

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

December 10, 2014

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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ORDER GRANTING *RENEWED MOTION TO INITIATE PROCEEDINGS*

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This matter came before Vice Chairman David F. Jones, Director Kenneth C. Hill and Director James M. Allison of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on November 4, 2014, to consider the *Renewed Motion to Initiate Proceedings* ("Motion") filed by the TRA Investigative Staff, acting as a Party ("Party Staff"), on October 22, 2014.

**BACKGROUND**

On April 18, 2013, the Authority issued an *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System* ("Order"), in which the panel denied a Certificate of Public Convenience and Necessity ("CCN") to Laurel Hills Condominium Property Owners Association ("Laurel Hills") for the operation of its water system.<sup>1</sup> Specifically, the panel's *Order* directed the following:

1. The *First Amended Petition* filed by Laurel Hills Condominium Property Owners Association is denied.
2. Laurel Hills Condominium Property Owners Association shall divest itself of the water utility within 60 days, or no later than June 7, 2013.

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<sup>1</sup> A full account of the TRA proceedings in this matter is set forth in the *Order* and other filings in this docket.

3. Laurel Hills shall submit evidence of such divestiture to the Authority for its approval.
4. If Laurel Hills is unable to divest its water utility by no later than June 7, 2013, Laurel Hills shall file a notice with the Authority of its inability to divest itself of the water utility and shall appear before the Authority at the time and date which may be ordered by the Authority to explain its efforts to divest itself of the water utility.
5. Pending divestiture of its water utility, Laurel Hills remains a public utility and shall follow all applicable statutes, rules and procedures. Specifically, Laurel Hills shall furnish safe, adequate and proper service and keep and maintain its property and equipment in such condition as to enable it to do so pursuant to Tenn. Code Ann. § 65-4-114.
6. To the extent allowable by the Proposed Agreed Order entered by the Chancery Court of Cumberland County, Laurel Hills shall bill and collect at the monthly interim rate of \$33.10 pending either divestiture of the water utility to a non-public utility or further action of this Authority.
7. The Show Cause proceeding opened as Docket No. 12-00077 will be held in abeyance until after the June 7, 2013 deadline for divestiture has passed. If Laurel Hills has not divested itself of the water utility by the deadline, the Hearing Officer and Investigative Staff shall resume proceedings against Laurel Hills for the violations set forth in the Show Cause Order issued by the Hearing Officer in this Docket and in Docket No. 12-00077 on July 17, 2012, and shall give notice to Laurel Hills of any additional violations before any additional counts are added to the Show Cause proceedings.
8. Authority Staff shall request the Comptroller of the Treasury, Office of State Assessed Properties, to appraise and value the property of the water utility pursuant to Tenn. Code Ann. § 65-4-117(2).
9. TRA Investigative Staff shall take whatever actions may be necessary against Laurel Hills in any Court to protect the customers of the water utility and to enforce this Order.<sup>2</sup>

On April 22, 2013, the Chancery Court for the Thirteenth Judicial District of Cumberland County (“Chancery Court”), consistent with the *Order*, entered an order allowing Laurel Hills to impose a monthly rate of \$33.10 for water service to its customers. On June 7, 2013, in accordance with the Authority’s *Order*, Laurel Hills filed its *Petitioner’s Notice*, informing the

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<sup>2</sup> *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System*, pp. 31-32 (April 18, 2013).

Authority that it had not divested the water system and requesting an additional 60 days to divest the water system. In addition, on June 14, 2013, Laurel Hills filed a petition for review of the Authority's *Order* with the Tennessee Court of Appeals, citing a variety of issues. The intervening parties to this docket, the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter ("Consumer Advocate") and certain customers of Laurel Hills (the "Customer Intervenors") also challenged the *Order* as to the utility's recovery of attorney fees as part of the \$33.10 monthly interim rate fixed by the Authority. During the regularly scheduled Authority Conference held on June 17, 2013, the panel considered Laurel Hills' request for an extension of time in which to divest the water system. Based on the record, the panel found such request to be reasonable and voted unanimously to extend the deadline for divestment to August 16, 2013. In the event that Laurel Hills did not divest the water system by that date, the Authority ordered Laurel Hills to file notice and to appear before the Authority at a time and date to be determined by the Authority in order to further explain its efforts to divest the water utility. The panel also voted to hold the related Show Cause Docket, TRA Docket No. 12-00077, in abeyance until August 16, 2013, or until further action of the Authority. Finally, the panel affirmed that all other findings, conclusions, and directives of its April 18, 2013 *Order* remain in effect.<sup>3</sup>

On August 20, 2013, upon an Agreed Order filed by Laurel Hills, the Chancery Court ordered a stay of its related proceedings in *Gary Haiser, et al., v. Laurel Hills Condominiums POA, Inc.*, Case No. 18CH2-2012-CH-513, and *Tennessee Regulatory Authority v. Laurel Hills Condominiums POA, Inc.*, Case No. 18CH2-2012-CH-560, pending resolution of the appeal filed in the Tennessee Court of Appeals. Thereafter, on August 27, 2013, Laurel Hills filed a *Petitioner's Renewed Notice*, which stated that it had not divested the water system, and given its

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<sup>3</sup> See *Order Granting Laurel Hills' Requests for Extension of Time to Divest and to Stay Further Action Pending Appeal* (November 5, 2013).

appeal of the Authority's *Order*, requested that the Authority stay any additional action in this docket pending final outcome of the appeal process, or, at a minimum, provide an additional 60 days to divest the water system. No party filed an objection to the *Petitioner's Renewed Notice*.

During the regularly scheduled Authority Conference held on September 9, 2013, the panel considered Laurel Hills' request to stay the proceedings pending the final outcome of its appeal of the Authority's *Order* filed in the Court of Appeals, or an additional extension of time in which to divest the water system. Based on the record, the panel found that an additional 60-day extension of the deadline for divestment of the water system would not be adequate. Therefore, the panel voted unanimously to grant Laurel Hills' request to stay additional action in this docket pending the final outcome of the appeals process. In addition, the panel continued to hold TRA Docket No. 12-00077 in abeyance and reaffirmed that all other findings, conclusions, and directives of its April 18, 2013 *Order* remain in effect.<sup>4</sup>

#### **RENEWED MOTION TO INITIATE PROCEEDINGS**

On October 22, 2014, Party Staff filed the *Motion* requesting that this matter be set for a Hearing. In support of the *Motion*, Party Staff states:

On April 14, 2014, the Court of Appeals for the Middle District of Tennessee upheld the Authority's decision in docket number 12-00030. Laurel Hills Condominiums Property Owners Association filed an application for permission to appeal the Court of Appeals decision in docket number 12-00030. On October 15, 2014, the Tennessee Supreme Court denied Laurel Hills Condominiums Property Owners Association application. At this time there is no reason to continue to delay the proceedings.<sup>5</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> *Renewed Motion to Initiate Proceedings*, p. 1 (October 22, 2014).

In addition, Party Staff filed in this docket a copy of the Mandate issued from the Tennessee Court of Appeals and related appellate court filings.<sup>6</sup> No other party, including Laurel Hills, filed a response to the *Motion*.

During the regularly scheduled Authority Conference held on November 4, 2014, the panel considered the *Motion*. The panel found that in consideration of the conclusion of the appellate court proceedings, abeyance of further TRA proceedings was no longer warranted and, therefore, unanimously voted to grant Party Staff's *Renewed Motion to Initiate Proceedings*. With the lifting of the stay, the panel unanimously voted to order Laurel Hills to divest itself of its water system immediately and without further delay.

**IT IS THEREFORE ORDERED THAT:**

1. The *Renewed Motion to Initiate Proceedings* filed on October 22, 2014, by TRA Investigative Staff acting as a Party is hereby granted.
2. Laurel Hills Condominium Property Owners Association shall divest itself of the water utility immediately and without further delay.

**Vice Chairman David F. Jones, Director Kenneth C. Hill and Director James M. Allison concur.**

**ATTEST:**

  
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**Earl R. Taylor, Executive Director**

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<sup>6</sup> The TRA Order was affirmed in all respects. See *Laurel Hills Condominiums Property Owners' Association v. Tennessee Regulatory Authority*, 2014 WL 1494126 (Tenn. Ct. App. Apr. 14, 2014), *perm. app. denied* (Tenn. Oct. 15, 2014).