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Sharla Dillon, Clerk
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

In Re: Petition of Laurel Hills Condominiums Property Owners Association for a Certificate of Public Conveyance and Necessity
Docket No. 12-00030

Dear Ms. Dillon:

Please find enclosed for filing in the above matter the original and four copies of the Customer Interveners' Brief/Closing Argument in the above-styled matter.

With kindest regards, I remain

Very truly yours,

Melanie E. Davis

MED:ps
Enclosures
cc: Shiva Bozarth, Attorney
Charlena S. Aumiller, Assistant Attorney General
Donald Scholes, Attorney
Benjamin Gastel, Attorney
John Moore, et al

BEFORE THE

TENNESSEE REGULATORY AUTHOITY

NASHVILLE, TENNESSEE

In Re:

PETITION OF LAUREL HILLS CONDOMINIUMS PROPERTY OWNERS ASSOCIATION FOR A CERTIFICATE OF PUBLIC CONVEYANCE AND NECESSITY.

Docket No. 12-00030

CUSTOMER INTERVENERS' BRIEF/CLOSING ARGUMENT

INTRODUCTION

Throughout this proceeding I was proud to defend the interests of the customers of the Laurel Hills Water System ("Customer Interveners"). Collectively they represent 112 of the 141 living units in a pristine mountain community known as Renegade Resort in Cumberland County, Tennessee. Many, if not most of the Customer Interveners were present in the gallery at the February 13th hearing, and several made emotional and poignant comments on the record. It should be noted, that since the very beginning of this Tennessee Regulatory Authority ("TRA") action, the Customer Interveners have been united in asking the TRA to not issue Laurel Hills Condominiums Property Owners Association ("Laurel Hills") a Certificate of Public Convenience and Necessity ("CCN"). No customers have spoken out in favor of the issuance of the CCN.

STANDARD

The burden in this proceeding is on the Petitioner, Laurel Hills, to show that it has the qualifications to be granted a CCN. TN Reg 1220-1-2-.16(2). The TRA has

the power to issue or refuse to issue the CCN in its discretion. T.C.A. §65-4-204. In other words, the CCN is a privilege and not a right for the Petitioner. In order to qualify for a CCN, the Petitioner must show that it has sufficient managerial, financial and technical abilities to provide for the applied for services. T.C.A. §65-4-201(c). Here, the applicant has not met this burden. The proof is overwhelming that in fact Laurel Hills lacks such abilities.

FACTS

Water has been used as a lever to gain power and control over different peoples since the beginning of man, and this case involving Laurel Hills is no different. On September 28, 2010, Phillip Guettler and Michael McClung, operating as Moy Toy, LLC purchased property on Renegade Mountain from Renegade Resorts, LLC and J.L.Wucher Co., LLC. Moy Toy, LLC subsequently sold the water system for a portion of Renegade Mountain (previously held by J.L. Wucher Co., LLC) to Laurel Hills Condominiums POA on May 1, 2011 for $400,000.

Within weeks of assuming control of the water system, Laurel Hills, unexpectedly, without notice, and without TRA approval raised water rates for all customers from $25 per month to $86.40 per month. After customers threatened to escrow water fees, an agreement was reached between the customers and an agent of Laurel Hills, Darryl McQueen, for a continuous 2011 water rate of $43.20 per month.

On October 31, 2011, Laurel Hills reneged on its agreement with its customers and demanded the $86.40 rate be paid immediately retroactive to June 2011.

In mid-December 2011, Michael McClung and Phillip Guettler were individually sued by many of the same individuals who are Laurel Hills water

customers for breach of fiduciary duty in a case involving control of the Renegade Mountain Community Club ("RMCC"). Within a week of being served with process in that case (which was unrelated to the water system), Laurel Hills turned its attentions to turning the water off to its customers. (Trans. p. 199, ln. 2 – p. 200, ln. 24). In a December 30, 2011 letter mailed to customers, Laurel Hills stated that water would be terminated to all customers effective January 31, 2012.

On January 17, 2012 the Laurel Hills authorized Michael McClung to terminate electric service with the Volunteer Energy Cooperative (VEC) to the water system's pumps. On January 19, 2012, Michael McClung testified that he authorized a work order to terminate electric service to the water system's pumps. The RMCC was advised about the eminent shut off of power to the water system by VEC and assumed liability for the electric bill.

The RMCC operated the water system for the next 12 days until VEC asked the RMCC to relinquish control back to Laurel Hills.

Unable to shut the system down by turning off the pumps, on February 1, 2012, Phillip Guettler, a Director of Laurel Hills, personally turned off water service to 87 living units without giving the required 60 day notice to the State of Tennessee or the customers by shutting off a valve. On February 2, 2012 Michael McClung and Phillip Guettler videotaped and taunted the residents as they desperately attempted to reestablish an alternate source of water.

The customers immediately filed for injunctive relief and received a Temporary Restraining Order ("TRO") from the Chancery Court in Cumberland County, Tennessee, to turn the water back on. Water was restored only because of the TRO.

After 5 days without water, on February 6, 2012, when Laurel Hills reestablished water to all 87 living units, it was discovered that the closed valve had been sabotaged and compacted with dirt, sand and asphalt. Mr. McClung admitted that he directed this action. (Trans. p. 93, ln. 8 – p. 94, ln. 23).

On February 14, 2012, following up on the TRO, Chancellor Ronald Thurman issued a temporary injunction keeping the water on for a period of time, upholding the $43.20 rate for water at the customers' request, and instructing Laurel Hills to present itself to the TRA for a determination of regulatory oversight.

Laurel Hills was defiant. After filing an initial Petition for a CCN with the TRA and in seeming defiance of the Chancery Court's temporary injunction, Laurel Hills withdrew its Petition and notified customers that it would be terminating water service to all customers except themselves on July 9, 2012. Laurel Hills was then issued a notice to appear before the TRA on May 21, 2012, for five potential violations of Tennessee State law. In response, it refused to appear, even through counsel, stating that it no longer considered itself a public utility. On June 20, 2012, Laurel Hills' counsel indicated to the TRA Hearing Officer that Laurel Hills no longer considered itself under the jurisdiction of the TRA and did not want to further cooperate.

In July of 2012, on behalf of the water customers, the TRA filed for injunctive relief from the Chancery Court in Cumberland County, Tennessee, to keep the water turned on. The previous temporary injunction had expired. Again Chancellor Thurman ruled that Laurel Hills was a public utility; that Laurel Hills had to continue to provide water to its customers, that the $43.20 rate was to remain in effect; and that Laurel Hills was subject to TRA regulatory authority. Only then did Laurel Hills come back to the TRA to request the CCN it now claims to want.

NO MANAGERIAL ABILITIES

When asked about experience managing a utility prior to Laurel Hills, Michael McClung stated: "I have none." (Trans. p.81, ln. 15-17).

The Tennessee Secretary of State records introduced into evidence clearly show that, at the time of the water system purchase in 2011, either Michael McClung and Phillip Guettler or either or both of them were (1) the Directors of the Renegade Mountain Community Club, (2) the Directors of Laurel Hills Condominiums POA which purchased the water system, (3) the Directors of Moy Toy, LLC, which sold the water system to Laurel Hills, (4) the Directors of Renegade Resources, LLC who provided maintenance services to Laurel Hills, and (5) the Directors of Renegade Timeshares, LLC which loaned $50,038 to Laurel Hills. In essence, Michael McClung and Phillip Guettler sold an overpriced and flawed water system to themselves (Moy Toy to Laurel Hills), took out a $400,000 note and paid interest to themselves with what they thought was water customer money (Laurel Hills to Moy Toy), issued a revocable license agreement between themselves (Moy Toy to Laurel Hills), contracted for goods and services between themselves (Laurel Hills to Renegade Resources) and loaned themselves $50,038 (Renegade Timeshares to Moy Toy). Expert witnesses, Ron Hill, Christopher Klein and William Novak all indicated that, in their expert opinions, these were not arm's length, market based transactions.

Even if Laurel Hills could make a convincing argument that all of the above transactions might be arm's length, market based transactions, Laurel Hills is registered as a nonprofit corporation with the State of Tennessee. As such, Laurel Hills is subject to the Tennessee Nonprofit Corporation Act which imposes a higher standard when defining a conflict of interest transaction and how it may be handled

among Directors. T.C.A. §48-58-302. This higher standard requires that any conflict be identified prior to any vote of the directors, that any director involved in the conflict may not vote on said action, and that a single director may not vote to approve a conflict of interest issue. None of these standards were even considered much less met by Laurel Hills.

Michael McClung testified as follows regarding conflicts of interest among the various entities with which he was involved (Trans. p. 184, ln. 16 – p. 185, ln. 10):

Q: Are you familiar with the term "conflict of interest"?

A: Sounds like three words. A term?

Q: The term "conflict of interest"?

A: Yeah. I know what it means.

Q: Okay. Are you familiar with it in the context of a Tennessee not for profit corporation and what might be a conflict of interest?

A: I am not familiar with Tennessee law.

Q: Were you concerned at all about there being a conflict of interest between your actions with Laurel Hills and these related entities you were talking about where you have an interest with them doing business together?

A: I wasn't concerned. No.

Q: And you wouldn't be concerned about that moving forward?

A: No.

Q: You think that's okay.

A: I have seen no conflict, no.

Michael McClung testified that in determining the value of the water system prior to the sale from a related entity to Laurel Hills, that he talked with unknown alleged other "people in the industry" and that based solely on the verbal description

he gave, they confirmed the replacement value of the system to be $2,000,000 and that a 20% valuation of $400,000 would be appropriate. (Trans. p. 72, ln. 16 – p. 73, ln. 17). He did no valuation and sought no valuation expert opinion. Michael McClung further testified that he did not remember exactly with whom he talked in arriving at the $400,000 value.

Everett Bolin, Manager of Crab Orchard Utility District ("COUD") testified that the land, pump house structure and tanks used by Laurel Hills at the Mullinix Drive pump station are owned by the COUD and not by Laurel Hills. William Novak testified that the revocable license issued by Moy Toy for the water lines has no value and that it was assumed that any residual value of the unserviceable 250,000 gallon water tank was already depreciated years ago.

Even though Michael McClung negotiated the Irrevocable License Agreement with his entity Moy Toy, LLC on behalf of Laurel Hills, he stated in his testimony that he did not know what a revocable license was, nor what was the difference between an easement and a revocable license. (Trans. p. 166, ln. 1-25). The assets remaining in the system involve $15,000 in pumps, seven miles of 30-40 year old pipes on another entity's property and less than an acre of land on which the water tower resides.

Nevertheless, even with massive debts and a pending TDEC enforcement action, Laurel Hills POA and Moy Toy, LLC (Phillip Guettler and Michael McClung) agreed with themselves that this system was valued at $400,000 and that this is the amount customers should pay for the water system through rate increases. They wanted to charge over $4,000 a month towards this expense from water system funds to pay to Moy Toy for the system. When asked in discovery in this case for tax records from Moy Toy to see if this transaction was properly reported to the IRS as a

legitimate arm's length transaction, the response from Laurel Hills was that "Moy Toy refused" to provide such records. The records were never produced.

Clearly, the "sale" of the system for $400,000 was a sham intended to enrich the sellers of the system at the expense of the water customers.

In Michael McClung's testimony, he admitted that he personally decided which bills to pay and which bills not to pay on behalf of Laurel Hills. Michael McClung admitted to co-mingling water system funds and condominium POA funds in the same bank account. (Trans. p. 185, ln. 19-22). This is something my twelve year old daughter would know not to do.

Despite water being the prime reason for a water system's existence, Michael McClung gambled with the customer's wellbeing that the COUD would not make good with their notifications of termination of the water service to Laurel Hills for non-payment of the water bill. Laurel Hills, under the bill paying decisions of Michael McClung, failed to pay the COUD for any water between December 23, 2011 and August 17, 2012. Laurel Hills, under the bill paying decisions of Michael McClung during this same period of time, elected to pay Moy Toy, LLC (themselves) $6420 in loan interest and Renegade Resources, LLC (themselves) $18,935 in "management fees". In total, Laurel Hills, under the bill paying decisions of Michael McClung, paid COUD almost nothing for the 14 month period from December 23, 2011 to February 19, 2013, (Trans. p. 102, ln. 20 – p. 103, ln. 5) despite receiving thousands of dollars worth of water and despite being paid by the customers for the water. (Trans. p. 103, ln. 23-25).

While it is true that Laurel Hills is now current on its water bills with COUD, that bill was paid only after the TRA February 13th hearing and only after a conference call with Chancellor Thurman where it was confirmed that if COUD

turned off the water to Laurel Hills for nonpayment as promised for the week after the TRA hearing, Laurel Hills could be held in contempt of the court order dated July 27, 2012. Only the fear of jail for its principals made Laurel Hills pay the system's water bill to COUD.

Michael McClung and Laurel Hills have further made various misrepresentations in their testimony that bring into question their veracity and trustworthiness. This in turn reflects on ability to properly manage the water system with the required integrity.

In Mr. McClung's affidavit filed in support of Chancery Court case 2012-CH-513, he states that "I did not request VEC to shut off electricity to the utility's pumps". See Ex. 2, Tab D, No. 16. In his testimony before the TRA on February 13, 2013, Michael McClung admitted that he did talk to VEC about terminating the electric to the pumping station. (Trans. p. 129, ln. 4–11.)

In Laurel Hills' Response to the Discovery Requests of the TRA, Laurel Hills stated that their office was staffed five hours per day five days a week for customer support. See, Response to No. 16. In Michael McClung's December 12, 2012 deposition in support of Chancery Court Case 2012-CH-560, he responded that this practice ended about "Thanksgiving (2012)". See Ex. 2, Tab B. (Trans. p. 147, ln. 25 - p. 148, ln. 7; Trans. p. 77, ln. 17 – p. 78, ln. 11). Testimony given by Robert Adkins (who lives across from the office) indicated that the office was not staffed in 2012 except for one to two days per week for one and one-half to two hours at a time. (Trans. p. 373-375).

In response, Michael McClung testified:

A: To me, staffing that office is they're not sitting there. They are in the area yes. That is staffing the office.

Q: You don't think someone being in the office is staffing the office?

A: Well it is but being there is not . . . .

(Trans. p. 102, ln. 13-25).

In Michael McClung's December 12, 2012 deposition in support of Chancery Court Case 2012-CH-560, he indicated that he was unaware of the identity of any of the other persons or entities (other than himself) who owned Moy Toy, LLC. See Ex. 2, Tab B. (Trans. p. 6, ln. 24 – p. 7, ln. 3). Secretary of State documents entered into evidence on February 13, 2013 show that Michael McClung filed and signed the annual reports for Moy Toy, LLC and was a director or managing member of the entity for many years. See Ex. 1, Tab. 18. Not knowing Moy Toy's ownership is either untrue or shows complete lack of business sense.

Michael McClung provided rebuttal testimony (Ex. 2, tab 18, on January 15, 2013) saying he was now not the managing member of Moy Toy, LLC but was a director. He was the managing member as of November 19, 2012, when the 2011 annual report was filed but said that he was not the managing member as of the filing of the 2012 annual report in the Secretary of State's Office on January 15, 2013. When asked when he stopped being managing member and became only a director of Moy Toy, LLC, he said "I still don't know the difference to this day, I'm sorry". (Trans p. 142, ln. 13-16). "It doesn't mean anything". (Trans. p. 142, ln. 22). Clearly, there was a recent attempt by someone to make it look like Michael McClung is not the principal of Moy Toy, when he really is.

In his testimony at the February 13, 2013 hearing, Michael McClung testified that the water valve used to turn off the water to 87 living units in February of 2012 was not sabotaged by placing sand in it that made it hard to turn back on, but rather "packed" to protect it from youth mischief. (Trans. p. 92, ln. 6-23). Everett Bolin,

manager of COUD, testified that he had never heard of this practice in his years in utility work in Tennessee. (Trans. p. 358, ln. 21 – p. 359, ln. 3). The packing made the valve very difficult to turn back on. (Trans. p. 316, ln. 3-17). This was clearly something done for spite.

Michael McClung and other principals of Laurel Hills have zero previous management experience in operating a utility of any kind. Laurel Hills' past management history of operating this utility, as discussed over the last several pages, has been terrible.

NO FINANCIAL ABILITIES

When asked about financial experience and knowledge about running a utility, Michael McClung admitted "I'm learning, but I don't have probably the level that Tennessee is expecting of POAs . . .". (Trans. p. 83, ln. 25 – p. 84, ln. 2).

The inability of Laurel Hills to properly value assets, determine a working budget, pay and prioritize accounts and manage cash flow shows complete lack of financial ability. Throughout the hearing Michael McClung repeatedly testified that Laurel Hills does not possess the funds necessary to operate the water utility and that it cannot borrow additional capital. In addition, all parties involved, to include Michael McClung, testified that Laurel Hills' ability to attract additional capital for expansion or capital projects is severely limited, and that such contribution is likely impossible as the system currently exists. Laurel Hills lacks financial ability to properly operate this utility. Laurel Hills' only "solution" to its financial woes is to try to jack up rates higher and higher on its customers.

NO TECHNICAL ABILITIES

When asked about technical experience and knowledge to run the water system, Michael McClung responded ". . . have I even run anything like this? No." (Trans. p. 83, ln. 11-17).

Laurel Hills has a dismal and unacceptable track record of knowing and complying with its technical responsibilities relating to this water system. Laurel Hills purchased an unauthorized public utility. They failed to identify the requirement to register with the TRA; failed to set approved rates; failed to give the proper 60 day water termination notice to customers and the State of Tennessee; failed to maintain customer records; failed to provide customer service functions; and failed to understand responsibilities as a registered nonprofit corporation within the State of Tennessee.

Michael McClung knows nothing about how to operate a water system, and he seemingly has no desire to learn. Mr. McClung testified as follows regarding TDEC's requirement that Laurel Hills keep a customer complaint log, as Laurel Hills was instructed:

Q: Is there a reason you don't keep a customer complaint log as required by TDEC regulations?

A: I wasn't aware TDEC had that requirement.

Q: Did you notice that that was in your TDEC letter that you got about things that you needed to do to come into compliance?

A: No. I didn't know that. Thank you for explaining that.

Q: Did you read any letters from TDEC that you needed a customer complaint log?

A: I gave it to these people who were in charge of keeping these records. But I cannot tell you that I read it, no.

Q: But you're the one in charge.

A: I am in charge.

(Trans. p. 208, ln. 12 – p. 209, ln. 2).

Michael McClung repeatedly referenced not knowing Tennessee law throughout his testimony, and it shows as Laurel Hills has done whatever it wanted to do without regard for the law since it "bought" this utility, such as turning off customers water upon a 30 day notice, (Trans. p. 187, ln. 18 – p. 190, ln. 21) instead of the required 60 days without ever even trying to find out what the law provides.

EXPERTS

Expert witnesses. Ron Hill and William Novak both testified that Laurel Hills lacks the technical, financial and managerial capabilities to operate a public utility in the State of Tennessee. Laurel Hills couldn't even find someone they could pay to say that they did possess these capabilities, as they did not offer an expert in support of their petition at the hearing.

CONCLUSION

In just 21 months, Laurel Hills operated an unauthorized and illegal public water system, established an unauthorized and unapproved $86.40 monthly water rate, attempted to abandon the water system twice, attempted to shut the water off to some or all customers three times, were the recipient of two separate injunctions from the same court, were served with multiple Chancery Court complaints, and basically "thumbed their nose" at the Chancery Court and the TRA.

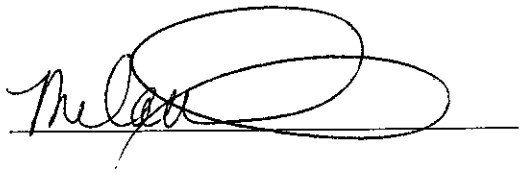
There is no evidence that Laurel Hills' willingness to properly and lawfully operate a public utility will improve, or that its bad acts will cease if the TRA issues it a CCN. On the contrary, there is every reason to believe that the Customer

Interveners will remain in a perpetual battle to protect and keep their water under fair and reasonable terms if the CCN is granted.

If the CCN is denied, as we submit is appropriate under this record, the water system can then be placed into receivership and the process can go forward from there.

The Customer Interveners pray that the TRA Directors deny the CCN and allow the process to proceed towards a long-term solution for the Renegade Mountain water system and its customers.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing of CUSTOMER INTERVENERS' BRIEF/CLOSING ARGUMENT has been served upon the following:

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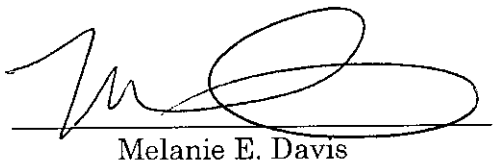
by mailing a true and accurate copy via E-Mail transmission and U.S. Mail, postage prepaid, this the 14th day of March, 2013.

Kizer & Black Attorneys, PLLC:



Melanie E. Davis