



Henry Walker
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September 15, 2016

Sharla Dillon
Tennessee Regulatory Authority
502 Deaderick Street, 4th Floor
Nashville, TN 37243

Re: Petition of Gateway Utility Company, Inc. et seq.
Docket No. 15-00123

Dear Sharla:

Please accept for filing in the above-captioned docket the two, attached letters from Mr. Don Scholes, counsel for Mallory Valley Utility District.

In the first letter, written in 2005, Mr. Scholes presciently described to the Franklin City Attorney the regulatory and other problems that would likely arise if the City allowed the developer of Gateway Commons to build and operate a private water system instead of requiring the developer to use the water services of Mallory Valley. He also informed the City that Mallory Valley "would probably not agree to ever take over" a private water system installed and operated by the developer.

In the second letter, written in 2016, Mr. Scholes points out that even though Mallory Valley considers Gateway a "customer" of the District, Gateway is now considered a public water system by the Tennessee Department of Environment and Conservation. He further states that Mallory Valley does not object to Gateway's application for a certificate of convenience and necessity from the TRA, adding that the District's position in this case should not be construed "as establishing a precedent" that the TRA has the authority to grant a certificate to a water utility operating inside the service area of a utility district.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS LLP

By:

A handwritten signature in dark ink, appearing to read "Henry Walker", written over a horizontal line.

Henry Walker

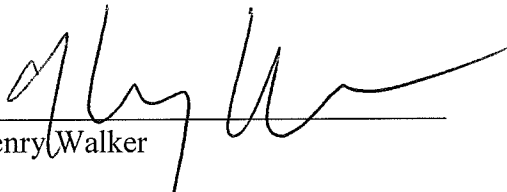
HW/dbi
Enclosures

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September, 2016, a copy of the foregoing document, together with enclosures, was served on the party of record, via electronic delivery and U.S. Mail, postage prepaid, addressed as follows:

Vance Broemel
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202-0207
rachel.newton@ag.tn.gov



Henry Walker

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May 17, 2005

JOE P. LENISKI, JR.
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*ALSO ADMITTED IN GA

Mr. Douglas Berry
Weed, Hubbard, Berry & Doughty
201 Fourth Avenue North, Suite 1420
Nashville, TN 37219

Re: Water Service to Gateway Commons - Mallory Valley Utility District

Dear Doug:

I am writing you to follow up on our telephone conversation yesterday regarding the Gateway Commons development at the corner of Franklin Road and Lynnwood Way. I understand that the Mayor and Board of Alderman considered the Concept Plan for the development on second reading at its meeting on May 10, 2005.

The Gateway Commons development is located within the boundaries of Mallory Valley Utility District (the District). The District has been advised that the developer intends to provide water service to the residential and commercial lots within the development with a privately-owned water system. The District has been requested to provide water service to the entire development through a large master meter. Therefore, the entire development will receive a single water bill from the District for water used within the entire development. The District understands that the developer will submeter the water to the individual residences and businesses within the development. The District presumes that at some point the private water system will be owned by and water will be submetered by a property owner's association of the development. All water lines within the development will be constructed, owned and operated by the developer or a property owner's association.

The submetering of such a large development raises several issues to which the District wants to make sure the City has given full consideration. The District does provide water service through master meters to a few apartment complexes and shopping centers where a single property owner leases multi-family units or office and retail space to tenants. The District is aware that some of these property owners submeter water purchased from the District. In these instances, a single property owner owns the multi-family units or commercial spaces being submetered. The Gateway Commons development is different in that the residential lots and commercial lots which will be served by a private water system will not be owned by a single property owner. Therefore, the

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developer or a property owner's association will be providing water service to the public within the development.

From what I presently know, I doubt that the Tennessee Regulatory Authority (TRA) would consider this private water system to be a "public utility" for the purposes of obtaining a certificate of public convenience and necessity to operate. The TRA does not view the landlord of an apartment complex which submeters individual units as being a public utility. I think the proposed private water system for the Gateway Commons development is broader than submetering by a landlord to its tenants in an apartment complex. Whether such a difference makes the proposed private water system a public utility for purposes of the TRA is unknown.

The operation of a private water system within the development raises a number of issues for the residents of the development, the City and the District which are set forth below.

- 1) Water rates for all residents and businesses in Gateway Commons will be set by the owner of the private water system. The District will not set the rates for the residents and businesses within the development because they will not be the District's customers.

- 2) The plans the District has seen for the proposed water lines within the development show the water lines located within public roads in the development. Because these water lines will be owned by the private water system, any damage to the public roads will be responsibility of the developer or property owner's association which owns the water lines. The private water system will be responsible for the operation and maintenance of all water lines within the development.

- 3) A question may exist as to whether the private water system can own and operate private water lines within the City's rights-of-way. The District has power under state law to use municipal rights-of-way for its water lines. I am not sure whether a private water system has the ability to use City rights-of-way without obtaining some kind of franchise from the City.

- 4) Any future water system improvements needed within the development will have to be financed and constructed by the private water system. The private water system will have to bear the costs of the repair, maintenance and replacement of water lines within the development. The District presumes that the costs of such improvements will have to be financed by the private water system through the monthly rates it charges for submetered water to residents and commercial businesses within the development. The private water system will have no condemnation power.

- 5) The District does not know whether the water lines to be constructed within the development must be submitted to the Tennessee Department of Environment and Conservation (TDEC) for approval. The water lines within the development will all be private lines but will be serving many townhomes and several businesses. The water lines will not be dedicated to the District; therefore, the District will not submit the water line plans to TDEC for approval. Does this

mean that the developer must submit the water lines plan to TDEC or that the water line construction can be done without TDEC review and approval? I do not know. Because the water lines will not be turned over the District, the District will not inspect the water line construction to make sure it is in compliance with plans designed by the District and approved by TDEC. Who will be responsible for making sure the water lines are properly constructed to TDEC requirements if the lines must meet TDEC requirements?

6) The District will only be able to give the City information about fire flows at the master meter where water is purchased by the private water system. The City may need to establish some system to make sure the private water system installed within the development is able to deliver the fire flows required by the City to the townhomes and commercial customers within the development. The water system inside the development will not be designed or reviewed by the District as currently set up.

7) The City may need to set up a program with the private water system for the operation and maintenance of all fire hydrants within the development since they will be owned and operated by the private water system. Any fire hydrants which are damaged or become inoperable will have to be replaced by the private water system unless the City assumes this expense.

8) The City may need to set up a program with the private water system regarding the installation and annual inspection of all backflow prevention devices. Because the water system within the development will be a private water system, the District will not be responsible for seeing that backflow prevention devices are installed and inspected.

9) The District will only be sending one bill to the private water system for water purchased each month whether it is owned by the developer or property owner's association. How does the City intend to charge for sewer service within the development? Will the City want the District to send the private water system a single bill for sewer service based upon water purchased at the master meter at the District's rates for water service? Will the City want to charge a minimum bill to all residences and businesses within the development? The District is trying to address this same issue.

10) Does the City intend to have the residents and businesses within the development pay sewer charges for water used for irrigation supplied by the private water system? Even if a commercial business sets a separate meter to measure water used for irrigation, the District will not be reading this meter. Unless the City sets up some procedure for such readings to be excluded for the billing of sewer, residents and businesses using water for irrigation will pay a sewer bill on such water which never enters the sewer system.

Unless for some reason the TRA were to consider this private water system a public utility, the issue of whether to permit such a private water system is more of a planning issue for the City

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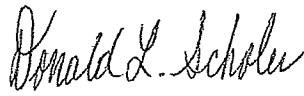
rather than a water provision issue for the District. The District can provide water to the development through a single master meter as presently proposed. The District can be the public water system within the development as it is for the rest of its service area.

If the City wants the residents and businesses in Gateway Commons to be served by the District's public water system, the City must make this decision now before the developer begins installing water lines within the development. If the District is to serve within the development, the water lines within the development will have to be designed to meet the District's specifications, and water line easements will need to be dedicated to the District.

The District wants to make sure the City is fully apprized of the issues which service to Gateway Commons by a private water system may raise for the City now and in the future. The District wants to put the City on notice that the District would probably not agree to ever take over any private water system installed by the developer and run by the developer and a property owner's association in the future. The District will be very hesitant to take over a water system not installed in accordance with its specifications. Should the private water system run into financial trouble in the future or the residents and businesses within development become unhappy with the rates set by the private water system in the future, the District will not want to take over a private water system which will would be a liability to the District in the event water system improvements would be necessary to bring the system up to the District's standards and specifications.

The District, its engineer and I would be more than happy to discuss the issues raised in the letter with you or any City officials should you desire for us to do so.

Sincerely yours,



DONALD SCHOLES

c: Ansley Coode
Joe Petrosky

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August 29, 2016

* ALSO ADMITTED IN GA
** ONLY ADMITTED IN OH
*** ALSO ADMITTED IN NY
**** ALSO ADMITTED IN MA

Via email and first class mail

Henry Walker
Bradley Arant Boult Cummings
Roundabout Plaza
1600 Division Street, Suite 700
Nashville, TN 37203

Re: Petition of Gateway Utility Company, Inc. before Tennessee Regulatory
Authority – Mallory Valley Utility District

Dear Henry:

I am writing you in follow up to our conversations about Gateway Utility Company, Inc. filing a petition with the Tennessee Regulatory Authority (TRA) to obtain a certificate of public convenience and necessity to provide water service to a development known as Gateway Village in Franklin, Tennessee. Gateway Village is located within the boundaries of Mallory Valley Utility District (the District). The District has been providing water service to Gateway Utility Company, Inc. for Gateway Village for several years through two master meters on Franklin Road. You have requested that the District write a letter to you as counsel for Gateway Utility Company, Inc. (Gateway Utility) stating that the District has no opposition to Gateway being issued a certificate to provide water service within Gateway Village to be submitted to the TRA in connection with the filing of its petition.

Please be advised that the District does not object to Gateway Utility Company, Inc. being issued a certificate from the TRA to provide water service to the Gateway Village development. However, the District's decision not to object to the Gateway Utility's petition should not be taken as an admission that the District believes Gateway needs a certificate from the TRA to operate its water system within Gateway Village or that the TRA has the legal authority to issue a certificate of public convenience and necessity within the boundaries of the District.

When the Gateway Village development was approved by the Franklin Planning Commission and Franklin Mayor and Board of Aldermen, neither the TRA nor any other person thought that Gateway needed a certificate to operate its water system within the development.

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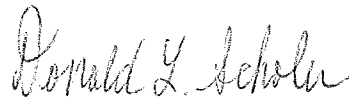
Gateway did not plan to separately meter the individual single family units and businesses within the development. Instead, the developer of Gateway Village informed Franklin and the District that all water served within the development would be submetered by Gateway Utility. Because the usage of water was to be submetered, neither the developer, Franklin, the District nor the TRA considered Gateway a public utility. When Gateway Utility began service within the development, the Tennessee Department of Environment and Conservation (TDEC) did not classify the system as a public water system. Later, however, TDEC changed its mind and decided Gateway should be considered a public water system for its regulatory purposes.

Under T.C.A § 65-4-101(6)(A), a public utility must be an entity “affected by and dedicated to the public use, under privileges, franchises, licenses, or agreements, granted by the state or by any political subdivision thereof.” Gateway Utility has no franchise or other privilege granted by Franklin dedicating its water system to the public use.

Under Tennessee law the TRA has no authority to issue a certificate of public convenience and necessity to a public utility located within the boundaries of a Tennessee tility district. *West Wilson Util. Dist. of Wilson Cty. v. Atkins*, 223 Tenn. 74, 78-79, 442 S.W.2d 612, 613-14 (1969). The District has been providing water service to the residents of Gateway Village since Gateway Village was occupied through two master meters which service was requested by Gateway Utility Company, Inc. The District does not believe any Tennessee court has reversed the Tennessee Supreme Court’s decision on this issue.

Therefore, the District’s willingness not to object to the TRA granting Gateway Utility Company, Inc. a certificate should not be construed in any way as establishing a precedent the District believes that the TRA has the legal authority to issue a certificate to a water provider located within the District’s boundaries. Moreover, the District does not agree that Tennessee law requires that Gateway Utility Company, Inc. have a certificate from the TRA to distribute water within Gateway Village purchased from the District; nevertheless, the District has elected not to object to Gateway Utility’s petition to the TRA for a certificate.

Sincerely yours,



DONALD L. SCHOLES

c: Jenny Clarke