

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

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

**CONSUMER ADVOCATE’S RESPONSE TO ISHA’S MOTION FOR A RULING ON
THE PLEADINGS**

INTRODUCTION

ISHA’s *Motion for Ruling on the Pleadings and Uncontested Facts* (“Motion”) asks the Tennessee Public Utility Commission (“Commission”) to do more than issue a prospective declaratory ruling concerning the applicability of Tennessee law. ISHA is now asking this Commission to effectively reverse or nullify the Commission’s prior Final Order in TPUC Docket No. 25-00018, in which the Commission determined that ISHA must obtain a certificate of convenience and necessity (“CCN”) before providing water service to tenants in its proposed development.

ISHA characterizes that prior determination as a “mistake” and argues that the Commission lacked jurisdiction to issue it because the development is located within the service area of the Warren County Utility District (“W.C.U.D.”). But ISHA did not seek reconsideration of the Final Order, nor did it seek judicial review of that Order. Instead, ISHA now seeks substantially the same relief through a new declaratory proceeding and seeks a reconsideration or reversal of the Commission’s prior decision. The Commission should decline to use this proceeding as a vehicle for an untimely collateral attack on its prior final order.

ARGUMENT

ISHA's Motion asks the Commission to declare that a prior final order in Docket No. 25-00018 was erroneous and to relieve ISHA from a prior CCN requirement that it failed to challenge through reconsideration or judicial review. The Commission should decline to use the present declaratory proceeding as a substitute for the appellate or judicial review process applicable to the final order in TPUC Docket No. 25-00018.

In addition, ISHA has not established that W.C.U.D.'s statutory territorial rights deprive the Commission of jurisdiction to determine whether ISHA's proposed water system is subject to the Public Utility Act.

Moreover, ISHA's assertion that the facts are undisputed is inconsistent with its own stated intention to subpoena W.C.U.D.'s General Manager to provide additional evidence concerning W.C.U.D.'s position. For these reasons, the Commission should deny ISHA's Motion and either decline to issue the declaratory ruling ISHA requests or conduct a full evidentiary hearing and permit W.C.U.D. to participate.

I. ISHA'S MOTION IMPROPERLY SEEKS TO RELITIGATE A FINAL COMMISSION ORDER.

ISHA's requested relief is fundamentally inconsistent with the procedural history of this matter. In TPUC Docket No. 25-00018, ISHA expressly asked the Commission to determine whether it was required to obtain a CCN to provide water service to tenants in its proposed golf development. The Commission determined that ISHA was a public utility and a CCN was required. ISHA did not seek reconsideration of that determination and did not appeal the Final Order.

Instead, ISHA now asks the Commission to declare that the requirement imposed in TPUC Docket No. 25-00018 as erroneous and let ISHA proceed without a CCN. That is not merely a

request for prospective clarification of an unsettled question. It is a request to revisit and reverse a prior final adjudication.

Tennessee law recognizes the importance of finality in administrative proceedings. Tennessee courts have held that final quasi-judicial determinations of administrative agencies have the effect of *res judicata* and may not be collaterally attacked in a subsequent proceeding.¹

The same principle is reflected in Tennessee's declaratory-order statutes. A declaratory ruling issued by the Commission is binding on the Commission and the petitioner concerning the state of facts alleged, subject to alteration or judicial review through the procedures provided by law.²

ISHA cannot circumvent or avoid the determination previously made and the consequences of its own actions by failing to seek reconsideration or judicial review of TPUC Docket No. 25-00018 by simply filing another declaratory petition and characterizing the prior order as a mistake. If ISHA believed the Commission exceeded its jurisdiction in TPUC Docket No. 25-00018, the appropriate mechanism for raising that challenge was a direct challenge to that order—not a collateral attack in a subsequent proceeding.

II. ISHA HAS NOT ESTABLISHED THAT THE PRIOR ORDER WAS VOID FOR LACK OF JURISDICTION.

ISHA repeatedly asserts that the Commission's prior order was entered without jurisdiction because the proposed development is located within W.C.U.D.'s service territory. That conclusion does not necessarily follow from the statutes or authorities cited by ISHA. The Commission unquestionably has statutory authority to determine the applicability of statutes within its jurisdiction and to determine whether a proposed provider of water service is subject to the Public

¹ See *State ex rel. Ragsdale v. Sandefur*, 389 S.W.2d 266, 271 (Tenn. 1965); *Purcell Enters., Inc. v. State*, 631 S.W.2d 401, 407 (Tenn. Ct. App. 1981).

² TENN. CODE ANN. § 65-2-104.

Utility Act. TENNESSEE CODE ANNOTATED § 65-2-104 expressly authorizes the Commission to issue declaratory rulings concerning the applicability of statutes enforceable by the Commission and the meaning and scope of Commission orders.

Similarly, Tennessee's CCN statutes establish a regulatory framework governing the construction or operation of public utility systems and authorize the Commission to determine whether a proposed system requires a certificate.³

The question of whether W.C.U.D. has an exclusive statutory right to furnish public water service within its territory is not necessarily identical to the question of whether ISHA is a "public utility" subject to the Commission's CCN requirements. The former concerns the statutory rights of a utility district; the latter concerns the regulatory status and obligations of the proposed provider. ISHA's Motion largely assumes the answer to the latter question based upon the former without any logical basis.

III. W.C.U.D.'S TERRITORIAL RIGHTS DO NOT ESTABLISH THAT ISHA IS EXEMPT FROM COMMISSION REGULATION.

ISHA relies heavily upon TENN. CODE ANN. § 7-82-301 and cases discussing the exclusive service rights of utility districts. The Consumer Advocate does not dispute that utility districts possess statutory territorial protection from interlopers and competitors that may compete for customers and revenue. Rather, the Consumer Advocate contends the Commission may disregard those protections when a utility district has *allowed* an entity to establish a public utility within the utility district's service territory. However, those principles do not resolve the issue presented by ISHA's *Motion*. ISHA is not currently asking the Commission to grant it a CCN over W.C.U.D.'s objection. Instead, ISHA asks the Commission to declare that it does not need a CCN at all and previously declaring it a public utility was a mistake. These are entirely different questions.

3 TENN. CODE ANN. §§ 65-4-201 to -206

The fact that W.C.U.D. may possess exclusive territorial rights does not automatically answer whether ISHA's proposed activities constitute the provision of regulated water utility service. The Commission's statutory authority would be substantially undermined if the mere existence of a utility district's service territory deprived the Commission of jurisdiction to determine whether another entity is operating a public utility.

ISHA cannot on one hand secure permission to build a water system from W.C.U.D. and then turn around and claim the utility district's "exclusive" service rights prevent the Commission's regulation. As the Consumer Advocate understands ISHA's position, ISHA asserts the golf project is shielded from regulation by the Commission because it lies within W.C.U.D.'s service area. The Consumer Advocate does not dispute that Tennessee law generally forbids the Commission from issuing a CCN to an encroaching utility service provider.⁴ However, ISHA's plan to operate a water system with the acquiescence of the utility district renders W.C.U.D.'s exclusive service rights void for ISHA if and when ISHA begins providing service.

A string of Tennessee cases upholds the exclusivity of a utility district's boundaries against *encroachment* from potential competitors.⁵ The common theme throughout these decisions is that only local courts can change the service area boundary with respect to an encroaching utility. In other cases, Tennessee courts have distinguished matters of exclusivity protecting utility districts from interlopers as opposed to those situations in which a utility district has, at some point, given an express grant of permission for others to serve.⁶ In such situations, Tennessee courts have concluded, whether through laches or by contract, that a utility district can essentially waive their

4 *West Wilson v. Atkins*, 442 S.W. 2d 612, 614 (Tenn. 1969).

5 *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. Ct. App. 1957)

6 *City of Cleveland v. Prospect-McDonald Utility District*, 1990 WL 58039*2 (Tenn. Ct. App.1990).

exclusive service rights for a specific portion of their service area.⁷ Here, ISHA is not an encroaching competitor that W.C.U.D. is seeking to oust to defend its service area; rather, ISHA alleges it has permission to move forward building a water system supplied by well water.

While a utility district may have exclusive service rights when organized and created, those rights are not absolute. The grant of exclusivity is conditional. The service rights are exclusive “so long as the district continues to furnish services” that it is authorized to furnish.⁸ A utility district’s exclusive service rights may be challenged on a basis of its ability to serve.⁹ The exclusiveness of service rights can also be undone by laches.¹⁰ Exclusiveness of service may be undone when a utility district contracts portions of its service area away.¹¹ As a matter of economic pragmatism, utility districts have waived exclusive service rights allowing the Commission to issue CCNs to public utilities operating within the boundaries of what was formerly their exclusive service territory.¹² The Commission has relied upon these waivers in granting and amending CCNs.¹³ Thus, when utility districts have indicated they have no intention to serve, the Commission has exercised jurisdiction.

The Commission is not being asked to determine whether W.C.U.D. can serve; nor is the Commission charged by law to do so. Nevertheless, the question is relevant, and the answer is not in dispute. The record clearly indicates W.C.U.D. will serve ISHA but only if ISHA commits to approximately \$70,000,000 dollars, which will allow the utility district to upgrade its plant and lay

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

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

9 *Id.*

10 *Whitehaven Utility District v. Ramsay*, 387 S.W. 2d 351, 353 (Tenn. 1964).

11 *City of Cleveland v. Prospect-McDonald Utility District*, 1990 WL 58039*2 (Tenn. Ct. App.1990).

12 *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).

13 *Id.*

new, wider water pipes to serve the expected capacity of ISHA’s Golf Project.¹⁴ ISHA’s motion now claims the price tag for W.C.U.D. to provide service is \$100 million.¹⁵ There is nothing in the record indicating an objection based on W.C.U.D.’s exclusive service area. W.C.U.D. is aware of this proceeding and has not weighed in.¹⁶ Moreover, in TPUC Docket 25-00018, W.C.U.D. submitted a letter indicating it had no agreement to provide service; however, the infrastructure needed to provide service is a financial concern for ISHA. As a result, W.C.U.D. is aware of ISHA’s plan to pursue “private wells, water treatment, and a private distribution system internal to ISHA’s developments(s)” for which it offered no objection.¹⁷

The Consumer Advocate respectfully submits that ISHA is not shielded from regulation simply by its location within a utility district’s service area when it has been “allowed” by the utility district to move forward with building a water system. To find otherwise would be to create a regulation-free zone for public utilities that have been granted permission to serve within a utility district’s “exclusive” service area.

IV. ISHA’S WELL-WATER PROPOSAL DOES NOT, BY ITSELF, RESOLVE THE CCN QUESTION.

ISHA repeatedly characterizes its proposal as merely the use of groundwater located on its own property. The source of the water does not determine whether the resulting system constitutes regulated utility service. The relevant inquiry necessarily includes the nature of the proposed service, the persons to whom the service will be provided, the ownership and operation of the

¹⁴ *Limestone’s Responses to the Consumer Advocate’s First Discovery Request*, Exhibit B, TPUC Docket No. 26-00034 (June 22, 2026).

¹⁵ *ISHA’s Motion for Ruling on the Pleadings and Uncontested Facts*, p. 2, TPUC Docket No. 26-00034 (September 25, 2026).

¹⁶ *Consumer Advocate’s Responses to ISHA’s First Set of Discovery Requests*, Exhibit B, TPUC Docket No. 26-00034 (July 24, 2026).

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*, TPUC Docket No. 25-00018, *Petition of Determination*, Exhibit D (March 5, 2025).

system, the relationship between ISHA and the people receiving water service, and the applicable statutory definitions.

ISHA proposes to develop a water system that would provide service to people occupying homes constructed on leased lots within the development. The costs of providing that water will be indirectly recovered through lease payments and other sources of revenue. These are facts that are material to the Commission's analysis.

ISHA cannot obtain a declaration that no CCN is required simply by characterizing the water as "well water" or by stating that there will be no separately itemized water charge. The Commission must consider the substance of the proposed arrangement, not merely the source of the water or the way costs are recovered.

V. ISHA'S RELIANCE ON THE PRIOR DOCKETS DOES NOT REQUIRE THE COMMISSION TO ADOPT ISHA'S INTERPRETATION.

ISHA asks the Commission to take judicial notice of Dockets Nos. 25-00018, 24-00077, and 22-00099, and the Consumer Advocate does not object to the Commission considering its own prior proceedings to the extent appropriate. However, judicial notice of a prior administrative record does not mean that every factual assertion or legal conclusion contained in that record must be accepted as established for purposes of the present proceeding.

Most importantly, TPUC Docket No. 24-00077 resulted in an Initial Order concluding that ISHA was not a public utility and did not require a CCN, whereas, TPUC Docket No. 25-00018 reached a different conclusion concerning a subsequent proposed development. ISHA cannot simply select the conclusion reached in TPUC Docket No. 24-00077 and ask the Commission to disregard the contrary Final Order entered in TPUC Docket No. 25-00018.

VI. IF THE COMMISSION CONSIDERS THE CURRENT PETITION, A HEARING IS APPROPRIATE.

ISHA asserts that the facts are undisputed and therefore suggests in its motion that no hearing is necessary. At the same time, however, ISHA states that it intends to subpoena W.C.U.D.'s General Manager to provide additional evidence concerning W.C.U.D.'s position in this docket. Those two positions are difficult to reconcile.

If ISHA believes that additional testimony from W.C.U.D. is necessary to establish the utility district's position, then the factual record is not complete. The Commission should not issue a declaratory ruling concerning W.C.U.D.'s territorial rights, consent, or position without a sufficiently developed record—particularly where ISHA seeks to use the resulting ruling to overturn the practical effect of a prior Commission order.

At minimum, if the Commission elects to reach the merits of ISHA's current Petition, the Commission should allow W.C.U.D. to participate and should develop a record sufficient to determine:

1. The precise nature and scope of W.C.U.D.'s existing service territory;
2. The precise nature of the water service ISHA proposes to provide;
3. Whether ISHA's proposed system constitutes the provision of utility service subject to the Public Utility Act;
4. Whether ISHA will be providing water service to tenants or members of the public;
5. The ownership, operation, and maintenance of the proposed water system;
6. How the costs of the proposed water service will be recovered;
7. Whether W.C.U.D. has agreed to, consented to, or otherwise relinquished any portion of its statutory territorial rights; and
8. The effect, if any, of the Commission's final order in Docket No. 25-00018.

VII. CONCLUSION

The Consumer Advocate respectfully requests that the Commission deny ISHA's Motion and decline to issue the declaratory ruling requested by ISHA. In the alternative, should the Commission determine that further consideration of ISHA's Petition is appropriate, the Consumer Advocate respectfully requests that the Commission conduct an evidentiary hearing and permit

W.C.U.D. to fully participate before issuing any ruling concerning W.C.U.D.'s territorial rights, whether ISHA is a public utility, and whether ISHA has an obligation to obtain a CCN.

RESPECTFULLY SUBMITTED,



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TPUC Docket 26-00034

CAD's Response to Motion for Ruling on the Pleadings

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:

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This the 1st day of October 2026.

A handwritten signature in black ink, reading "Ryan McGehee". The signature is written in a cursive, flowing style.

RYAN MCGEHEE
Assistant Attorney General