

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

IN RE:

**PETITION OF ISHA FOUNDATION, INC.
FOR DECLARATORY JUDGMENT**

DOCKET NO. 26-00034

MOTION FOR RULING ON THE PLEADINGS AND UNCONTESTED FACTS

INTRODUCTION

The ISHA Foundation, Inc, (“ISHA”) has asked the Tennessee Public Utility Commission to issue a declaratory ruling that ISHA is not required to obtain a certificate of convenience and necessity (“CCN”) in order to provide water service to tenants living in a proposed development on the ISHA campus. The campus is located within the service area of the Warren County Utility District (“WCUD”) which currently provides water service to some, but not all, areas of Isha’s large, remote and largely wooded site.

The Commission has no jurisdiction over utility districts or the provision of water within a utility district’s service area. State law expressly prohibits the Commission from interfering with the “management and control” of a utility district (T.C.A. 7-82-104(a)) and multiple Tennessee courts have held that the Commission is prohibited from granting a CCN to another utility operating within the designated geographic service area of a utility district without the agreement of the utility district, a judicial finding that the utility district has waived its right to protect its territory or a ruling by the county mayor that there is a public need for an additional provider.

None of that has occurred here. WCUD itself has stated that it is willing to provide service to the new development but only if ISHA is willing to pay the utility district for substantial

expansions of WCUD's treatment and distribution systems. Those costs could exceed \$100 million and make it impractical for ISHA to obtain water from WCUD for the new development. Instead, ISHA has proposed to the Tennessee Department of Environment and Conservation a plan designed by ISHA's engineers to use water from wells on the ISHA campus to provide service to the tenants. A landowner's use of well water on his own property does not affect the territorial rights of a public utility and, in this case, would not require WCUD's approval or any change in the utility district's service area. ISHA would continue to receive its current service from WCUD but would use well water to serve the proposed development. The entire ISHA campus would remain within WCUD's designated geographic service area, and the Commission would have no jurisdiction over any of it.

The purpose of this declaratory judgment proceeding is to clarify that the Commission cannot require ISHA to obtain a certificate in order to use well water to serve tenants living in the proposed development. Such a ruling is necessary to correct a mistake made by the agency last year. In May 2025, the Commission issued a declaratory ruling (Docket 25-00018) stating incorrectly that ISHA must have a CCN before proceeding with its proposed development. There were no parties in that case other than ISHA, and no one pointed out that the Commission has no jurisdiction over the provision of water within the boundaries of a utility district unless the utility district waives, loses or agrees to surrender its territorial rights. In that case, WCUD's general manager wrote a letter to the Commission---the only evidence in the record on this issue--explaining that "WCUD has not declined to serve" the proposed development but that doing so would require the utility district to make a substantial investment "for facilities upgrades" and that the costs of those upgrades "have been deemed cost prohibitive by ISHA." Docket 25-00018, Petition, Exhibit D. Despite WCUD's explanation that it had not declined to provide service, the

Commission nevertheless ordered ISHA to obtain a certificate to provide water service to tenants in the development. There is no discussion in the order of the jurisdiction issue and no finding that WCUD had waived, lost or agreed to surrender its territorial rights. The ruling was clearly a mistake. Until that mistake is corrected, ISHA is stuck. The Commission has ordered ISHA to obtain a certificate, but ISHA cannot get a certificate because the Commission's order contains no finding that WCUD has waived, lost or otherwise given up its exclusive service area.

To reiterate, it is undisputed that:

1. The ISHA campus is located within the exclusive service area of WCUD.
2. Tennessee courts have ruled many times that the Commission has no jurisdiction to grant a CCN to another entity to operate within a utility district's service area unless the utility district has waived, lost or agreed to surrender its territorial rights.
3. The Commission has made no finding that WCUD has waived, lost or agreed to give up its right to be the sole provider of water within its service area.
4. Without any findings to support its exercise of jurisdiction, the Commission has ordered ISHA to obtain a CCN to provide water service inside WCUD's territory.

That decision should now be corrected.

This case is set for hearing, if necessary, on November 2, 2026. The facts are not contested, and the law is well established. The Commission does not need a hearing in order to rule. Nevertheless, ISHA will subpoena the general manager of WCUD so that he can provide a more complete explanation, either in writing or at the hearing, as to whether the utility district will agree to allow ISHA to obtain a certificate to provide service to customers inside WCUD's service area. Therefore, if the Commission wishes to read or hear more evidence of the utility district's position, the Commission will have that opportunity.

STATEMENT OF FACTS

The facts are described in the Petition, the pre-filed testimony of Dr. Usha Doshi and, for further background, in the records of Commission dockets 25-00018, 24-00077 and 22-00099, which were all declaratory judgment petitions filed by ISHA. As requested in the Petition, ISHA asks that the Commission take judicial notice of the record in all three of those earlier proceedings. The Consumer Advocate did not participate in those dockets and has elected not to file testimony in this docket. The facts set forth by ISHA in the Petition and Dr. Doshi's testimony are not disputed.

ISHA is located on a large, remote, predominately wooded campus in a hilly area near McMinnville, Tennessee. A non-profit corporation, ISHA describes itself as a center for spiritual growth and the study of yoga and meditation. Petition,¹ ISHA houses transient guests and is planning developments for long-term tenants who will lease lots on the property and build or rent houses on the leased lots. Id. Because of the hilly terrain and remote location, the provision of water service to these developments for domestic use and fire prevention presents a number of engineering issues.

The ISHA campus is located wholly within the service area of the Warren County Utility District which currently provides water service to several ISHA buildings but lacks the capacity to provide all the water that will be needed for the proposed developments. See Docket 25-00018, Exhibit D (letter from WCUD General Manager Anthony Pelham) and Docket 26-00034, "ISHA Response to Consumer Advocate's First Discovery Request," Exhibit B (emails between ISHA and WCUD). Because of WCUD's lack of additional capacity and the prohibitive cost of increasing the utility district's capacity, ISHA is planning to use water from wells on the campus--water that will be treated to meet TDEC safety standards----to provide drinking water and fire

protection for tenants in the proposed developments. The costs of providing that water will be paid by ISHA and recovered through lease payments and other sources of revenue. Petition, 2-3.

In Docket 24-00077, ISHA asked the Commission whether ISHA needed a certificate of convenience and necessity to use water from wells on the property in order to develop a project called “ISHA Kamala,” described as 76 town homes and 187 single family lots that will be leased to tenants for 99 years. Petition, 2-4. The Petition stated that WCUD “has reached its maximum service capacity and cannot support further growth” without prohibitively expensive upgrades. Id. ISHA explained, however, that by “using water sourced post master meter,” (meaning that ISHA would add well water to ISHA-owned distribution pipes downstream from WCUD’s master meter), ISHA would have sufficient water for both domestic use and fire protection and could proceed with the Kamala development. Id. The Petition stated further that ISHA would hire a licensed operator to manage the water system and comply with all applicable TDEC standards. Id. Following the filing of the Petition, the Commission Staff sent a letter to Dr. Usha Doshi, the Petitioner’s witness, asking, “Does the ISHA Kamala development lie entirely within the service territory of the Warren County Utility District (WCUD)? If so, please provide a letter from WCUD on its letterhead confirming that the ISHA Kamala development is entirely within the WCUD service area.” A week later, ISHA filed with the Commission a letter from Mr. Anthony Pelham, WCUD’s general manager, stating that the “proposed Kamala Phase 1 development as presented to WCUD lies entirely within the WCUD potable water service area.” No one intervened in the case; no hearing was held and no evidence entered into the record other than the Petition itself and the letter from Mr. Pelham. On March 3, 2025, a month after Mr. Pellam’s letter was filed, the Hearing Officer issued an Initial Order holding that, because the water system “will be built, owned and operate by ISHA for the exclusive use of people leasing in the ISHA Kamala

[development]...ISHA is not a ‘public utility’ as defined by Tenn, Code Ann. 65-4-101(6) and is not required to obtain a CCN from the Commission.” Initial Order, 3. The Initial Order was amended to correct some typographical errors and became a Final Order of the Commission by operation of law.

On March 5, 2025, two days after the Hearing Officer ruled in Docket 24-00077 that ISHA did not require a CNN to use well water to create sufficient capacity to proceed with the Kamala development, ISHA filed another, nearly identical request for a declaratory ruling, Docket 25-00018, asking if ISHA needed a certificate to use well water to provide service for the “Yogi Golf” development, described as 290 single family lots that would be leased to tenants for 99 years. Petition, 2-4. ISHA said it would hire a licensed operator to manage the water system in compliance with all applicable TDEC regulations and that there would be no separate charge to the tenants for water service. Id. In anticipation of a question from the Staff, ISHA included in the Petition a letter from WCUD’s general manager stating that “the project lies within WCUD’s potable water service area” and confirming “that the existing WCUD infrastructure is inadequate” to serve the Yogi Golf development. Petition, Exhibit D. Since ISHA was unable to pay the costs of expanding WCUD’s capacity, the letter also stated that WCUD “has no commitment or agreement to expand any facilities to increase capacity” to the ISHA campus beyond WCUD’s existing service.

There were no intervenors, no hearing, and no evidence in the record other than the Petition and attached exhibits. This time, however, the Hearing Officer concluded that ISHA is required to obtain a certificate of convenience and necessity in order to use well water to provide service to tenants in the proposed development. There was no discussion in the Initial Order of the fact that the development lies within the service area of WCUD or that, absent the utility district’s consent,

a ruling by a court that the utility district had waived its exclusive service rights or a ruling by the county mayor that another water provider is needed, the Commission has no jurisdiction to issue a certificate inside a utility district's territory. There is no mention of any of these issues, only a directive that ISHA must obtain a certificate before proceeding with the development, a directive that, based on the facts in the record, the agency had no authority to issue. ISHA did not seek reconsideration or file an appeal.

ARGUMENT

In 2018, the Commission's Legal Division filed a brief in Davidson County Chancery Court describing the Commission's virtually complete lack of authority over utility districts. A copy of the brief is attached. Noting that state law "is explicit with respect to the Commission's lack of jurisdiction in matters within the realm of the management and control of a utility district," the lawyers for the Commission told the Chancellor, "It is well settled that the Commission has no jurisdiction to issue a CCN to an entity to provides services and compete with a utility district for customers and revenue within the confines of a utility district." Commission brief at 4-5, emphasis added. The brief cited the case of West Wilson Utility District v. Z.D. Atkins, 442 S.W. 612, 613-614 (Tenn. 1969) in which the Tennessee Supreme Court held that a utility district "has an exclusive franchise to construct and operate a public water system in its designated geographical area [and that the] only method by which this franchise can be altered or modified in any way is by a petition filed in the County Court [now called the county commission] for that purpose." Using strong language to emphasize the point, the Court's opinion states that allowing "any other agency...to modify the geographic area" of a utility district "could result in utter chaos." Id.

The Supreme Court's ruling was based on a state statute, still on the books, that protects the exclusive service rights of a utility district. The statute states, "So long as the district continues

to furnish any of the services which it is herein authorized to furnish, [it] shall be the sole public corporation empowered to furnish such services in the district and no other person, firm or corporation shall furnish or attempt to furnish any of the said services in the area embraced by the district, unless and until it shall have been established that the public convenience and necessity requires other or additional service.” T.C.A. 7-82-301(a)(1). That determination--- that “the public convenience and necessity requires other or additional service”—is not made by the Commission but by the county officials in the county that originally incorporated the utility district. Town of Rogersville, ex rel Rogersville Water Commission v, Mid Hawkins County Utility District, 2003 Tenn. App. LEXIS 411. (A copy of the Rogersville case is attached to the Petition.) Similarly, the Tennessee Attorney General has opined, “Courts have concluded that the exclusive franchise area of a utility district can only be modified by the county executive....” Tennessee Attorney General Opinion 00-067.

Based on these rulings, the Commission has no jurisdiction to require ISHA to obtain a certificate. WCUD holds an exclusive franchise to provide water service within its service area, and there has been no determination by Warren County officials that there is a public need for another provider of service within the district.

There are two other possible ways in which another entity could provide water within WCUD’s service area. Neither is applicable here.

First, WCUD could affirmatively agree to allow another provider to offer service. As amended in 2022, T.C.A. 7-82-301(a)(1)(C) provides that a utility district, “notwithstanding [its] exclusive right to furnish services in the district, may enter into an agreement” with an “investor-owned water utility” that would “permit that other entity to operate within the district.” While it is unclear if ISHA, a 501(c)(3) charity, could be considered an “investor-owned” utility, there is no

agreement between WCUD and ISHA that would permit ISHA to operate as a public utility within WCUD's service area.

Second, it is remotely possible, at least in theory, that a court might hold at some time in the future that WCUD is barred by the doctrine of laches from asserting its right to be the exclusive provider of water service in its service area. In the case of Whitehaven Utility District v. Ramsey, 387 S.W.2d 351 (Tenn. 1964), the Supreme Court held that a utility district, having waited eight years to object to the construction and operation of a municipal water system within the utility district's territory, was barred by the doctrine of laches from objecting to the city's water service. That case has no bearing on this matter. ISHA has not raised--and could not credibly raise--a claim that WCUD has waived its right to provide service. To the contrary, WCUD's general manager specifically stated in his letter to ISHA that the utility district "has not declined to serve" the Yogi Golf development. Moreover, even if ISHA had been providing water service on its campus for years without objection from WCUD, the doctrine of laches is an equitable consideration, as explained in the Whitehaven case, that can only be enforced by a court of equity. The Commission is an administrative agency, not a court, and has no statutory authority to grant equitable relief.

None of this is new or in dispute. Echoing what the agency's lawyers told the Chancellor, the Commission itself has held that it is "well settled" that the agency has no authority to issue a CCN to another provider within a utility district's service area over the objection of the utility district. For a thorough discussion of the law in this area, see the Initial Order Issued in Docket 17-00120 (September 28, 2018).

In sum, there can be no doubt that the Commission lacks the authority to grant ISHA a certificate of convenience and necessity within the service area of the Warren County Utility District. WCUD has not waived, lost or agreed to surrender its statutory right to be the exclusive

provider of public water service within its geographic territory, and the Commission's order issued in Docket 25-00018 does not hold otherwise. Indeed, the order says nothing at all about the jurisdiction issue.

ISHA should have raised the jurisdictional issue in Docket 25-00018. It failed to do so. Perhaps for that reason, the agency overlooked it and erroneously ruled that ISHA could not go forward with its plans for the Yogi Golf development without a CCN to provide water service to the tenants. The Commission, however, has no authority to grant ISHA a certificate to provide that service.

The only way to remedy this impasse is for the Commission to correct the mistake that was made in Docket 25-00018 and issue a ruling that ISHA is not required at this time to have a CCN in order to go forward with the Yogi Golf development. Circumstances, of course, may change in the future. WCUD may surrender the territory, or the parties may enter into an agreement pursuant to T.C.A. 7-82-301(a)(1)(C). But that time is not now.

CONCLUSION

The facts are not in dispute. The law is clear. ISHA asks that its Petition be granted without further delay.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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

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This 24th day of September 2026.



Henry Walker (B.P.R. 000272)

FILED
MAY 24 PM 2:58
TENNESSEE
CLERK OF DISTRICT COURT
MEMPHIS, TENN.

No. 18-455-IV
Chancellor Perkins

Dismissal of an action is proper when the allegations in a complaint, taken as true, are insufficient to state a claim. *Shipley v. Knoxville Journal Corp.*, 670 S.W.2d 222, 223 (Tenn. Ct. App. 1984). Particularly in the case of a lack of subject matter jurisdiction, which is “so

fundamental that it requires dismissal whenever it is raised and demonstrated.” *Dishmon v. Shelby State Community College*, 15 S.W.3d 477, 480 (Tenn. Ct. App. 1999). The existence of subject matter jurisdiction depends on the cause of action and the relief sought. *Landers v. Jones*, 872 S.W. 2d 674, 675 (Tenn.1994). When a court’s subject matter jurisdiction is questioned, it must first ascertain the nature or gravamen of the case. *Staats v. McKinnon*, 206 S.W. 3d 532, 542 (Tenn.Ct.App.2006) (cert.denied)(internal citations omitted). Taken as true, the allegations stated in the Complaint and relief sought do not provide a basis to convey subject matter jurisdiction upon this Court or state a cause of action for relief this Court may grant.

RELEVANT FACTS IN THE COMPLAINT

Milcrofton was created by an order of the County Court of Williamson County in 1975. *See* Complaint, pp. 2-3, ¶ 8. Milcrofton has the exclusive right to provide water service within its boundaries pursuant to Tenn. Code Ann. § 7-82-301(a)(1)(B). *Id.* at p. 3, ¶ 9. Milcrofton provides water service to King’s Chapel Subdivision located within Williamson County, Tennessee. *Id.* at pp. 3-4, ¶ 14, 15 and 16. Defendant John Powell asked Milcrofton for permission to build water lines to distribute water to homes in King’s Chapel for irrigation; Milcrofton denied permission. *Id.* at p. 4, ¶ 17. Defendants John Powell and Non Potable Well Water, Inc. (“Non Potable Water”) provide well water to approximately thirty individuals in King’s Chapel Subdivision in Williamson County, Tennessee. *Id.*, ¶ 18, 19. Non Potable Water has not been issued a Certificate of Convenience and Necessity (“CCN”) by the Commission. *Id.* ¶ 20.

Milcrofton petitioned the Commission to declare Non Potable Water a “public utility” and requested the Commission to take enforcement action to stop operation of the system unless

and until it receives a CCN. *Id.* at p.5, ¶ 24. The Commission, by order dated October 6, 2017, dismissed Milcrofton's petition, finding that the Commission did not have jurisdiction and that Milcrofton should seek a resolution of its complaint elsewhere. *Id.* at pp. 5-6, ¶ 24, 26.

ARGUMENT

This Court Lacks Subject Matter Jurisdiction

The general rule in Tennessee is that a chancery court has subject matter jurisdiction to adjudicate declaratory judgment actions; but such actions must be within the scope of the chancery court's jurisdiction. *Memphis Bonding Company v. Criminal Court of Tennessee 30th District*, 490 S.W. 3d 458, 465 (Tenn.Ct.App.2015) (cert.denied). The Complaint in this matter asserts this Court has jurisdiction pursuant to Tenn. Code Ann. § 4-5-225(a). However, Tenn. Code Ann. § 4-5-225(a) provides for the jurisdiction of this Court to issue such judgments "unless otherwise specifically provided by statute."

Pursuant to Tenn. Code Ann. § 65-2-104, the legislature has specifically provided that a declaratory ruling by the Commission, if issued, is subject to *review* of this Court:

On the petition of any interested person,.... A declaratory ruling, if issued after argument and stated to be binding, is binding between the commission and the petitioner on the state of facts alleged in the petition, unless it is altered or set aside by a court in a proper proceeding. Such rulings are subject to review in the chancery court of Davidson County in the manner provided in this chapter for the review of decisions in contested cases. The commission shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition.

Tenn.Code Ann. § 65-2-104 (emphasis added). Here, the Commission neither issued nor declined to issue a declaratory ruling. As a threshold issue, the Commission found it lacked jurisdiction to resolve or otherwise entertain the matter before it. While a declaratory ruling issued by the Commission would be properly reviewable by this Court, the Plaintiff here is

seeking to place this Court in the shoes of the Commission and issue an original declaratory judgment, an action seemingly beyond the scope of Tenn. Code Ann. § 65-2-104. Even assuming Tenn. Code Ann. § 65-2-104 authorized this Court to review the Commission's finding that it had no jurisdiction, the Plaintiff has not requested review of the order.

Assuming Tenn.Code Ann. § 4-5-225(a) applies here as an arguable basis of subject-matter jurisdiction, the Commission respectfully submits this matter should still be dismissed. Tenn.Code Ann. § 4-5-225(a) addresses the jurisdiction of this Court to render a declaratory judgment regarding statutes within the primary jurisdiction of any state agency. *Colonial Pipeline Company v. Morgan*, 263 S.W. 3d 827, 841 (Tenn.2008). The Commission respectfully submits that enforcing the exclusivity of a utility district's service area is not within the primary jurisdiction of the Commission or any other state body other than the local courts of jurisdiction that created the utility district. The Commission respectfully asserts the relief requested by the Plaintiff was outside the scope of the statutory authority of the Commission. The Commission's lack of jurisdiction does not confer subject matter jurisdiction to this Court to resolve the dispute between the Plaintiff and Non Potable Water.

The Commission Lacks Jurisdiction To Grant the Relief Sought by The Plaintiff

The crux of the relief requested by the Plaintiff would have required the Commission to eject an alleged interloper and competitor from the Plaintiff's exclusive service area. The Commission has narrowly drawn jurisdiction with respect to utility districts. Tenn. Code Ann. §§ 65-4-105(f); 7-82-104(a). Tenn. Code Ann. § 7-82-104(a) is explicit with respect to the Commission's lack of jurisdiction in matters within the realm of the management and control of

a utility district. Aside from natural gas pipeline safety requirements, the Commission has not been granted the authority to police utility districts or resolve disputes within their boundaries.

Recent legislative action deleting Tenn. Code Ann. § 7-82-103, a provision that formerly provided for a review of a utility district's rates by the Commission in limited circumstances, does not indicate a desire on the legislature's part to expand the Commission's jurisdiction. Moreover, it is well settled that the Commission has no jurisdiction to issue a CCN to an entity to provide services and compete with a utility district for customers and revenue within the confines of a utility district. *West Wilson Utility District v. Z.D. Atkins*, 442 S.W. 2d 612, 613-614 (Tenn.1969).

In a continuous line of cases, the decisions of Tennessee courts have embraced the primacy of the jurisdiction of local courts to settle matters concerning the exclusiveness of a utility district's service area. *Id.*; *Whitehaven Utility District v. Ramsay*, 387 S.W. 2d 351, 353-355 (Tenn.1964); *Consolidated Gray-Fordtown-Colonial Heights Utility District v. O'Neil*, 354 S.W. 2d 63, 65 (Tenn.1962); *City of Crossville v. Middle Tennessee Utility District*, 345 S.W. 2d 865, 867 (Tenn.1961); *Chandler Investment Co. v. Whitehaven Utility District*, 311 S.W. 2d 603, 613 (Tenn.App.Ct.1957)(cert.denied). Furthermore, the Tennessee legislature has not assigned the Commission the authority to be the arbiter or guardian of the exclusiveness of the franchises of utility districts.

The Commission would note one area in which the Tennessee legislature has delegated to the Commission the authority to determine border disputes that may entail the service area of a utility district; however this vestment of authority over such disputes has been narrowly drawn to apply exclusively to providers of electricity in specific circumstances. Tenn. Code Ann. § 65-34-

105. Given the statutory framework created by the Tennessee legislature and its application by Tennessee courts, the Commission respectfully submits the Commission is not the forum or enforcement mechanism for the exclusiveness of the boundaries of utility districts.

The pragmatic logic noted within the holding of the Tennessee Supreme Court in *West Wilson* is compelling.

If upon the creation of a utility district any other agency, including the courts, be allowed any method to modify the geographical area in the district without the matter being first heard by the creating agency (County Court) could result in utter chaos.

West Wilson at 614. Limiting local courts to the drawing and altering of service area boundaries of utility districts yet charging the Commission with enforcement of such boundaries, would promote an unsound regulatory and judicial review process and all without the benefit of a legislative directive authorizing such action. Even assuming the Defendant Non Potable Water is a “public utility,” the gravamen of the Plaintiff’s requested relief is centered entirely around defending the exclusivity of the Plaintiff’s service area. As such, the Commission respectfully submits the controversy between Milcrofton and Non Potable Water is properly within the purview of the courts of Williamson County.

Review of the Order is Time Barred

Review of the Commission’s order is time barred. The order of the Commission was entered on October 6, 2017. *See* Complaint, *Id.* at pp. 5-6, ¶ 24, 26. Absent the filing of reconsideration or appeal, by operation of law pursuant to Tenn. Code Ann. §§ 4-5-314(b) and 4-5-318(f), the order becomes a final order of the Commission. The Complaint was filed with this Court on April 23, 2018, more than sixty (60) days after the date the Commission issued the order.

Review of Final Decisions of the Commission Is Proper before the Court of Appeals

The Commission respectfully submits that while this Court would have jurisdiction to review a declaratory order issued by the Commission, the agency made a decision based purely on jurisdiction rather than rule upon the legal or otherwise specific factual application of the law or a rule to a party. Thus, the Commission's decision is a "final decision" as contemplated under Tenn. Code Ann. §4-5-322(b)(1)(B)(iii).¹ As a final decision, the Commission's dismissal of Milcrofton's petition for lack of jurisdiction was reviewable by the Middle Section of the Court of Appeals.

CONCLUSION

Based on the foregoing, the Commission respectfully requests this Court to dismiss the Complaint.

Respectfully Submitted,



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¹ The Davidson County Chancery Court, Part III, came to a similar conclusion when a party sought judicial review of a denial of a Petitioner's intervention in a show-cause proceeding. The Court ruled the Commission's decision was a "final decision" subject to review by the Court of Appeals. A copy of the ruling is attached for convenience.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served by electronic mail, postage pre-paid U.S. first-class mail, and/or delivering a copy by hand, upon the following person(s):

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On this the 24th day of May, 2018



Ryan L. McGehee

FILED

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE, PH 3:00
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III

DAVIDSON COUNTY CHANCERY CT

CONSUMER ADVOCATE AND)
PROTECTION DIVISION OF THE)
OFFICE OF THE ATTORNEY)
GENERAL OF TENNESSEE by and)
through Herbert H. Slatery III,)
Attorney General and Reporter for)
the State of Tennessee,)

Petitioner,)

VS.)

TENNESSEE REGULATORY)
AUTHORITY,)

Respondent.)

NO. 15-926-III

CLERK & MASTER
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D.C.E.H.

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FILED

MEMORANDUM AND ORDER DENYING
PETITIONER'S MOTION FOR A STAY AND
DISMISSING PETITION FOR JUDICIAL REVIEW

This case is before the Court on the Petitioner's preliminary motion to stay proceedings before the Tennessee Regulatory Authority ("TRA") in TRA Docket No. 12-00077 *In Re Show Cause Proceeding of Laurel Hills Condominium Property Owners' Association*. The stay seeks to hold the show cause proceedings in abeyance pending resolution in this Court of Petitioner's contemporaneously filed *Petition for Judicial Review* of TRA's denial of Petitioner's intervention in the TRA show cause proceedings. Based upon textual analysis of the applicable jurisdictional statute in this case, Tennessee Code

Annotated section 4-5-322, the Court denies the Petitioner's *Motion for Stay* for lack of jurisdiction. The Court's reasoning is as follows.

The issue in the *Petition For Judicial Review* is whether the Respondent Tennessee Regulatory Authority ("TRA") had the right to deny Petitioner's motion to intervene on behalf of consumers in a show cause hearing TRA is conducting to sanction a water service provider, Laurel Hills Condominium Property Owners' Association, who did not have a service provider certificate. The Petitioner asserts it has an absolute right by statute to intervene; the Respondent asserts the right is not absolute. Also disputed by the parties is whether TRA's denial of Petitioner's motion to intervene is a final decision or an interlocutory matter. Further necessary context is that a settlement has been reached with the water provider in the show cause proceedings to turn over the facility, and on August 17, 2015, that settlement will be presented to TRA for approval. The Petitioner asserts TRA's denial of its intervention precludes its input and/or objections on the settlement proposal.

It is in this context that the Petitioner has filed a Tennessee Code Annotated section 4-5-322(c) motion for the Court to stay the TRA show cause proceedings until the intervention issue can be decided on appeal, and it is in this context that the Court concludes it does not have jurisdiction to rule on the stay, and does not have jurisdiction of the contemporaneously filed *Petition For Judicial Review*.

The Court's conclusion is based upon Tennessee Code Annotated section 4-5-322, particularly subsection (b)(1)(B)(iii). It provides that appeals of TRA "final decision[s]" are filed with the middle division of the court of appeals:

(iii) A person who is aggrieved by any final decision of the Tennessee regulatory authority, or by a final decision of the state board of equalization in a contested case involving centrally assessed utility property assessed in accordance with title 67, chapter 5, part 13, shall file any petition for review with the middle division of the court of appeals.

Accordingly, if TRA's denial of Petitioner's intervention constitutes a "final decision," then jurisdiction is with the court of appeals, and this Court has no jurisdiction to issue a stay.

If, on the other hand, TRA's denial of Petitioner's intervention is an interlocutory matter, this Court nevertheless concludes it still does not have jurisdiction.

The source of interlocutory jurisdiction in administrative cases is Tennessee Code Annotated section 4-5-322(a)(1). It provides as follows:

(a)(1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review. A preliminary, procedural or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy [emphasis added].

Significant to this case is that the format of subsection 4-5-322(a)(1) does not designate the chancery court of Davidson County as the jurisdiction for interlocutory appeals. While the second sentence of section (a)(1) provides for interlocutory review, it does not designate a court. Thus, the provision for interlocutory review in section 4-5-322(a)(1) appears to be just the identification and designation that such a right exists.

It is the next subsection, 4-5-322(b)(1)(A)-(B), which designates which courts perform judicial review for various cases. As quoted above, the court of appeals, in section 4-5-322(b)(1)(B)(iii), designates the middle division court of appeals for TRA issues.

While it is the case that the designation of the court of appeals for TRA matters in subsection 4-5-322(b)(1)(B)(iii) references that designation in terms of a TRA "final decision," the same can be said about the designation of Davidson County chancery court in subsection 4-5-322(b)(1)(A). This subsection is not broader than subsection 4-5-322(b)(1)(B)(iii).

The designation of the Davidson County chancery court, like the text designating the court of appeals for TRA matters, both arise, the text says, from "final" orders or decisions. There is no broader text, indicative of general interlocutory authority by Davidson County Chancery Court, in section 4-5-322(a)(1), b(1)(A), or (b)(1)(B)(iii). For ease of reference and to demonstrate these are quoted in sequence as follows:

(a)(1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review. A preliminary, procedural or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy [emphasis added].

* * *

(b)(1)(A) Proceedings for review are instituted by filing a petition for review in the chancery court of Davidson County, unless another court is specified by statute. Such petition shall be filed within sixty (60) days after the entry of the agency's final order thereon [emphasis added].

* * *

(iii) A person who is aggrieved by any final decision of the Tennessee regulatory authority, or by a final decision of the state board of equalization in a contested case involving centrally assessed utility property assessed in accordance with title 67, chapter 5, part 13, shall file any petition for review with the middle division of the court of appeals [emphasis added].

From this textual analysis, the Court concludes it lacks jurisdiction to rule on the Petitioner's *Motion For A Stay*, and to proceed on the *Petition For Judicial Review*.

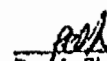
It is therefore ORDERED that the Petitioner's *Motion For Stay* is denied, and the *Petition For Judicial Review* is dismissed with prejudice. Court costs are taxed to the Petitioner.


ELLEN HOBBS LYLE
CHANCELLOR

cc: Rachel Newton
Shiva K. Bozarth
Ben Gastel (nonparty counsel, for information only)

RULE 58 CERTIFICATION

A Copy of this order has been served by U. S. Mail upon all parties or their counsel named above.


Deputy Clerk and Master
Chancery Court

8/14/15
Date