

V-F

**PETITION OF HALLSDALE-POWELL UTILITY  
DISTRICT OF KNOX COUNTY, TENNESSEE, AND  
LYLE B. LEE REGARDING THE AUTHORITY AND  
BOUNDARIES OF THE NORTHEAST KNOX UTILITY  
DISTRICT OF KNOX COUNTY, TENNESSEE**



**Filed  
October 13, 1999**

**C. Coulter Gilbert, Esquire  
KENNERLY, MONTGOMERY & FINLEY, P.C.  
Attorneys for Plaintiff Hallsdale-Powell Utility District  
Post Office Box 442  
Knoxville, Tennessee 37901-0442**

MTAS LIBRARY JUN 30 2005  
UNIV. OF TENN

TO THE HONORABLE TOMMY SCHUMPERT  
COUNTY EXECUTIVE OF KNOX COUNTY, TENNESSEE

PETITION OF HALLSDALE-POWELL UTILITY DISTRICT OF KNOX COUNTY,  
TENNESSEE, AND LYLE B. LEE REGARDING THE AUTHORITY AND  
BOUNDARIES OF THE NORTHEAST KNOX UTILITY DISTRICT OF KNOX  
COUNTY, TENNESSEE

*Thomas H Schumpert*

PETITION

'99 OCT 13 RCV'D

The Petitioners hereby request that the County Executive find and declare that the public convenience and necessity require that the exclusive authority of Northeast Knox Utility District of Knox County, Tennessee (the "District") to provide wastewater service within the District's boundaries be vacated, or in the alternative, that the exclusive authority of the District to provide wastewater service within the portion of the District's boundaries known as the Beaver Creek Drainage Basin be vacated. The Petitioners also hereby request that the District's authority, if any, to provide services other than water and a wastewater collection system be vacated. In support of such petition, the Petitioners respectfully represent and state to the County Executive as follows:

1. The District is a utility district located in Knox County, Tennessee and is organized under the Utility District Law of 1937, codified in Section 7-82-101 et seq. of Tennessee Code Annotated (the "Act"). As authorized by prior orders of the County Judge of Knox County, Tennessee, and its successor, the County Executive, the District operates a water system and a wastewater collection system in the northeast portion of Knox County. As indicated in the Utilities Management Federation, Inc.'s report to the Knox County Commission's Growth Policy Coordinating Committee dated March 25, 1999 (the "Federation Report"), the District serves approximately 800 wastewater customers, operates no wastewater

treatment facilities, has 18 employees, and provides wastewater service to only 13% of the homes and businesses located in its service area. A copy of the Federation Report (excluding the maps) is submitted herewith as Exhibit A.

2. Petitioner Hallsdale-Powell Utility District of Knox County, Tennessee ("HPUD") is a utility district located in Knox County, Tennessee and is organized under the Act. As authorized by prior orders of the County Judge of Knox County, Tennessee, and its successor, the County Executive, HPUD operates a water system and a wastewater system, including wastewater treatment facilities, in the northern portion of Knox County. As indicated in the Federation Report, HPUD serves approximately 14,900 wastewater customers (15,547 as of August 30, 1999), operates two wastewater treatment plants, has 80 employees, and provides wastewater service to 69% of the homes and businesses located in its service area. A portion of HPUD's wastewater system is located in the Beaver Creek Drainage Basin (the "Basin"), which is located within the District's boundaries and is contiguous to HPUD's boundaries. The Basin area is more particularly described by that map submitted hereto as Exhibit B.

3. Petitioner Lyle B. Lee is a resident of Anderson County, Tennessee, who has developed residential property in the Basin and who owns an interest in real property lying within the District's exclusive service area in the Basin.

4. The City of Knoxville ("Knoxville") is a municipal corporation organized under the laws of the state of Tennessee and is located in Knox County, Tennessee. For many years, Knoxville has operated municipally owned water and wastewater systems that serve customers located within and without the corporate limits of Knoxville. The Knoxville Utilities Board ("KUB") is the agency of Knoxville that is responsible for the management and operation of the Knoxville water and wastewater systems. Upon information and belief, KUB serves

approximately 60,000 wastewater customers, operates six wastewater treatment facilities, and has 950 employees.

5. Pursuant to Section 7-82-301 of Tennessee Code Annotated, the District has the sole right to provide wastewater services in its defined boundary area “unless and until it has been established that the public convenience and necessity requires other or additional services.” The County Executive of Knox County has jurisdiction to determine whether public convenience and necessity require that the District not retain its exclusive right to provide wastewater service. West-Wilson Utility District of Wilson County v. Atkins, 442 S.W. 2d 612 (Tenn. 1969); Tennessee Code Annotated Section 7-82-202(a).

6. Pursuant to the Act, on January 14, 1985, Knox County Executive Dwight Kessel convened a public hearing in response to the District’s petition to extend its boundaries and to allow the District to “conduct, operate and maintain a system(s) for the furnishing of water and sewer services and to conduct all other operations and systems as enumerated in Section 7-82-101, Tennessee Code Annotated, within its entire boundary and service as enlarged” [*sic*]. Following the public hearing, County Executive Kessel entered an order dated January 14, 1985 (the “1985 Order”) that authorized the District within its original and expanded boundaries to “operate and maintain water service, wastewater system, sanitary sewer system, sewer disposal, and treatment facilities.” The 1985 Order also provides that the District “shall have the power and authority to conduct, operate, and maintain all other system(s) numerated in T.C.A. 3-82-101” [*sic*]. A copy of the 1985 Order is submitted herewith as Exhibit C.

7. Upon information and belief, at one time the District operated limited wastewater treatment facilities after the 1985 Order but has since ceased the operation of its wastewater

treatment facilities. The District continues to own and maintain a wastewater collection system that transports wastewater to HPUD and KUB for treatment. Upon information and belief, the District does not provide any other service authorized by the Act other than the District's water system and its wastewater collection system.

8. Upon information and belief, a recent attempt by the District to obtain a NPDES permit that would allow the District to discharge treated wastewater into the Holston River has been denied by the State of Tennessee. In support of this contention, submitted herewith as Exhibit D is an affidavit of Paul E. Davis, Director of the Division of Water Pollution Control of the Tennessee Department of Environment and Conservation and supporting documentation. The District has appealed the state's denial of its discharge permit application, which appeal is currently pending.

9. Commencing in the early 1970's, HPUD began providing wastewater service in the Basin to District water customers through wastewater facilities constructed in the Basin by HPUD that extended to Gibbs High School (the "Beaver Creek Basin Interceptor Line"). The provision of wastewater services in the Basin by HPUD grew out of the joint efforts of the District, HPUD and the West Knox Utility District to cooperate with each other in planning, constructing and financing a wastewater interceptor line for the Beaver Creek Drainage Basin. This joint effort was memorialized by resolution of the three parties dated October 2, 1972 (the "Basin Arrangement"). A copy of the 1972 resolution is submitted herewith as Exhibit E. The Basin Arrangement predated the District's grant of authority to provide wastewater service under the 1985 Order, and reflected good engineering practice since drainage in the Basin generally flows by gravity into the Beaver Creek Basin Interceptor Line. The funding for the Beaver Creek

Basin Interceptor Line was comprised of capital contributions from HPUD, a federal grant and a state loan to HPUD, of which \$976,320.02 was still outstanding as of June 30, 1999.

10. The public need for wastewater services in the Basin and for the Beaver Creek Basin Interceptor Line was established pursuant to a Section 201 Facilities Plan (the "201 Plan") for Knox County, Tennessee, that was undertaken in the early 1970's by the City of Knoxville, HPUD, the District and other Knox County utility districts. One of the primary objectives of the 201 Plan was to identify cost-effective, environmentally sound, wastewater system alternatives for the study area. Among other things, the 201 Plan recommended that i) HPUD provide wastewater service in the Basin because the Basin drains primarily into HPUD's service area and ii) instead of constructing a treatment plant on the north side of the Holston River for service to the remainder of the District's area, that wastewater be collected and pumped to the former Eastwood treatment plant across the Holston River, which has since been converted to a pump station by KUB and now pumps wastewater to KUB's Loves Creek Wastewater Treatment Plant.

11. HPUD maintains that the 1985 Order was never intended to disrupt the Basin Arrangement between HPUD and the District that commenced in the 1970's and that allowed HPUD to provide all wastewater service in the Basin upon the construction of the Beaver Creek Basin Interceptor Line. The Basin Arrangement continued for almost twelve (12) additional years after the 1985 Order until NEKUD unilaterally adopted a contrary interpretation of the Basin Arrangement after a change in its management. In support of these allegations, Petitioners submit the Affidavits of former County Executive Dwight Kessel and C. Douglas Irwin, the former general manager of the District as Exhibit F and Exhibit G respectively, and a letter to HPUD from the District's general manager dated December 2, 1996 as Exhibit H.

12. Petitioners maintain that even if the 1985 Order is construed to grant the District exclusive wastewater service authority in the Basin, the District's ability to enforce such right of exclusive service has been waived by laches, by the acquiescence of the District and by the affirmative action of the District's Board of Commissioners. By waiting over twelve years to object to HPUD's continued provision of wastewater services in the area, the District should be barred from enforcing such right under the legal principle of laches. Whitehaven Utility District v. Ramsay, 387 S.W. 2d 351 (Tenn. 1964) (utility district barred from action to assert its right of exclusive service jurisdiction where the district waited eight years to commence suit against a city that constructed sewer projects within its boundaries). Moreover, by action of NEKUD's Board of Commissioners on February 24, 1997, NEKUD authorized HPUD to serve the Basin without condition or restriction. A copy of NEKUD's board minutes memorializing this action is submitted herewith as Exhibit I.

13. Upon information and belief, the District does not treat any of the wastewater it collects from its customers, but instead relies on several contractual arrangements with HPUD and KUB to obtain wholesale wastewater treatment services for its wastewater collection customers. Such contractual arrangements include i) an Agreement Regarding Wastewater Treatment Facilities dated June 5, 1998 with HPUD (the "1998 Agreement") that extends through June 5, 2008, which is tied to KUB's wholesale treatment rate and permits the District to add additional wastewater customers to the collection facilities it purchased from HPUD under the 1998 Agreement; ii) an Agreement With Respect to Water and Wastewater Facilities dated April 1, 1991 with KUB (the "1991 Agreement") of unlimited term, which obligates KUB to provide up to 250,000 gallons per day of wastewater collection and treatment services to the District through its Brookvale Subdivision facilities at KUB's wholesale wastewater treatment

rate; iii) an Assignment Agreement dated February 19, 1998 with KUB (the "1998 KUB Assignment Agreement") assigning to the District the interests of Knox County under an agreement dated August 29, 1994 regarding the Eastbridge Wastewater Treatment Plant, which agreement permits the District to deliver up to 170,000 gallons per day of wastewater to the Eastbridge Treatment Plant at KUB's wholesale rate through February 19, 2008; and iv) a Wastewater Agreement dated April 27, 1998 with KUB (the "1998 KUB Service Agreement") that runs through April 2008, which obligates KUB to provide an additional 500,000 gallons per day of wastewater treatment services to the District at KUB's wholesale rate.

14. Upon information and belief, additional wastewater treatment capacity from HPUD and KUB is readily available and can be secured contractually upon the District's request and the consummation of satisfactory contractual arrangements with HPUD and KUB.

15. Notwithstanding the availability of existing wastewater treatment capacity through HPUD and KUB, the District has embarked on a campaign to build a wastewater treatment facility as indicated by Paul E. Davis's affidavit and supporting documents submitted herewith as Exhibit D. Upon information and belief, contrary to good engineering practices, the District has adopted a ten year capital program that will reconfigure its wastewater collection system by pumping wastewater that currently flows primarily by gravity to HPUD under the 1998 Agreement to that portion of the District's collection system that is pumped to KUB (or eventually to the new wastewater treatment plant the District seeks to build). In support of this contention, Petitioners submit herewith a letter dated July 27, 1999 from the District's legal counsel as Exhibit J. HPUD maintains that such capital plans are unnecessary in view of existing treatment capacity available to the District and are less cost efficient than utilizing designs that take advantage of existing gravity flow capacity.



16. Upon information and belief, the District's quest to expand its wastewater collection system and build its own treatment facilities has resulted in imprudent business and engineering decisions that are not in the best interests of the District's ratepayers and those seeking service with the District. For example, the District recently attempted to charge Petitioner Lyle B. Lee with the costs of installing a pump station for a subdivision off Thompson School Road consisting of approximately 110 lots so that the District could pump the wastewater flow from the development to its facilities that were purchased from HPUD under the 1998 Agreement. To avoid having the developer pay approximately \$55,000.00 in capital costs to the District for an unnecessary pumping system, HPUD agreed to permit the District to serve the development and tap onto HPUD's gravity main that was proximately located to the development. An affidavit from Petitioner Lyle B. Lee is submitted herewith in support of this contention as Exhibit K.

17. Petitioners maintain that amending the District's wastewater authority to a nonexclusive authority will permit other wastewater utilities to provide new wastewater customers in the affected area with wastewater service at lower rates. In support of this contention, Petitioners submit Exhibit L, which contains what Petitioners believe are the current wastewater rates of the District, HPUD and KUB. Petitioners also maintain that allowing HPUD to continue to serve in the Basin as it has for over twenty-five (25) years will over the long term keep the rates of affected customers lower since HPUD is already positioned to provide adequate wastewater services to this area by means of a gravity flow system that can generally be operated more cost-efficiently than the District's plans to pump wastewater in the Basin to a new treatment facility or to existing collection facilities that are connected to KUB's wastewater system.

18. The District's authority, if any, to provide all utility services authorized under the Act, with the exception of its water authority and wastewater collection authority, should be vacated because the District does not provide any such services. Moreover, except for its recent application to obtain a NPDES permit, the District has not demonstrated any serious attempt to provide any other services. In support of this contention the Petitioners allege that the District failed to demonstrate why the public convenience and necessity required this grant of authority at the time of the public hearing giving rise to the 1985 Order and that the District is no longer entitled to an exclusive right of service for these additional powers because it failed to furnish any of these services to the public. T.C.A. § 7-82-301(a)(1).

19. Petitioners further maintain that the District's grant of authority, if any, under the 1985 Order to provide all authorized services under the Act, except for a water system and wastewater collection system, should be vacated because the 1985 Order is technically deficient. First, the petition seeking the 1985 Order refers to the provision of "all other operations and systems as enumerated in Section 7-82-101," which provision refers to no enumerated services. Moreover, the text of the 1985 Order grants the District "the power and authority to conduct, operate, and maintain all other system(s) numerated in T.C.A. 3-82-101"[*sic*], which if not in error references a code section that does not concern utility districts, and if in error refers to a section of the Act that does not enumerate any particular power or authority.

20. The Petitioners are being materially and adversely affected by existence of the District's exclusive right to provide wastewater service within its boundaries. The interest of the Petitioners and the public convenience and necessity require that the District's exclusive right to provide wastewater service be declared a nonexclusive right and that HPUD also be granted a nonexclusive right to provide wastewater service within the Basin. Petitioners also aver that it is

in the public's best interest and convenience to amend the 1985 Order to vacate the District's exclusive authority, if such authority actually exists, to provide other utility services under the Act that it has failed to provide.

21. In support of this Petition, the Petitioners request that the County Executive consider the following:

a. The area served by NEKUD is considered a primary growth area for Knox County and will require adequate and cost efficient wastewater services to meet future development needs of the area. In support of this allegation, Petitioners submit herewith as Exhibit M *The Knoxville News-Sentinel* article dated June 16, 1999 regarding Knox County's future development needs.

b. Utilizing existing wastewater treatment capacity from HPUD and KUB will eliminate, or at minimum defer, NEKUD's need to build a wastewater treatment facility and thereby help keep wastewater rates low for the ratepayers of NEKUD.

c. Eliminating NEKUD's exclusive wastewater jurisdiction in the District's boundaries will allow neighboring wastewater utilities to extend service to unserved areas at lower rates than those currently being charged by NEKUD.

d. Vacating the District's authority to provide wastewater treatment services will minimize environmental risks associated with the District's proposed construction and operation of a new wastewater treatment facility on the Holston River. As a relatively small district serving only 800 wastewater customers and with a staff of 18 employees who currently operate no wastewater treatment plant, environmental safety may be enhanced by continued reliance on utility systems

that have existing wastewater treatment capacity, experienced employees and larger customer bases to spread fixed operational and maintenance costs.

e. Vacating the District's exclusive wastewater authority, particularly in the Basin, will eliminate a source of continued confusion and conflict between the affected utility providers, area developers and customers.

f. Establishing HPUD's right to continue with its provision of wastewater service within the Basin will preserve the Basin Arrangement that has existed for approximately 25 years and will permit HPUD to continue to recover its original investment associated with the construction of the Beaver Creek Basin Interceptor Line and to retire the remaining debt on this facility.

**PREMISES CONSIDERED**, Petitioners request as follows:

- A. That the County Executive call a public hearing on the Petition as required under the Utility District Law of 1937 and that proper notice thereof by publication be given.
- B. That the County Executive find that the public convenience and necessity require that the 1985 Order be amended by vacating the District's exclusive authority to operate and maintain a "wastewater system, sanitary sewer system, sewer disposal, and treatment facilities" within the District's entire boundaries and in lieu thereof providing the District with "nonexclusive authority to operate and maintain a wastewater collection system" within its boundaries.
- C. As an alternative to the finding requested in subsection B above, that the County Executive find that the public convenience and necessity require

that the 1985 Order be amended by vacating the District's exclusive authority to operate and maintain a "wastewater system, sanitary sewer system, sewer disposal, and treatment facilities" within the Basin and in lieu thereof providing the District with "nonexclusive authority to operate and maintain a wastewater collection system" within the Basin.

- D. That the County Executive find that the public convenience and necessity require that the District's power and authority, if any, to conduct, operate and maintain within the District's boundaries all other utility systems enumerated in the Act, as may be granted by the 1985 Order, be vacated except for such power and authority related to the District's water system and wastewater collection system.
- E. That after said public hearing, a proper order be entered by the County Executive ordering and decreeing i) that the District's authority to operate and maintain a "wastewater system, sanitary sewer system, sewer disposal, and treatment facilities" within the District's entire boundaries as granted by the 1985 Order be amended to a "nonexclusive right to operate and maintain a wastewater collection system" within the District's boundaries and ii) that the 1985 Order be amended to that effect.
- F. As an alternative to the order requested in subsection E above, that after said public hearing, a proper order be entered by the County Executive ordering and decreeing i) that the District's authority to operate and maintain a "wastewater system, sanitary sewer system, sewer disposal, and treatment facilities" within the Basin as granted by the 1985 Order be

amended to a "nonexclusive right to operate and maintain a wastewater collection system" within the Basin and ii) that the 1985 Order be amended to that effect.

- G. That after said public hearing, a proper order be entered by the County Executive ordering and decreeing that i) the District's power and authority to conduct, operate, and maintain within the District's boundaries all other utility systems enumerated in the Act, with the exception of a water system and wastewater collection system, as may be granted by the 1985 Order, be vacated and ii) that the 1985 Order be amended to that effect.
- H. That such further action be taken and such further relief be granted with reference to these matters as may be proper or desirable.

IN WITNESS WHEREOF, the Petitioners have submitted this Petition as of the 13th day of October, 1999.

**PETITIONERS:**

HALLSDALE-POWELL UTILITY DISTRICT  
OF KNOX COUNTY, TENNESSEE

By: Allan Gill  
Allan Gill, General Manager

Lyle B. Lee  
Lyle B. Lee

CERTIFICATE OF NOTICE

The undersigned hereby certifies that an exact copy of this Petition has been noticed to the following interested parties by certified mail, return receipt requested, at the following addresses:

Northeast Knox Utility District  
Attention: Richard Phillips, General Manager  
7210 Washington Pike  
Corryton, Tennessee 37221

Knoxville Utilities Board  
Attention: Larry A. Fleming, President  
626 Gay Street, S.W.  
P. O. Box 51326  
Knoxville, Tennessee 37902-1326

City of Knoxville  
Attention: Mayor Victor Ashe  
City/County Building  
400 Main Street  
Knoxville, TN 37902

City of Blaine  
Mayor Vickie Vineyard  
Post Office Box 85  
Blaine, Tennessee 37709-0085

City of Luttrell  
Attention: Mayor Phil Ruth  
Post Office Box 82  
Luttrell, Tennessee 37779-0082

City of Maynardville  
Attention: Mayor Eugene Richardson  
Post Office Box 217  
Maynardville, Tennessee 37807-0217

City of Plainview  
Attention: Mayor William J. VonSchipmann  
1817 Tazewell Pike  
Corryton, Tennessee 37721

Luttrell-Blaine-Corryton Utility District  
Attention: Bill Greene, General Manager  
Post Office Box 27  
Luttrell, Tennessee 37779

This 13<sup>th</sup> day of October, 1999.

KENNERLY, MONTGOMERY & FINLEY, P.C.

By: C. Coulter Gilbert

C. Coulter Gilbert, Esquire  
Attorneys for Hallsdale-Powell Utility District  
Post Office Box 442  
Knoxville, Tennessee 37902  
(423) 546-7311



TO THE HONORABLE TOMMY SHUMPERT  
COUNTY EXECUTIVE OF KNOX COUNTY, TENNESSEE

RESPONSE OF NORTHEAST KNOX UTILITY DISTRICT TO  
PETITION OF HALLSDALE POWELL UTILITY DISTRICT OF  
KNOX COUNTY, TENNESSEE AND LYLE B. LEE

The Petition of Hallsdale Powell Utility District (HPUD) and Lyle B. Lee is an astonishingly arrogant effort by HPUD to put a neighboring utility district out of business. HPUD's Petition is couched in paternalistic terms that suggest that HPUD is more experienced, richer, and has better judgment than Northeast Knox Utility District (NEKUD). HPUD wants the County Executive to bless its multiyear campaign to devour NEKUD's service area and its own blatant violation of T.C.A. § 7-82-301(a)(1). For the reasons discussed below, the Petition is void as drafted, contains material omissions of crucial facts, and should be denied when, and if, the defects are corrected.<sup>1</sup>

---

<sup>1</sup> This Response relies on two exhibits. Included in Exhibit A are photocopies of pertinent correspondence and other documents from 1972 through the present, arranged in chronological order. Exhibit B depicts portions of the HPUD and NEKUD service areas, including the disputed Beaver Creek basin. The yellow line on that map depicts the border between the two districts. The pink line depicts the boundaries of the Beaver Creek drainage area as shown in the 201 Facilities Plan. The red line depicts the approximate location of the Beaver Creek interceptor which is owned and operated by HPUD. The green lines reflect two pressure mains sold by HPUD to NEKUD in 1998. Finally, the brown line depicts the approximate borders of a portion of the Beaver Creek drainage area which NEKUD voluntarily offered to transfer to HPUD in connection with the 1998 Agreement Regarding Wastewater Treatment and Facilities.

I

The Tennessee Code does not contain specific instructions for the method to be used by a utility district when it wishes to assault the territorial integrity of a neighboring district. The little instruction in existence finds its origin in Chandler v. Whitehaven Utility District of Shelby County, 311 S.W.2d 603. That case relies on T.C.A. § 6-3607, which is now codified at T.C.A. § 7-82-301. The pertinent portion of that statute is quoted in Chandler at page 607:

District as municipality -- Powers -- From and after the date of the making and filing of such order of incorporation, the district so incorporated shall be a 'municipality' or public corporation in perpetuity under its corporate name and the same shall in that name be a body politic and corporate with power of perpetual succession, but without any power to levy or collect taxes. Charges for services authorized herein, shall not be construed as taxes. The powers of each district shall be vested in and exercised by a majority of the members of the board of commissioners of the district. 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 unless and until it shall have been established that the public convenience and necessity requires other or additional services...

The Court of Appeals then stated:

The provisions of T.C.A. § 6-2607 quoted above provide the only method by which the exclusive franchise awarded to the Whitehaven Utility District may be modified; i.e., that the Quarterly County Court of Shelby County adjudicate that the public convenience and necessity requires other or additional services. Hence, we hold that the sole recourse available to the Chandler Investment

Company, if it is dissatisfied with the services offered by the Whitehaven Utility District, is to petition the Quarterly County Court of Shelby County under the authority of T.C.A. § 6-2607 to establish that the public convenience and necessity requires that the exclusive franchise to furnish water, fire protection, and sewerage service granted to the Whitehaven Utility District be modified so as to permit other agencies, possibly the city of Memphis Light, Gas and Water Division, to furnish water to the complainant and other potential customers within the vicinity of complainant subdivision.  
311 S.W.2d 603, 613.

This holding was reiterated and approved once again in West Wilson Utility District of Wilson County v. Atkins, 442 S.W.2d 612, 614. Unfortunately, these cases do not provide any information as to the appropriate procedure for such a petition. T.C.A. § 7-82-301(a)(1) begins with the words "from and after the date of the making and filing of such order of incorporation, ..." The statute is referring to an order of incorporation which has been executed in accordance with the provisions of T.C.A. § 7-82-201 and 202. These two statutes contain the only procedure set forth in the Code for creating or modifying the borders of a utility district. The petitioners seem to have recognized this fact by following a portion of the procedure set forth in Section 201. T.C.A. § 7-82-201(a)(3) states that the petition shall include "a statement showing why existing utility districts, or municipal or county services could not adequately provide the needed service because of cost, time or other service delivery factors..." Indeed, this is the thrust of HPUD's argument. HPUD claims that its employees are better trained, that it has better

facilities, and that it is better able to provide the needed services at a lower cost than is NEKUD. Although the County Executive has not specifically referred to T.C.A. § 7-82-202 in any documents generated by his office thus far, he has clearly recognized the application of that statute by the procedure used. In particular, the County Executive has set the hearing on HPUD's Petition within thirty days after receipt of the Petition and has advertised the hearing in the *Knoxville News Sentinel*, both as required by § 202(a).

The petitioners have attempted to pick and choose those portions of the statutes which they will obey. T.C.A. § 7-82-201 states that the petition must be signed by at least 25 owners of real property who reside within the boundaries of the proposed district. This can only be interpreted as owners of property within the contested area, all of which lies within NEKUD's service area. The Petition has been signed only by Allan Gill, HPUD's general Manager, and Lyle B. Lee. The petitioners have completely ignored the obligation to obtain the signatures of 25 residents of the contested district. The Petition is void and cannot be considered by the County Executive as presently drafted. The Petition should be dismissed and should not be reconsidered unless and until it has been refiled in the proper form.

## II

T.C.A. § 7-82-202(b) states in pertinent part:

On the issue of whether the public convenience and necessity requires the creation of the

district, the county executive shall take into consideration the review and final comments of the board, and the ability of an existing utility district or an incorporated city or town to serve the area, and such existing utility district or city or town at the hearing may make known its intention to serve the area. In that event the county executive shall suspend action on the petition for sixty (60) days. Within the sixty (60) days, the existing utility district or city or town may submit to the county executive its plans for serving the area, including the specific area to be served, the facilities to be installed, the services to be supplied, and a time schedule for completing installation of facilities to provide the services, and the county executive, after considering such plans and hearing the views of the utility district's proponents thereon, shall determine a reasonable time within which the existing utility district or city or town must provide the services.

NEKUD reiterates that the Petition is void and cannot be considered as presently drafted. The Petition must be rejected and refiled in proper form. However, in the event the County Executive chooses to consider the Petition, NEKUD hereby advises the Executive and the Petitioners that it intends to serve all of the customers within the boundaries of its service area and that it has taken appropriate steps in order to provide such service. Northeast Knox Utility District hereby demands a sixty (60) day suspension of these proceedings, as provided by T.C.A. § 7-82-202(b) so that it may have the necessary time to properly advise the County Executive of its present and future services.

### III

A suspension of proceedings is particularly important because of the significant issues involved in this case. HPUD and the Knoxville Utilities Board have both filed Petitions attacking NEKUD's right to provide sewer services to customers within its district. NEKUD collects an average of \$28,629.00 per month on sewer fees, or approximately \$343,551.00 per year. NEKUD has debt of approximately \$4,156,137.00. The next annual payment will total approximately \$390,000.00. The debt was incurred, and the improvements constructed, upon the reasonable belief that NEKUD would have both water and sewer fees to pay its debt. It should be readily apparent that reduction or elimination of NEKUD's sewer income would radically affect its ability to pay its debts. There can be little doubt that a grant of the KUB and HPUD Petitions would endanger NEKUD's existence.

### IV

The County Executive's letter of November 2, 1999, states that the Rules of Evidence and Civil Procedure do not apply to this proceeding. Thus, the Petitioners may be able to rely upon the Affidavits attached to their Petition without NEKUD having ever had the opportunity to obtain discovery from those witnesses. NEKUD is constitutionally entitled to due process of law and to cross-examine those witnesses against it. Both of these rights will be violated if NEKUD is denied the opportunity to adequately defend itself. The County Executive should order the Petitioners, the

directors, and employees of HPUD, and the affiants on whom Petitioners rely to submit to depositions and to produce documents relevant to this dispute before conducting a hearing on the Petition.

V

The suspension of proceedings is further necessitated by the manner in which HPUD has conducted itself. The Executive will undoubtedly recall that HPUD has spent the past several months attempting to persuade NEKUD that the two entities should merge. The parties met with the County Executive on June 14 at which time HPUD requested that NEKUD enter into a Joint Resolution considering a merger. It was agreed that the parties would attempt to agree upon an Interim Service Agreement to temporarily deal with the parties' differences while merger discussions were continuing. Thereafter, the parties exchanged several drafts of a proposed service agreement and a merger resolution. HPUD continued to engage in those discussions until September 30, 1999, when NEKUD passed a Resolution expressing its willingness to consider merger. The Resolution was transmitted to Mr. C. Coulter Gilbert, HPUD's attorney by letter dated October 4, 1999. NEKUD received no response until it was served with HPUD's 15 page Petition and a Chancery Court Complaint seeking a declaration of the parties' rights. The Petition is accompanied by numerous exhibits, including Affidavits of Dwight Kessel, C. Douglas Irwin (a former manager of NEKUD), Lyle Lee, and Paul E. Davis, Director of Water

Pollution Control for the Tennessee Department of Environment and Conservation. It would seem that the merger discussions were simply an effort to misdirect NEKUD's attention towards wording of a merger resolution and a service agreement while HPUD was planning litigation and this Petition. HPUD obviously intended to take advantage of NEKUD by utilizing the short time periods contained in T.C.A § 7-82-201 and 202 for the purpose of depriving NEKUD of the opportunity to adequately defend itself.

## VI

As will be discussed below, HPUD has been extending sewer lines into NEKUD's service area since the early 1970's. In 1996 NEKUD discovered that HPUD was expanding at will, and with no written agreement outlining the borders of that expansion. Despite repeated objection by NEKUD, HPUD has continued to build lines and acquire customers in NEKUD's area. This is a blatant violation of the restrictions set forth in T.C.A. § 7-82-301(a)(1) which states that "no other person, firm or corporation shall furnish or attempt to furnish" competing services without a determination that additional services are necessary.

## VII

If granted, the Petition will have dramatic and unintended consequences for customers within NEKUD's service area. The Petitioners seek to eliminate NEKUD's exclusive right to provide wastewater service for its customers throughout its service



area. The Petitioners claim they can provide services at a lower cost than NEKUD and that NEKUD's right to provide those services should be terminated. The Petitioners want the Executive to believe he can simply suspend NEKUD's exclusive right to provide sewer services within its district with no adverse consequences to customers within that district. That representation is clearly mistaken.

Chandler Investment Company v. Whitehaven Utility District of Shelby County, Tennessee, 311 S.W.2d 603 (Tenn.App.1957), involved a developer who wanted to subdivide 178 acres located within the geographical limits of Whitehaven Utility District. He wanted to obtain his water service from Whitehaven Utility District, but contracted for sewer service from the City of Memphis. He actually paid the City of Memphis \$13,500.00 for sewer connections. The utility district took the position that it would not provide water service to a customer who refused to subscribe to its sewer service. The directors of the utility district testified that they had no funds with which to make the capital expenditure for the customer's water lines and that they would be unwilling to extend the lines even if the funds were available because "it would not appear to be a profitable venture." 311 S.W.2d at 606. The Court upheld the utility district's right to deny water service. The Court stated:

In the absence of an express provision in the franchise or charter obligation of a public service company requiring it to furnish the designated service to every inhabitant or property owner within its territory, the right of an inhabitant of such territory to demand

an extension of service for his benefit is not absolute and unqualified but is to be determined by the reasonableness of the demand therefor under the circumstances involved. The law on this question seems to be well stated in 43 Am.Jur. page 602 and we quote from said work as follows:

'...the right of an inhabitant or group of inhabitants of a community or territory served by a public service company to demand an extension of service for their benefit is not absolute and unqualified, but is to be determined by the reasonableness of the demand therefor under the circumstances involved. The duty of a public service company to extend its service facilities, and the reasonableness of a demand for such extension, depend in general, upon the need and cost of such extension, and the return in revenue which may be expected as a result of the extension; the financial condition of the utility; the advantages to the public from such an extension; and the franchise or charter obligation to make such extension. In this last respect, a water company may be compelled to extend its mains so as to supply all of the inhabitants of the municipality by which it is franchised, if its charter requires it to do so.'

(Emphasis added) 311 S.W.2d at 611-612.

The Court went on to say:

When the Chandler Investment Company bought the 170 acres of land for subdivision purposes in 1955, it was chargeable with notice that this land lay within the geographical limits of the Whitehaven Utility District. It was also chargeable with notice that the Whitehaven Utility District had been created under the authority of the statutes of Tennessee quoted above by the Quarterly County Court of Shelby County, Tennessee and that the Whitehaven Utility District had the exclusive

franchise for furnishing water to customers within its area.

. . .

As we interpret the provisions of the code section under which the Whitehaven Utility District was established quoted above, we do not understand that the utility district is required to furnish water, fire protection, and/or sewer service to every inhabitant or property owner within the district. On the contrary, T.C.A. § 6-2625 indicates that it was the legislative intent that the utility district operate a system that was at all times profitable and sufficient to pay the operation costs and amortize the bonds which were obtained to make the necessary capital outlay. Also, the last sentence in T.C.A. § 6-2607 shows clearly that the legislature contemplated that any utility district created under this act might not be able to render services to all of the inhabitants within the district. 311 S.W.2d at 613

NEKUD's charter does not require it to provide its services to each and every customer within its district. If the Petition is granted, NEKUD will be forced to analyze the application by each prospective water customer to determine whether it is profitable to provide water service without sewer service. NEKUD may eventually be forced to deprive potential customers of water service because it does not deem that particular customer to be profitable without sewer service. When that occurs, the customer will be deprived of water until HPUD somehow obtains permission and funding to build its own water lines into NEKUD's service territory. This will be extremely difficult, as NEKUD will continue to retain its exclusive right to provide water service in the district. Rather than making life easier for residents within

the NEKUD service area, grant of the Petition would place property owners in a precarious position because they would never know whether they would be able to obtain both water and sewer service.

#### VIII

In City of Cleveland v. Prospect McDonald Utility District of Bradley County, 1990 W.L. 58039 (Tenn.App.1990), the Court of Appeals stated, "Any encroachment would, of course, dilute the revenues of the existing utility and tend to destroy it." HPUD's Petition is intended to dilute the revenues of NEKUD and ultimately destroy it. The history of the relationship between these parties leaves no doubt about HPUD's intentions.

In the process of reviewing that history, the County Executive should be aware that the Petition omits several crucial facts. The Petition suggests that a February 24, 1997, resolution of NEKUD's Board gave HPUD the unfettered right to serve the Beaver Creek Basin. HPUD neglects to mention that the same resolution states that NEKUD alone will define the boundaries of the Basin. HPUD also fails to disclose that it has refused to honor the boundaries set by NEKUD.

HPUD claims NEKUD is guilty of laches because NEKUD sat on its rights while HPUD was building its lines. HPUD does not mention that NEKUD recognized and compensated for the laches argument in early 1997. NEKUD's February, 1997, Resolution recognizes HPUD's right to provide wastewater service in the Basin as long as HPUD adhered to boundaries set by NEKUD. Allan Gill,

HPUD's manager, acknowledged that fact when he quoted the parties' agreement in a letter dated March 13, 1997:

HPUD will continue to own and operate all of the systems it presently owns and operates as of the date of the agreement.

HPUD sold part of its lines in the Basin to NEKUD in 1998. As contemplated by the February 24, 1997 Resolution, NEKUD proposed revisions in the boundaries of the parties' service areas which would allow each to gain the benefit of its own lines. NEKUD proposed that the Basin be allocated as set out in Exhibit B. The Basin would essentially have been divided into thirds. HPUD would have a clearly defined right to serve the central third, which is the area immediately around Beaver Creek. NEKUD would serve the outer thirds, primarily with the lines sold to it by HPUD. HPUD would continue to profit from the interceptor because NEKUD would pay it to process much of the waste it collected in the Basin. HPUD rejected the proposal, arguing that it would restrict HPUD's growth in the area. See letter of Ed Summers dated March 11, 1998, which states:

On the map which accompanied that agreement, lines were drawn which, if agreed to, would eliminate the ability of HPUD to expand within the Beaver Creek Drainage Area, except by seeking approval from NEKUD's Board of Commissioners. ... Therefore, the District's Commissioners are not disposed to voluntarily enter into an agreement which would limit its ability to service the Beaver Creek Drainage Area.

The claim of laches is a mischaracterization of the problem, for NEKUD has long acknowledged HPUD's rights with regard

to the Beaver Creek Interceptor. As Mr. Summers' letter clearly illustrates, this dispute actually results from HPUD's desire to use the Beaver Creek Interceptor as a vehicle for continued intrusions into NEKUD's service area.

## IX

In October, 1972, West Knox Utility District, HPUD, and NEKUD executed a Joint Resolution agreeing to cooperate in the planning, construction, and financing of the Beaver Creek interceptor and related treatment facilities. The Resolution does not state the names of the owners and operators of those facilities. According to the Petition, this document represents the "Basin Arrangement."

Thereafter, the City of Knoxville and others did participate in creation of a Section 201 Facilities Plan. The Plan assumed the existence of an Agreement between NEKUD and HPUD whereby HPUD would provide wastewater collection and disposal service in the Beaver Creek Drainage Area. Although the 201 Plan made this assumption, there is no known documentary evidence of such an agreement beyond the 1972 Joint Resolution. Furthermore, the 201 Plan is not a contractual relationship between HPUD and NEKUD. Rather, the 201 Plan is used to make determinations about federal construction grants and discharge permits. See 33 U.S.C. § 1288(d) and (e).

The 201 Plan itself recognizes that the suggested projects may not be constructed as contemplated by the Plan.

Volume 5, Part 2, § 1.1.7 states that, "It is the intent of this report that no segment of the system be constructed unless it is economically feasible or required for health reasons." Volume 2, Part 2, § 1.3 states, "Included in this Chapter VII are other alternative methods for collection and disposal of the wastewater from Northeast Knox Utility District. These alternatives should be reviewed from time to time as unforeseen changing conditions make another alternative preferable." Volume 5, Part 1, § 1.4.2 states:

As would be expected in any long range study, many of the detailed proposals discussed in this report will be subject to modifications and revisions to conform to the actual pattern and sequence of ultimate development.

One such unforeseen possibility was HPUD's 1998 sale of lines in the Basin to NEKUD.

There is no dispute that HPUD constructed a sewer line known as the Beaver Creek Interceptor, nor is there any dispute that a portion of the Beaver Creek Basin was incorporated into NEKUD by virtue of an Order of the County Executive entered in February, 1985. There is no dispute that HPUD continued to extend its lines into the NEKUD service area after that portion of the Basin was incorporated into NEKUD's service area.

By 1996 NEKUD had undergone a change of administration. On September 23, 1996, the NEKUD commissioners approved the hiring of Richard Phillips as General Manager. Mr. Phillips immediately recognized that HPUD was extending lines into NEKUD's territory with no written agreement which would define the service areas of each district. After an appropriate resolution of the Board, Mr.

Phillips wrote HPUD on December 2, 1996. The letter states:

The Northeast Knox Utility District's Board of Commissioners at its November meeting voted not to allow water and sewer services to be extended into the NEKUD service area except by written agreement between the utility districts providing and receiving service. In order to provide continuous service to the customers we would encourage a business meeting at your earliest convenience.

On January 30, 1997, Mr. Phillips wrote HPUD's manager once again:

Dear Allan:

I appreciate you meeting with me on January 2, 1997 at your office to discuss possible solutions to the extension of sewer service in the NEKUD territory. And, at this time no agreement has been reached.

I know you are continuing to install sewer service regardless of our prior letter dated December 2, 1996 which stated that Northeast Knox Utility District's Board of Commissioners would require written agreements before service can be extended into our service area. Northeast Knox Utility District has exclusive right of service whether by agreement or by physically providing that service. The area you are extending service into can be serviced by NEKUD. Therefore, once again I must point out that NEKUD does not intend to waiver [sic] their exclusive right of service in their District.

I do believe that a compromise between NEKUD and Hallsdale Powell can be reached very quickly to settle this issue.

Paragraph 12 of the Petition states, "Moreover, by action of NEKUD's Board of Commissioners on February 24, 1997 NEKUD authorized HPUD to serve the Basin without condition or restriction." The minutes of the February 24, 1997, meeting of the



Commissioners are included in Exhibit A. The minutes first reflect a discussion between Allan Gill and Attorney Clifford Cruze in which Mr. Cruze "pointed out to Mr. Gill that HDPUD did not have the right to expand within Northeast Knox Utility District's territory."

After a discussion, Commission Lakin made a motion to permit Hallsdale Powell Utility District to supply NEKUD's water customer's sewer service only within the Basin area and this would be contingent upon the execution of a treatment agreement between Hallsdale Powell Utility District and Northeast Knox Utility District to cover collection services within the surrounding area of the Basin. Hallsdale Powell Utility District is to supply sewer services only within the Basin area and is to give to NEKUD all customers that it is currently serving water to within said Basin Area. Furthermore, Northeast Knox Utility District would define the boundary lines of the Basin area.  
(Emphasis added.)

Thus, although NEKUD expressed its willingness to allow HPUD to continue operating in the Basin, NEKUD attached the condition that NEKUD would define the Basin boundaries. On March 13, 1997, Mr. Gill wrote NEKUD to document HPUD's intention to execute a wastewater treatment agreement. It is interesting that the letter misstates the terms of the NEKUD Resolution. In pertinent part, the letter states:

1. HPUD will continue to own and operate all of the system it presently owns and operates as of the date of the agreement.
2. HPUD will limit the expansion of its system to the Beaver Creek Drainage Area (the Basin area).

3. NEKUD will define the Basin area boundaries by generally accepted geological criteria.  
(Emphasis added.)

As is apparent, Mr. Gill attached the words "generally accepted geological criteria" in an effort to misconstrue the meaning of the NEKUD Resolution.

Mr. Phillips wrote Mr. Gill on March 25, 1997. Mr. Phillips specifically refers to paragraph 3 of Mr. Gill's letter:

In reference item number 3 in your letter, NEKUD is in the process of having its engineer to prepare a map defining the portion of the Beaver Creek Drainage Area which it is willing for your serve [sic] contingent upon the execution of the Sewer Treatment Agreement referenced above.

HPUD and NEKUD began negotiations on a Wastewater Treatment Agreement. On December 3, 1997, Mr. Phillips wrote Mr. Gill concerning those negotiations and stated:

The area within which HPUD will continue to serve its customers is set out on the map which is exhibit one to the Agreement and described within the Agreement. We have made an effort to set boundary lines on existing roads and along the crest of Beaver Ridge. Should the opportunity arise for HPUD to provide wastewater treatment service within NEKUD's boundaries and outside the area designated to HPUD, approval from NEKUD's Board of Commissioners will be necessary. NEKUD will need to determine that such service is necessary and feasible. NEKUD also reserves the right to purchase the customers within the area designated to HPUD should it acquire wastewater treatment capability at a future time.

On January 8 Ed Summers, HPUD's attorney, wrote Elma Rodgers, NEKUD's attorney. He stated:

I have reviewed (the proposed) agreement, and even if the per customer price could be agreed upon, HPUD is not in agreement with other provisions of the draft, for example, the boundaries set forth in your proposed exhibit "1".

That same letter expresses HPUD's intention to extend service within the Basin to Phase II of the Nicholas Crossing Subdivision.

Ms. Rodgers wrote Mr. Summers on January 28, 1998, to say:

Based on Mr. Gill's letter to the Board dated March 13, 1997, NEKUD was to define the Basin area boundaries regarding the proposed Treatment Agreement. NEKUD did just that with Exhibit 1 to the proposed Agreement. In order to avoid the considerable expense of a formal survey, the Board used major roadways as defining boundary lines where possible. Since HPUD apparently does not agree with the boundaries as defined, we would welcome HPUD's proposal identifying where it thinks the boundary should be.

By this point it should be clear that NEKUD did not grant HPUD the unfettered right to continue expanding into NEKUD's service area because NEKUD repeatedly told HPUD that the agreement was conditioned upon NEKUD's determination of the boundaries.

The Executive can examine the approximate location of the proposed boundaries on the map which is filed as Exhibit B. As is readily apparent, NEKUD had voluntarily offered to give HPUD the right to treat sewage in a substantial swath of territory surrounding HPUD's Beaver Creek interceptor line. NEKUD was simply seeking a reasonable agreement on a line of demarcation so that the

parties would not be engaged in unnecessary disputes and duplication of services.

Mr. Summers' letter of March 11 left no doubt that HPUD was not interested in a reasonable limitation on HPUD's expansion when he stated that exhibit 1 "would eliminate the ability of HPUD to expand within the Beaver Creek Drainage Area."

Also included in Exhibit A is a March 9, 1998 excerpt from the *Halls Shopper* which states:

On the advice of their lawyer, Ed Summers, the Commissioners refused to negotiate with the Northeast Knox Utility District to change the boundaries of sewer service. 'Their proposal would freeze your growth in that area,' Summers said.

On June 5, 1998, HPUD and NEKUD did execute an Agreement regarding wastewater treatment and facilities. As a part of that Agreement, HPUD sold NEKUD two lines which are marked in green on Exhibit B. It can be seen that the location of those lines would allow NEKUD to provide service for customers located in the outer thirds of the Beaver Creek Basin. It is also important to note that NEKUD intended to send the waste it collected in the Basin to HPUD, for which HPUD would be paid. Thus, the Agreement and NEKUD's intentions were consistent with the 201 Plan.

The parties were unable to reach an agreement with respect to their respective boundaries. They also disagreed concerning interpretation of the Wastewater Services Agreement. Thus, the disputes continued. The undersigned wrote Mr. Summers on May 12, 1999, objecting to HPUD's continued intrusions into NEKUD's

service area. That letter states in part:

Honoring its legal responsibilities would, indeed, freeze HPUD's growth because HPUD has chosen to grow by trespassing into NEKUD's service area. I attended a meeting at which I heard HPUD representatives tell NEKUD they intended to continue adding new customers in NEKUD's service area with or without NEKUD's permission. I am convinced that HPUD intends to continue its incursions until forced to stop.

By this point, HPUD had discovered they did not like the Wastewater Treatment Agreement because it appeared to force HPUD to treat a considerable amount of NEKUD's waste. Thus, HPUD's president wrote NEKUD's president on May 24, 1999, to say:

I believe we stated that we would cancel the June 5, 1998, Agreement regarding wastewater treatment and facilities between our two districts and we would sit down and hammer out a new definitive contract that would eliminate confusion now and any confusion in the years ahead for commissioners and customers to come after us.

Shortly thereafter, Mr. Gilbert wrote the undersigned to announce his involvement in the dispute. The letter begins with a warning that NEKUD has no right to connect customers to HPUD's sewer system. Paragraph 4 of the letter states that "any attempt by NEKUD to cut into or tap HPUD's sewer facilities without HPUD's express written consent will constitute an unlawful act under T.C.A. § 65-35-101 et seq. and possibly subject NEKUD to criminal and civil remedies as prescribed in the law." The letter goes on to encourage NEKUD to accept the plan proposed in Mr. Hill's letter of May 24, which included cancellation of the June 5, 1998,

Wastewater Treatment Agreement.

On the same day, NEKUD offered to buy HPUD's existing lines in the NEKUD service area for \$1,850,000.00. The letter making that offer reiterated "NEKUD is adamant that the parties must respect the lines separating their districts. This proposal is an effort to resolve the parties' differences as amicably as possible."

HPUD instituted discussion of a possible merger between the districts. The parties met with Mr. Shumpert and others on June 14, 1999, because negotiations were progressing poorly. As a result of that meeting, the undersigned drafted a proposed Agreement between the parties, a copy of which is included in Exhibit A. This proposal sought to preserve the status quo while the parties discussed a possible merger.

HPUD promptly rejected the proposal and responded with an eight page agreement of its own. For the reasons set forth in a letter from the undersigned dated August 30, 1999, HPUD's extremely complicated agreement was not acceptable. One of the most objectionable provisions was a subtle attempt to void the 1998 Wastewater Treatment Agreement. In the meantime, HPUD wrote NEKUD on July 13, 1999, to state that it intended to add yet another customer in NEKUD's service area.

The 1998 Wastewater Treatment Agreement terminates in 2008. By late July, 1999, NEKUD had recognized that its relationship with HPUD was sufficiently hostile that HPUD was likely to refuse an extension of that Agreement beyond 2008.

Recognizing its duty to supply its customers with appropriate services, NEKUD adopted a resolution to build lines which would completely relieve HPUD of NEKUD waste by June 1, 2008. That resolution was documented in a letter from the undersigned dated July 27, 1999, which also states:

You have indicated that HPUD wishes to continue adding customers in the NEKUD service area. HPUD should terminate its solicitation of customers in NEKUD's area. Those customers need to contact NEKUD so it can evaluate their needs. NEKUD will contact HPUD if it feels service should be provided by HPUD. In all other respects, NEKUD reiterates its existing position -- HPUD must end its policy of intrusion and make arrangements to divest itself of customers within the NEKUD service area.

The undersigned and Mr. Gilbert continued to meet in an effort to hammer out a possible merger resolution. NEKUD requested a quantity of information from HPUD so it could evaluate the pros and cons of merger. HPUD simply ignored that request for information. The undersigned and Mr. Gilbert continued to meet and exchange drafts of a proposed Joint Resolution and an Interim Service Agreement. Finally, on September 30, 1999, the NEKUD Commissioners approved an Interim Service Agreement and a Joint Resolution to seriously consider a merger. By letter dated October 4, 1999, the undersigned advised Mr. Gilbert of that resolution. That same letter also contains a suggestion that the parties should seriously consider retention of a mediator in an effort to resolve their differences. HPUD's response was this Petition and its

Chancery Court lawsuit.

X

In addition to the preceding comments, certain specific allegations of the Petition are addressed below:

(a) Paragraph 1 seeks to create the impression that NEKUD is able to serve only 13% of the wastewater customers in its service area. NEKUD is capable of serving far more than 13%, but some customers choose to use septic tanks while others have been lost due to the persistent incursions by HPUD.

(b) The allegations of paragraph 2 are admitted.

(c) The allegations of paragraph 3 are admitted.

(d) The allegations related to City of Knoxville and the Knoxville Utilities Board are admitted, although they are irrelevant to this Petition.

(e) The allegations of paragraph 5 are admitted. However, the action of the County Executive is subject to judicial review by the Knox County Circuit Court.

(f) The allegations of paragraph 6 are admitted. It is true that the 1985 Order contains a typographical error. However, it is denied that a mere typographical error should have any relevance to this dispute.

(g) With respect to paragraph 7, the present management is unaware of any wastewater treatment facilities which were discontinued. The remaining allegations of paragraph 7 are admitted.



(h) The allegations of paragraph 8 are admitted. However, NEKUD has not yet had the opportunity to depose Mr. Davis and cannot comment about the affidavit.

(i) Much of paragraph 9 has previously been discussed. However, it is not accurate to state that the 1972 Resolution "reflected good engineering practice," since the Resolution contains nothing more than an agreement to cooperate. The Resolution reflects no engineering practice at all. NEKUD does not have sufficient information with which to form a belief as to the last sentences of paragraph 9.

(j) With respect to paragraph 10, the 201 Plan has previously been discussed.

(k) With respect to paragraph 11, NEKUD has not yet had the opportunity to depose Dwight Kessel and Douglas Irwin and is, therefore, unable to comment about any statements they have made in their affidavits. However, as noted above, there was no "Basin Arrangement" to disrupt. The Resolution which reflects the so-called "Basin Arrangement" is nothing more than an agreement to cooperate.

(l) The allegations of paragraph 12 and the Petitioners' claim of laches have been previously discussed. A laches argument is simply moot because NEKUD has already recognized HPUD's investment in the Beaver Creek Interceptor Line. NEKUD offered to grant HPUD a substantial slice of the Beaver Creek Drainage Area, as is shown in Exhibit B. When that proposal was rejected, NEKUD offered to buy those lines from HPUD for

\$1,850,000.00. Furthermore, all sewage collected by NEKUD in the remainder of the Basin would be sent to HPUD for processing. Thus, HPUD would receive financial benefit from any growth in the Basin, but outside of its service area. NEKUD continues to propose that HPUD should be granted the territory marked on Exhibit A or that it will buy HPUD's lines in the Beaver Creek Drainage Area. Either approach is fair to both parties. What is not fair is HPUD's continued efforts to take over the Basin in its entirety, and HPUD's inappropriate request in this Petition to compete with NEKUD throughout its service area.

(m) Most of the allegations of paragraph 13 have previously been discussed, and no additional response will be included herein.

(n) With respect to the allegations of paragraph 14, both HPUD and KUB have filed Petitions attacking NEKUD's territorial integrity. It is impossible to believe that both of those entities are readily willing to supply unlimited wastewater treatment capacity while they are in the process of attempting to dismantle NEKUD. Indeed, both of those entities base their Petitions on arguments that NEKUD does not own its own wastewater treatment facility and is unable to process its waste itself.

(o) Most of the allegations of paragraph 15 have been previously discussed.

(p) With respect to paragraph 16, it is completely untrue that NEKUD's expansion plans and request for a treatment facility have resulted in "imprudent business and engineering

decisions that are not in the best interest of the district's rate payers." Those decisions have been forced by antagonistic relations with HPUD. NEKUD has been forced to assume that HPUD will not extend the Wastewater Treatment Agreement beyond 2008, and it is obvious that HPUD intends to continue expanding into NEKUD's service area without NEKUD's permission. The allegations about Lyle Lee are simply untrue. Mr. Lee apparently signed a contract for service with HPUD despite the fact that he knew the land lay within the NEKUD service area. Contrary to the allegations of the Petition, Mr. Lee was not asked to contribute to the cost of the pumping system. The Commission minutes of July 27, 1998, state: "Discussion of the development of Harbison Plantation on Thompson School Road. Motion by Mr. Jarnigan to provide water and sewer service for this subdivision. NEKUD is to construct an off-site force main and pump station. Seconded by Mr. Lakin. Motion unanimously approved." It is denied that anyone associated with NEKUD demanded a \$55,000 payment from Mr. Lee.

(q) Most of the allegations of paragraph 17 have been discussed above. HPUD wants the County Executive to amend NEKUD's wastewater authority to a non-exclusive authority which "will permit other wastewater utilities to provide new wastewater customers in the affected area with wastewater service at lower rates. HPUD has gone to considerable effort to suggest that NEKUD simply has poor judgment and engages in poor engineering decisions. HPUD wants the Executive to believe that it has better judgment and is better able to care for NEKUD's customers. HPUD's supposedly

innocent suggestion that NEKUD's authority become non-exclusive will not have the effect represented by HPUD. The proposal demonstrates HPUD's own extraordinarily poor judgment. If HPUD's Petition is granted, customers will be subjected to the threat of condemnation by multiple competing utility boards, where competing utilities build duplicating lines so they can each offer services to the same customers. This Wild West No-Mans-Land is far removed from the orderly system contemplated by the statute, wherein cooperative agencies peacefully co-exist, each respecting the rights of its neighbor. HPUD's proposal would guarantee that multiple utility companies would all engage in expensive and unnecessary construction programs which would cause considerable expense and inconvenience to their rate payers.

(r) Paragraphs 18 and 19 of the Petition suggest that NEKUD's authority should be removed because it has not attempted to provide all of the services authorized by the statute and because of a typographical error in the Order granting NEKUD's authority. Perhaps HPUD should first examine its own house to determine just how many services it has sought to offer its own customers. NEKUD has never sought to provide more services than those specifically authorized in the documents which create it, nor is it under any duty to do so. As recognized in Chandler v. Whitehaven, the district is under no duty to provide all of the services for which it is authorized as long as it furnishes any of those services. 311 S.W.2d 603, 613. Thus, Petitioners' argument has no merit. HPUD's attempts to void NEKUD's authority are

simply another demonstration of HPUD's vexatious attempts to destroy NEKUD's integrity.

(s) Paragraph 20 of the Petition simply confirms NEKUD's long held suspicion that HPUD seeks to consume it. HPUD has continued to expand into the Basin and has refused NEKUD's efforts to establish a reasonable line of demarcation between the districts. HPUD has attempted to pressure NEKUD into a merger, all the while using those proceedings in an effort to void the 1998 Wastewater Services Agreement. Paragraph 20 seeks to eliminate NEKUD's exclusive right to provide wastewater service within all of its boundaries, not just the Basin. HPUD finally admits that its true motivation is expansion throughout the Northeast Knox Utility District.

## XI

Simply put, NEKUD has made many attempts to resolve these disputes by amicable means. NEKUD voluntarily offered HPUD approximately one-third of the Basin area, and fully intended to send the remaining waste in the Basin area to HPUD for processing. When that attempt failed, NEKUD offered to buy HPUD's lines for \$1,850,000.00. At HPUD's request, NEKUD then passed a Resolution expressing its willingness to discuss merger. It even proposed retention of a mediation to resolve these problems. In contrast, HPUD has used every means at its disposal to consume the Northeast Knox Utility District. The County Executive should not permit it to do so.

Respectfully submitted the 9 day of November,  
1999.

NORTHEAST KNOX UTILITY DISTRICT

BY: Richard C. Phillips  
Richard C. Phillips  
ITS: General Manager

John M. Neal  
John M. Neal  
THE NEAL LAW FIRM  
Post Office Box 11546  
Knoxville, TN 37939  
(423) 558-5858

Attorney for Northeast Knox  
Utility District

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document has been furnished to counsel of record in this cause by hand delivery as follows:

C. Coulter Gilbert, Esq.  
Kennerly, Montgomery & Finley  
550 Main Street, Fourth Floor  
Knoxville, TN 37902

This 9th day of November, 1999.

John M. Neal  
John M. Neal