

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT**

**NASHVILLE, TENNESSEE**

**February 6, 2013**

**IN RE:**

**PETITION OF LAUREL HILLS CONDOMINIUMS  
PROPERTY OWNERS ASSOCIATION FOR A  
CERTIFICATE OF PUBLIC CONVENIENCE AND  
NECESSITY**

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**DOCKET NO. 12-00030**

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**RESPONSE TO PETITIONERS FIRST AND THIRD MOTIONS IN LIMINE**

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Comes now Tennessee Regulatory Investigative Staff and requests that Petitioner's First and Third Motions in Limine be denied and in support thereof would show as follows:

Response to First Motion in Limine

1. Petitioner objects to the testimony of Everett Bolin as an expert witness on the grounds that his testimony fails to meet the requirements of Tenn. R. Evid. 702.<sup>1</sup>
2. An objection to Mr. Bolin's expertise is unwarranted and fails to acknowledge that Mr. Bolin has significant experience and knowledge about the management of a water service on the Cumberland Plateau and specifically in Cumberland County, Tennessee where Petitioner is located. In fact there may be no person with more experience available. Certainly, Petitioner has not asserted that they have an individual with as much experience operating in the area prepared to testify.
3. The law is particularly clear that in proceeding before the Tennessee Regulatory Authority that the Directors should be afforded the opportunity to weigh the evidence and

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<sup>1</sup> Petitioner's First Motion in Limine p. 1

determine its probative value for themselves without the constraints associated with the court system. In fact the legislature stated quite clearly that “the authority shall not be bound by the rules of evidence applicable in a court, but it may admit and give probative effect to any evidence which possesses such probative value as would entitle it to be accepted by reasonably prudent persons in the conduct of their affairs....”<sup>2</sup>

4. Therefore, Tenn. R. Evid. 702 is not a valid basis upon which to exclude Mr. Bolin’s testimony. If Petitioner asserts that Mr. Bolin’s testimony lacks the appropriate evidentiary foundation then the appropriate place to establish that fact is with cross examination.

#### Response to Third Motion in Limine

5. Petitioner objects to the use of fifteen exhibits identified in the Customer Intervenor’s list of exhibits apparently on the grounds that these exhibits “were not previously produced as part of Customer Intervenor’s direct testimony”<sup>3</sup>.
6. There is no requirement in law or a prior order in this matter that materials to be used as evidence in this matter must be filed along with pre-filed testimony or as pre-filed testimony.
7. In reviewing the list of exhibits at issue it is clear that Petitioner has had access to all of them and in fact generated many of them. While they may not have been presented in this case the Petitioner can hardly claim surprise regarding documents in its possession whether or not it has shared them with its counsel.

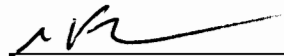
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<sup>2</sup> Tenn. Code Ann. §65-2-109(a)

<sup>3</sup> Petitioner’s Third Motion in Limine

**WHEREFORE** the Tennessee Regulatory Authority Investigative Staff respectfully requests that the Petitioner's First and Third Motions in Limine be denied.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

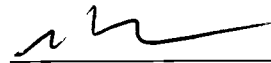
I hereby certifies that I have served a copy of the forgoing document on the following persons by depositing a copy of same in the U.S. Mail, postage prepaid, addressed to them at the addresses shown below:

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This the 7<sup>th</sup> day of February, 2013.

  
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Shiva K. Bozarth