

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

January 16, 2020

IN RE:

PETITION OF CARTWRIGHT CREEK, LLC FOR
DECLARATORY RULING

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DOCKET NO.
19-00061

INITIAL ORDER

This matter is before the Hearing Officer of the Tennessee Public Utility Commission (“Commission” or “TPUC”) to consider the *Petition of Cartwright Creek, LLC for a Declaratory Ruling* (“*Petition for Declaratory Order*” or “*Declaratory Order Petition*”) filed by Cartwright Creek, LLC (“Cartwright Creek” or the “Company”) on July 22, 2019.

RELEVANT BACKGROUND

On March 26, 2019 in Docket No. 19-00042, Cartwright Creek filed a *Petition of Cartwright Creek, LLC to Amend Service Territory to Include the Wilson Parcel and Garrett Parcel for the Troubadour Development in Williamson County* (“*Petition to Amend*”) seeking to amend its service territory to include two proposed parcels, the Wilson Parcel and the Garrett Parcel, for the Troubadour Development in Williamson County.¹ Cartwright Creek states the parcels are adjacent to the east of the Company’s present service territory. On May 10, 2019 in Docket No. 19-00042, Cartwright Creek filed *Supplemental Information in Support of the*

¹ See *In re: Petition of Cartwright Creek, LLC to Amend Service Territory to Include the Wilson Parcel and Garrett Parcel for the Troubadour Development in Williamson County*, Docket No. 19-00042, *Petition of Cartwright Creek, LLC to Amend Service Territory to Include the Wilson Parcel and Garrett Parcel for the Troubadour Development in Williamson County* (March 26, 2019).

*Petition and Request for Waiver of Some Filing Requirements (“Waiver Request”).*² In the *Waiver Request*, Cartwright Creek requested that the Hearing Officer allow the Company to “forego certain filing requirements either under the ‘law of the case’ doctrine or if the utility and the agency staff agree that the information is not needed to evaluate the utility’s request to expand its service area.”³ Cartwright Creek stated that the “development formerly known as ‘Stillwater,’ then ‘Hideaway’ and now ‘Troubadour,’ has recently been redesigned to make it a more upscale community by reducing the total number of houses to 375 and increasing the total amount of land in the development through the addition of two, adjacent parcels that lie just outside the utility’s service area.”⁴ According to Cartwright Creek, the “sole purpose of this Petition is to ask the Commission to adjust the boundaries of the utility’s service area to include the two adjacent parcels.”⁵ The Company maintained that “[s]ince the Commission has already authorized Cartwright Creek to serve this development most of the voluminous filings normally required of a wastewater company seeking to serve a new area (*see*, T.P.U.C. rule 1220-04-13-.17) are unnecessary).”⁶ Cartwright Creek argued it is only adjusting the boundary lines established in Docket No. 07-00180, and in that docket, the Commission determined the Company had the technical, managerial, and financial capabilities to provide wastewater services to more homes than it currently plans to serve with the addition of the two parcels. Cartwright Creek argued those findings remain in effect and are the “‘law of the case’ and cannot be re-

² *See In re: Petition of Cartwright Creek, LLC to Amend Service Territory to Include the Wilson Parcel and Garrett Parcel for the Troubadour Development in Williamson County*, Docket No. 19-00042, *Supplemental Information in Support of the Petition and Request for Waiver of Some Filing Requirements* (May 10, 2019) (hereinafter *Waiver Request*).

³ *Waiver Request*, p. 1 (May 10, 2019).

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.*

litigated by any party or reconsidered by the agency absent a substantial change in the law or the facts since the earlier decision.”⁷

The Hearing Officer scheduled a Status Conference on June 27, 2019, during which Cartwright Creek argued its *Waiver Request*. In an effort to allow the docket to move along expeditiously, on July 2, 2019, the Hearing Officer informed Cartwright Creek that the *Waiver Request* was denied and a written order would be issued later. The Hearing Officer reasoned that knowing the *Waiver Request* was denied would allow Cartwright Creek to begin filing the minimum filing requirements set forth in Commission Rule 1220-04-13-.17. However, Cartwright Creek did not file documents required in Rule 1220-04-13-.17. Prior to entry of an order denying the *Waiver Request*, Cartwright Creek filed a *Petition for Declaratory Order* on July 22, 2019, in the current docket, Docket No. 19-00061, asking the Commission to issue a declaratory ruling regarding the applicability of Tenn. Code Ann § 65-4-201(a) to the facts in the current docket.⁸ On September 30, 2019, in Docket No. 19-00042, the Hearing Officer issued an *Order Holding Proceedings in Abeyance* holding the proceedings in that docket in abeyance until a determination is made on the *Petition for a Declaratory Order*.

PETITION FOR DECLARATORY ORDER

In its *Declaratory Order Petition*, Cartwright Creek argues that state law “does not require a utility to obtain a certificate for ‘an extension into territory ... contiguous to its ... system’ that is not already ‘receiving service of a like character from another public utility.’”⁹ Cartwright Creek states that its service territory borders the Wilson parcel on the north, west and south. As a result, Cartwright Creek maintains that the parcel is contiguous on three sides of the utility’s service area. According to Cartwright Creek, “[t]he parcel does not currently have any

⁷ *Id.* at 3.

⁸ See *In re: Petition of Cartwright Creek, LLC for Declaratory Ruling*, Docket No. 19-00061 (July 22, 2019).

⁹ *Id.* at 2.

wastewater service, and the only utility that has a legal right to provide wastewater service to the parcel has relinquished that right.”¹⁰ Cartwright Creek argues that “under these circumstances, the statute expressly states that Section 201(a) ‘shall not be construed to require’ Cartwright Creek ‘to obtain a certificate for an extension’ of service to homes located on this parcel.”¹¹ Cartwright Creek asks the Commission to “issue a declaratory ruling confirming that the certification requirement of Section 201(a) does not apply to the extension of wastewater service by Cartwright creek [sic] to the contiguous, unserved Wilson parcel.”¹² Mr. Bruce Meyer, who is employed by Schaeffer Wastewater Solutions and responsible for the day-to-day operations, engineering, and permitting, for Cartwright Creek, filed Pre-Filed Testimony on behalf of the Company on July 30, 2019.

OCTOBER 14, 2019 HEARING

A Hearing in this matter was convened before the Hearing Officer on October 14, 2019, as noticed on October 4, 2019. Cartwright Creek was represented at the Hearing by its counsel:

Henry W. Walker, Esq. - Bradley Arant Boult Cummings, LLP, 1600 Division Street, Suite 700, Nashville, TN 37203.

During the Hearing, Cartwright Creek presented the testimony of its witness, Bruce Meyer. In addition, members of the public were given an opportunity to comment on the *Petition*, but no member of the public sought to comment.

FINDINGS & CONCLUSIONS

Tenn. Code Ann. § 65-4-201(a) provides as follows:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the

¹⁰ *Id.*

¹¹ *Id.* (*Emphasis added in original*).

¹² *Id.*

commission, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate; **provided, however, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it.**¹³

Cartwright Creek seeks a Declaratory Order from the Commission that pursuant to Tenn. Code Ann. § 65-4-201(a) it should not be required to obtain an amendment to its certificate of convenience and necessity (“CCN”) to provide service to the Wilson parcel because the parcel is contiguous to its service area. Cartwright Creek relies specifically on the portion of the statute that states:

... provided, however, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it.¹⁴

In support of its *Declaratory Order Petition*, Cartwright Creek filed maps in the docket showing the Wilson parcel is surrounded on three sides by Cartwright Creek’s service territory. Cartwright Creek also filed Pre-Filed Testimony of Bruce Meyer, who is responsible for the daily operations of Cartwright Creek. To his testimony, Mr. Meyer attached a letter from

¹³ Tenn. Code Ann. § 65-4-201(a) (Supp. 2019) (*emphasis added*).

¹⁴ *Id.*

Thomas R. Fous, the president of Troubadour subdivision, requesting that Cartwright Creek provide wastewater service to the Wilson parcel. Mr. Meyer also testifies that the Wilson parcel is currently unserved and is in the Nolensville College Grove Utility District (“NCUD”) service area and that NCUD provided a letter stating it has relinquished its right to provide service to the Wilson parcel. According to Mr. Meyer, Troubadour’s existing treatment system has ample capacity to serve the twenty-two additional homes planned for the Wilson parcel.

A petition for a declaratory order before the Commission is governed by Tenn. Code Ann. §§ 4-5-223 and 65-2-104. Tenn. Code Ann. § 65-2-104 provides “the commission may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it or with respect to the meaning and scope of any order of the commission.” Additionally, Tennessee case law instructs decision-makers on how to interpret and construe statutory provisions.

When construing a statute, the decision-maker must “ascertain and give effect to the intent and purpose of the legislation, considering the statute as a whole and giving words their common and ordinary meaning.”¹⁵ There is a presumption that a statute says what it means and means what it says.¹⁶ “Whenever possible, legislative intent should be determined from the plain language of the statute, ‘read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning.’”¹⁷ If the decision-maker is unable to ascertain the legislative intent of a statute from the plain language because the language is ambiguous, then the decision-maker may use extrinsic aids such as the legislative history of the

¹⁵ *Consumer Adv. Div. v. Tennessee Reg. Auth.*, No. M1999-01699-COA-R12-CV, 2000 WL 1514324, *3 (Tenn. Ct. App. Oct. 12, 2001) (citing *Marion County Bd. of Comm’rs v. Marion County Election Comm’n*, 594 S.W.2d 681 (Tenn. 1980)); see *Consumer Adv. Div. v. Greer*, 967 S.W.2d 759, 761 (Tenn. 1998).

¹⁶ See *Consumer Adv. Div. v. Tennessee Reg. Auth.*, 2000 WL at *3 (citing *Worley v. Weigel’s, Inc.*, 919 S.W.2d 589, 593 (Tenn. 1996)).

¹⁷ *Kultura, Inc. v. Southern Leasing Corp.*, 923 S.W.2d 536, 539 (Tenn. 1996) (quoting *National Gas Distrib., Inc. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991)); see *Consumer Adv. Div. v. Greer*, 967 S.W.2d at 761.

statute.¹⁸ The decision-maker may also consult other extrinsic sources such as a “statute’s historical background, the conditions giving rise to the statute, and the circumstances contemporaneous with the statute’s enactment.”¹⁹ An ambiguity exists when the “parties legitimately have different interpretations of the same statutory language.”²⁰

With respect to the set of facts presented to the Hearing Officer in this docket regarding the applicability of the Tenn. Code Ann. § 65-4-201(a) to the Wilson parcel the Hearing Officer finds that Tenn. Code Ann. § 65-4-201(a) applies to the set of facts set forth in the *Petition for Declaratory Order*. Specifically, the Hearing Officer finds that Cartwright Creek has established that the Wilson parcel is contiguous to the Company’s service territory and does not currently receive similar service from another public utility. The Wilson parcel is located in NCUD’s service area which ordinarily would prohibit Cartwright Creek from serving the development. However, the Company has provided a letter that NCUD has relinquished its right to serve the Wilson parcel, and the developer for the Wilson parcel has expressed a desire for Cartwright Creek to provide service. Based on these findings and the strict interpretation of the statute as written, the Hearing Officer concludes that Cartwright Creek is not required to seek an amendment to its CCN to serve the Wilson parcel.

Although the Hearing Officer concludes that a certificate is not necessary for Cartwright Creek to serve the contiguous Wilson parcel, the Hearing Officer concludes that pursuant to the broad authority of the Commission over the utilities it regulates, Cartwright Creek is ordered to cooperate with Commission Staff in providing all necessary information regarding its provision of service to the Wilson parcel. Under Tenn. Code Ann. Title 65, the Tennessee General

¹⁸ See *Chapman v. Sullivan County*, 608 S.W.2d 580, 582 (Tenn. 1980); *City of Oak Ridge v. Roane County*, 563 S.W.2d 895, 899 (Tenn. 1978); *Consumer Adv. Div. v. Tennessee Reg. Auth.*, 2000 WL at *3.

¹⁹ *BellSouth Telecomm. v. Greer*, 972 S.W.2d 663, 673 (Tenn. Ct. App. 1997), *perm. app. denied* (Tenn. June 15, 1998).

²⁰ See *Consumer Adv. Div. v. Tennessee Reg. Auth.*, 2000 WL at *3.

Assembly has expressly delegated to the Commission broad “practically plenary” jurisdiction, power, and authority to govern and control *all* public utilities and their property, property rights, facilities, and franchises.²¹ Moreover, the Commission’s enabling statutes “shall not be construed as being in derogation of the common law, but shall be given a liberal construction, and any doubt as to the existence or extent of a power conferred on the authority [commission] by this chapter [4] or chapters 1, 3 and 5 of this title shall be resolved in favor of the existence of the power, to the end that the authority [commission] may effectively govern and control the public utilities placed under its jurisdiction by this chapter.”²²

By filing the *Petition for Declaratory Order*, the Company acknowledged the need for the Commission’s guidance on the issue of public utilities providing service to contiguous territories not included in a certificated service area. On December 9, 2019, the Commission opened a rulemaking proceeding to promulgate a rule establishing a process to address concerns about public utilities serving contiguous areas without the Commission’s concomitant analysis of the technical, financial, and managerial ability of those public utilities to provide such additional services. Until the Commission’s rules are promulgated, the Hearing Officer concludes that at a minimum, when a public utility seeks to serve a contiguous territory, it must provide written notice to the Commission by filing with the Commission’s Docket Manager its intent thirty (30) days prior to providing service and establish that such territory falls within the parameters of the contiguous provision contained in Tenn. Code Ann. §65-4-201(a). Before serving any contiguous territory, the public utility must establish that:

1. It has a valid CCN for the area it is currently serving, and the system to be utilized to serve the contiguous area is in good standing with the Commission, the Tennessee

²¹ Tenn. Code Ann. § 65-4-104; also Tenn. Code Ann. § 65-4-105(a). (*emphasis added*)

²² Tenn. Code Ann. § 65-4-106 (originally enacted Acts 1919, Ch. 49); *and see* Tenn. Code Ann. § 65-2-121.

Department of Environment and Conservation (“TDEC”), and other applicable regulatory bodies;

2. The territory it seeks to serve is contiguous to its route, plant, line, or system by providing maps showing the relevant locations;
3. The area it seeks to serve is not in the service area of another public utility, utility district, municipality, or other authorized utility service provider or proof that any such utility provider has relinquished rights to serve the area;
4. The area it seeks to serve does not currently receive similar services and requests service from the public utility. This information should include a description of the services to be provided, including the estimated number of homes to be served; and
5. A tariff for the rates to be charged to the customers in the new territory has been approved by the Commission;

In addition, the public utilities seeking to serve a territory pursuant to the contiguous provision shall cooperate with requests for information from Commission Staff.

IT IS THEREFORE ORDERED THAT:

1. The certification requirement contained in Tenn. Code Ann. § 65-4-201(a) does not apply to Cartwright Creek, LLC providing service to the contiguous Wilson parcel.

2. Cartwright Creek, LLC shall comply with requests for information from Tennessee Public Utility Commission Staff regarding the provision of service to the Wilson parcel.

3. Until Rules are promulgated by the Tennessee Public Utility Commission, any public utility seeking to provide service to a contiguous territory pursuant to Tenn. Code Ann. § 65-4-201(a) shall file in writing with the Tennessee Public Utility Commission’s Docket

Manager the following at least thirty (30) days before providing service:

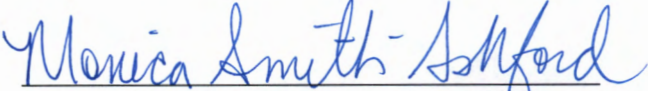
- a. Proof of a valid certificate of convenience and necessity for the area it is currently serving that is contiguous to the area it seeks to serve, and the system to be utilized to serve the contiguous area is in good standing with the Tennessee Public Utility Commission, the Tennessee Department of Environment and Conservation, and other applicable regulatory bodies;
- b. The territory it seeks to serve is contiguous to its route, plant, line, or system by providing detailed maps showing the location;
- c. The area it seeks to serve is not in the service area of another public utility, utility district, municipality, or other authorized utility service provider or proof that any such utility provider has relinquished rights to serve the area;
- d. The area it seeks to serve does not currently receive similar services and wants to receive service from the public utility. This information should include a description of the services to be provided, including the estimated number of homes to be served; and
- e. A tariff of the rates to be charged to the customers in the new territory has been approved by the Tennessee Public Utility Commission;

4. Public utilities seeking to serve a territory pursuant to the contiguous provision shall cooperate with requests for information from Tennessee Public Utility Commission Staff.

5. This Initial Order may be appealed to the Tennessee Public Utility Commission pursuant to Tenn. Code Ann. § 4-5-315.

6. This Initial Order will become a Final Order of the Tennessee Public Utility Commission fifteen (15) days after it is issued unless appealed or the Tennessee Public Utility

Commission gives notice of its intention to review the Initial Order within that fifteen (15) day period.



Monica Smith-Ashford, Hearing Officer