

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

**THE APPLICATION OF THE
JACKSON SUSTAINABLE
COOPERATIVE FOR A
DETERMINATION OF EXEMPTION
AND IN THE ALTERNATIVE, FOR A
CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY**

Docket No. 21-00061

**STATEMENT OF THE TENNESSEE VALLEY AUTHORITY
RECOMMENDING THAT THE COMMISSION NOT ISSUE A
DECLARATORY RULING AND DECLINE TO OPEN A CONTESTED
CASE PROCEEDING**

The Tennessee Valley Authority (“TVA”) submits the following Statement pursuant to Tennessee Public Utility Commission rules 1220-01-02-.05 and 1220-01-02-.02(2) urging the agency not to issue a declaratory order as requested by the Petitioner, the Jackson Sustainability Cooperative (“JSC”), and to decline to open a contested case proceeding to consider whether JSC should be granted a certificate of convenience and necessity to provide electric service to retail customers in Jackson, Tennessee.

Summary

JSC is a generation and transmission cooperative (“G&T Cooperative”) organized under the Tennessee Electric G&T Cooperative Act, T.C.A. § 48-69-101 et seq. As a G&T Cooperative, JSC is statutorily “exempt in all respects” from the jurisdiction of the Tennessee Public Utility Commission (“the Commission”). T.C.A. § 48-69-119. The Petitioner nevertheless asks that the Commission issue a declaratory ruling as to whether JSC is exempt from regulation because of

two other statutes, T.C.A. § 65-4-101(6)(A) and T.C.A. § 65-4-101 (6)(A)(v). Under state law, a person has standing to ask for a declaratory ruling only if he has a recognized, legal interest that will be “affected” by the outcome of the request. See T.C.A. § 4-5-223(a). Since, under the Tennessee Electric G&T Cooperative Act, JSC is already exempt from Commission regulation, JSC will not be “affected” one way or the other by a Commission ruling as to whether JSC is also exempt under other statutes. Therefore, JSC has no standing to ask for declaratory rulings on those other issues.

Second, JSC asks that if the Commission finds that JSC is a regulated public utility under the Commission’s jurisdiction, the Commission should open a contested case proceeding and grant JSC a certificate of convenience and necessity to provide electric service to retail customers in Jackson, Tennessee. Petition at 17. Under the Commission’s rules, the agency is not required to open a contested case if “[t]he relief which the petition seeks is on its face barred as a matter of law.” See Rule 1220-01-02-.02(2). As a G&T Cooperative, JSC is prohibited from offering “electrical power and energy services to retail customers in the Tennessee Valley Authority area.” T.C.A. § 48-69-118(a). There is no dispute that Jackson, Tennessee is within TVA’s service area. See Petition, Exhibit 5. Since JSC cannot legally operate as a public utility offering retail electric service in Jackson, JSC’s request for a certificate to provide such service is “on its face barred as a matter of law.” Therefore, the agency should decline to open a contested case for the purpose of granting JSC a license to offer a service that the Petitioner has no legal right to provide.

Discussion

According to the Petition (cover letter at 1), JSC’s Charter (Petition, Exhibit 1, Section 3(a)), its Bylaws (Petition, Exhibit 2, Section 1.1) and the sworn, prefiled testimony of JSC’s President, Dennis Emberling (Petition, Exhibit 14, at 2), JSC is a G&T Cooperative organized

under T.C.A. § 48-69-101 et seq. As a G&T Cooperative, JSC is “exempt in all respects from the jurisdiction and control of the Tennessee public utility commission.” T.C.A. § 48-69-119. JSC may offer wholesale electric service to its members (T.C.A. § 48-69-106(a)(1)) but is prohibited from offering electric service to retail customers located in TVA’s service area. T.C.A. § 48-69-118(a). TVA’s service area is defined by federal law (16 U.S.C. § 831n-4(a)) and encompasses nearly all of Tennessee, including Jackson.

Despite the exemption provision in T.C.A. § 48-69-119, JSC requests that the Commission issue a declaratory ruling that the Petitioner is exempt from Commission regulation because JSC is a “cooperative” as defined in T.C.A. § 65-4-101(6)(A) (v).¹ That statute excludes from the Commission’s jurisdiction a cooperative organized under either the Rural Electric and Community Services Cooperative Act (T.C.A. § 65-25-101 et seq.) or the Telephone Cooperative Act (T.C.A. § 65-29-101 et seq.).

JSC has no standing to make this request. Both the Uniform Administrative Procedures Act, T.C.A. § 4-5-223(a), and the rules of the Tennessee Public Utility Commission, Rule 1220-01-02-.05(1), state that a petition for a declaratory order may only be filed by an “affected person.” That is, it must be filed by a person threatened with a “distinct and palpable injury... to a recognized legal right or interest.” Calfee v. Tennessee Department of Transportation, No. M2016-01902-COA-R3-CV, 2017 WL 2954687, at *11 (Tenn. Ct. App. 2017) quoting Metropolitan Gov’t of Nashville v. Bd. of Zoning Appeals of Nashville, 477 S.W.3d 750, 755 (Tenn. 2015). Since JSC is exempt from regulation as a G&T Cooperative, a ruling by the Commission as to whether JSC is also exempt under either of the two acts cited in T.C.A., § 65-

¹ The Petition, at 1 and 17, refers to “T.C.A. § 65-4-101(6)(E)” as exempting a “cooperative organization not organized or doing business for profit” from the Commission’s regulation. There is no such section. The statute the Petitioner is describing is T.C.A. § 65-4-101(6)(A)(v).

4-101(6)(A)(v) will have no impact on JSC. Therefore, the Petitioner has no standing to request a declaratory ruling on the applicability of T.C.A. § 65-4-101(6)(A)(v). Calfee, supra, at 9.

Similarly, the Petitioner has no standing to request a declaratory ruling that JSC is not an entity “affected by and dedicated to the public use” and therefore not a “public utility” subject to the Commission’s jurisdiction. See T.C.A. § 65-4-101(6)(A). In the Petition, JSC describes the benefits of the “supplemental,” “behind-the-meter” electric services it plans to sell to end-users in Jackson. Petition at 5-8. While the issue of whether a retail provider of such services is a “public utility... affected by and dedicated to the public use” may arise in some future Commission proceeding, it is not before the Commission now because JSC, as an unregulated G&T Cooperative, would not be “affected” by the agency’s declaratory ruling and therefore has no standing to ask hypothetical questions about the Commission’s jurisdiction over a provider of these services. See Calfee, supra, at 9, 11.

Finally, the Petitioner asks that if the Commission finds that JSC is subject to the agency’s jurisdiction, the Commission should grant JSC a certificate of public convenience and necessity to sell electricity to end users in Jackson. Petition at 17. As discussed above, JSC is prohibited from offering electric service to retail customers in Jackson.

Under Commission Rule 1220-01-02-.02(2)(c), the agency may not commence a contested case if “[t]he relief which the petition seeks is on its face barred as a matter of law.” Since JSC cannot be granted a certificate to engage in conduct that is prohibited by statute, the relief sought by JSC is “barred as a matter of law.” There is no reason to open a contested case.

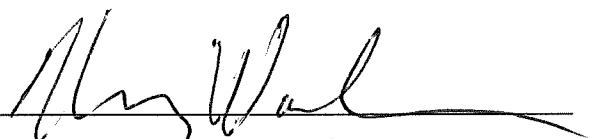
Conclusion

As a G&T Cooperative, JSC is exempt from Commission regulation under T.C.A. § 48-69-119 and therefore has no standing to ask for declaratory rulings as to whether JSC is also exempt from regulation under T.C.A. § 65-4-101(6)(A)(v) or T.C.A. § 65-4-101(6)(A).

As a G&T Cooperative, JSC is prohibited by T.C.A. § 48-69-118(a) from offering electric service to retail customers in Jackson. The Commission therefore is “barred as a matter of law” from granting JSC a certificate of convenience and necessity to sell electric service to retail end users in Jackson.

JSC’s Petition reflects a misunderstanding of the structure, duties, exemptions and limitations of a G&T Cooperative. As a result, JSC seeks declaratory rulings that it has no right to request and relief that the Commission has no authority to grant. The Commission should deny the requests for declaratory rulings, decline to open a contested case proceeding to consider JSC’s application for a certificate and spend no further time on this docket.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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