

STATE OF TENNESSEE

Office of the Attorney General



HERBERT H. SLATERY III
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202
TELEPHONE (615)741-3491
FACSIMILE (615)741-2009

May 23, 2017

Ben Gastel, Esquire
Branstetter, Stranch & Jennings, PLLC
223 Rosa L. Parks Avenue
Suite 200
Nashville, TN 37203

RE: Milcrofton Complaint, TPUC Docket No. 17-00013.

Dear Mr. Gastel:

The Consumer Advocate has reviewed the complaint filed by Milcrofton Utility District in this case and would request information regarding the nature of the relief being sought before the Consumer Advocate decides what action to take regarding this matter. It is our understanding, based on a letter from Milcrofton dated January 26, 2017, filed in TPUC Docket No. 17-00013, that Milcrofton Utility District provides water service within its service area in the Southeastern part of Williamson County, and that as a utility district Milcrofton claims it has the exclusive right to provide water service within its service area. In its complaint, Milcrofton states that Mr. John Powell or a related company is providing irrigation within the Milcrofton territory.

The Consumer Advocate makes this request because the Complainant, Milcrofton Utility District, is seeking relief that appears to contradict a position previously taken by another utility district in a letter filed at the TPUC.

In the letter of complaint dated January 26, 2017, (and filed in TPUC Docket No. 17-00013 on February 7, 2017), Milcrofton states that Mr. Powell or the company providing water for irrigation should obtain a Certificate of Convenience and Necessity or CCN from TPUC for his company that is operating in the Milcrofton area of service:

[i]f Mr. Powell is providing water for irrigation to the members of the public living in the King's Chapel Subdivision and charging a fee to connect to eh system or for water used, then Milcrofton requests that Mr. Powell be informed to cease operating this water system until he has obtained the requisite certificate to operate the system.

However, in a letter dated August 29, 2016, on behalf of Mallory Valley Utility District, and filed as an attachment to a letter dated and filed September 15, 2016, in TPUC Docket No. 15-00123, the attorney for Mallory Valley Utility District states that the TPUC has no authority to issue a CCN to a company operating in the service area of a utility district:

Under Tennessee law the TRA has no authority to issue a certificate of public convenience and necessity to a public utility located within the boundaries of a Tennessee [u]tility district. *West Wilson Util. Dist. of Wilson Cty. v. Atkins*, 223 Tenn. 74, 78-79, 442 S.W.2d 612, 613-14 (1969). The District has been providing water service to the residents of Gateway Village since Gateway Village was occupied through two master meters which service was requested by Gateway Utility Company, Inc. The District does not believe any Tennessee court has reversed the Tennessee Supreme Court's decision on this issue. (Emphasis added.)

Accordingly, in order to clarify the relief being sought by Milcrofton, we request that Milcrofton state whether it is acknowledging that the TPUC has the authority to issue a CCN to a company operating in the service area of a utility district, and if so, on what legal basis? If, on the other hand, Milcrofton contends that TPUC cannot issue a CCN to any water company operating in the utility district's service territory, why is it requesting Mr. Powell to obtain a CCN?

Feel free to also provide any other information you believe would be helpful in the Consumer Advocate making a decision in this matter.

We appreciate your attention to this matter.

Sincerely,

A handwritten signature in dark ink, reading "Vance L. Broemel". The signature is fluid and cursive, with the first name "Vance" being the most prominent.

Vance L. Broemel
Senior Counsel