

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE**

June 21, 2012

IN RE:)	
)	
PETITION OF LAUREL HILLS CONDOMINIUMS)	DOCKET NO.
PROPERTY OWNERS ASSOCIATION FOR A)	12-00030
CERTIFICATE OF PUBLIC CONVENIENCE AND)	
NECESSITY)	

ORDER APPOINTING HEARING OFFICER

This matter came before Chairman Kenneth C. Hill, Director Sara Kyle, and Director Mary W. Freeman of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on May 21, 2012 to consider whether to open a docket to investigate and initiate show cause proceedings against Laurel Hills Condominiums Property Owners Association (“Laurel Hills”) for alleged violations of Tenn. Code Ann. §§ 65-4-201, 65-4-301(a), 65-5-102, 65-5-101 and/or 65-5-103; and for withholding or refusing to provide service to its customers in violation of Tenn. Code Ann. § 65-4-115.

Background

Laurel Hills is a homeowners association in Cumberland County, Tennessee that purchases treated water from Crab Orchard Utility District and sells it to property owners in Renegade Resort. Prior to 2000, Renegade Mountain Community Club, the homeowners association for Renegade Resort, owned the water system. Through a series of conveyances, the water system is now owned by Laurel Hills. Because Laurel Hills sells water to customers outside of its homeowners association, it is a public utility subject to regulation by the TRA; however, Laurel Hills does not have a Certificate of Public Convenience and Necessity (“CCN”) from the TRA.

On or about February 1, 2012, Laurel Hills cut off the water supply to Renegade Mountain customers due to a billing dispute. Renegade Mountain customers petitioned the Chancery Court in Cumberland County for a temporary injunction, and the Chancellor ordered, among other things, Laurel Hills to promptly contact the TRA to determine whether the water system is subject to oversight by the TRA.¹ If so, the Chancellor ordered that the process for regulation must be commenced.

On April 10, 2012, Laurel Hills filed a Petition for a CCN. In its Petition, Laurel Hills states that with the passage on Public Chapter 430 of the 2011 Tennessee Public Acts, it became a public utility subject to regulation by the Authority. According to the Petition, revenue from water sales is the only source of income to operate the water system, and the majority of customers stopped making payments for water service in October and November 2011.² Laurel Hills also states that it owes Crab Orchard Utility District \$14,455.98.³ The Petition states the water system is not metered, so service cannot be terminated for individual customers who do not pay. Laurel Hills requests that it be allowed to charge \$86.40 per month pending a final decision by the Authority, with a refund to customers if the Authority approves a lower rate.⁴ On May 1, 2012, a group of Renegade Mountain customers filed a Petition to Intervene in the CCN docket, alleging several inaccuracies in Laurel Hills' Petition for a CCN.⁵

On May 7, 2012, Laurel Hills filed a *Notice of Voluntary Dismissal and Withdrawal* ("Notice of Dismissal"). In its *Notice of Dismissal*, Laurel Hills states that it has sent a notice to its customers, the Tennessee Department of Environment and Conservation and other interested persons that, effective July 9, 2012, it will no longer provide water service to anyone other than itself. Laurel Hills asserts that it does not require a CCN because it will no longer be serving members of the public and attached

¹ Petition, p. 4 (April 10, 2012).

² *Id.* at 3.

³ *Id.* at 3.

⁴ *Id.* at 5.

⁵ *Petition of Gary Haiser et al. to Intervene in Docket No. 12-00030* (May 1, 2012).

the notice to its customers, which it mailed with monthly water bills and posted on-site.⁶

On May 11, 2012, the TRA's General Counsel issued a *Notice to Appear* to Laurel Hills to appear at the Authority's May 21, 2012 Authority Conference and show cause why the Authority should not convene a proceeding to impose civil penalties and sanctions against it for operation of a public utility without a Certificate of Public Convenience and Necessity in violation of Tenn. Code Ann. § 65-4-201; for failure to pay its annual inspection fee in violation of Tenn. Code Ann. § 65-4-301(a); for failure to file a tariff in violation of Tenn. Code Ann. § 65-5-102; for charging rates not approved by the Authority in violation of Tenn. Code Ann. § 65-5-101 and/or Tenn. Code Ann. § 65-5-103; and for withholding or refusing to provide service to its customers in violation of Tenn. Code Ann. § 65-4-115.

Laurel Hills filed its *Response to Notice to Appear* ("Response") on May 18, 2012. The *Response* states that as of July 9, 2012, Laurel Hills will no longer be a public utility as defined in Tenn. Code Ann. § 65-4-101(6) because it will no longer be serving members of the public. The *Response* maintains that it is not financially feasible to operate the Laurel Hills system as a public utility. Consequently, Laurel Hills does not have funds budgeted to defend itself against a Show Cause proceeding initiated by the Authority, and therefore, will be unable to appear before the Authority on May 21, 2012 as requested in the *Notice to Appear*.⁷

May 21, 2012 Authority Conference

At the regularly scheduled Authority Conference held on May 21, 2012, the panel considered opening a docket to determine whether to convene a show cause proceeding against Laurel Hills. No one from Laurel Hills was present at the Conference.

Based on the record, the panel voted unanimously to appoint a Hearing Officer to make a determination whether to issue a Show Cause proceeding in this matter based upon any evidence

⁶ *Notice of Dismissal* (May 7, 2012).

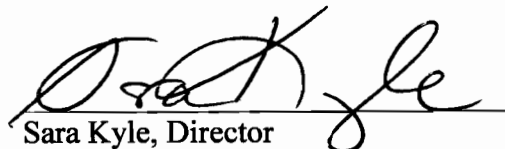
⁷ *Id.* at 5-6.

presented by Investigative Staff. In addition, the panel authorized the Hearing Officer to prepare this matter for hearing before the Directors if it is determined that a Show Cause proceeding should be initiated. The panel authorized Investigative Staff to take any necessary measures, including, but not limited to, filing for injunctive relief in the Chancery Court for Cumberland County, to maintain water service for all customers of Laurel Hills, including the homeowners in Renegade Resort pending resolution of the Show Cause proceeding.

IT IS THEREFORE ORDERED THAT:

1. General Counsel, or her designee, be appointed Hearing Officer to determine if a Show Cause proceeding should be initiated against Laurel Hills Property Owners Association.
2. If a Show Cause proceeding is initiated, the Hearing Office shall prepare the matter for a hearing by the Directors.
3. The Tennessee Regulatory Authority Investigative Staff is authorized to take any necessary measures, including, but not limited to, filing for injunctive relief in the Chancery Court for Cumberland County, to maintain water service for all customers of Laurel Hills, including the homeowners in Renegade Resort pending resolution of the Show Cause proceeding.


Kenneth C. Hill, Chairman


Sara Kyle, Director

 6/08/12
Mary W. Freeman, Director