

IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

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

CONSUMER ADVOCATE'S RESPONSE TO MOTION TO WITHDRAW

The Office of the Tennessee Attorney General, Division of Consumer Protection and Advocate ("Consumer Advocate") does not oppose Gateway Utility, Inc.'s ("Gateway Utility") *Motion to Withdraw* ("Motion"). However, instead of simply withdrawing its petition, Gateway Utility has cited case law allegedly in support of its decision, particularly *West Wilson Utility District of Wilson County v. Atkins*, 442 S.W.2d 612 (Tenn. 1969). The Consumer Advocate questions Gateway Utility's interpretation of that case law. Accordingly, the Consumer Advocate requests that if the TRA grants the *Motion*, it does so without relying or referencing any of the case law cited in the *Motion*.

In referring to *West Wilson Utility District* and related cases, counsel for Gateway argues as follows:

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.

Motion at 2.

However, the assertion that *West Wilson Utility District* stands for the proposition that “only the county officials in which the utility district is located have the statutory authority to alter the district’s boundaries” is contradicted by the holding of *Town of Rogersville v. Mid Hawkins County Utility District*, 122 S.W.3d 137 (Tenn. Ct. App. 2003), in which the court found it was not within the power of a county court to withdraw the lines of a utility district:

Tenn. Code Ann. § 7-82-301(a) provides that the county court must find that “public convenience and necessity requires other or additional services[.]” It does not say that the public convenience and necessity results in re-drawing the boundaries of the district. *See also, Tenn. Atty. Gen. Op.*, 2002 WL 31398958 (October 7, 2002). It is clear that no court can reduce or increase the territory of a utility district; where the Legislature has fixed the boundaries of a utility district. The County Executive and Circuit Court erred in ordering that the parties' respective boundaries be redrawn.

Town of Rogersville, 122 S.W.3d at 140.

Given the nature of the *Motion* and the fact it is not opposed, the holding of *West Wilson Utility District* and its alleged implications, including the implied limitation on the TRA’s jurisdiction, will not be examined in this proceeding. Because these issues will not be fully explored and argued, the Consumer Advocate urges the TRA to simply grant the *Motion* without further comment.

Accordingly, the Consumer Advocate requests that if the TRA grants the *Motion*, it does so without either agreeing or disagreeing with Gateway Utility’s reasons for filing the *Motion*. The Consumer Advocate makes this request because of the potential implication of case law asserted by Gateway Utility could have a dramatic impact on the TRA’s jurisdiction over entities operating a water or wastewater utility.

RESPECTFULLY SUBMITTED,

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Dated: October 26, 2016

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

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This the 26 day of October, 2016.


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