

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

IN RE:)
)
PETITION OF SUPERIOR WATER SERVICE)
FOR A CERTIFICATE OF CONVENIENCE) **Docket No. 17-00120**
AND NECESSITY TO PROVIDE WATER)
SERVICE TO A PORTION OF KING'S)
CHAPEL SUBDIVISION IN WILLIAMSON)
COUNTY)

JOINT PETITION TO INTERVENE AND MOTION TO DISMISS

Nolensville/College Grove Utility District (“NCGUD”) and Milcrofton Utility District (“MUD”) (collectively “the Districts”), petition to intervene and move to dismiss the above-captioned proceeding.

Statement of Facts

Superior Water Service, LLC (“Superior”) has asked the Tennessee Public Utility Commission (“the Commission”) to issue Superior a certificate of convenience and necessity to provide water service to a portion of the King’s Chapel subdivision in Williamson County, Tennessee. This area, where 177 houses will eventually be built (Pre-filed Testimony of John Powell, at 2), is wholly located within the service territory of NCGUD. Under state law, NCGUD has an exclusive franchise to construct and operate a public water system within its service territory unless the Williamson County Mayor finds that the public convenience and necessity requires an additional service provider. See T.C.A. § 7-82-301(a)(1)(B). At this time, the Mayor has made no such finding.

MUD’s service territory is adjacent to NCGUD’s service territory. MUD’s territory includes a portion of the King’s Chapel subdivision. Pursuant to T.C.A. § 12-9-108, the Districts have entered into a “Service Area Agreement” under which MUD assumed “all duties, liabilities

and obligations” of NCGUD to provide water service to the entire King’s Chapel subdivision, including the area that Superior desires to serve. Although MUD is contractually obligated to provide service to this area, the Agreement states that the “existing boundaries” of NCGUD “shall remain unchanged.” A copy of the Agreement is attached.

Petition to Intervene

Both Districts have a legal interest in the right to provide water service to the area which Superior wishes to serve. NCGUD had the exclusive right under state law to serve this area, but it allowed MUD to exercise this exclusive right under an interlocal agreement, as authorized by state law. Both utilities therefore have a legal interest in this proceeding and a right to intervene pursuant to T.C.A. § 4-5-310(a). Granting the Districts’ petition will promote the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

Motion to Dismiss

It is well established that the Commission has no jurisdiction to issue a certificate of convenience and necessity to a utility seeking to provide service to an area within the exclusive jurisdiction of a utility district unless the county government which created the utility district first finds that there is a public need for an additional service provider. West Wilson Utility District v. Z. D. Atkins, 442 S.W.2d 612, 613-614 (Tenn. 1969). No such finding has been made at this time, and any such ruling would be “subject to appellate review.” Id., at 614.¹

¹ Based on Superior’s application, there appears to be a disagreement between the developer of King’s Chapel and Milcrofton over the terms and conditions under which the utility district will provide water to the area Superior wants to serve. Any such dispute should have been timely brought before the Utility Management Review Board by the developer. T.C.A. § 7-82-702(a)(9) (requiring that the UMRB hold a hearing regarding “any decision” “concerning the justness and reasonableness of [a] utility district’s requirement that...the developer build utility systems to be dedicated to the utility district or the justness and reasonableness of fees or charges against...the developer related to the utility systems.”; see also American Heritage Apartments v. The Hamilton County Water and Wastewater Treatment Authority, 494 S.W.3d 31 (Tenn. 2016) (noting that a customer in a dispute with a utility district must exhaust his administrative remedies by going before the Utility Management Review Board before filing suit against the utility district).

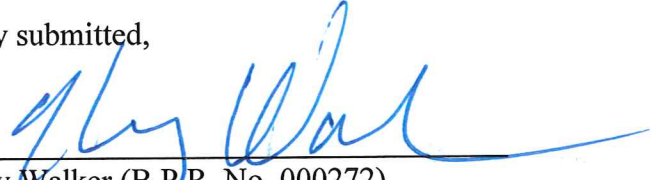
Since the Commission has no jurisdiction in this matter, as the present dispute is committed to the jurisdiction of other governmental actors, the Commission must dismiss the company's application.

Conclusion

The Districts ask that they be allowed to intervene in this proceeding and, furthermore, that the Commission dismiss Superior's application.

Respectfully submitted,

By: _____


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By: _____


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Attorney for Milcrofton Utility District

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of November, 2017, a copy of the foregoing document was served on the parties of record, via electronic delivery and U.S. Mail, postage prepaid, addressed as follows:

John Powell, President
Superior Water Service
P.O. Box 40
Arrington, TN 37014
Email: john-powell@comcast.net



Henry Walker

SERVICE AREA AGREEMENT

See attached.

SERVICE AREA AGREEMENT

This Agreement entered into by and between Nolensville/College Grove Utility District of Williamson County, Tennessee and Milcrofton Utility District of Williamson County, Tennessee (hereafter the Agreement).

WITNESSETH:

Whereas, Nolensville/College Grove Utility District of Williamson County, Tennessee (hereafter N/CGUD) is a utility district created pursuant to the provisions of T.C.A. §§ 7-82-101 to 7-82-804 and is authorized to provide water service within and without its geographic boundaries in Williamson County, Tennessee;

Whereas, Milcrofton Utility District of Williamson County, Tennessee (hereafter Milcrofton) is a utility district created pursuant to the provisions of T.C.A. §§ 7-82-101 to 7-82-804 and is authorized to provide water service within and without its geographic boundaries in Williamson County, Tennessee;

Whereas, N/CGUD and Milcrofton have contiguous boundaries;

Whereas, a new section of the residential development known as Kings Chapel Subdivision is being developed by Ashby Communities, LLC;

Whereas, this new section is located entirely within N/CGUD's boundaries;

Whereas, Milcrofton provides water service to the existing sections of the Kings Chapel Subdivision and is in a better position to provide the water service requested to the new section of the Kings Chapel Subdivision than N/CGUD;

Whereas, N/CGUD is concerned that it may not be able to serve this new section of this development and continue to provide the water service demanded by its other customers;

Whereas, Milcrofton has expressed a willingness to provide water service this new section of the Kings Chapel Subdivision;

Whereas, T.C.A. § 12-9-108 authorizes any public agency to contract with another public agency to perform any governmental service, activity, or undertaking, including the provision of utility service, which each public agency is authorized by law to perform; and

Whereas, N/CGUD and Milcrofton have agreed to enter into this Agreement pursuant to T.C.A. §12-9-108.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth, the parties do hereby agree as follows:

1. N/CGUD agrees to grant to Milcrofton the right to provide water service to the 329 acre tract designated as Parcel 18 on Williamson County Tax Map 109 (the transferred area) which area is located entirely within the boundaries of N/CGUD which will be developed as a new section of the Kings Chapel Subdivision.
2. Milcrofton shall assume all duties, liabilities and obligations of N/CGUD to provide water service within the transferred area.
3. Water service by Milcrofton in the transferred area will be furnished in accordance with the rules, regulations and policies of Milcrofton.
4. All fees and charges paid by the developer within the transferred area shall belong to Milcrofton.
5. The existing boundaries of Nolensville/College Grove Utility District of Williamson County, Tennessee shall remain unchanged.
6. The provisions of this Agreement shall be modified or altered only in writing by the mutual agreement of the parties.

7. This Agreement and shall be governed by the laws of the State of Tennessee.

**NOLENVILLE/COLLEGE GROVE UTILITY
DISTRICT OF WILLIAMSON COUNTY,
TENNESSEE**

By: Paul Campbell
Paul Campbell, President

Dated: April 18, 2008

**MILCROFTON UTILITY DISTRICT OF
WILLIAMSON COUNTY, TENNESSEE**

By: Howard G. Smithson
Howard G. Smithson, President

Dated: April 16, 2008