

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

November 7, 2025

IN RE:

**PETITION OF TELLICO VILLAGE PROPERTY
OWNERS ASSOCIATION (TVPOA) TO DETERMINE
IF A CCN IS NEEDED**

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**DOCKET NO.
25-00048**

ORDER DENYING MOTION TO DISMISS OF TVPOA

This matter is before the Administrative Judge of the Tennessee Public Utility Commission (“Commission” or “TPUC”) for consideration of the *Tellico Village Property Owners Association, Inc.’s Motion to Dismiss Consumer Advocate’s Petition and/or Complaint for the Tennessee Public Utility Commission to Convene a Show Cause Proceeding* (“*Motion to Dismiss*”) filed on August 8, 2025, by Tellico Village Property Owners Association (“TVPOA”). TVPOA’s *Motion to Dismiss* seeks to dismiss the *Consumer Advocate’s Petition and/or Complaint for the Tennessee Public Utility Commission to Convene a Show Cause Proceeding Against Tellico Village Property Owners Association, Inc.* (“*Complaint*”) filed by the Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) on July 7, 2025.

RELEVANT BACKGROUND

In its *Complaint*, the Consumer Advocate requests the Commission to convene a show cause proceeding requiring TVPOA to appear and show cause why the Commission should not have jurisdiction over TVPOA as a regulated public utility. The Consumer Advocate also requests the Commission take such other action it deems appropriate for violations of law including the operation of a public utility without a certificate of public convenience and necessity (“CCN”) in violation of

Tenn. Code Ann. § 65-4-201; failure to pay inspection fee in violation of Tenn. Code Ann. § 65-4-301(a); failure to file a tariff in violation of Tenn. Code Ann. § 65-5-102; and charging rates not approved by the Commission in violation of §§ 65-5-501 and/or 65-5-103.¹

TVPOA’S MOTION TO DISMISS

TVPOA filed its *Motion to Dismiss* on August 18, 2025, arguing the Commission lacks jurisdiction over TVPOA because TVPOA is exempt from Commission regulation. Therefore, TVPOA maintains the Consumer Advocate’s *Complaint* fails to state a claim upon which relief can be granted and should be dismissed. TVPOA argues extensively that it was created as a residential subdivision and designated as such in the Tellico Village Master Plan.² In addition, TVPOA maintains that “it was always anticipated that it would eventually include development of a de minimis number of commercial amenities and lots in order to serve and benefit the residential community.”³ TVPOA states the Commission has only the authority granted to it by statute and that grant of power must be strictly construed.⁴ According to TVPOA, it is a utility exempt from Commission regulation pursuant to Tenn. Code Ann. §65-4-101(6)(B)(i) because it is a non-profit homeowners association operating a utility in a residential subdivision for the exclusive use of the subdivision.⁵ TVPOA argues the statute is clear and does not require that the exemption be limited to exclusively residential subdivisions or only residential lots.⁶ According to TVPOA, “[h]ad the Legislature intended to limit the broad exemption in Tenn. Code Ann. Sec. 65-4-101(6)(B)(i) to subdivisions with exclusively residential lots, or even subdivisions with a specific quantity or ratio of residential lots, it certainly

¹ *Complaint*, pp. 1-2 (July 7, 2025).

² *Motion to Dismiss*, pp. 3-4 (August 18, 2025).

³ *Id.* at 5.

⁴ *Id.* at 9.

⁵ *Id.*

⁶ *Id.* at 11-12.

could have done so.”⁷ Therefore, TVPOA maintains that simply because it serves five commercial customers does not transform it into a public utility subject to Commission jurisdiction.

TVPOA also contends it is exempt from Commission regulation as a cooperative nonprofit corporation pursuant to Tenn. Code Ann. §65-4-101(6)(E). TVPOA maintains that the statute at its inception exempted TVPOA from regulation creating a vested right of exemption for TVPOA under the statute because it was not until 2011 that the definition of cooperative was narrowed. TVPOA maintains it has a vested right to be exempted from regulation because it relied on its exemption under Tenn. Code Ann. § 65-4-101(6)(E) that had been in place for 25 years and when the statute was changed, there was no intent for it to be applied retroactively, therefore, it can only be applied prospectively to other entities seeking the exemption after 2011.⁸ Further, TVPOA argues it falls within the Court of Appeals definition of a cooperative exempt from Commission regulation. According to TVPOA, it is similarly situated to Fairfield Glade Community Club (“Fairfield Glade”) in which the Commission made a legal determination that Fairfield Glade was a nonprofit corporation and issued a letter stating it did not require a CCN. According to TVPOA, the Commission relied exclusively on Tenn. Code Ann. § 65-4-101(6)(E) and Fairfield Glade’s status as a nonprofit corporation for the exemption, despite Fairfield Glade providing sewer service to a commercial supermarket located on property contiguous to Fairfield Glade.⁹ TVPOA reasons that based on the precedent and the fact the commercial properties are actually within Tellico Village “[a]ny attempt by the Commission to now deny TVPOA of its exemption from regulation by the Commission as a nonprofit corporation would not only violate Tenn. Code Ann. § 65-4-101(6)(E) but would also violate

⁷ *Id.*

⁸ *Id.* at 25.

⁹ *Id.* at 24.

the clear legal precedent created by the Tennessee Regulatory Authority’s longstanding exemption of FGCC [Fairfield Glade].”¹⁰

Lastly, TVPOA argues that the Commission by its own action has indicated an intent to exempt TVPOA from regulation.¹¹ TVPOA points to a general descriptive statement regarding the Commission regulating Tennessee’s investor-owned utility companies that is included in the cover letter to the Governor attached to its Annual Report, the Commission’s Annual Reports, the Commission overview in the Tennessee Blue Book, and on the Commission website as being indicative of an admitted limitation on the Commission’s jurisdiction.¹² In addition, TVPOA contends that because the Commission has chosen not to regulate TVPOA or any similarly situated entity for over 40 years, indicates that the Commission lacks the regulatory authority to do so.¹³

CONSUMER ADVOCATE’S RESPONSE

On September 8, 2025, the Consumer Advocate filed the *Consumer Advocate’s Response to Tellico Village Property Owners Association, Inc.’s Motion to Dismiss* (“*Consumer Advocate’s Response*”) asking that TVPOA’s *Motion to Dismiss* be denied. The Consumer Advocate points out that TVPOA’s *Motion to Dismiss* “...does not once refer to the legal standard for a motion to dismiss or any case law under Tennessee Rule of Civil Procedure 12.02(6) governing the failure to state a claim upon which relief can be granted.”¹⁴ The Consumer Advocate explains that a motion to dismiss “challenges only the legal sufficiency of the complaint not the strength of the [petitioner’s] proof or evidence.”¹⁵ In addition, the Consumer Advocate states that Tennessee courts follow a liberal pleading practice with the primary purpose of the pleading being to “...give notice of the nature of

¹⁰ *Id.*

¹¹ *Id.* at 26.

¹² *Id.* at 26-28.

¹³ *Id.* at 30.

¹⁴ *Consumer Advocate’s Response*, ftnt. 1 (September 8, 2025) (emphasis omitted).

¹⁵ *Id.* at 2 (quoting *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011)).

the wrongs and injuries complained of with reasonable certainty, and notice of the defenses that will be interposed, and to acquaint the court the real issues to be tried.”¹⁶

The Consumer Advocate argues the Commission has jurisdiction to determine whether a utility is exempt from regulatory oversight. Inherent in the authority granted to the Commission by the Legislature is the power for the Commission to determine what constitutes a public utility. Otherwise, according to the Consumer Advocate, a utility could simply claim itself to be an entity not subject to Commission jurisdiction, and the Commission would be prohibited from inquiring into the actual structure of the entity.¹⁷ In fact, the Consumer Advocate states it is not uncommon for the Commission to make decisions as to whether a company is a public utility, and just recently, the Commission made determinations in two dockets that two entities were not public utilities.¹⁸

Next, the Consumer Advocate addresses the exemption from Commission regulation for homeowner associations (“HOA”) contained in Tenn. Code Ann. § 65-4-101(6)(B)(ii). TVPOA cites a number of cases as examples of where the primary use of land being the determinative factor for the land use designation to show that serving only five commercial lots should not prohibit exemption of an overwhelmingly residential subdivision. The Consumer Advocate disagrees with the persuasiveness of these cases because they are zoning cases and tax-exempt status cases, not regulatory oversight cases. However, the Consumer Advocate avers “[i]t is clear from these decisions that a fact-based analysis is required for a determination of a tax-exempt status, thus inappropriate for the granting of a motion to dismiss prior to fact-finding by the appropriate agency, such as the Commission.”¹⁹

¹⁶ *Id.* (quoting *Hummett v. Vogue, Inc.*, 165 S.W.2d 577, 579 (Tenn. 1942)).

¹⁷ *Id.* at 6-7.

¹⁸ *Id.* at 7.

¹⁹ *Id.* at 11.

TVPOA claims it is a non-profit corporation and should also be exempt under Tenn. Code Ann. § 65-4-101(6)(B)(ii), similar to Fairfield Glade. The Consumer Advocate explains that the non-profit statutory exemption contained in Tenn. Code Ann. § 65-4-101(6)(B)(ii) is a two-step process.²⁰ The Consumer Advocate argues that while TVPOA may be a 501(c)(4) non-profit entity, it does not have a letter of exemption issued before 2009, as required for that statutory exemption.²¹

Lastly, the Consumer Advocate addresses TVPOA's arguments that the Commission has expressed an intent to exempt TVPOA through its actions. The Consumer Advocate maintains "it is the statutory language that controls the jurisdiction of the commission and not publicly available statements in reports or from other entities."²² According to the Consumer Advocate, "[r]ather than attempting to discern the Commission's intent in the actions or inactions described above [prior dockets based on outdated statutes, verbiage in annual reports or the Blue Book, etc.], it would be prudent to for the Commission to investigate and develop a record for it to reach a determination of its jurisdiction under the current statute Tenn. Code Ann. § 65-4-(6)(B)(ii)."²³ The Consumer Advocate contends it has established a sufficient factual basis to articulate a claim for relief and TVPOA's *Motion to Dismiss* should be denied.

FINDINGS AND CONCLUSIONS

TVPOA's *Motion to Dismiss* filed pursuant to Commission Rules 1220-1-2-.03(2)(b) and (e) requests that the Consumer Advocate's *Complaint* be dismissed "on grounds that the Commission lacks jurisdiction over TVPOA because TVPOA is statutorily exempt from regulation by the Commission."²⁴ Therefore, TVPOA maintains the Consumer Advocate's *Complaint* fails to state a claim upon which relief can be granted. Commission Rule 1220-1-2-.03(2) allows certain defenses,

²⁰ *Id.* at 13.

²¹ *Id.* at 13-14.

²² *Id.* at 15.

²³ *Id.* at 15-16.

²⁴ *Motion to Dismiss*, p. 1 (August 18, 2025).

including lack of jurisdiction and failure to state a claim upon which relief can be granted, to be made by motion, and much of the language of Commission Rules 1220-1-2-.03(2)(b) and (e) mirrors that of the Tennessee Rule of Civil Procedure 12.02(6) and offers guidance when analyzing motions to dismiss.

The standards for granting a motion to dismiss filed under Tenn. R. Civ. P. 12.02(6) have been well-established in Tennessee and provide the framework for the Administrative Judge’s analysis of the *Motion to Dismiss*. A motion to dismiss filed under Tenn. R. Civ. P. 12.02(6) must challenge the legal sufficiency of the petition and not the strength of the plaintiff’s evidence.²⁵ When evaluating a motion to dismiss, the petition should be construed liberally presuming all factual allegations to be true. In addition, the Petitioner should be given the benefit of all reasonable inferences drawn from the facts.²⁶ A party who files a motion to dismiss “admits the truth of all of the relevant and material allegations contained in the complaint, but asserts that the allegations fail to establish a cause of action.”²⁷ “To be sufficient and survive a motion to dismiss, a complaint must be entirely devoid of factual allegations.”²⁸

TVPOA fails to discuss the legal framework for analyzing motions to dismiss or how the allegations in the Consumer Advocate’s *Complaint* are factually deficient such that TVPOA should prevail on its *Motion to Dismiss*. Instead, TVPOA focuses on the substantive legal arguments regarding why it is exempt from Commission regulation and due to the statutory exemption, the Commission lacks jurisdiction and therefore, the Consumer Advocate’s *Complaint* fails to state a claim.

²⁵ See *Webb v. Nashville Area Habitat for Humanity*, 346 S.W.3d 422, 426 (2011) (citations omitted).

²⁶ See *Indiana State District Council of Laborers v. Brukardt, et al.*, 2009 WL 426237 (Tenn.Ct.App.2009).

²⁷ See *Webb v. Nashville Area Habitat for Humanity*, 346 S.W.3d 422, 426 (2011) (citations omitted).

²⁸ *Id.*

It is clear from the *Complaint* that the Consumer Advocate put a lot of effort and research in preparing the filing. In addition, the *Consumer Advocate's Response* answers the arguments made by TVPOA and supports those arguments with facts from the record. The Consumer Advocate's *Complaint* clearly sets forth the allegations against TVPOA including, the operation of a public utility without a CCN, failure to pay an annual inspection fee, failure to file a tariff, and charging rates not approved by the Commission.²⁹ In the *Complaint* and the *Consumer Advocate's Response*, the Consumer Advocate sets forth detailed underlying facts regarding the alleged violations of law. When analyzing motions to dismiss all factual allegations should be presumed to be true. Both Parties actually agree to many of the facts that give rise to the alleged violations of law. The Parties admit that TVPOA is a property owners association; that TVPOA provides water and wastewater services to Tellico Village, which is primarily a residential community, and TVPOA also provides those services to some commercial customers. The Consumer Advocate names five commercial entities served by TVPOA and provides a copy of the water and sewer rates effective January 1, 2025, showing rates for both residential and commercial customers.³⁰ TVPOA does not deny serving the commercial customers.

Regarding TVPOA's claim that it is similarly situated to Fairfield Glade. The Consumer Advocate states it is unsure whether TVPOA is a 501(c)(4), but even if it is, the exemption under Tenn. Code Ann. § 65-4-101(6)(B)(i) is a two-step process that also requires a letter dated prior to January 1, 2009 from the Commission expressing the entity is not regulated.³¹ The Consumer Advocate sent a records request to the Commission to determine if such a letter existed for TVPOA. The Commission stated there was no record of such letter for TVPOA.³²

²⁹ *Complaint*, pp. 1-2 (July 7, 2025).

³⁰ *Id.* at 4, 9.

³¹ *Id.* at 11-12.

³² *Id.* at 12.

The Administrative Judge finds the Consumer Advocate's *Complaint* alleges sufficient facts in connection with the alleged violations of law to establish a claim and should be allowed to go forward. The Parties disagree as to the interpretation of the law, and there are additional facts that need to be gathered. TVPOA will have an opportunity to make its legal arguments at the appropriate time. The Administrative Judge finds that these arguments are not appropriate for a motion to dismiss, and the Consumer Advocate's *Complaint* certainly provides enough facts to pass the threshold for establishing a claim upon which relief can be granted. Therefore, based on the record, the Administrative Judge concludes the *Motion to Dismiss* should be denied.

IT IS THEREFORE ORDERED THAT:

1) The *Tellico Village Property Owners Association, Inc.'s Motion to Dismiss Consumer Advocate's Petition and/or Complaint for the Tennessee Public Utility Commission to Convene a Show Cause Proceeding* filed on August 8, 2025, is denied.

2) Tellico Village Property Owners Association, Inc. may file an Answer to the *Consumer Advocate's Petition and/or Complaint for the Tennessee Public Utility Commission to Convene a Show Cause Proceeding Against Tellico Village Property Owners Association, Inc.* by **November 25, 2025**.


Monica Smith-Ashford, Administrative Judge