

## February 10, 2017

**PETITION OF GATEWAY UTILITY COMPANY,  
INC. FOR A CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY TO PROVIDE  
WATER SERVICE FOR A PORTION OF  
WILLIAMSON COUNTY, TENNESSEE KNOWN  
AS GATEWAY VILLAGE**

**DOCKET NO.**  
**15-00123**

This matter is before the Hearing Officer of the Tennessee Regulatory Authority (“Authority” or “TRA”) to consider the *Motion to Withdraw* filed by Gateway Utility, Inc. (“Gateway”) on October 4, 2016.

Gateway, formerly Gateway Utility Company, Inc., filed a *Petition for a Certificate of Convenience and Necessity* (“*Petition*”) on December 17, 2015 seeking a Certificate of Public Convenience and Necessity (“CCN”) from the Authority to provide water service to a portion of Williamson County, Tennessee known as Gateway Village.

During the regularly scheduled Authority Conference held on January 11, 2016, the voting panel of Directors assigned to this docket appointed General Counsel or her designee to act as Hearing Officer to prepare this matter for hearing. On February 24, 2016, the Hearing Officer issued an Order granting the Petition to Intervene filed by the Consumer Protection and Advocate Division of the Office of the Attorney General (“Consumer Advocate”). On October

4, 2016, Gateway filed a *Motion to Withdraw*, and the Consumer Advocate filed a response on October 26, 2016.

#### ***MOTION TO WITHDRAW***

Gateway seeks to withdraw its *Petition* for a CCN because according to Gateway, the TRA does not have the statutory authority to grant such a *Petition*. In its *Petition*, Gateway states it is located within the service territory of Mallory Valley Utility District (“MVUD”), and MVUD sells water to Gateway which, in turn, sells water to customers in Gateway Village. Gateway asserts that “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.”<sup>1</sup> Gateway maintains that 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 to Gateway Village.”<sup>2</sup> Therefore, Gateway concludes the TRA does not have jurisdiction to grant the *Petition* it filed.

#### ***CONSUMER ADVOCATE’S RESPONSE TO MOTION TO WITHDRAW***

On October 26, 2016, the Consumer Advocate filed the *Consumer Advocate’s Response to Motion to Withdraw* (“*Response*”). In its *Response*, the Consumer Advocate “questions Gateway Utility’s interpretation of that case law.” According to the Consumer Advocate, the holding in *Town of Rogersville v. Mid Hawkins County Utility District*, 122 S.W.3d (Tenn. Ct. App. 2003) contradicts Gateway’s assertion that *West Wilson Utility District* stands for the proposition that the district’s boundaries can only be altered by the county officials in which the

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<sup>1</sup> *Motion to Withdraw*, p. 1 (October 4, 2016) citing *West Wilson Utility District of Wilson County v. Atkins*, 442 S.W. 2d 612,614 (Tenn. 1969).

<sup>2</sup> *Id.* at 2.

utility district is located.<sup>3</sup> The Consumer Advocate asserts that since the *Motion to Withdraw* is unopposed, the implied limitation on the TRA's authority put forth by Gateway in relying on *West Wilson Utility District* will not be determined in these proceedings and urges the TRA to "simply grant the *Motion* without further comment."<sup>4</sup> The Consumer Advocate states that if the Authority either agrees or disagrees with Gateway's analysis in its *Motion to Withdraw*, it "could have a dramatic impact on the TRA's jurisdiction over entities operating a water or wastewater utility."<sup>5</sup>

#### **FINDINGS AND CONCLUSIONS**

The Hearing Officer finds it is not necessary to address Gateway's argument that the TRA does not have authority to grant Gateway a CCN to make a determination on Gateway's *Motion to Withdraw*. In fact, the Hearing Officer specifically declines to make any interpretation or analysis of the caselaw presented by Gateway. Nevertheless, the Hearing Officer finds that the *Motion to Withdraw* is appropriate and should be granted for reasons other than those stated in the *Motion to Withdraw*.

Gateway is a customer of MVUD and thus, as a customer of a Utility District, Gateway is not a public utility subject to TRA jurisdiction.<sup>6</sup> According to Gateway, "MVUD sells water to Gateway Utility which, in turn, sells water to customers in Gateway Village."<sup>7</sup> Referencing a letter from MVUD, Gateway states "the utility district considers Gateway a 'customer' of MVUD and bills Gateway at a commercial rate."<sup>8</sup> Also, in a letter dated May 17, 2005 from Don Scholes, counsel for MVUD, Mr. Scholes states that MVUD has been asked to provide

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<sup>3</sup> *Response*, p. 2 (October 26, 2016).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

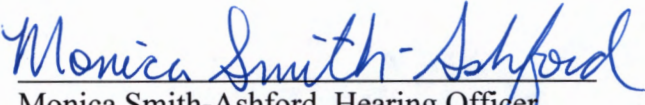
<sup>6</sup> See Tenn. Code Ann. §7-82-104 (2015).

<sup>7</sup> *Motion to Withdraw*, p. 1 (October 4, 2016).

<sup>8</sup> *Id.* at 2.

water service to the entire Gateway development through a large master meter.<sup>9</sup> According to Mr. Scholes, “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.”<sup>10</sup> The Hearing Officer finds that based on statements made by both MVUD and Gateway, Gateway is a customer of MVUD and as such, is not a public utility subject to Authority jurisdiction. The Hearing Officer rejects Gateway’s support of its *Motion to Withdraw* and declines to make any determination on the arguments and assertions set forth in the *Motion to Withdraw*. Based on the record in this docket and the foregoing analysis, the *Motion to Withdraw* is **GRANTED**.

**IT IS SO ORDERED.**



Monica Smith-Ashford, Hearing Officer

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<sup>9</sup> Letter from Don Scholes dated May 17, 2005, p. 1 (September 15, 2016).

<sup>10</sup> *Id.*