128 developments. Similarly, TDEC issues a State Operating Permit for each treatment system and monitors its operation. The Advocate's suggestion that the TRA should review "the adequacy of the design, construction and maintenance" of the proposed system (Petition to Intervene, at 2) is directed at the wrong state agency.²

² The Petition to Intervene contains a number of unsupported allegations and misleading statements about TWSI's operations at the four sites at issue in Docket 14-00136 and other TDEC-related matters. These allegations are being addressed by TDEC and, to the extent relevant, by the parties and the Authority in Docket 14-00006. The Advocate is a party to that docket.

Furthermore, whatever concerns the TRA has about TWSI's qualifications can—and presumably will—be raised by the TRA itself. In Docket No. 14-00006 (Sept. 3, 2014), the Authority granted TWSI's most recent application for a certificate to serve another development but required the utility to file "detailed monthly reports" about TDEC-related issues and directed the TRA Staff "to continue working with TWSI and TDEC to closely monitor these situations." *Id.*, at 6. In other words, the TRA is appropriately addressing these matters and does not require the assistance of another party in order to determine whether TWSI is qualified to operate a wastewater treatment system at The Enclave at Dove Lake. As previously discussed, TWSI is responsible to the TRA, not to third parties, to demonstrate the utility's compliance with state law.

Conclusion

The Advocate's request to raise questions about TWSI's qualifications is not a sufficient basis to intervene as a matter of right in this proceeding. As the Authority has ruled in other, similar cases, a petitioner must have a "legal interest" in the outcome of the case to intervene under T.C.A. § 4-5-310(a). Therefore, the Petition to Intervene should be denied.³

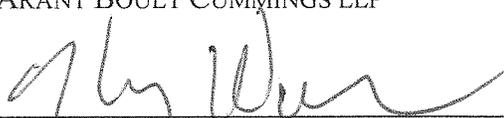
³ In two of the three cases discussed above in which the agency found that the would-be intervenor was not entitled to intervene as a matter of right under T.C.A. § 4-5-310(a), the intervenor was allowed to participate in the docket on a limited basis as a matter of agency discretion under T.C.A. § 4-5-310(b).

There is no good reason in this case to grant the Advocate intervention even on a limited basis. First, the Advocate seeks to raise issues that are already before the agency in Docket 14-00136 and, in any event, can be adequately addressed by the Authority itself. Second, as stated in TWSI's application, the construction of the treatment system will take approximately ten to sixteen weeks following approval of the application. The Advocate's participation, even on a limited basis, would likely prolong these proceedings for months and result in financial harm to the project developer. Therefore, the Authority should not grant the Petition to Intervene under either subsection (a) or (b).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of March, 2015, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

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