

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

October 6, 2017

IN RE:)	
)	
COMPLAINT OF MILCROFTON UTILITY)	DOCKET NO.
DISTRICT AGAINST JOHN POWELL AND/OR)	17-00013
KING'S CHAPEL CAPACITY, LLC)	

INITIAL ORDER DISMISSING *FIRST AMENDED PETITION*

This matter is before the Hearing Officer of the Tennessee Public Utility Commission (“Commission” or “TPUC”) for consideration of the complaint against King’s Chapel Capacity, LLC (“KCC”), Ashby Communities, LLC (“Ashby”), John Powell, and Non-Potable Well Water, Inc. (“Well Water”) (together “Respondents”) filed by Milcrofton Utility District (“Milcrofton”).

RELEVANT BACKGROUND

Milcrofton Utility District (“Milcrofton”) filed a complaint, which was amended on April 25, 2017.¹ In its *Amended Petition*, Milcrofton asserts that Respondents are “operating an illegal public utility within the King’s Chapel development in Williamson County, Tennessee.”² The *Amended Petition* states that Milcrofton is a duly organized utility district under Tennessee state law and operates a water distribution system in certain parts of Williamson County, including the King’s Chapel subdivision (“King’s Chapel”). According to the *Amended Petition*, Ashby is the developer of King’s Chapel, and Mr. Powell is the manager of Ashby. KCC has a Certificate of Public Convenience and Necessity (“CCN”) from the Commission to provide sewer service to King’s Chapel. In addition, the *Amended Petition* states that Mr. Powell is also the owner of Well Water.

¹ As a result of information obtained at the Status Conference held on April 11, 2017, Milcrofton filed a *First Amended Petition* (“*Amended Petition*”) amending its complaint to include Well Water as a party in this matter.

² *Amended Petition*, p. 1 (April 25, 2017).

The *Amended Petition* alleges that Mr. Powell asked Milcrofton for permission to build water lines from a well in the subdivision to distribute water to lot owners for irrigation for a fee. Milcrofton 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)."³ The *Amended Petition* maintains that despite Milcrofton denying Mr. Powell's request, he and/or some combination of Respondents provide water from a well to some residents of King's Chapel for a fee.⁴ Milcrofton argues the water system is dedicated to public use and is a public utility under Tenn. Code Ann. § 65-4-101 but has failed to obtain a CCN from the Commission in violation of Tenn. Code Ann. § 65-4-201. In addition, the *Amended Petition* asserts that the fee being charged for water service has not been approved by the Commission and requests the Respondents responsible for providing the service "be informed to cease operating this water system."⁵ Milcrofton asks the Commission to declare that the Respondents are a public utility for owning and operating a water system within King's Chapel; that the Commission take enforcement action to prevent operation of this water system "until and unless a certificate of public convenience and necessity is obtained;" and grant Milcrofton any relief to which it is entitled.⁶ In response to a letter from the Consumer Protection and Advocate Division of the Office of the Attorney General ("Consumer Advocate"), Milcrofton subsequently clarified its position stating, "the District [Milcrofton] further believes that the Tennessee Public Utility Commission would be without authority to grant such a Certificate [CCN]. . . . As a result the District is not requesting that TPUC issue a CCN in this proceeding, but rather declare that the Respondent is a "public utility" as that term is used in Tenn. Code Ann. § 65-4-101."⁷

³ *Id.* at 2.

⁴ *Id.*

⁵ *Id.* at 2-3.

⁶ *Id.* at 3.

⁷ Data Response from Milcrofton to the CAD, p. 1 (May 30, 2017) (emphasis in original).

The Respondents filed a *Response to Amended Petition and Jurisdictional Opposition* (“*Response*”) stating that only Well Water provides supplemental irrigation services to homeowners of King’s Chapel because Milcrofton has been unable to meet those needs.⁸ The *Response* maintains that “the exclusivity provided by T.C.A. § 7-82-301 has not been met, given that the Petitioner [Milcrofton] has been unable to furnish all of the services that it was authorized to furnish.”⁹ The *Response* also states Milcrofton’s *Amended Petition* remains deficient because the only entity providing water service is Well Water and denies that Milcrofton is entitled to any enforcement remedies.

BRIEFS ON JURISDICTION

During the Status Conference held on April 11, 2017, the parties discussed the issues in the docket, and the Hearing Officer requested the parties file briefs addressing whether the Commission has jurisdiction to hear and make a determination in this matter.

MILCROFTON

In the *Petitioner’s Brief on Jurisdiction*, Milcrofton argues that the Commission has authority to institute declaratory proceedings to rule on a matter within its jurisdiction and its *Amended Petition* is such a declaratory action because it “directly impacts whether the Respondents are operating a ‘public utility’ under Tenn. Code Ann. §65-4-101.”¹⁰ Milcrofton maintains that Respondents’ water system is a public utility and Title 65, Chapter 4 “imposes various requirements on public utilities that the Commission is entitled to enforce.”¹¹ According to Milcrofton, “[t]here 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.”¹² Milcrofton asks the

⁸ *Response*, p. 2 (May 16, 2017).

⁹ *Id.*

¹⁰ *Petitioner’s Brief on Jurisdiction*, p. 3 (April 25, 2017).

¹¹ *Id.* at 4.

¹² *Id.*

Commission to “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 uncertified and illegal water system in Williamson County, Tennessee.”¹³

*WELL WATER*¹⁴

Well Water raises several jurisdictional issues in its brief. It questions whether the Commission has jurisdiction over the “distribution of non-potable water service through the pipes.”¹⁵ Well Water argues that the Commission does not regulate any non-potable water entities in Tennessee even though many such entities would be subject to Commission jurisdiction according to the arguments contained in Milcrofton’s *Amended Petition*.¹⁶ Well Water also denies that it is a public utility subject to Commission jurisdiction because “the Well Water entity has not dedicated its property to the public use. And it does not supply services that the public has a legal right to demand and /or receive. Hence, it is not a ‘public utility.’”¹⁷ Further, Well Water argues that Milcrofton has failed to provide all of the required services, therefore, “the Complainant’s [Milcrofton’s] right to exclusivity has been compromised.”¹⁸ Well Water states that Milcrofton’s “jurisdictional arguments towards whether it is an ‘interested person’ and, therefore whether it can institute declaratory proceedings” misses the true jurisdictional issue which is whether Well Water is a public utility.¹⁹ Well Water maintains it is not a public utility subject to Commission jurisdiction and the *Amended Petition* should be dismissed.²⁰

¹³ *Id.*

¹⁴ The portion of the *Response* addressing the jurisdiction issues refers only to Well Water entity and not to “Respondents,” presumably because it maintains the only entity of the named Respondents providing water is Well Water.

¹⁵ *Response*, p. 4 (May 16, 2017).

¹⁶ *Id.*

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 7.

²⁰ *Id.*

FINDINGS AND CONCLUSIONS

The Hearing Officer is not persuaded by the arguments regarding jurisdiction set forth by Milcrofton nor does the Hearing Officer adopt the arguments put forth by Well Water relative to the Commission's jurisdiction. Tenn. Code Ann. § 7-82-104(a) is controlling with regard to whether the Commission has jurisdiction to make a determination on Milcrofton's *Amended Petition*. It provides in pertinent part as follows:

- (a) Neither the Tennessee Public Utility Commission nor any other board or commission of like character hereafter created shall have jurisdiction over the district in the management and control of any system, including the regulation of its rates, fees, tolls or charges...

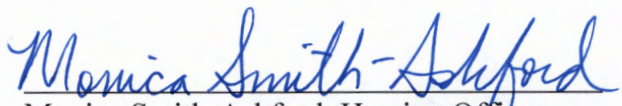
As the utility district for the area in question, Milcrofton has the exclusive right to provide water service in its service area. The statute makes it clear that the Commission does not have jurisdiction over the management and control of any system within the district. The *Amended Petition* goes to the heart of Milcrofton's management and control of its service area. Considering the express statutory limitation on the Commission's authority with regard to the management and control of a system within the utility district service area, it is unlikely that the General Assembly intended the Commission to have jurisdiction to resolve this dispute between a utility district and a system allegedly infringing on its exclusive right to provide service in a particular area. The Hearing Officer declines to expand the Commission's jurisdiction in such a manner.

The Commission has been granted limited authority relative to certain utility districts in Tenn. Code Ann. § 65-4-105. It provides that in certain circumstances the Commission may have authority to review the rates charged and services provided by certain utility districts. However, this review can only be initiated by a petition signed by at least ten percent of the users within the authorized area of the public utility district. This limited grant of authority to the Commission does not apply to the facts of the *Amended Petition*. Milcrofton asserts the Commission would not have

authority to issue a CCN to Well Water but would like the Commission to exercise enforcement proceedings over Well Water.²¹ The Hearing Officer concludes that because Well Water is located within Milcrofton's service area and the *Amended Petition* involves Milcrofton's management and control of its service area, the Commission lacks jurisdiction to grant the relief requested in the *Amended Petition*. Even though the utility district has filed this complaint seeking a determination by the Commission, Tenn. Code Ann. § 7-82-104 prohibits the Commission from exercising jurisdiction in this matter, and Milcrofton should seek a resolution of its complaint elsewhere. For the foregoing reasons, the Hearing Officer concludes that the *Amended Petition* filed by Milcrofton should be dismissed with prejudice and that this docket should be closed.

IT IS THEREFORE ORDERED THAT:

1. The *First Amended Petition* filed by Milcrofton Utility District is dismissed with prejudice.
2. The Docket Manager is directed to close this docket.
3. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Reconsideration within fifteen days of the date of this Initial Order.


Monica Smith-Ashford, Hearing Officer

²¹ See Data Response from Milcrofton to the CAD, p. 1 (May 30, 2017).