

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

IN RE:	)	
	)	
PETITION OF ISHA FOUNDATION, INC.	)	DOCKET NO. 26-00034
FOR DECLARATORY JUDGMENT	)	ORAL ARGUMENTS REQUESTED
	)	
	)	

CONSUMER ADVOCATE’S MOTION TO DISMISS

Comes the Consumer Advocate Division of the Office of the Attorney General (“Consumer Advocate”), pursuant to TPUC Rule 1220-01-02-.06, and moves the Tennessee Public Utility Commission (“Commission”) to dismiss the *Petition* of ISHA Foundation, Inc. (“ISHA”) for a declaratory judgment as the Commission has already ruled upon ISHA’s request in TPUC Docket No. 25-00018.

As grounds for the *Motion*, the Consumer Advocate would show that:

1. The Commission issued a final order in Docket No. 25-00018 in which ISHA’s request for a determination of whether a Certificate of Convenience and Necessity (“CCN”) for ISHA’s proposed water system for the ISHA Golf project. The Commission’s final order concludes a CCN is required. ISHA did not seek reconsideration or judicial review of the final order in TPUC Docket No. 25-00018.
2. ISHA’s petition in this matter seeks a declaratory judgment concluding a CCN is not necessary; it is an attempt to overturn or nullify the final order in Docket No. 25-00018. As such, it is time barred and subject to *res judicata*.

Accordingly, the Petition should be dismissed.

Pursuant to TPUC Rule 1220-01-02-.06(4), the Consumer Advocate requests oral argument.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script, reading "Ryan McGehee".

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TPUC Docket 26-00034

CA's Motion to Dismiss

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via electronic mail, and upon request via U.S. Mail, upon:

Henry Walker (B.P.R. 000272)
Bradley Arant Boult Cummings LLP
1221 Broadway, Suite 2400
Nashville, TN, 37203
Email: hmwalker@bradley.com

This the 24th day of September 2026.

A handwritten signature in black ink, reading "Ryan McGehee". The signature is written in a cursive, flowing style. The first name "Ryan" is written with a large, looped 'R'. The last name "McGehee" is written with a large, looped 'M' and a trailing flourish.

RYAN MCGEHEE
Assistant Attorney General

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION
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PETITION OF ISHA FOUNDATION, INC. FOR DECLARATORY JUDGMENT	)	DOCKET NO. 26-00034
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**CONSUMER ADVOCATE’S MEMORANDUM OF LAW IN SUPPORT OF THE
MOTION TO DISMISS**

Pursuant to the amended procedural schedule for dispositive motions and in accordance with Tenn. Comp. R. & Regs. 1220-01-02-.03(2)(e), the Consumer Advocate respectfully moves the Administrative Law Judge in this matter to dismiss the Petition as a matter of law for failing to state a claim upon which relief can be granted. The Commission has already ruled upon the Petitioner’s request and issued an order that has become final. Absent a material change in facts or law, ISHA’s attempt to overturn or nullify the Commission’s final order in TPUC Docket No. 25-00018 with a declaratory judgment is inappropriate when the claim is time barred and subject to *res judicata*.

STANDARD OF REVIEW

This motion is analogous to a Tennessee Rule of Civil Procedure 12.02 motion to dismiss. As such, a review is determined by an examination of the pleadings alone.¹ A defendant 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.’

¹ *Leggett v. Duke Energy Corp.*, 308 S.W.3d 843, 851 (Tenn. 2010); *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 696 (Tenn. 2002).

² In considering a motion to dismiss, courts “must construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences.”

³ *Tigg v. Pirelli Tire Corp.*, 232 S.W.3d 28, 31-32 (Tenn. 2007) (citing *Trau-Med.*, 71 S.W.3d at 696).

ARGUMENT

The Petition in this docket is nothing more than a thinly veiled attempt by Petitioner to relitigate the issues decided in TPUC Docket No. 24-00018, a contested case. The Petitioner failed to appeal the final order in that docket within the 60-day period set forth in Tenn. Code Ann. § 4-5-322(b)(1)(A)(iv), rendering it unappealable. Any appeal at this time is time barred. Accordingly, the 24-100018 final order is *res judicata* to the issues presented in the present Petition, and the Petition should be dismissed.

I. The Commission Has Already Ruled Upon the Petitioner’s Request.

In TPUC Docket No. 25-00018, the Commission ruled upon ISHA’s request to determine whether it was required to have CCN to operate its proposed water system.⁴ ISHA’s request in this docket seeks a declaratory judgment reversing the Commission’s decision in TPUC Docket No. 25-00018. The Uniform Administrative Procedures Act (the “UAPA”) authorizes a process for an administrative agency to issue declaratory judgments, and the Commission has specific authority to issue a declaratory judgment.⁵ The Consumer Advocate does not challenge the authority of the Commission to issue such orders. Rather, the Commission must address, as a threshold issue, whether a declaratory judgment is appropriate here when the Commission has already ruled upon the same application of law to the same facts and the same party.

² *Brown v. Tenn. Title Loans, Inc.*, 328 S.W.3d 850, 854 (Tenn. 2010) (quoting *Freeman Indus., LLC v. Eastman Chem. Co.*, 172 S.W.3d 512, 516 (Tenn. 2005)).

³ *Tigg v. Pirelli Tire Corp.*, 232 S.W.3d 28, 31-32 (Tenn. 2007) (citing *Trau-Med.*, 71 S.W.3d at 696).

⁴ *Initial Determination That a CCN Is Required*, TPUC Docket No. 25-00018, (May 30, 2025) (copy attached).

⁵ TENN. CODE ANN. §§ 4-5-225, 65-2-104.

In recent years, the Commission has allowed parties to seek a “determination” from the Commission to determine whether a CCN is required. In other words, petitioners have presented facts and sought a ruling as to whether a statutory requirement applies to them. ISHA is among those that have utilized this process. In an initial order issued by the Administrative Judge in Docket 25-00018, the Commission concluded a CCN was required for the ISHA Golf project.⁶

The written order held:

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 Commission⁷

That order was issued on May 30, 2025, and by virtue of TENN. CODE ANN. § 4-5-314, it became a final order when no reconsideration or further review was sought by ISHA.

The common thread that runs through each determination docket is a request for the Commission to apply Tennessee law to certain facts and determine whether a CCN is required. For all practical purposes, these are declaratory judgments. Declaratory judgments are so named because “they proclaim the rights of the litigants without ordering execution or performance.”⁸ The purpose of declaratory judgments is to settle important questions of law before the controversy has reached a more critical stage.⁹ The chief function is one of construction rather than sorting through factual disputes.¹⁰ The order in TPUC Docket No. 25-00018 did precisely that in applying the law to the facts presented by ISHA.

II. The Petition Is Time Barred and Should Be Dismissed.

⁶ *Initial Determination That a CCN Is Required*, pp. 3–5, TPUC Docket No. 25-00018 (May 30, 2025).

⁷ *Id.* at 3.

⁸ *Colonial Pipeline Co. v Morgan*, 263 S.W. 3d. 827, 837 (Tenn.2008).

⁹ *Id.*

¹⁰ *Id.*

Regardless of whether one classifies an initial determination order as a declaratory judgment or not, it is indisputable that the order in TPUC Docket No. 25-00018 is a final order that applied the same law and same facts as those presented here. Entertaining ISHA's *Petition* here opens the door for a practice of allowing parties another bite at the apple when they fail to appeal a final order of the Commission. In a line of cases involving incarcerated individuals seeking declaratory judgments, Tennessee courts have wrestled with the issue of when a statutory limitation applies.¹¹ A statute of limitation does not apply to a declaratory judgment in of itself given that it is a procedural mechanism; nevertheless, is the *nature* of the *substantive claim* of a declaratory judgment that determines what statutory limitation applies and whether it can go forward.¹² The gravamen of the action is a determination of whether ISHA should have a CCN if it builds a water system for the ISHA Golf project. The Commission has already answered that question.

A declaratory-judgment action is time barred if relief on the direct claim would also be barred.¹³ A contrary rule would allow a party to make a mockery of the statute of limitations by the simple expediency of creative labeling.¹⁴ Here, this action is time barred because it seeks to relitigate a final order of the Commission for which the time for judicial review has lapsed. ISHA sought no reconsideration of the Commission's ruling in TPUC Docket No. 25-00018, nor did ISHA appeal the final order.

The final order in TPUC Docket No. 25-00018 is a valid final order under the UAPA's statutory requirements. The UAPA governs contested case proceedings before administrative

¹¹ *Hughley v. State*, 208 S.W. 3d 388, 391-394 (Tenn.2006).

¹² *Nunn v. Tenn. Department of Corrections*, 547 S.W. 3d 163, 175 (Tenn. Ct. App. 2017) (cert. denied).

¹³ *Id.* (citing *Kielbasa v. B & H Rentals, LLC*, No. M2002-00129-COA-R3-CV, 2003 WL 21297315, at *4 (Tenn. Ct. App. May 22, 2003)).

¹⁴ *Id.*

agencies and “is designed to clarify and bring uniformity to the procedure of state administrative agencies and judicial review of their determination and shall be applied accordingly.”¹⁵ The term “contested case” is defined by the UAPA as a proceeding, including a declaratory proceeding, in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing.¹⁶ The UAPA does not create a distinction or different classes of contested cases or final orders. The proceeding in TPUC Docket No. 25-00018 has all the indications of a “contested case.” The order issued by the Commission in TPUC Docket No. 25-00018 was not cursory or defective and contains all the requirements of TENN. CODE ANN. § 4-5-314, including findings of fact, conclusions of law, and explicitly provided the timeline for when the order would be final and for judicial review.

Under the provisions of the UAPA, review of a final order of the Commission is subject to TENN. CODE ANN. § 4-5-322(b)(1)(B)(iii). No judicial review was undertaken in TPUC Docket No. 25-00018. As such, the initial order in TPUC Docket No. 25-00018 became a final order as a matter of law and remains valid and applicable to ISHA until such time as there is a material change in the law or facts. Rather than seek timely review, ISHA waited nearly a year before filing virtually the same petition with the Commission under the guise of seeking a declaratory judgment. Again, a declaratory judgment action is time barred if relief on the direct claim would also be barred.¹⁷ Simply claiming this proceeding is different because the present petition includes the label “declaratory judgment” does not make it a timely or explain why the final order in TPUC Docket No. 25-00018 must be cast aside.

¹⁵ TENN. CODE ANN. § 4-5-103(a)(1).

¹⁶ TENN. CODE ANN. § 4-5-102(3).

¹⁷ *Nunn v. Tenn. Department of Corrections*, 547 S.W. 3d 163, 175 (Tenn. Ct. App. 2017) (citing *Kielbasa v. B & H Rentals, LLC*, No. M2002-00129-COA-R3-CV, 2003 WL 21297315, at *4 (Tenn. Ct. App. May 22, 2003)).

This is not a situation in which a new proceeding is warranted because a previous order of the Commission has been outrun by new facts and law. While never explicitly stated, ISHA's *Petition* presents a novel practice of seeking to nullify a final order. Throwing the final order in TPUC Docket No. 25-00018 aside and allowing a declaratory judgment to go forward here would require the Commission to retroactively create a distinct new class of contested cases in which the outcome would be cast into an abyss. That is not contemplated in the UAPA or Tennessee case law.

III. The Final Order in TPUC Docket No. 25-00018 Is *Res Judicata* in This Docket.

The facts of the petition filed in TPUC Docket No. 25-00018 and the *Petition* in this Docket are materially the same. The relief sought by ISHA in TPUC Docket No. 25-00018 is identical to the relief sought here in this Docket; namely a finding that ISHA does not require a CCN to build and operate a water system. As a determination has already been concluded by the Commission in this matter for ISHA for the same project and facts, and that determination became a final order and was not appealed, the request of ISHA for a declaratory order for the same project and facts would appear to be barred by the judicial concept of *res judicata*.

The doctrine of *res judicata* bars a second suit between the same parties or their privies on the same cause of action if there is a final judgment in the first case and both cases involve the same parties with the same cause of action or identical issues.¹⁸ The Court of Appeals explained, “[t]he doctrines of *res judicata* and collateral estoppel are applicable to give conclusive effect to quasi-judicial determinations of administrative agencies.”¹⁹ Specific to TPUC, the Tennessee Supreme Court recognized that TPUC orders have *res judicata* effect, binding a company “by the

¹⁸ *Richardson v. Tenn. Bd. of Dentistry*, 913 S.W. 2d 446, 459 (Tenn. 1995).

¹⁹ *Morris v. Esmark Apparel, Inc.*, 832 S.W.2d 563,566 (Tenn. Ct. App. 1991) (cleaned up).

ruling of the Commission until such time as it may be able to muster new evidence to warrant a rate increase.”²⁰

To determine if *res judicata* applies in this docket, TPUC must consider whether “(1) the issues decided in adjudicative proceedings are identical; (2) the prior adjudication resulted in a judgment on the merits; (3) the proceedings involve the same parties; and (4) the parties had a full and fair opportunity to litigate the issue in the prior proceeding.”²¹ The *res judicata* effect of the final order in TPUC Docket No. 25-00018 requires dismissal of the Petition here.

The first three *Wayman* factors are easily dispatched. The issues raised in the Petition are identical to those adjudicated in Docket 25-00018. The *Petition* in this Docket concedes that this proceeding is a “similar request” to the petition in that Docket.²² Indeed, ISHA requests an identical ruling in this Docket that its water system does not require a CCN.²³ Docket 25-00018 resulted in a final order (a judgment on the merits). And that proceeding involved the same parties (ISHA, most importantly).

On the fourth *Wayman* factor, there is no doubt that ISHA had a “full and fair opportunity to litigate [each issue involved here] in the prior proceeding.” However, to fend off *res judicata* ISHA appears to rely upon a claim that ISHA previously “failed to bring to the agency’s attention” to raise arguments “that the Commission has no jurisdiction over the provision of water service inside the exclusive service area of WCUD” or that to be regulated a water utility must provide services “for compensation.”²⁴ Contrary to ISHA’s footnote, these issues were ripe for

²⁰ *United Cities Gas Co v. Tenn. Pub. Serv. Comm’n*, 789 S.W. 2d 256, 258 (Tenn. 1998)

²¹ *Wayman v. Transp. Licensing Comm. Of Metro. Gov’t of Nashville & Davidson Cnty.*, No. M2009-01360-COA-R3-CV, 2010 WL 1293796, at *3 (Tenn. Ct. App. Apr. 5, 2010).

²² Petition, p. 5, fn 1.

²³ Petition, p. 5 (“Isha respectfully asks that the Commission issue a declaratory ruling stating that Isha is not required to obtain a certificate of convenience and necessity . . .”).

²⁴ *Id.*

consideration in TPUC Docket No. 25-00018, and ISHA was positioned to argue them as forcefully as it deemed fit. The Court of Appeals explained:

Like a judgment of a court, an administrative adjudication is *res judicata* or conclusive between the same parties on the same cause of action not only as to all matters litigated, *but as to all matters which could have been litigated in the proceeding with respect to such a cause.*²⁵

As in the present Docket, the *Petition for Determination* presented facts regarding the ISHA Golf project being located within WCUD's service area and included a letter from WCUD acknowledging it had no agreement to expand service to ISHA Golf.²⁶ Moreover, the relief sought by ISHA was a determination by the Commission that a CCN was not required; in other words, a finding that the Commission has no jurisdiction.²⁷ The Commission's order explicitly took note that ISHA was within the service area of WCUD and that there was no commitment that WCUD would provide service.²⁸ The Commission went on to determine a CCN was required based on the facts in the record.²⁹ Thus, the issues of jurisdiction was clearly front and center in Docket 25-00018. Because those issues were litigated (and in any event *could have been* litigated) in Docket 25-00018, the fourth *Wayman* factor is satisfied and *res judicata* bars this matter.

IV. Practical Considerations Favor Dismissal.

Res judicata or a time bar on the *Petition* might not apply if there had been a sufficiently material change or shift in facts or law. However, a review of the TPUC Docket No. 25-00018 filings and the *Petition* and the discovery in this matter reveal there are no significant changes of fact or law. The final order in TPUC Docket No. 25-00018 has all the hallmarks of a final order

²⁵ *Purcell Enters., Inc. v. State*, 631 S.W.2d 401, 407 (Tenn. Ct. App.1981) (quoting 2 Am. Jur. 2d Administrative Law § 502 (1962)) (emphasis added).

²⁶ *Petition of Isha Foundation, Inc. to Determine if a CCN Is Needed.*, ¶¶ 10, 17, Ex. D, TPUC Docket No. 25-00018, (March 5, 2025).

²⁷ *Id.* at Section III: Prayer for Relief

²⁸ *Initial Determination That a CCN Is Required*, pp. 3–4, TPUC Docket No. 25-00018 (May 30, 2025).

²⁹ *Id.* at 4–5.

and clearly provided a process for judicial review.³⁰

One must consider how a conclusion of law made by a state agency in a final order can be tossed aside without judicial review. This is precisely what ISHA is requesting. In a contested case, parties and state agencies commit time and resources to reach decisions. To construe the UAPA to allow final orders which have not been appealed to simply fall into a void because a party couches its attempt at a “do over” as a declaratory judgment produces an absurd result. The UAPA does not make distinctions or create classifications of contested cases that would allow a final order to be disposable or sidestep an order’s effectiveness and applicability. ISHA’s strategy cannot be condoned, and its Petition should be dismissed.

CONCLUSION

For the foregoing reasons, the Petition should be dismissed.

RESPECTFULLY SUBMITTED,



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TPUC Docket 26-00034

CA's Motion to Dismiss

³⁰ TENN. CODE ANN. § 4-5-314(c).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via electronic mail, and upon request via U.S. Mail, upon:

Henry Walker (B.P.R. 000272)
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This the 24th day of September 2026.

A handwritten signature in cursive script, reading "Ryan McGehee", is positioned above a horizontal line.

RYAN MCGEHEE
Assistant Attorney General

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

May 30, 2025

IN RE:	)	
	)	
PETITION OF ISHA FOUNDATION, INC. TO	)	DOCKET NO.
DETERMINE IF A CCN IS NEEDED	)	25-00018

INITIAL DETERMINATION THAT A CCN IS REQUIRED

This matter is before the Administrative Judge of the Tennessee Public Utility Commission (“Commission” or “TPUC”) upon the Petition of Determination (“*Petition*”) filed on March 5, 2025, by Isha Foundation, Inc. (“Isha” or “Petitioner”) requesting a determination by the Commission whether a Certificate of Public Convenience and Necessity (“CCN”) is required to provide water service to the proposed “Isha Yogi Golf” project (“Isha Golf” or “Project”) that will be a part of the expansion of the Isha Institute of Inner Sciences that is a center for spiritual growth, yoga, and meditation located in Warren County, Tennessee.

THE *PETITION*

Isha is a Tennessee nonprofit 501(c)(3) corporation formed on November 23, 1998.¹ Dr. Usha Doshi is the President of Isha. Isha’s principal office is located at 951 Isha Lane, McMinnville, TN 37110.² The *Petition* states that as part of its ongoing expansion project, it will be opening a new zone called “Isha Golf” which will consist of 290 single family lots that will be leased to Isha members under a 99-year lease agreement with water service included in the terms of the lease agreement.³ According to the *Petition*, “[h]omes in this zone will either be built by

¹*Petition*, p. 1 (March 5, 2025).

² *Id.* at 2.

³ *Id.* at 3.

members on leased lots or will be constructed by the Institute and leased or rented to members.”⁴ Members will not be billed for water separately, and the Isha Foundation will continue to own the land.⁵ The *Petition* states “Isha Institute plans to develop a borewell for source water and provide a treatment facility and distribution system as part of its internal water system which will service the new development zone, ‘Isha Yogi Golf,’ using the groundwater sourced on Isha's property.”⁶ Isha explains that its expanded water system will be operated by a water operator certified by the Tennessee Department of Environment and Conservation (“TDEC”) and comply with TDEC rules and regulations.

In its *Petition*, Isha explains that:

The Warren County Utility District, the local public utility, has reached its maximum service capacity and cannot support further growth. Due to the remote location of this project, meeting the required demand would necessitate nearly 20 miles of waterline improvements, as well as significant upgrades to the water treatment plant and pump stations. Financing these extensive upgrades is entirely unfeasible for both the Warren County Utility District and the project owner, Isha Foundation. The scale and cost of these improvements effectively make the project untenable. In comparison, constructing and operating the System as described above provides a feasible path forward for growth of the Project. Isha has requested and received a letter from WCUD which establishes that the Project lies within WCUD's potable water service area and further confirms that the existing WCUD infrastructure is inadequate.⁷

FINDINGS AND CONCLUSIONS

Tenn. Code Ann. § 65-4-101(6)(A) provides:

(6)(A) “Public utility” means every individual, copartnership, association, corporation, or joint stock company, its lessees, trustees, or receivers, appointed by any court whatsoever, that own, operate, manage or control, within the state, any interurban electric railway, traction company, all other common carriers, express, gas, electric light, heat, power, water, telephone, telegraph, telecommunications

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 4-5.

services, or any other like system, plant or equipment, affected by and dedicated to the public use, under privileges, franchises, licenses, or agreements, granted by the state or by any political subdivision thereof. “Public utility” as defined in this section shall not be construed to include the following nonutilities:

- (i) Any corporation owned by or any agency or instrumentality of the United States;
- (ii) Any county, municipal corporation or other subdivision of this state;
- (iii) Any corporation owned by or any agency or instrumentality of the state;
- (iv) Any corporation or joint stock company more than fifty percent (50%) of the voting stock or shares of which is owned by the United States, this state or by any nonutility referred to in subdivisions (a)(1), (2), and (3);

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. While the water system at the proposed Isha Golf will be built, owned, and maintained by Isha for the exclusive use of people leasing at the Isha Golf community, there are a number of facts that distinguish this Project from Isha’s previous dockets where the Administrative Judge determined a CCN was *not* necessary.⁸

First, while Isha Golf is in WCUD’s service area, in the letter filed with the *Petition*, WCUD states as follows:

WCUD has no commitment or agreement to expand any facilities to increase capacity and serve additional Isha developments beyond the existing individual lots served in Isha Village and Isha Enclave Subdivisions and the existing 11/2” and 2” Meters that serve the main campus and pending Kamala development(s).⁹

In addition, WCUD confirms that the existing infrastructure is insufficient to meet the potable

⁸ See *In Re: Petition of Isha Foundation, Inc. to Determine if a CCN is Needed*, Docket No. 24-00077, *Initial Determination that CCN is Not Required* (March 27, 2025); see also *In Re: Petition of Isha Foundation, Inc. to Determine if a CCN is Needed*, Docket No. 22-00099, *Initial Determination that CCN is Not Required* (November 14, 2022).

⁹ See *Petition*, Exhibit D (Letter dated March 3, 2025, from Anthony Pelham General Manager Warren County Utility District) (March 5, 2025).

demands and Fire Flow requirements without off-site upgrades.¹⁰

In Docket No. 24-00077 concerning the Isha Kamala Project, the Administrative Judge determined a CCN was not needed. In that docket, WCUD was supplying the water for the Isha system making it akin to a master meter for the Isha water system distributing the water supplied by WCUD, and WCUD is still considered to be the service provider. From the facts provided in the current *Petition*, the water source will be wells on the Isha property, and WCUD has stated it is not serving the Isha Golf Project. So, Isha will install infrastructure and be its own water system. In Docket No. 22-00099, the Administrative Judge determined a CCN was not needed for a wastewater system to serve a project being built to increase accommodations for the growing number of residential programs on the Isha Campus. The Administrative Judge found that the wastewater system would be built for the exclusive use of that project and participants, there would be no permanent residences served by the wastewater system, and there would be no charge for the utility service provided to participants staying in the accommodations.¹¹

Although Isha maintains it will continue to own the Isha Golf land, it also states that the homes in the Isha Golf area will either be built by the members on leased lots or built by the Institute and leased or rented to members with 99-year lease terms. The fact that Isha will not charge members for water consumption or water service or that water service is built into the lease terms is immaterial to the analysis. Based on the facts presented in the record, the Administrative Judge finds that customers in the Isha Golf area would potentially have a significant interest in the home sites and that the public interest would require regulation by the Commission. The Isha Golf Project differs from the more transient nature of cabins and weekly rentals where the Commission has previously determined that CCNs are not necessary for a water or wastewater system serving

¹⁰ *Id.*

¹¹ See *In Re: Petition of Isha Foundation, Inc. to Determine if a CCN is Needed*, Docket No. 22-00099, *Initial Determination that CCN is Not Required*, p. 3 (November 14, 2022).

those type of rental units on its own property. Further, the Administrative Judge finds that Isha does not fall within one of the statutory exceptions to the definition of a public utility. Therefore, based on the record, the Administrative Judge concludes that Isha Golf Project appears to be a “public utility” as defined by Tenn. Code Ann. § 65-4-101(6) and is required to obtain a CCN from the Commission.

IT IS THEREFORE ORDERED THAT:

1. Isha Foundation, Inc. is required to obtain a Certificate of Public Convenience and Necessity from the Tennessee Public Utility Commission to provide water service in the manner set forth in its *Petition* to its proposed Isha Yogi Golf Project.

2. Any party aggrieved by the decision of the Administrative Judge in this Initial Order may file a Petition for Appeal with the Tennessee Public Utility Commission within fifteen (15) days from the date of this Initial Order.

3. This Initial Order shall become a Final Order of the Tennessee Public Utility Commission, if no petition for reconsideration or appeal of this Order is filed prior to the expiration of the fifteen (15) day appeal period.


Monica Smith-Ashford, Administrative Judge