

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

September 28, 2018

IN RE:)	
)	DOCKET NO.
PETITION OF SUPERIOR WATER SERVICE, LLC)	17-00120
FOR A CCN TO PROVIDE WATER SERVICE TO A)	
PORTION OF KING'S CHAPEL SUBDIVISION IN)	
WILLIAMSON COUNTY)	

**ORDER GRANTING MOTION TO DISMISS FILED BY MILCROFTON UTILITY DISTRICT
AND NOLENSVILLE/COLLEGE GROVE UTILITY DISTRICT**

This matter is before the Hearing Officer of the Tennessee Public Utility Commission (“Commission” or “TPUC”) to consider the motion to dismiss filed by Milcrofton Utility District (“Milcrofton”) and Nolensville/College Grove Utility District (“NCGUD”) (together, “the Districts”) on November 27, 2017.¹ In the *Motion to Dismiss*, the Districts seek to dismiss the *Petition* filed by Superior Water Service, LLC (“Superior”) on October 31, 2017. According to the Districts, 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.”²

On May 22, 2018, the Hearing Officer held a Status Conference with the parties to discuss a briefing schedule for Superior to respond to the *Motion to Dismiss*. Pursuant to the Briefing Schedule issued by the Hearing Officer, Superior filed *Superior Water Service, LLC’s Response to*

¹ See *Joint Petition to Intervene and Motion to Dismiss* (“*Motion to Dismiss*”) (November 27, 2017).

² *Motion to Dismiss*, p. 2 (November 27, 2017) (citing *West Wilson Utility District v. Z.D. Atkins*, 442 S.W.2d 612, 613-614 (Tenn. 1969)).

Motion to Dismiss (“*Superior’s Response*”) on June 12, 2018. On June 28, 2018, the Districts filed the *Reply in Support of Motion to Dismiss* (“*Districts’ Reply*”).

SUPERIOR’S RESPONSE

Superior maintains that:

[t]he *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.

In *Superior’s Response*, Superior argues that its *Petition* should not be dismissed because “NCGUD has refused to furnish and provide service within its district.”³

According to Superior, “[u]nder 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.”⁴ In addition, Superior asserts that NCGUD conceded its right to be the sole water provider when it entered into the Interlocal Agreement with Milcrofton, however, Milcrofton does not have the adequate water supply to provide service within the geographic territory requested by Superior.⁵ Therefore, according to Superior, “this area remains unserved after the need and necessity has (sic) been established.”⁶ For these reasons, Superior asks that the *Motion to Dismiss* be denied.

DISTRICTS’ REPLY

In the *Districts’ Reply* filed on June 29, 2018, the Districts argue that the area Superior seeks to serve is within the “chartered service area of duly created utility districts.”⁷ Therefore, the

³ *Superior Response*, p. 3 (June 12, 2018).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Districts’ Reply*, p. 3 (June 29, 2018).

Commission does not have jurisdiction to provide the relief requested in Superior's *Petition*.⁸ Milcrofton states it remains committed to provide water to the King's Chapel subdivision, has the ability to serve the area, and has set forth the conditions under which a developer can obtain water service.⁹ Milcrofton asserts it has never taken the position that it cannot supply the new sections of King's Chapel subdivision with water. According to the *Districts' Reply*, Milcrofton provides water service to all of the King's Chapel subdivision through an Interlocal Agreement which sets forth the terms and conditions by which a developer may obtain service and the Commission is not the proper state agency to contest the conditions and fees.¹⁰ The Districts maintain that "[s]tate law is clear that such controversies are exclusively within the domain of the Utility Management Review Board ("UMRB")."¹¹

The Districts argue that Superior's attempts to distinguish *West Wilson* are "wholly meritless"¹² because "West Wilson makes clear that the Commission exceeds its jurisdiction by issuing a certificate of convenience and necessity to a water utility to provide water service in an area already served by a duly created utility district."¹³ According to the Districts,

the holding in *West Wilson* is premised solely and exclusively on the basis that the area sought to be served by the private water utility seeking a certificate from the Commission was within the geographic boundary of a duly created utility district. The decision *repeatedly* holds that it is the fact the geographic area to be served is within the utility district's service territory that is the basis of the Court's decision (and not whether the utility district could provide water service).¹⁴

The Districts ask that the *Motion to Dismiss* be granted because the Commission does not have the authority to grant the relief requested in Superior's *Petition*.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* (citing *West Wilson* at 614).

¹⁴ *Id.* at 4. Emphasis in original.

FINDINGS & CONCLUSIONS

It is well settled that the Commission does not have jurisdiction to issue a Certificate of Public Convenience and Necessity (“CCN”) to an entity to provide services and compete with a utility district for customers and revenue within the confines of a utility district. *West Wilson Utility District v. Z.D. Atkins*, 442 S.W. 2d 612, 613-614 (Tenn.1969). In addition, Tenn. Code Ann. § 7-82-104(a) is explicit with respect to the Commission’s lack of jurisdiction in matters within the realm of the management and control of a utility district. 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...

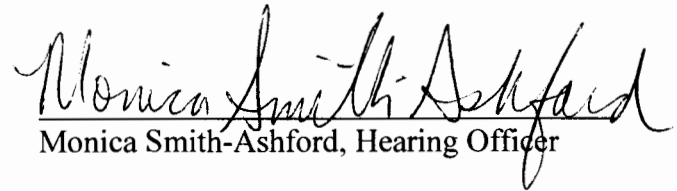
Aside from natural gas pipeline safety requirements, the Commission has not been granted the authority to police utility districts or resolve disputes within their boundaries. Recent legislative action deleting Tenn. Code Ann. § 7-82-103, a provision that formerly provided for a review of a utility district’s rates by the Commission in limited circumstances, does not indicate a desire on the legislature’s part to expand the Commission’s jurisdiction.

There is no dispute in this matter that the geographic area Superior seeks to serve in its *Petition* is within the geographic boundaries of the Districts, therefore, the Hearing Officer concludes that based on well-settled law in this area, the Commission lacks jurisdiction to provide the relief Superior requests. For the foregoing reasons, the Hearing officer concludes that the Districts’ *Motion to Dismiss* should be granted and Superior’s *Petition* should be dismissed with prejudice and the docket closed.

IT IS THEREFORE ORDERED THAT:

1. The Motion to Dismiss filed by Milcrofton Utility District and Nolensville/College Grove Utility District is granted.

2. The *Petition* filed by Superior Water Service, LLC is dismissed with prejudice and this docket is closed.


Monica Smith-Ashford, Hearing Officer