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Filed Electronically in TPUC Docket Room 4-25-17

April 25, 2017

Ms. Sharla Dillon  
Dockets and Records Manager  
Tennessee Regulatory Authority  
Andrew Jackson Building  
502 Deaderick Street, Fourth Floor  
Nashville, TN 37243

**RE: First Amended Petition and Brief on Jurisdiction by Petitioner, Dkt.  
No. 17-00013**

HAND-DELIVERED

Dear Ms. Dillon:

Please find attached the Petitioner's First Amended Petition and Brief on Jurisdiction for filing with the Tennessee Public Utility Commission in Docket Number 17-00013.

Sincerely,

*s/Benjamin A Gastel*  
Benjamin A. Gastel

Enclosure

cc: Phillip Jones



**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION  
NASHVILLE, TENNESSEE**

**In re: COMPLAINT OF MILCROFTON UTILITY DISTRICT AGAINST JOHN  
POWELL KING'S CHAPEL CAPACITY, LLC, ASHBY COMMUNITIES, LLC,  
AND/OR NON-POTABLE WELL WATER, INC.**

**DOCKET NO. 17-00013**

**FIRST AMENDED PETITION**

COMES NOW the Petitioner, Milcrofton Utility District and petitions the Tennessee Public Utility Commission (the "Commission") for a declaration that John Powell, King's Chapel Capacity, LLC, Ashby Communities, LLC and/or Non-Potable Well Water, Inc. – or some combination thereof – are operating an illegal public utility within the King's Chapel development in Williamson County, Tennessee.

1. In January of 2017, Milcrofton Utility District ("Petitioner" or the "District") filed a letter with the Commission alerting it to the situation in the King's Chapel development. Thereafter, the Commission opened a docket, established a contested case, and appointed a hearing officer. On April 11, 2017, the Commission held a Status Conference in this matter where the duly appointed Hearing Officer requested that the District file an Amended Petition setting out the nature of the present dispute and adding potentially necessary parties. This Amended Petition attempts to address these issues.

2. The Petitioner is a duly organized utility district under Tennessee state law and operates a water distribution system in certain areas in Williamson County, Tennessee. The Petitioner provides the residential water service to the King's Chapel subdivision located in Williamson County, Tennessee off of Highway 96 between Franklin, Tennessee, and Triune, Tennessee.

3. The developer of the King's Chapel Subdivision is Ashby Communities, LLC. John Powell is the Manager of Ashby Communities. Mr. Powell is the owner and Manager of Kings' Chapel Capacity, LLC. King's Chapel Capacity, LLC has a certificate from the Commission to provide sewer service within the King's Chapel Subdivision. Mr. Powell is also apparently the owner and or operator of Non-Potable Well Water, Inc., which according to the Tennessee Secretary of State's website, has its principle place of business at "JOHN POWELL, 3201 ASPEN GROVE DR APT K1, FRANKLIN, TN 37067-4870 USA." Mr. Powell, King's Chapel Capacity, LLC, Ashby Communities, LLC, and Non-Potable Well Water, Inc. are hereinafter defined as the "Respondents."

4. In 2015 Mr. Powell asked for permission from the District to build water lines from a well in the subdivision to distribute water to lot owners to be used for irrigation. Mr. Powell intended to and has in fact charged lot owners a fee for connecting them to a water system within the subdivision. The District does not know how many homes have connected to this irrigation system, but suspects several houses are connected, and at the status conference, counsel for Mr. Powell alleged that there were approximately 30 homes connected to the water distribution system.

5. The District denied Mr. Powell's request primarily because the District has the exclusive right to provide water service within its service area under T.C.A. § 7-82-301(a). Despite denying Mr. Powell permission to connect homeowners to a public water irrigation system, he has proceeded to do so.

6. Mr. Powell, or some combination of the Respondents, is offering to provide and does provide water from a well to the general public in the King's Chapel Subdivision for a fee. As such this water system is affected by and dedicated to public use and is a public utility under

T.C.A. § 65-4-101. Neither Mr. Powell nor any company which he owns has obtained a certificate of public convenience and necessity to operate this public water system in violation of T.C.A. § 65-4-201. The fee he is charging for this service has not been approved by the TRA or any regulatory body.

7. Further, Mr. Powell is not operating this water system through any entity exempt from the definition of “public utility” under T.C.A. § 65-4-101. If Mr. Powell, or some combination of the Respondents, is providing water to the members of the public living in the King’s Chapel Subdivision and charging a fee to connect to the system or for water used, then the District requests that the Respondents responsible for the provision of this service be informed to cease operating this water system.

8. The District further request that the TRA take any other enforcement action necessary to require Respondents to cease the operation of this water system.

WHEREFORE, PREMISES CONSIDERED, the Petitioner prays:

1. That the Commission declare that the Respondents are a “public utility” for owning and operating a water system within the King’s Chapel subdivision in Williamson County, Tennessee.

2. That the Commission take enforcement action to prevent the operation of this water system until and unless a certificate of public convenience and necessity is obtained; and

3. The Commission grant the Petitioner any other relief to which it is entitled.

Dated April 25, 2017.

Respectfully submitted,



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*Attorneys for Petitioner*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 25, 2017, a true and exact copy of the foregoing First Amended Petition was served upon the following by electronic mail and by depositing a copy in the United States Mail, first-class postage prepaid:

Phillip Jones  
Evans, Jones, and Reynolds  
Suntrust Plaza  
401 Commerce St.  
Suite 710  
Nashville, TN 37219

*Attorney for Respondents*



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Benjamin A. Gastel