

**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

PETITIONER'S BRIEF ON JURISDICTION

COMES NOW the Petitioner, Milcrofton Utility District and files this brief addressing the Tennessee Public Utility Commission's (the "Commission") jurisdiction to rule in the present proceeding. 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 a brief explaining the Commission's jurisdiction in this matter.

FACTUAL BACKGROUND

As explained in Petitioner's First Amended Petition, contemporaneously filed herewith, the Petitioner is a duly organized utility district under Title 7, Chapter 82 of the Tennessee Code. The District operates a water distribution system in certain areas in Williamson County, Tennessee, and specifically provides residential water service to King's Chapel subdivision located in Williamson County, Tennessee off of Highway 96 between Franklin, Tennessee, and Triune, Tennessee.

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., and at the Status Conference in this matter, counsel for Mr. Powell alleged that Non-Potable Well Water, Inc. provided the water service at issue in this contested case.¹

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 water 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.

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). Nevertheless, Mr. Powell, or some combination of the Respondents, are providing that service to the King's Chapel subdivision to this day. But for the provision of this water service, the District would provide the water service to these home owners in the King's Chapel subdivision.²

¹ John Powell, King's Chapel Capacity, LLC, Ashby Communities, LLC, and Non-Potable Well Water, Inc. are hereinafter defined as the "Respondents."

² At the Status Conference counsel for Mr. Powell claimed that the King's Chapel irrigation water system also served, or at least could serve, customers that are not served by the District. The District is at this time without sufficient information to address this allegation. Regardless, there is no question that this water system operated by some combination of the Respondents currently serves current customers of the District.

ARGUMENT

Tennessee law makes clear that the Commission has the authority to institute declaratory proceedings to rule on a matter within the Commission's jurisdiction. Specifically, Tenn. Code Ann. § 65-2-104 states:

On the petition of any interested person, the authority may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it or with respect to the meaning and scope of any order of the authority. A declaratory ruling, if issued after argument and stated to be binding, is binding between the authority and the petitioner on the state of facts alleged in the petition, unless it is altered or set aside by a court in a proper proceeding.

Tenn. Code Ann. § 65-2-104. In other words, "any interested person" may institute declaratory proceedings with the Commission that impact "any rule or statute" enforceable by the Commission. *Id.*

The present proceeding is such a declaratory action. The District is clearly an "interested person" in the proceeding because the Respondents are essentially providing water service to the District's customers.

The present proceeding impacts a "rule or statute enforceable" by the Commission because the present contested case directly impacts whether the Respondents are operating a "public utility" under Tenn. Code Ann. § 65-4-101.

Specifically, Tenn. Code Ann. § 65-4-101 states the following:

"Public utility" means every individual, copartnership, association, corporation, or joint stock company, its lessees, trustees, or receivers, appointed by any court whatsoever, that own, operate, manage or control, within the state, any interurban electric railway, traction company, all other common carriers, express, gas, electric light, heat, power, water, telephone, telegraph, telecommunications services, or any other like system, plant or equipment, affected by and dedicated to the public use, under privileges, franchises,

licenses, or agreements, granted by the state or by any political subdivision thereof.

The First Amended Petition specifically alleges that the Respondents' water system is a public utility under this section. *See* First Amended Petition, ¶¶ 6-7.

Title 65, Chapter 4 also imposes various requirements on public utilities that the Commission is entitled to enforce. *See generally* Tenn. Code Ann. § 65-4-104 (detailing the scope of the Commission's jurisdiction over public utilities); §§ 110-111 (imposing accounting requirements on public utilities); § 122 (requiring the Commission ensure that public utilities do not impose discriminatory or unjust practices upon customers); *see also* Tenn. Code Ann. 65-4-201 *et seq.* (detailing the process and standards by which a public utility may obtain a certificate of public convenience and necessity, which is required to be obtained before a public utility begins operations).

There is no legitimate dispute that Tenn. Code Ann. § 65-4-101 and its concomitant regulations over "public utilities" constitute a "rule or statute" enforceable by the Commission. Indeed, one can argue that it is the heart of the reason why the Commission exists.

CONCLUSION

For the foregoing reasons, the District respectfully requests that the Commission exercise its jurisdiction under Tenn. Code Ann. § 65-2-104 and take up the matter as to whether the Respondents, or some variation of the Respondents, are a "public utility" operating an uncertificated and illegal water system in Williamson County, Tennessee.

SIGNATURE ON FOLLOWING PAGE

Dated April 25, 2017.

Respectfully submitted,



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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:

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