

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION OF GATEWAY UTILITY, INC. FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE WATER SERVICE TO A PORTION OF WILLIAMSON COUNTY, TENNESSEE KNOWN AS GATEWAY VILLAGE)))))))	DOCKET NO. 15-00123

MOTION TO WITHDRAW

Gateway Utility, Inc. (“Gateway Utility” or “Gateway”), respectfully moves to withdraw the above-captioned petition which asks the Tennessee Regulatory Authority (“TRA”) to grant Gateway a certificate of convenience and necessity to provide water service to residential and commercial customers within a development called Gateway Village. Gateway Village is located within the service territory of Mallory Valley Utility District (“MVUD”). MVUD sells water to Gateway Utility which, in turn, sells water to customers in Gateway Village.

Gateway moves to withdraw this petition because, as pointed out in a letter from MVUD filed September 15, 2016, the Tennessee Supreme Court has ruled that the TRA does not have statutory authority to grant a certificate of convenience and necessity to a utility seeking to provide service within the established service territory of a utility district. West Wilson Utility District of Wilson County v. Atkins, 442 S.W. 2d 612, 614 (Tenn. 1969) (holding that the Tennessee Public Service Commission “exceeded its jurisdiction in issuing to [the applicant] a certificate of convenience and necessity to operate a public water system in that geographic area . . . which is within the designated geographic area of West Wilson Utility District”).

Counsel for Gateway has studied the Court's opinion in West Wilson Utility District as well as the precedents upon which the Court relied. See Chandler Investment Co. v. Whitehaven Utility District of Shelby County, 311 S.W. 2d 603, 613 (Tenn. Ct. App 1957) (holding that "the only method by which the exclusive franchise awarded to the [utility district] may be modified ... is to petition the [county commission]"); City of Crossville v. Middle Tennessee Utility District, 345 S.W. 2d 865, 867 (Tenn. 1961) (holding that "jurisdiction" to alter the boundaries of a utility district "is in the County Judge or Chairman of the County Court"); and Consolidated Gray-Fordtown-Colonial Heights Utility District v. O'Neill, 354 S.W. 2d 63, 65 (Tenn. 1962) (affirming the holding in Chandler that only the county legislative body has the authority to establish or amend the boundaries of a utility district). These cases unanimously hold that only the county officials in which the utility district is located have the statutory authority to alter the district's boundaries. Based on these holdings, counsel for Gateway has concluded that, even though MVUD has stated it does not object to Gateway's application, the TRA does not have jurisdiction to alter the boundaries of MVUD's service territory by carving out a portion of that territory and granting Gateway Utility a certificate to provide service within Gateway Village.¹

As stated in the letter from MVUD, the utility district considers Gateway a "customer" of MVUD and bills Gateway at a commercial rate. Within Gateway Village, the rates, terms and conditions of service are set by a volunteer board composed of residential and commercial customers in accordance with the bylaws of Gateway Utility. Although the utility is not a

¹ Pursuant to T.C.A. § 6-51-111, the City of Franklin could initiate proceedings to take over the provision of water service to Gateway Village. Dyersburg Surburban Consolidated utility District v. City of Dyersburg, 2007 WL 1859460 (Tenn. Ct. App., 2007). But, see, Ross County Water Company v. City of Chillicote, 666 F.3d 391 (6th Cir. 2011) (holding that a federal program which lends money to rural water companies prohibits local governments from expanding into the rural company's service territory). MVUD participates in that federal loan program.

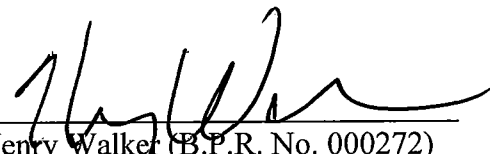
In any event, whether or not the city of Franklin could take over service to Gateway Village, it is clear from the West Wilson Utility District line of cases that the TRA lacks jurisdiction to grant a certificate to Gateway.

“homeowners association” as that term is defined in T.C.A. § 65-4-101(7)², the utility is owned and operated by its customers, similar to a utility owned by a homeowners’ association. Gateway Utility also operates as a public water system under the jurisdiction of the Tennessee Department of Environment and Conservation.

Since the Tennessee Supreme Court has held that the TRA does not have jurisdiction to amend the service area of a utility district, Gateway respectfully asks to withdraw its application.

Respectfully submitted,

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² State law excludes from the TRA’s jurisdiction “nonprofit homeowners associations” whose only members are “owners of lots in residential subdivisions” and which provide utility service “for the exclusive use of that subdivision.” T.C.A. § 65-4-101(7). Since Gateway provides service to both residential and commercial customers, Gateway does not fit the statutory definition of a homeowners association.

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October, 2016, 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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