

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

IN RE:	)	
	)	
PETITION OF ISHA FOR A DECLARATORY	)	Docket No. 26-00034
JUDGMENT	)	
	)	

CONSUMER ADVOCATE DIVISION’S BRIEF

Jonathan Skrmetti, Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate Division of the Office of the Attorney General (“Consumer Advocate” or “CAD”), hereby respectfully submits this brief in the above-styled matter.

I. BACKGROUND

On April 21, 2026, ISHA Foundation, Inc. filed a Petition for a Declaratory Ruling. ISHA seeks a determination concerning the Tennessee Public Utility Commission’s (“TPUC” or “Commission”) jurisdiction over water service proposed for its development within the exclusive service area of the Warren County Utility District (“WCUD”).¹ ISHA’s Petition raises two related issues: (1) whether the Commission possesses jurisdiction over ISHA’s proposed provision of water service; and (2) whether WCUD’s exclusive service rights preclude the Commission from exercising regulatory authority over ISHA’s proposed water system.²

¹ *In re: Petition of ISHA Foundation, Inc. for Declaratory Judgment*, p. 1, Docket 26-00034 (May 26, 2026).

² *Id.*

The Consumer Advocate respectfully submits that ISHA’s position rests on a fundamental misunderstanding of the relationship between the Commission’s jurisdiction over public utilities and a utility district’s statutory exclusive service rights. The existence of WCUD’s exclusive service area does not, by itself, exempt ISHA from regulation as a public utility. Nor does the absence of a fee or charge for water service eliminate the requirement to obtain a Certificate of Convenience and Necessity (“CCN”) when otherwise required by Tennessee law.

Moreover, the Commission has previously considered substantially the same facts and legal question in TPUC Docket No. 25-00018, involving ISHA’s proposed golf course/residential development.³ In that proceeding, the Commission determined that ISHA was a public utility and required a CCN.⁴ That determination became final when ISHA did not pursue reconsideration or judicial review. The Commission should consider whether the present Petition constitutes an impermissible attempt to relitigate an issue previously decided in a final order.

II. ARGUMENT

A. ISHA’s Jurisdictional Argument Requires Clarification

ISHA appears to contend that the Commission lacks authority over the provision of water service within WCUD’s service area unless the county executive first determines that public convenience and necessity require another or additional provider.

This argument requires an important clarification. It is not the county executive’s determination that confers jurisdiction upon the Commission. Rather, the county executive’s finding that public convenience and necessity requires other or additional services is the statutory mechanism through which WCUD’s exclusive franchise may be modified. Even if that

³ *In re: ISHA Foundation, Inc. Petition of Determination: To Determine that a Certificate of Public Convenience and Necessity is Not Required for ISHA Yogi Golf Project*, Docket 25-00018, *Initial Determination that a CCN is Required* (May 30, 2025).

⁴ *Id.* at 3.

modification occurs, the Commission’s regulatory authority over a private entity that qualifies as a public utility remains a separate legal question.

Tennessee law distinguishes between:

1. The exclusive service rights granted to a utility district under TENN. CODE ANN. § 7-82-301; and
2. The Commission’s jurisdiction over entities that meet the statutory definition of a public utility under TENN. CODE ANN. § 65-4-101.

The existence of an exclusive utility district service area does not automatically transform a private entity’s proposed water system into a nonregulated activity. Instead, the Commission must consider whether the entity falls within the statutory definition of a public utility and whether applicable statutory restrictions on competing service providers affect the proposed operation.

B. ISHA Qualifies as a Public Utility Under Tennessee Law and Must Obtain a CCN

1. Tennessee’s Definition of a Public Utility Is Broad

Under TENN. CODE ANN. § 65-4-101(6)(A), the definition of “public utility” encompasses every individual, corporation, or association that owns, operates, manages, or controls, within Tennessee, a water system, plant, or equipment that is “affected by and dedicated to the public use” under privileges, franchises, licenses, or agreements granted by the State or a political subdivision.

The statutory definition is broad and is not limited to for-profit corporations. Nonprofit entities may also qualify as public utilities when their operations satisfy the statutory criteria. The Tennessee General Assembly has directed that the statutory provisions governing the Commission’s authority be liberally construed. TENN. CODE ANN. § 65-4-106 provides that any doubt concerning the existence or extent of a power conferred upon the Commission shall be resolved in favor of the existence of that power. The Tennessee Supreme Court has interpreted this statutory framework as vesting the Commission with “practically plenary authority over the

utilities within its jurisdiction.”⁵ The central inquiry is whether ISHA’s proposed water system is affected by and dedicated to public use—not merely whether ISHA is organized as a nonprofit corporation or intends to provide water service without charge.

2. ISHA’s Proposed Water Service Is Dedicated to Public Use

ISHA describes itself as a center for spiritual growth and the study of yoga and meditation.⁶ The Petition contemplates the development of approximately 102 residential lots on ISHA’s property, with each lot leased to an ISHA “member” who may either construct a residence or lease a home constructed on the property.⁷ Although ISHA may characterize the proposed residents as members, the relevant consideration is the nature of the water service being provided. ISHA is proposing to operate a water system for residential occupants who will reside on leased property and receive water service as part of their occupancy arrangement.

The fact that ISHA may provide water without separately charging residents does not, standing alone, establish that the water system is private or exempt from Commission jurisdiction. The statutory analysis turns on the nature and dedication of the service, as well as the applicability of any statutory exemption.

In *In re Laurel Hills Condominiums Property Owners Ass’n*, the Commission addressed whether a nonprofit homeowners association’s water system was dedicated to public use under TENN. CODE ANN. § 65-4-101(6)(A).⁸ The Commission concluded that the association’s provision

⁵ *In Re: Complaint & Petition of the Consumer Advoc. Unit in the Fin. Div. of the Off. of the Att’y Gen. for the Tennessee Pub. Util. Comm’n to Convene A Show Cause Proceeding Against Thunder Air, Inc. & Thunder Air, Inc. d/b/a Jasper Highlands Dev., Inc.*, No. 20-00098, Order Approving Stipulation and Settlement Agreement, p. 8 (Feb. 26, 2021) (citing *BellSouth Adver. & Publ’g Corp. v. Tenn. Reg. Auth.*, 79 S.W.3d 506, 512–513 (Tenn. 2002)).

⁶ *In re: Petition of ISHA Foundation, Inc. for Declaratory Judgment*, p. 2, TPUC Docket No. 26-00034, (April 21, 2026).

⁷ *Id.* at 1.

⁸ *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System*, p. 6, TPUC Docket No. 12-00030 (April 18, 2013).

of water service beyond its own membership subjected the system to public utility regulation and CCN requirements.

The reasoning in *Laurel Hills* is instructive here. Where a nonprofit provides water service to persons beyond the limited class contemplated by the applicable exemption, the system may lose its private character and become dedicated to public use. ISHA's proposed provision of water service to residential occupants leasing land from ISHA presents the same regulatory concern.

3. The Nonprofit Homeowners' Association Exemption Does Not Apply

Tennessee law provides a limited exemption from the definition of "public utility" for certain nonprofit homeowners' associations and organizations. Under TENN. CODE ANN. § 65-4-101(6)(B)(i), the exemption applies when the statutory requirements are satisfied, including:

1. Membership is limited to owners of lots in residential subdivisions;
2. The association owns, constructs, operates, or maintains a water system for the exclusive use of that subdivision; and
3. The subdivision is unable to obtain such services from the local utility district.

When the statutory conditions are met, the association's property, property rights, and facilities used to render those services are excluded from Commission jurisdiction.

ISHA does not satisfy these requirements. First, the proposed service recipients are residential tenants, not lot owners. ISHA's proposed arrangement involves leasing lots to individuals who may construct or occupy residences on the property. The statutory exemption is limited and does not automatically extend to a nonprofit providing water service to occupants who do not own the lots. Second, ISHA's proposed system is not established solely for the exclusive use of a qualifying homeowners' association. The proposed water service would be provided to residential occupants in connection with their leasehold interests in property owned by ISHA. The existence of an organizational membership structure does not, by itself, satisfy the statutory

exemption. Third, the development is located within WCUD's existing service area. The record indicates that WCUD has represented that it can provide water service to ISHA's development, subject to the infrastructure and associated costs necessary to serve the project.

The Consumer Advocate understands that the infrastructure investment required to connect ISHA's development to WCUD's system may be substantial. However, the cost of obtaining service does not establish that the development is unable to obtain service from the local utility district within the meaning of the statutory exemption. The record indicates that WCUD can provide service if ISHA funds the infrastructure necessary to accommodate the development.

Accordingly, ISHA cannot rely on the nonprofit homeowners' association exemption to avoid Commission jurisdiction. The decision in *Laurel Hills* further supports the conclusion that the provision of water service to persons outside the limited class contemplated by the exemption may subject the entity to regulation as a public utility.⁹

C. WCUD's Exclusive Service Rights Do Not Create a Regulation-Free Zone

1. WCUD's Exclusive Franchise Is a Separate Legal Consideration

Under TENN. CODE ANN. § 7-82-301(a)(1)(B), so long as a utility district continues to furnish authorized services, it is the sole public corporation empowered to furnish those services within its district. No other person, firm, or corporation may furnish or attempt to furnish those services unless and until it has been established that public convenience and necessity require other or additional services.¹⁰

The Tennessee Supreme Court in *W. Wilson v. Atkins*¹¹ held that the Public Service Commission lacked jurisdiction to issue a CCN to a public utility seeking to operate a water system

⁹ *Id.*

¹⁰ TENN. CODE ANN. § 7-82-301(a)(1)(B).

¹¹ *West Wilson Util. Dist. of Wilson Cnty. v. Atkins*, 442 S.W. 2d 612, 614 (Tenn.1969).

in territory where a utility district had previously been granted authority to operate. The decision underscores the importance of a utility district's statutory exclusive franchise. Similarly, in *Town of Rogersville ex rel. Rogersville Water Comm'n v. Mid Hawkins Cnty. Util. Dist.*,¹² the Tennessee Court of Appeals recognized the statutory framework governing challenges to a utility district's exclusive service rights.

These authorities establish that WCUD's exclusive service rights must be addressed in determining whether ISHA may lawfully operate a competing water system. They do not, however, establish that an entity is exempt from Commission jurisdiction merely because its proposed system is located within a utility district's service area.

2. ISHA's Proposed Operation Requires Examination of WCUD's Conduct

ISHA cannot rely on WCUD's exclusive service rights as both a shield against Commission regulation and a basis for operating a separate water system with WCUD's acquiescence. As the Consumer Advocate understands ISHA's position, ISHA contends that its proposed water system is beyond Commission regulation because the development lies within WCUD's exclusive service area. The Consumer Advocate does not dispute that Tennessee law generally restricts the Commission's ability to issue a CCN to a competing utility seeking to operate within an existing utility district's exclusive service territory.¹³

The question presented here, however, is not simply whether ISHA is an unauthorized competitor seeking to encroach upon WCUD's territory. The record indicates that WCUD is aware

¹² 122 S.W.3d 137 (Tenn. Ct. App. 2003).

¹³ *Chandler Inv. Co. v. Whitehaven Util. Dist. of Shelby Cnty.*, 311 S.W.2d 603 (1957). (The Tennessee Court of Appeals held that a utility district's exclusive franchise precluded a customer from contracting with a competing utility even when the district required the customer to advance infrastructure extension costs, and that the sole recourse available to a party dissatisfied with a utility district's service is to petition the county court to establish that public convenience and necessity requires modification of the exclusive franchise.)

of ISHA's proposed development and has not asserted an objection to ISHA's plan to develop a private water system supplied by wells and has not surrendered its exclusive service territory.

Tennessee courts have recognized that the scope and enforcement of utility district exclusivity may be affected by the utility district's conduct, including circumstances involving express permission, contractual arrangements, waiver, or laches.¹⁴ In certain cases, courts have considered whether a utility district has effectively relinquished or waived its exclusive service rights with respect to a specific portion of its territory.¹⁵

The Consumer Advocate does not contend that WCUD's acquiescence, standing alone, automatically resolves every question concerning the Commission's jurisdiction. Rather, WCUD's conduct is relevant to whether ISHA may proceed with a public water system and whether the Commission should treat the proposed operation as categorically barred from regulatory oversight.

3. The Record Demonstrates That WCUD Has Not Objected to ISHA's Proposed System

The record indicates that WCUD's ability to serve ISHA's proposed development would require substantial infrastructure investment. Specifically, the record shows that approximately \$70 million may be required to upgrade WCUD's plant and install larger water lines capable of serving the anticipated capacity of ISHA's golf project.¹⁶

The record also indicates:

- WCUD is aware of this proceeding and has not intervened or otherwise asserted an objection to ISHA's proposed private water system.

¹⁴ *Whitehaven Util. Dist. v. Ramsay*, 387 S.W. 2d 351, 353 (Tenn. 1964); *City of Cleveland v. Prospect-McDonald Utility District*, 1990 WL 58039 (Tenn. Ct. App.1990).

¹⁵ *In re: Petition of Superior Wastewater Systems, LLC to Amend its Certificate of Public Convenience and Necessity to Provide Wastewater Service to the Taliaferro Road Parcel in Williamson County*, TPUC Docket No. 21-00001, *Order Amending Certificate of Public Convenience and Necessity*, pp. 2—4 (October 21, 2021).

¹⁶ *Consumer Advocate's Responses to ISHA's First Set of Discovery Requests*, Exhibit B (July 24, 2026).

- In TPUC Docket No. 25-00018, WCUD submitted a letter stating that it had no agreement to provide service to ISHA's development.¹⁷
- WCUD acknowledged that the infrastructure costs necessary to provide service presented a financial concern for ISHA.
- WCUD was aware of ISHA's plan to pursue private wells, water treatment, and a private distribution system internal to ISHA's development and did not object to that plan.¹⁸

These facts are significant. The Consumer Advocate is not asking the Commission to determine whether WCUD possesses the ability to serve the development as a prerequisite to exercising jurisdiction over ISHA. Instead, the record demonstrates that WCUD has not taken action to enforce its exclusive service rights against ISHA's proposed system, despite having knowledge of the project.

ISHA should not be permitted to rely on WCUD's statutory exclusivity to claim that the Commission lacks jurisdiction while simultaneously proceeding with a private water system that WCUD has not opposed. To conclude otherwise would create a regulatory gap in which a private entity could provide water service within a utility district's territory while claiming exemption from Commission oversight based solely on the existence of the utility district's exclusive franchise. Tennessee law should not be construed to create such a regulation-free zone.

D. ISHA's Present Petition Is Directly Analogous to Its 2025 Proceeding

The most directly relevant authority is *In re Petition of ISHA Foundation, Inc. to Determine if a CCN Is Needed*, TPUC Docket No. 25-00018, a proceeding before the Commission involving ISHA's proposed golf course development.

¹⁷ *In re: ISHA Foundation, Inc. Petition of Determination: To Determine that a Certificate of Public Convenience and Necessity is Not Required for ISHA Yogi Golf Project*, Docket 25-00018, *Petition of Determination*, Exhibit D (March 5, 2025).

¹⁸ *Id.*

In that proceeding, ISHA sought a determination that it was not required to obtain a CCN to provide water service to residents of its golf course development in McMinnville, Tennessee, located within WCUD's exclusive service area. The proposed arrangement involved substantially similar circumstances:

- ISHA was a private nonprofit entity.
- Residential occupants would lease land owned by ISHA.
- Water service would be provided without a separate charge.
- Water would be sourced from on-site wells.
- The development would be located within WCUD's exclusive service area.

The principal distinction identified in the prior proceeding was WCUD specifically stated it did not decline to serve the development, but that the existing infrastructure was insufficient and concerned the ability to serve the development.¹⁹ That distinction does not alter the fundamental legal question of whether ISHA's proposed water system constitutes a public utility subject to Commission jurisdiction.

On May 30, 2025, the Commission issued an Initial Determination concluding that ISHA Golf was a public utility and required a CCN.²⁰ The Administrative Judge stated:

“Based on the information provided in the Petition, the Administrative Judge finds that Isha Golf is a public utility and requires a certificate of public convenience and necessity (‘CCN’) from the Commission”²¹

¹⁹ *Id.*

²⁰ *In re: ISHA Foundation, Inc. Petition of Determination: To Determine that a Certificate of Public Convenience and Necessity is Not Required for ISHA Yogi Golf Project*, TPUC Docket 25-00018, *Initial Determination that a CCN is Required*, (May 30, 2025).

²¹ *Id.* at 3

The Commission's prior determination is directly relevant to the present *Petition*. ISHA has already sought a determination concerning the CCN requirement for a similar proposed development, and the Commission concluded that ISHA qualified as a public utility.

Therefore, the Consumer Advocate submits that ISHA is subject to the Commission's regulatory authority, including the requirement to obtain a CCN before commencing operations when required by Tennessee law.

E. Providing Water Service Without Charge Does Not Exempt ISHA From Commission Jurisdiction

ISHA's apparent reliance on the absence of a charge for water service does not provide a sufficient legal basis for avoiding Commission jurisdiction. The statutory definition of "public utility" under TENN. CODE ANN. § 65-4-101(6)(A) focuses on whether the water system is "affected by and dedicated to the public use." The definition does not establish that an entity is exempt solely because it does not impose a separate charge for water service.

Likewise, the nonprofit homeowners' association exemption under TENN. CODE ANN. § 65-4-101(6)(B)(i) does not create a blanket exemption for nonprofit entities providing free water service. The exemption depends on satisfaction of the statutory conditions, including the membership, exclusive-use, and service-availability requirements.

Finally, WCUD's exclusive franchise rights under TENN. CODE ANN. § 7-82-301(a)(1)(B) restrict the provision of services by unauthorized persons or entities within the district's territory. The statutory restriction is not conditioned solely on whether the competing provider charges a fee.

Accordingly, the absence of a separate charge for water service does not eliminate the need to determine whether ISHA qualifies as a public utility or whether it must obtain a CCN.

F. The Commission Should Consider the Preclusive Effect of Its Prior Final Order

1. The Commission’s Authority to Issue Declaratory Rulings Is Not Disputed

The Consumer Advocate does not dispute that the Commission possesses authority to issue declaratory rulings under the Uniform Administrative Procedures Act (“UAPA”) and applicable statutory authority.²²

The threshold issue is whether the Commission should entertain a petition seeking substantially the same determination that it previously made concerning the same party, the same development, and the same legal question. ISHA’s prior proceeding resulted in an order determining that a CCN was required for its proposed golf course development. The *Order* was issued on May 30, 2025, and became final when ISHA did not seek reconsideration or further review, subject to verification of the applicable procedural history.

Under TENN. CODE ANN. § 4-5-314, a final administrative order constitutes a formal adjudication containing findings of fact and conclusions of law. The availability of judicial review under TENN. CODE ANN. § 4-5-322 further demonstrates that a party dissatisfied with a final Commission order must pursue the statutory review process rather than seek to relitigate the same issue through subsequent proceedings.

2. Administrative Agency Decisions May Receive Res Judicata Effect

Tennessee courts recognize that quasi-judicial determinations by administrative agencies may be entitled to res judicata and collateral estoppel effect. In *Morris v. Esmark Apparel, Inc.*, the Tennessee Court of Appeals recognized that the doctrines of *res judicata* and collateral estoppel may apply to quasi-judicial determinations of administrative agencies when the agency acts in a judicial capacity, resolves disputed issues properly before it, and the parties have an adequate

²² TENN. CODE ANN. § 4-5-314(c).

opportunity to litigate.²³ In *Hirt v. Metropolitan Board of Zoning Appeals of Metropolitan Government of Nashville & Davidson County*,²⁴ the court confirmed that the fact that a final order was issued by an administrative body rather than a court does not, standing alone, preclude application of *res judicata*.²⁵ Similarly, *Purcell Enterprises, Inc. v. State* recognized the applicability of *res judicata* to decisions of administrative agencies and boards.²⁶ The Tennessee Attorney General has likewise recognized that administrative decisions may be entitled to *res judicata* effect and may be conclusive between the same parties concerning matters litigated or that could have been litigated.²⁷

3. The Elements of Res Judicata and Collateral Estoppel

Under Tennessee law, *res judicata* generally requires a showing that:

1. The underlying judgment was rendered by a body of competent jurisdiction;
2. The same parties or their privies were involved in both proceedings;
3. The same claim or cause of action was asserted in both proceedings; and
4. The underlying judgment was final and on the merits.

Tennessee follows a transactional approach in determining whether two proceedings involve the same cause of action. Under this approach, claim preclusion may extend to matters that were relevant to, and could reasonably have been litigated in, the prior proceeding.

Collateral estoppel, or issue preclusion, focuses on whether a particular issue was previously determined. The doctrine generally requires:

1. The issue decided in the prior proceeding is identical to the issue presented in the current proceeding;

²³ 832 S.W.2d 563 (Tenn. Ct. App. 1991).

²⁴ No. M201900775COAR3CV, 2020 WL 1983766 (Tenn. Ct. App. April 27, 2020).

²⁵ No. M201900775COAR3CV, 2020 WL 1983766 (Tenn. Ct. App. April 27, 2020).

²⁶ 631 S.W.2d 401 (Tenn. Ct. App. 1981).

²⁷ Tenn. Op. Atty Gen. No. 92-62 (Oct. 8, 1992).

2. The prior proceeding resulted in a judgment on the merits;
3. The party against whom preclusion is asserted was a party or in privity with a party to the prior proceeding; and
- 4.
5. The party had a full and fair opportunity to litigate the issue.²⁸

4. The Commission's Prior Determination Is A Final Order

In *United Cities Gas Co. v. Tennessee Public Service Commission*, the Tennessee Supreme Court addressed the *res judicata* effect of a Commission decision involving a rate increase petition.²⁹ The Court held that the Commission's decision constituted a final judgment entitled to *res judicata* effect and rejected the argument that Commission orders are never truly final. The Court recognized that a party remains bound by the Commission's ruling unless new evidence warrants a different result and that the Commission may not arbitrarily change its policy or ruling without substantial and material evidence.³⁰

The same principles support consideration of the finality of the Commission's determination in TPUC Docket No. 25-00018. The Commission applied Tennessee law to the facts presented by ISHA and determined that a CCN was required for the proposed development. The *Order* contained the essential characteristics of an adjudicatory determination, including the application of law to the facts and a conclusion concerning ISHA's regulatory status. The availability of judicial review provided ISHA with a statutory avenue to challenge the determination. However, it chose not to take any action to challenge the determination.

5. The Prior Proceeding Involved the Same Party, Facts, and Legal Question

The record demonstrates substantial overlap between TPUC Docket No. 25-00018 and the present proceeding. In both matters:

²⁸ *Morris v. Esmark Apparel, Inc.*, 832 S.W.2d 563 (Tenn. Ct. App. 1991).

²⁹ 789 S.W.2d 256 (Tenn. 1990).

³⁰ *Id.*

- ISHA is the Petitioner.
- The proposed development involves ISHA’s golf project and associated residential development.
- The property is located within WCUD’s service area.
- ISHA proposes to provide water service through a private system.
- The proposed water service is associated with residential occupants leasing land from ISHA.
- The central legal question is whether ISHA is a public utility and must obtain a CCN from the Commission.

The Commission’s prior order expressly considered the location of ISHA’s development within WCUD’s service area and that there was no commitment by WCUD to provide service.³¹ After considering the facts presented, the Commission determined that a CCN was required.³² ISHA’s present Petition acknowledges that it constitutes a “similar request” to its prior petition.³³ ISHA appears to distinguish the present proceeding by asserting that it did not previously raise a jurisdictional argument. That distinction is not persuasive. Subject matter jurisdiction cannot be created or defeated through waiver. More importantly, the issue of the Commission’s authority was inherent in ISHA’s prior request for a determination that a CCN was not required. The essential facts underlying the jurisdictional issue were before the Commission when it issued its prior order.

6. ISHA’s Failure to Seek Judicial Review Does Not Permit a Collateral Attack

The Consumer Advocate recognizes that *res judicata* would not necessarily apply if there had been a material change in the facts or applicable law. However, the record presently indicates

³¹ *In re: Petition of ISHA Foundation, Inc. to Determine if a CCN is Needed*, TPUC Docket No. 25-00018, *Initial Determination That a CCN is Required*, pp. 3—4 (May 30, 2025).

³² *Id.* at pp. 4—5 (May 30, 2025).

³³ *In re: Petition of ISHA Foundation, Inc. for Declaratory Judgment*, p. 1, TPUC Docket 26-00034, (May 26, 2026).

no significant change that would alter the legal question previously resolved by the Commission. The Commission's May 30, 2025 *Order* was subject to the statutory framework governing final administrative orders and judicial review. If ISHA believed the Commission had incorrectly determined that a CCN was required, its remedy was to pursue the applicable reconsideration and judicial review procedures.

A subsequent petition seeking a different result on substantially the same facts raises concerns regarding finality, judicial economy, and the integrity of the administrative process. A final administrative determination should not be rendered effectively meaningless merely because a party reframes its request as a declaratory ruling rather than directly seeking review of the prior order. Allowing such a practice would permit repeated litigation of the same legal question, impose unnecessary burdens on the Commission and the parties, and undermine the statutory procedures governing review of final agency decisions.

The Consumer Advocate respectfully submits that the Commission should consider whether the present Petition is barred, in whole or in part, by res judicata or collateral estoppel.

G. Practical Regulatory Consequences of ISHA's Proposed Operation

A nonprofit that operates a water system qualifying as a public utility without obtaining the required CCN may be subject to significant regulatory consequences. As illustrated in *In re Laurel Hills Condominiums Property Owners Ass'n*, operating a public water utility without the required authorization may implicate TENN. CODE ANN. §§ 65-4-201, 65-4-301(a), and 65-5-102, among other applicable statutory and regulatory requirements.³⁴

These potential consequences underscore the importance of resolving ISHA's regulatory status before commencing operations. ISHA's own prior decision to seek a Commission

³⁴ *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System*, p. 6, TPUC Docket No. 12-00030 (April 18, 2013).

determination concerning its CCN obligations demonstrates the practical value of obtaining regulatory clarity before developing and operating a private water system.

The Consumer Advocate does not contend that a CCN, standing alone, necessarily resolves WCUD's exclusive service rights. The Commission must consider the separate statutory restrictions governing utility district territory, including the limitations recognized in *W. Wilson Utility District*.³⁵

III. CONCLUSION

ISHA's *Petition* should be considered considering the statutory framework governing public utilities, the exclusive service rights of utility districts, and the finality of the Commission's prior determination in TPUC Docket No. 25-00018.

The record supports the following conclusions:

1. ISHA's status as a nonprofit entity does not automatically exempt it from the definition of a public utility under TENN. CODE ANN. § 65-4-101(6)(A).
2. ISHA's proposed provision of water service to residential occupants leasing land from ISHA is subject to examination under the statutory definition of a public utility.
3. The nonprofit homeowners' association exemption under TENN. CODE ANN. § 65-4-101(6)(B)(i) does not appear to apply based on the facts presently before the Commission.
4. The absence of a separate charge for water service does not independently exempt ISHA from Commission jurisdiction or applicable CCN requirements.
5. WCUD's exclusive service rights under TENN. CODE ANN. § 7-82-301 must be considered separately from the Commission's jurisdiction over ISHA as a potential public utility.
6. The Commission previously determined in TPUC Docket No.25-00018 that ISHA's proposed golf development constituted a public utility requiring a CCN.

³⁵

West Wilson Util. Dist. of Wilson Cnty. v. Atkins, 442 S.W. 2d 612, (Tenn. 1969).

7. The prior determination presents substantial questions concerning finality, res judicata, and collateral estoppel, particularly where the present Petition involves the same party, project, legal question, and materially similar facts.

Accordingly, the Consumer Advocate respectfully requests that the Commission:

- A. Determine that ISHA's proposed provision of water service is subject to the Commission's jurisdiction under Tenn. Code Ann. § 65-4-101 and applicable law;
- B. Determine that ISHA does not qualify for the nonprofit homeowners' association exemption under TENN. CODE ANN. § 65-4-101(6)(B)(i), based on the facts presented in the Petition and record;
- C. Consider the preclusive effect of the Commission's prior final order in TPUC Docket No. 25-00018, including whether the doctrines of res judicata and collateral estoppel bar ISHA from seeking a different determination concerning the same proposed development and CCN requirement;
- D. Recognize that WCUD's exclusive service rights constitute a separate statutory issue that does not, by itself, eliminate Commission jurisdiction over an entity that qualifies as a public utility; and
- E. Grant such other and further relief as the Commission deems just and appropriate.

RESPECTFULLY SUBMITTED,

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DATED: September 24, 2026

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 24th day of September, 2026



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Senior Assistant Attorney General