

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

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

SUPERIOR WATER SERVICE, LLC'S RESPONSE TO MOTION TO DISMISS

This filing shall serve as Superior Water Service, LLC's response to the Motion to Dismiss filed by Milcrofton Utility District and Nolensville/College Grove Utility District.

Statement of Facts

The Williamson County Planning Commission (hereinafter referred to as "**The Planning Commssion**") serves for the Mayor of Williamson County and its citizens. The Planning Commission has already determined the need and necessity for additional water service in the service territory proposed by Superior Water. The Planning Commission approved a site plan, preliminary and final plats, based on letters received from Milcrofton Utility District (hereinafter referred to as "**Milcrofton**") that they have the present ability to provide adequate water in this same service territory, which they now admit that they are unable to provide. Based on these same water availability letters the developer secured various loans that exceed Twenty-Seven Million Dollars (\$27,000,000) and has built roads and all other infrastructure. If Milcrofton had the capability to provide water service in this geographical territory, then there would be no need for Superior to request this Certificate of Convenience and Necessity. However, Milcrofton has now informed the developer of the Kings' Chapel subdivision that it does not have access to

sufficient water supplies that would be needed in order to provide service and would not have this capability until sometime in 2019.

Response to West Wilson Utility District Case

In their joint Motion to Dismiss, both Milcrofton and Nolensville/College Grove Utility District (referred to herein as “NCGUD”) cite the case of *West Wilson Utility District v. Z.D. Atkins*, 442 S.W. 2d 612, 613 – 614 (Tenn. 1969). The *West Wilson* case is based upon geographic service territories. In this case, it was undisputed that adequate water was available through West Wilson Utility District. In this pending petition, Milcrofton does not have the available water supplies to provide service, while NCGUD refuses to provide service based upon a prior interlocal agreement with Milcrofton.

The Interlocal Agreement

The interlocal agreement proffered to this commission in the motion to dismiss between Milcrofton and NCGUD speaks for itself in several ways, both Milcrofton and NCGUD agree that they were created as entities under T.C.A. §§ 7-82-101 to T.C.A. 7-82-804. Section T.C.A. § 7-82-301 (B) states in relevant part as follows:

(B) So long as the district continues to furnish any of the services that it is authorized to furnish in this chapter, **it shall be the sole** public corporation empowered to furnish such services in the district, and no other person, firm or corporation shall furnish or attempt to furnish any of the services in the area embraced by the district, **unless and until it has been established that the public convenience and necessity requires other or additional services**; provided, that this chapter shall not amend or alter §§ 6-51-101 6-51-111, and 6-51-301.[*emphasis added*]

This state code is clear, and the facts are clear. Specifically, while the geographic area of this petition is incorporated within the Nolensville service territory, once the incumbent utility refuses to furnish utility service, as they have to the developer they concede the right to be the sole water service provider in the district. It is Superior Water’s position that Nolensville

conceded their right to be the sole water provider when they entered into the interlocal agreement with Milcrofton. After knowing that Milcrofton could not provide adequate water service and in fact breached the interlocal agreement in early 2017 the Nolensville Board on November 14th 2017 reaffirmed the breached interlocal agreement to a contiguous water utility to serve, who by admission cannot serve. Again, Nolensville concedes their exclusive right to this area of their district as they refused to serve by interlocal agreement and appropriated this area of their district to another Utility serve either.

Conclusion

This petition by Superior Water should not be dismissed since NCGUD has refused to furnish and provide service within its district. Under T.C.A. § 7-82-301 (B), NCGUD's refusal to provide service means that they have now lost their right to be the sole public corporation empowered to furnish such services within the district. In addition, Milcrofton does not have an adequate water supply to provide service within the geographic territory requested by Superior Water. NCGUD has refused to serve, but retains its district area within the interlocal agreement. The interlocal agreement transfers the right to serve this area to Milcrofton. After being advised that Milcrofton could not serve they again reaffirm the interlocal agreement and refuse to serve, giving their district area again to a Milcrofton who cannot serve. Therefore, this area remains unserved after the need and necessity has been established. The joint actions of both these utilities have denied adequate water service to this territory (Nolensville) who can serve but refuses and Milcrofton who cannot or will not provide the water services that are immediately needed. Therefore, the Joint Petition filed by Milcrofton and NCGUD in this Docket should be denied.

Request for Oral Argument

Superior Water hereby formally requests oral argument on this Motion before the Hearing Officer, Monica Smith-Ashford, or in the alternative before the full panel of the Commission, as provided under the Rules of Practice of the Tennessee Public Utility Commission, Chapter 1220-01-02-.06(4).

Respectfully Submitted:



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

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This the 12th day of June, 2018.



Michael P. Dolan