

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT**

**NASHVILLE, TENNESSEE**

**July 17, 2012**

**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 REQUIRING LAUREL HILLS CONDOMINIUMS PROPERTY OWNERS  
ASSOCIATION TO APPEAR AND SHOW CAUSE  
WHY A CEASE AND DESIST ORDER AND CIVIL PENALTIES & SANCTIONS SHOULD  
NOT BE IMPOSED AGAINST IT FOR VIOLATIONS OF STATE LAW**

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This matter is before the Hearing Officer upon the order of the Tennessee Regulatory Authority ("TRA" or "Authority") in Docket No. 12-00030, to consider the preliminary findings of TRA Investigative Staff presented against Laurel Hills Condominiums Property Owners Association ("Laurel Hills") and, based thereon, determine whether to convene a show cause proceeding requiring Laurel Hills to appear before the Authority to show cause why the TRA should not issue a cease and desist order and impose civil penalties and sanctions against it for the following violations of state law:

- 1) Operation of a public utility without a Certificate of Public Convenience and Necessity ("CCN") in violation of Tenn. Code Ann. § 65-4-201;
- 2) Failure to pay an annual inspection fee in violation of Tenn. Code Ann. § 65-4-301(a);
- 3) Failure to file a tariff in violation of Tenn. Code Ann. § 65-5-102;
- 4) Charging rates not approved by the Authority in violation of Tenn. Code Ann. § 65-

5-101 and/or 65-5-103; and,

- 5) Withholding or refusing to provide service to customers in violation of Tenn. Code Ann. § 65-4-115.

### **JURISDICTION**

The Authority is specifically authorized and charged under Tenn. Code Ann. § 65-1-113, to ensure that the laws of this state as they relate to the Authority's jurisdiction over public utilities "are enforced and obeyed, that violations thereof are promptly prosecuted, and all penalties due the state are collected."<sup>1</sup> The Authority is empowered to hear this matter and render an order pursuant to the powers delegated by the Tennessee General Assembly including those provided in Tenn. Code Ann. §§ 65-2-106, 65-3-105, 65-4-116, and 65-4-120.

### **RELEVANT FACTS**

1. 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 Mountain. Laurel Hills purchased the water system on May 1, 2011 and has never obtained a CCN from the TRA.<sup>2</sup>
2. 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, as part of the rulings, the Chancellor ordered Laurel Hills to promptly contact the TRA to determine whether the water system is subject to oversight by the TRA.<sup>3</sup> If so, the Chancellor ordered that the regulatory process must be commenced.
3. On April 10, 2012, Laurel Hills filed a petition for a CCN to operate its water system in

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<sup>1</sup> Tenn. Code Ann. § 65-1-113.

<sup>2</sup> *Petition*, p. 1 (attached as Exhibit 1 without original attachments).

<sup>3</sup> *Id.* at 4.

Docket No. 12-00030.<sup>4</sup>

4. In its *Petition*, Laurel Hills acknowledged that with the passage on Public Chapter 430 of the 2011 Tennessee Public Acts, it became a public utility subject to regulation by the TRA.<sup>5</sup>
5. Laurel Hills has not paid an annual inspection fee pursuant to Tenn. Code Ann. §65-4-301(a), neither in 2011 or 2012.<sup>6</sup>
6. Laurel Hills has approximately fifty residential customers; one of which includes Cumberland Point Condominium Association consisting of eighty-four individual residential units.<sup>7</sup>
7. Laurel Hills admits that, prior to its purchase of the water system, the water system served customers outside of the Laurel Hills Property Owners Association and that those customers were charged a flat monthly rate for water service.<sup>8</sup>
8. Beginning June 2011, Laurel Hills began charging its customers, including those outside of the Laurel Hills Property Association, \$86.40 per month for water service.<sup>9</sup>

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

<sup>5</sup> *Id.* at 5; and see 2011 Pub.Acts, c. 430, §§ 1, 2 (eff. June 6, 2011), amending Tenn. Code Ann. § 65-4-101 as follows:

SECTION 1. Tennessee Code Annotated, Section 65-4-101, is amended by adding the following language as a new subdivision (9):

(9) "Public utility" does not mean any nonprofit corporation, as defined in 501(c)(4) of the Internal Revenue Code, which owns and operates a wastewater system primarily for the use of the members of the corporation and which has received a written statement of exemption from regulation as a public utility from the Tennessee regulatory authority prior to January 1, 2009.

SECTION 2. Tennessee Code Annotated, Section 65-4-101(6)(E), is amended by deleting the subdivision in its entirety and by substituting instead the following language:

(E) Any cooperative organization not organized or doing business for profit, cooperative association not organized or doing business for profit, or cooperative corporation not organized or doing business for profit. For purposes of this subdivision (6)(E), "cooperative" shall mean only those nonprofit cooperative entities organized under or otherwise subject to § 65-25-201 et seq. ("Rural Electric and Community Services Cooperative Act") or § 65-29-101 et. seq. ("Telephone Cooperative Act").

<sup>6</sup> *Affidavit of Tabatha Blackwell*, p. 4 (attached as Exhibit 2).

<sup>7</sup> *Petition* at 3.

<sup>8</sup> *Id.* at 2

<sup>9</sup> *Id.*

9. Laurel Hills sent bills for water service and notices regarding rates to customers who had property outside of Laurel Hills Property Owners Association.<sup>10</sup>
10. On May 7, 2012, Laurel Hills filed a *Notice of Voluntary Dismissal and Withdrawal* (“*Notice of Dismissal*”) seeking to withdraw its *Petition* pending before the Authority. In its *Notice of Dismissal*, Laurel Hills stated that it had mailed a notice to its customers, the Tennessee Department of Environment and Conservation, and other interested persons, informing them that, effective July 9, 2012, it would no longer provide water service to anyone other than itself. Laurel Hills attached a copy of its customer notice to its *Notice of Dismissal*.<sup>11</sup>
11. In its *Notice of Dismissal*, Laurel Hills further asserts that because it has decided to no longer provide water service to members of the public, and notified its customers of its decision by mail and by on-site posting at the Guard Shack and Renegade Time Shares, a CCN from the Authority is no longer required.<sup>12</sup>
12. On May 11, 2012, the TRA’s General Counsel issued a *Notice to Appear* requiring Laurel Hills to appear during the regularly scheduled Authority Conference on May 21, 2012, and show cause why the TRA 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 TRA 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

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<sup>10</sup> Copies of bills and other rate communications (attached as Exhibit 3).

<sup>11</sup> *Notice of Dismissal* (attached as Exhibit 4).

<sup>12</sup> *Id.*

Tenn. Code Ann. § 65-4-115.<sup>13</sup>

13. On May 18, 2012, Laurel Hills filed in the docket file a *Response to Notice to Appear* (“*Response*”). In its *Response*, Laurel Hills stated 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. Laurel Hills asserts that it is not financially feasible for it to operate the Laurel Hills water system as a public utility. In addition, Laurel Hills stated that as it had no funds budgeted to defend itself in any civil penalty (i.e., Show Cause) proceeding initiated by the TRA, it would not appear before the TRA on May 21, 2012, as required in the *Notice to Appear*.<sup>14</sup>

#### **ALLEGED VIOLATIONS OF STATE LAW**

The following actions, alleged to have been performed by Laurel Hills, constitute violations of state law:

- A. Laurel Hills has admitted to operating a water company providing service to customers outside of the Laurel Hills Property Owners Association since at least May 1, 2011, without a CCN.

#### **COUNT 1:**

The failure of Laurel Hills to obtain a CCN upon its purchase and operation of a water company that serves the public violates Tenn. Code Ann. § 65-4-201, which states:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction,

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<sup>13</sup> *Notice to Appear* (attached as Exhibit 5).

<sup>14</sup> *Response* at 5-6. (attached as Exhibit 6).

establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate; provided, however, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it.<sup>15</sup>

- B. Laurel Hills did not pay an annual inspection fee in 2011 or 2012.

**COUNT 2:**

The failure of Laurel Hills to pay an annual inspection fee in 2011 and 2012 violates Tenn. Code Ann. §65-4-301(a), which states:

(a)(1) Every public utility doing business in this state and subject to the control and jurisdiction of the authority to which the provisions of this chapter apply, shall pay to the state of Tennessee on or before April 1 of each year, a fee for the inspection, control and supervision of the business, service and rates of such public utility.<sup>16</sup>

- C. Laurel Hills has not filed a tariff or schedule of its rates and charges with the TRA.

**COUNT 3:**

The failure of Laurel Hills to file a tariff since purchasing the water company in May 2011 violates Tenn. Code Ann. §65-5-102, which states:

The authority has the power to require every such public utility to file with it complete schedules of every classification employed and of every individual or joint rate, toll, fare, or charge made or exacted by it for any product supplied or service rendered within this state as specified in such requirement.<sup>17</sup>

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<sup>15</sup> Tenn. Code Ann. § 65-4-201(a).

<sup>16</sup> Tenn. Code Ann. § 65-4-301(a)(1).

<sup>17</sup> Tenn. Code Ann. § 65-5-102.

- D. Laurel Hills has charged, and is charging, rates and has attempted to collect money for water service without approval of the TRA.

**COUNT 4:**

The actions of Laurel Hills in imposing rates for water service to the public without TRA approval violates Tenn. Code Ann. §65-5-101, which states:

(a) The Tennessee regulatory authority has the power after hearing upon notice, by order in writing, to fix just and reasonable individual rates, joint rates, tolls, fares, charges or schedules thereof, as well as commutation, mileage, and other special rates which shall be imposed, observed, and followed thereafter by any public utility as defined in § 65-4-101, whenever the authority shall determine any existing individual rate, joint rate, toll, fare, charge, or schedule thereof or commutation, mileage, or other special rates to be unjust, unreasonable, excessive, insufficient, or unjustly discriminatory or preferential, howsoever the same may have heretofore been fixed or established. In fixing such rates, joint rates, tolls, fares, charges or schedules, or commutation, mileage or other special rates, the authority shall take into account the safety, adequacy and efficiency or lack thereof of the service or services furnished by the public utility.<sup>18</sup>

- E. Laurel Hills attempted to increase the rates charged to its customers for water service without TRA approval.

**COUNT 5:**

The failure of Laurel Hills to obtain permission from the TRA prior to increasing the rates it charges customers for water service violates Tenn. Code Ann. §65-5-103, which states:

(a) When any public utility shall increase any existing individual rates, joint rates, tolls, fares, charges, or schedules thereof, or change or alter any existing classification, the authority shall have power either upon written complaint, or upon its own initiative, to hear and determine whether the increase, change or alteration is just and reasonable. The burden of proof to show that the increase, change, or alteration is just and reasonable shall be upon the public utility making the same. In determining whether such increase, change or alteration is just and reasonable, the authority shall take into account the safety, adequacy and efficiency or lack thereof of the service or services

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<sup>18</sup> Tenn. Code Ann. § 65-5-101(a).

furnished by the public utility. The authority shall have authority pending such hearing and determination to order the suspension, not exceeding three (3) months from the date of the increase, change, or alteration until the authority shall have approved the increase, change, or alteration; provided, that if the investigation cannot be completed within three (3) months, the authority shall have authority to extend the period of suspension for such further period as will reasonably enable it to complete its investigation of any such increase, change or alteration; and provided further, that the authority shall give the investigation preference over other matters pending before it and shall decide the matter as speedily as possible, and in any event not later than nine (9) months after the filing of the increase, change or alteration. It shall be the duty of the authority to approve any such increase, change or alteration upon being satisfied after full hearing that the same is just and reasonable.<sup>19</sup>

- F. Laurel Hills has withheld water service from its customers for failure to pay rates that were not approved by the TRA.

**COUNT 6:**

The actions by Laurel Hills to withhold water service from its customers violates Tenn. Code Ann. §65-4-115, which states:

No public utility shall adopt, maintain, or enforce any regulation, practice, or measurement which is unjust, unreasonable, unduly preferential or discriminatory, nor shall any public utility provide or maintain any service that is unsafe, improper, or inadequate, or withhold or refuse any service which can reasonably be demanded and furnished when ordered by the authority.<sup>20</sup>

**BASED UPON THE FOREGOING INFORMATION AND ATTACHMENTS,** as presented by TRA Investigative Staff, the Hearing Officer acting pursuant to the scope of the TRA's authority granted under Tenn. Code Ann. §§ 65-1-113, 65-2-106, 65-3-105, 65-4-116, and 65-4-120, hereby determines that Laurel Hills should be required to appear and show cause why it should not be found in violation of state law and the Authority should not immediately

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<sup>19</sup> Tenn. Code Ann. § 65-5-103(a).


<sup>20</sup> Tenn. Code Ann. § 65-4-115.



issue a cease and desist order and further impose civil penalties and sanctions to the maximum extent allowed by law.

**BE IT THEREFORE ORDERED THAT:**

Laurel Hills Condominiums Property Owners Association shall appear before the Tennessee Regulatory Authority during its next regularly scheduled Authority Conference in the Hearing Room on the ground floor of the offices of the Tennessee Regulatory Authority, the date of which is yet to be determined and upon such determination separate notice shall issue, to show cause why the Authority should not proceed to take action against Laurel Hills Condominiums Property Owners Association for the unlawful actions and omissions alleged against it in this Order, including, but not limited to, the issuance of a cease and desist order and the imposition of civil penalties and sanctions.

  
Kelly Cashman-Grams, Hearing Officer

cc: Docket No. 12-00077

BRANSTETTER, STRANCH & JENNINGS, PLLC

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April 10, 2012

\* ALSO ADMITTED IN GA  
\*\* ALSO ADMITTED IN KY  
\*\*\* ONLY ADMITTED IN OH

Ms. Sharla Dillon  
Docket Room Manager  
Tennessee Regulatory Authority  
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Nashville, TN 37243-0505

*Via Hand Delivery*

filed electronically in docket office on 04/10/12  
Docket No. 12-00030

Re: Petition of Laurel Hills Condominiums Property Owners Association for a  
Certificate of Public Convenience and Necessity

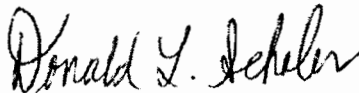
Dear Sharla:

I have enclosed an original and five copies of the Petition in the above styled case along with a check in the amount of \$25.00 which the appropriate filing fee.

This Petition and this cover letter are being filed electronically by electronic mail this same date. Please return the additional copy of the Petition stamp filed to me.

Thank you for your assistance.

Sincerely yours,



DONALD L. SCHOLLES

Enclosures

c: Michael McClung  
Robert Schwerer  
Melanie Davis



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

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

**DOCKET NO.** \_\_\_\_\_

**PETITION**

COMES NOW the Petitioner, Laurel Hills Condominiums Property Owners Association and petitions the Tennessee Regulatory Authority (the Authority) for a Certificate of Public Convenience and Necessity to operate a water distribution system within a development in Cumberland County, Tennessee, known as Renegade Mountain.

1. Laurel Hills Condominium Property Owners Association, Inc. (Petitioner or Laurel Hills) is a Tennessee nonprofit corporation which owns and operates a small water distribution system in Cumberland County, Tennessee within a development known as Renegade Mountain. Laurel Hills is the property owners association for the timeshare units of the Laurel Hills timeshare condominiums complex.

2. Laurel Hills acquired the water system on May 1, 2011. The warranty deed and bill of sale which conveyed the water system's real and personal property to Laurel Hills is attached to this Affidavit as Exhibit 1. Laurel Hills has been operating the water system since May 1, 2011.

3. Laurel Hills acquired the water system from Moy Toy, LLC which purchased the Renegade Mountain development on December 28, 2010. Moy Toy, LLC did not assume the operation of the water system after it purchased the Renegade Mountain development but

transferred the water system to Laurel Hills. When Laurel Hills acquired the water system, it understood that the persons served by the water system had been paying a flat rate of \$25.00 per month per residential unit for water service except for the Cumberland Point Condominium Association which paid a flat rate of \$20.00 per month for each resident unit in the Cumberland Point Condominiums complex.

4. Laurel Hills does not know how long the monthly flat rates of \$25.00 and \$20.00 per residential unit had been in effect or how these rates were developed. Laurel Hills understands that these flat monthly rates had been in effect for several years.

5. When Laurel Hills acquired the water system, the water system was out of compliance with several rules and regulations of the Tennessee Department of Environment and Conservation (TDEC) due to the failure of the prior owner to properly maintain and upgrade the water system. At that time TDEC had a pending case filed in the Davidson County Chancery Court seeking to enforce an order of the TDEC Commissioner issued in 2008 against the prior owner and operator of the system. Exhibit 2 to this Petition is a copy of the complaint filed by TDEC to enforce the Commissioner's Order.

6. After Laurel Hills acquired the water system, it began discussions with TDEC representatives about a plan of action to address the items set forth in the TDEC Commissioner's 2008 Order and to bring the water system into substantial compliance with its regulations for public water systems. Laurel Hills implemented the plan of action developed with TDEC. By January 1, 2012, Laurel Hills had substantially achieved this goal of compliance, and TDEC dismissed the pending enforcement action against the Renegade Mountain water system.

7. For water service beginning June 2011, Laurel Hills implemented a flat rate of \$86.40 per residential unit for monthly water service. Laurel Hills adopted this rate after

reviewing the anticipated monthly operating expenses of the water system, the cost of improvements needed in the system to comply with TDEC regulations and the debts of the water system. The water system has approximately 50 residential customers; however, service to one customer, Cumberland Point Condominiums Association, include 84 residential units in the Cumberland Point condominiums complex

8. Laurel Hills purchases water from Crab Orchard Utility District to serve its customers. At the time the Laurel Hills took over the water system, the water system's past-due account with Crab Orchard Utility District was almost \$20,000. Presently, Laurel Hills owes Crab Orchard Utility District \$14,455.98.

9. Revenue from water sales is Laurel Hills only source of income to operate the water system. Because Laurel Hills did not have sufficient revenue to meet its operating expenses, to pay its debts and to make the necessary improvements to its water system, it has borrowed money to pay for the water system improvements and for the implementation of new operating requirements mandated by TDEC

10. Most of the customers of Laurel Hills have not paid their bills for water service in full since June of 2011. Beginning in October and November of 2011, the majority of the customers of Laurel Hills stopped making any payments for water service to Laurel Hills. By the end of December of 2011, Laurel Hills had expended almost all of its funds to continue to operate the water system and had no revenue coming in from its customers to pay its expenses.

11. The water system operated by Laurel Hills is not metered. When the water system was constructed, no valves or other equipment was installed on the individual service lines connected to Laurel Hills water mains which would permit Laurel Hills to terminate water service to individual customers for nonpayment. Therefore, Laurel Hills sent a Memorandum to

its customers dated December 30, 2011, with the customers' January bills in which Laurel Hills advised its customers that unless payment was received for past-due bills, it would have no alternative except to suspend water service effective January 31, 2012, for lack of funds to operate the water system. A copy of the Memorandum is attached as Exhibit 3 to this Petition.

12. On February 3, 2012, six customers of Laurel Hills filed a lawsuit against Laurel Hills in the Chancery Court of Cumberland County seeking a declaration that Laurel Hills had abandoned the water system and seeking a temporary restraining order and temporary injunction to prohibit Laurel Hills from terminating water service to its customers for nonpayment. A copy of this Complaint is attached as Exhibit 4 to this Petition. A temporary restraining order was issued on February 3, 2012, a copy of which is attached as Exhibit 5 to this Petition.

13. After a hearing on February 14, 2012, the Chancellor Ronald Thurman entered an order dated February 28, 2012 granting a temporary injunction which prohibited Laurel Hills from terminating water service for 60 days to any customer who had paid one-half of the customer's outstanding balance on its account within 20 days after February 14, 2012 and who was a party to the lawsuit. A copy of Chancellor Thurman's order is attached as Exhibit 6 to this Petition.

14. In his February 28, 2012 Order, Chancellor Thurman ordered that Laurel Hills contact the Authority within 20 days after the temporary injunction hearing regarding the Authority's regulation of the Renegade Mountain water system. Counsel for Laurel Hills wrote a letter dated February 16, 2012 to the Authority's General Counsel to inform the Authority that this Petition would be filed. A copy of this letter is attached as Exhibit 7 to this Petition.

15. Laurel Hills understands that no previous owner of the Renegade Mountain water system had ever obtained a certificate of public convenience and necessity to operate the water

system from the Tennessee Public Service Commission or the Authority since the water system was constructed in the 1970s and 1980s. At the time Laurel Hills acquired the water system on May 1, 2011, it understood that its operation of the Renegade Mountain water system was not subject to regulation by the Authority because Laurel Hills was a Tennessee nonprofit corporation.

16. As a result of the enactment of Public Chapter 430 of the 2011 Tennessee Public Acts, it appears that Laurel Hills became a public utility as defined in T.C.A § 65-4-101 and became subject to regulation by the Authority on the effective date of Public Chapter 430, June 6, 2011.

17. The federal tax return for Laurel Hills for the 2011 calendar year is attached as Exhibit 8 to this Petition. A balance sheet for Laurel Hills which only includes its water system assets and liabilities has not prepared as of the date of the filing of this Petition.

18. Laurel Hills believes that the flat monthly rate of \$86.40 per residential unit is a just and reasonable rate. A proposed tariff for Laurel Hills is attached to this Petition as Exhibit 9. Laurel Hills believes that its cost of service may justify an even higher rate.

19. Laurel Hills has very little historical information and documentation on the Renegade Mountain water system.

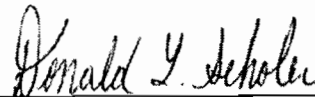
20. Because of the sizeable loss of the water system, Laurel Hills requests that the Authority permit it to continue charging the monthly \$86.40 rate per residential unit pending a final decision on this Petition to provide Laurel Hills with revenue to keep the water system operating. In the event the Authority approves a lower rate at the conclusion of this matter, the Authority may order a refund of the difference between this rate and the rate approved by the Authority with the terms and conditions for the refund established by the Authority.

WHEREFORE, PREMISES CONSIDERED, the Petitioner prays:

1. That the Authority issue a Certificate of Public Convenience and Necessity to operate the Renegade Mountain water system in Cumberland County;
2. That the Authority approve the tariff filed by the Petitioner with this Petition confirming the current flat rate monthly rate of \$86.40 per residential unit and approving the rules and regulations for service in this tariff; and
3. The Authority grant the Petitioner any other relief to which it is entitled.

Dated April 10, 2012.

Respectfully submitted,



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DONALD L. SCHOLES BPR # 10102  
BENJAMIN A. GASTEL BPR # 028699  
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*Attorneys for Petitioner*



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

**IN RE:** )  
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**PETITION OF LAUREL HILLS CONDOMINIUMS ) DOCKET NO. \_\_\_\_\_**  
**PROPERTY OWNERS ASSOCIATION FOR A )**  
**CERTIFICATE OF PUBLIC CONVENIENCE AND )**  
**NECESSITY )**

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**AFFIDAVIT OF TABATHA BLACKWELL**

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**STATE OF TENNESSEE**

**DAVIDSON COUNTY**

Tabatha Blackwell, being first duly sworn state as follows:

1. I, Tabatha Blackwell, am a Utilities Consultant for the Petitioner, the Tennessee Regulatory Authority ("TRA" or the "Authority").

2. I graduated from the University of Memphis Cecil C. Humphreys School of Law in 2007, with a Juris Doctor degree, and I am licensed to practice as an attorney in the state of Tennessee. I am a member of the National Association of Regulatory Commissioners Staff Subcommittees on Water and Consumer Affairs.

3. I have worked for four years with the TRA. My current position includes review and analysis of utility filings made with the TRA. I also serve as a policy and legal advisor to the TRA chairman.

4. Laurel Hills Condominiums Property Owners Association ("Laurel Hills") is a homeowners association in Cumberland County, Tennessee. Laurel Hills purchases treated

water from Crab Orchard Utility District ("Crab Orchard"), and sells it to property owners in Renegade Resort, whose homeowners association is called the Renegade Mountain Community Club (for purposes of this affidavit, all customers not in the Laurel Hills Condominiums will be referred to as "Renegade Mountain" customers).

5. Around February 1, 2012, TRA Staff, including myself, became aware through media reports and calls from Renegade Mountain customers that Laurel Hills had 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 the water turned back on for 60 days from February 14, 2012 for certain customers. The Chancellor further ordered that Laurel Hills should promptly contact the TRA to determine whether or not the water system is subject to oversight by the TRA. If so, the Chancellor ordered that the process for regulation must be commenced.

6. In a letter dated February 16, 2012, the attorney for Laurel Hills, Don Scholes, notified the TRA that he intended to file a petition with the TRA to request a certificate of public convenience and necessity ("CCN") for Laurel Hills to provide water service to the Renegade Mountain customers.

7. On April 10, 2012, Laurel Hills filed a *Petition* for a CCN. In its *Petition* Laurel Hills stated that "[a]s a result of the enactment of Public Chapter 430 of the 2011 Tennessee Public Acts, it appears that Laurel Hills became a public utility as defined in T.C.A. § 65-4-101 and became subject to regulation by the Authority on the effective date of Public Chapter 430, June 6, 2011."

8. On May 7, 2012, Laurel Hills filed a *Notice of Voluntary Dismissal and Withdrawal*. In its *Notice*, Laurel Hills stated 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 states that because “[Laurel Hills] will no longer be servicing members of the public and its water system will not be dedicated to public use...[Laurel Hills] will not require a Certificate of Public Convenience and Necessity from the Tennessee Regulatory Authority.” Laurel Hills attached a copy of its notice to its customers, which stated that “Laurel Hills encourages persons currently served by its water system to make every effort to find another water source no later than July 9, 2012.”

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

10. At the May 21, 2012 Authority Conference, Laurel Hills did not show up to answer the *Notice to Appear*. At that time the Authority appointed General Counsel or her designee as Hearing Officer in this matter, and authorized the Hearing Officer to make a determination whether to issue a Show Cause and, if a Show Cause was issued, to prepare this matter for hearing before the directors. Further, Investigative Staff was authorized to take any necessary measures, including 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.

11. On June 20, 2012, I, along with TRA counsel Shiva Bozarth, met with Laurel Hills' counsel, Don Scholes and Ben Gastel. At this meeting, Mr. Scholes reiterated Laurel Hills' position that Laurel Hills intends to terminate service to the Renegade Mountain customers, and, once these customers were disconnected, Laurel Hills would no longer be subject to TRA jurisdiction and regulation. Mr. Scholes stated that Laurel Hills had no desire to be a public utility, and therefore had no intention to resume the process to obtain a CCN.

12. By Laurel Hills' admission in its *Petition*, as well as by statements made by counsel, Laurel Hills has been subject to the TRA's regulatory jurisdiction since at least June 6, 2011, and is therefore required to conform to the TRA's rules and regulations. As set forth in the Authority's *Notice to Appear*, Laurel Hills appears to be in violation of several state statutes. Laurel Hills' refusal to be brought into voluntary compliance, as evidenced by its withdrawal of the *Petition* for a CCN, has triggered the Authority's need to act to bring them into compliance through a show cause proceeding.

13. I affirm that Laurel Hills has not paid any fees required by statute to the TRA.

14. I have been designated as Investigative Staff in this proceeding. Due to the rapid development of the circumstances, and the high probability that Laurel Hills will disconnect water service to the Renegade Mountain customers on July 9, 2012, the Authority has authorized me to proceed in a manner to maintain water service, including of injunctive relief in the Chancery Court for Cumberland County.

15. It is my belief based on the facts as set forth that the injunctive relief sought by the TRA is necessary and proper to avoid immediate and irreparable injury, loss or damage to citizens of the State of Tennessee.

16. I affirm that the statements contained in this affidavit are true and accurate based on my personal knowledge.

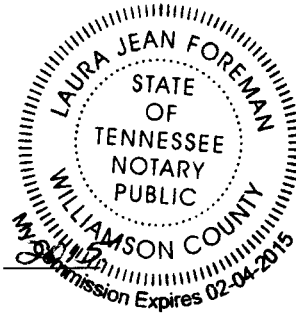
**FURTHER THE AFFIANT SAYETH NOT:**

Tabatha Blackwell  
Tabatha Blackwell  
Tennessee Regulatory Authority

Subscribed and sworn to me before this 10<sup>th</sup> day of July, 2012.

Laura Jean Foreman  
Notary Public

My Commission expires on the 04 day of 02,



**LAUREL HILLS CONDOMINIUMS  
PROPERTY OWNERS ASSOCIATION  
P.O. BOX 288  
CRAB ORCHARD, TN 37723**

**OCTOBER 31, 2011**

**OUR MONTHLY RATE OF \$86.40 HAS BEEN CONFIRMED BY A CPA FIRM WHO  
WORKS FOR OTHER TENNESSEE WATER UTILITIES.**

**PLEASE, IF YOU ASKED FOR A HARDSHIP ALLOWANCE WHILE WE WAITED  
FOR THIS INFORMATION YOU MUST "CATCH-UP" YOUR PAYMENTS BY  
NOVEMBER 30, 2011.**

**THIS POA OWNED WATER DISTRIBUTION DEPENDS ON NEIGHBORS WORKING  
RESPONSIBLY TO CONSERVE WATER AND PAY YOUR BILLS.**

**IT'S THE AVAILABILITY OF WATER WE PRESERVE UNTIL WE HAVE MORE  
SUBSCRIBERS.**

**THANK YOU.**

[laurelhillscondoass@gmail.com](mailto:laurelhillscondoass@gmail.com)

Laurel Hills Condominiums POA

P.O. Box 25  
Crossville, TN 38557

# Invoice

Date	Invoice #
11/1/2011	2282

Bill To
John Moore 848 Livingston Rd STE 101 #62 PMB Crossville, TN 38555-6719

Due Date
11/15/2011

Description	Qty	Rate	Amount
Monthly Water Fee		86.40	86.40
Total			\$86.40

Laurel Hills Condominiums POA

P.O. Box 25

Crossville, TN 38557

# Statement

DATE
11/1/2011

TO:
John Moore 848 Livingston Rd STE 101 #62 PMB Crossville, TN 38555-6719

		AMOUNT DUE		AMOUNT ENC.	
		\$302.40			
DATE	TRANSACTION			AMOUNT	BALANCE
04/30/2011	Balance forward				0.00
05/01/2011	INV #2030.			125.00	125.00
07/01/2011	INV #2079.			172.80	297.80
07/15/2011	PMT #9011823138.			-211.40	86.40
08/01/2011	INV #2124.			86.40	172.80
08/26/2011	PMT #9012365319.			-43.20	129.60
09/01/2011	INV #2168.			86.40	216.00
09/22/2011	PMT #9012870648.			-43.20	172.80
10/01/2011	INV #2234.			86.40	259.20
10/21/2011	PMT #9013357643.			-43.20	216.00
11/01/2011	INV #2282.			86.40	302.40
CURRENT		1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE
86.40		43.20	43.20	43.20	86.40
					\$302.40



**LAUREL HILLS CONDOMINIUMS  
PROPERTY OWNERS ASSOCIATION  
P.O. BOX 288  
CRAB ORCHARD, TN 37723**

**MEMORANDUM**

**DATE:** December 30, 2011

**TO:** Water Customers of Laurel Hills Condominiums Property Owners Association

**VIA:** Mailed with Monthly Water Bills and Posted On-Site

**RE:** Water Service Suspension

---

In June 2011, the Board of Directors of the Laurel Hills Condominiums Property Owners Association approved a monthly water rate of \$86.40. This water rate may be viewed by some as an increase from the subsidized rate the previous system owner was charging. However, in setting its rates, the Association is required to take into account its operating expenses and the costs associated with water system improvements being mandated by the Tennessee Department of Environment and Conservation.

The vast majority of the Association's water system customers have refused to pay their monthly bills for water service. As a result the Association is now unable to meet its operating expenses, including paying its water supplier, Crab Orchard Utility District. When the water system was installed, the prior owner of the water system did not install water meters to measure water service by connection and installed no mechanism which would permit the water system to discontinue the water service to individual customer connections for nonpayment of monthly water bills.

In an emergency meeting of the Association's Board of Directors on December 22, 2011, the Board concluded that it had no alternative except to suspend water service to all customers for the nonpayment of the Association's water bills by its water customers. **Please be advised that water service will be discontinued on January 31, 2011, unless Crab Orchard Utility District elects to terminate water service to the Association sooner for nonpayment.**

The Association's Board urges the Association's water customers to pay their outstanding accounts in full to avoid this water service suspension.

**POSTED AT: GUARD SHACK AND RENEGADE TIME SHARES LOCATED AT 17  
MOUNT LAUREL, CRAB ORCHARD, TN 37723.**



BRANSTETTER, STRANCH & JENNINGS, PLLC

ATTORNEYS AT LAW  
227 SECOND AVENUE NORTH  
FOURTH FLOOR

NASHVILLE, TENNESSEE 37201-1631  
TELEPHONE (615) 254-8801 ~ FACSIMILE (615) 250-3937

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R. JIAN JENNINGS\*  
JOE P. LENISKI, JR.  
DONALD L. SCHOLES  
MIKE STEWART  
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J. GERARD STRANCH, IV  
MICHAEL J. WALL

ASSOCIATES:  
KARLA M. CAMPBELL  
BEN GASTEL\*  
STACEY K. SKILLMAN \*\*

OF COUNSEL:  
ROBERT E. RICHARDSON, JR. \*\*\*

May 7, 2012

\* ALSO ADMITTED IN GA  
\*\* ALSO ADMITTED IN KY  
\*\*\* ONLY ADMITTED IN OH

Ms. Sharla Dillon  
Docket Room Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

*Via Hand Delivery*

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

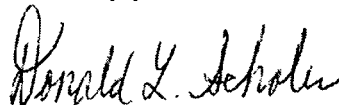
Dear Sharla:

I have enclosed for filing an original and five copies of the Notice of Voluntary Dismissal and Withdrawal in the above styled case

This Petition and this cover letter are being filed electronically by electronic mail this same date. Please return the additional copy of the Petition stamp filed to me.

Thank you for your assistance.

Sincerely yours,

  
DONALD L. SCHOLES

Enclosures

c: Michael McClung  
Robert Schwerer  
Melanie Davis



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

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

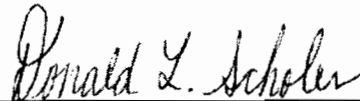
**DOCKET NO. 12-00030**

**NOTICE OF VOLUNTARY DISMISSAL AND WITHDRAWAL**

COMES NOW the Petitioner, Laurel Hills Condominiums Property Owners Association and files this Notice of Voluntary Dismissal and Withdrawal to withdraw the Petition filed in this docket. Attached as Exhibit 1 to this Notice is a copy of the Notice to Customers and Interested Persons which has been mailed to the Petitioner's customers, the Tennessee Department of Environment and Conservation and other interested persons to inform these persons that effective July 9, 2012, the Petitioner will cease providing water service with its system to any person other than itself.

Because the Petitioner will only be using its water system to serve itself, the Petitioner will no longer be serving members of the public and its water system will not be dedicated to public use. Therefore, Petitioner will not require a Certificate of Public Convenience and Necessity from the Tennessee Regulatory Authority.

Respectfully submitted,



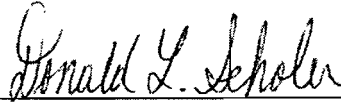
Dated May 7, 2012

DONALD L. SCHOLES BPR # 10102  
BENJAMIN A. GASTEL BPR # 028699  
**Branstetter, Stranch & Jennings, PLLC**  
227 Second Avenue North, 4th Floor  
Nashville, Tennessee 37201-1631  
(615) 254-8801; Fax: (615) 250-3937  
*Attorneys for Petitioner*

**CERTIFICATE OF SERVICE**

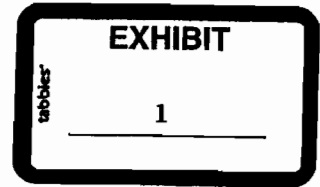
I hereby certify that on May 7, 2012, a true and exact copy of the foregoing Notice of Voluntary Dismissal and Withdrawal was served upon the following by electronic mail and by depositing a copy in the United States Mail, first-class postage prepaid:

Melanie Davis  
Kizer & Black Attorneys, PLLC  
329 Cates Street  
Maryville, TN 37801

A handwritten signature in cursive script, reading "Donald L. Scholes", written over a horizontal line.

Donald L. Scholes

**LAUREL HILLS CONDOMINIUMS  
PROPERTY OWNERS ASSOCIATION  
P.O. BOX 288  
CRAB ORCHARD, TN 37723**



**NOTICE TO CUSTOMERS AND INTERESTED PERSONS**

**DATE:** May 07, 2012

**TO:** Water Customers of Laurel Hills Condominiums Property Owners Association, Tennessee Department of Environment and All Interested Persons

**VIA:** Mailed with Monthly Water Bills and Posted On-Site

**RE:** Cessation of Water Service by Laurel Hills Condominiums Property Owners Association

---

Pursuant to T.C.A. § 68-221-711(9), Laurel Hills Condominiums Property Owners Association (Laurel Hills) hereby gives notice to its water customers, the Tennessee Department of Environment (TDEC) and other interested persons that effective July 09, 2012, Laurel Hills will no longer use its water system to provide water service to any person other than itself. Laurel Hills will continue to operate its water system to provide water service only to the Laurel Hills Time Shares.

Please be advised that Laurel Hills will be installing a valve box at each customer connection to its water distribution system. Water service will not be available during the installation of the valve box. The customer will need to have a plumber reconnect the customer's service line to the valve box after the valve box has been installed.

Because Laurel Hills will not be providing service to the public located on its existing water system, Laurel Hills will withdraw its pending Petition for a Certificate of Public Convenience and Necessity.

Laurel Hills encourages persons currently served by its water system to make every effort to find another water source no later than July 09, 2012.

**POSTED AT: GUARD SHACK AND RENEGADE TIME SHARES LOCATED  
AT 17 MOUNT LAUREL, CRAB ORCHARD, TN 37723.**

# TENNESSEE REGULATORY AUTHORITY



460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

## NOTICE TO APPEAR

**IN RE:** *Petition of Laurel Hills Condominiums Property Owners Association  
for a Certificate of Public Convenience and Necessity*

**DOCKET NO:** 12-00030

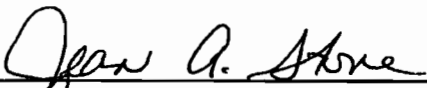
**DATE:** May 11, 2012

Laurel Hills Condominiums Property Owners Association ("Laurel Hills") shall appear before the Tennessee Regulatory Authority ("Authority") during the Authority Conference scheduled for **Monday, May 21, 2012 at 1:00 p.m. (central)** and show cause why the Authority should not proceed to convene a proceeding to impose civil penalties and sanctions 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.

The Authority Conference shall be held in the Hearing Room on the Ground Floor at 460 James Robertson Parkway, Nashville, Tennessee. This matter will be considered by the voting panel of Chairman Kenneth C. Hill, Director Sara Kyle and Director Mary W. Freeman. Any party is entitled to be represented by counsel.

Participants with disabilities who require special accommodations or alternate communications formats should contact the Tennessee Regulatory Authority ADA-EEO/AA Coordinator/Officer at 460 James Robertson Parkway, Nashville, Tennessee 37243-0505, 1-800-342-8359 or TDD (615) 741-3930, so that reasonable accommodations can be made.

### **FOR THE TENNESSEE REGULATORY AUTHORITY:**

  
Jean A. Stone, General Counsel

Original in Docket File No. 12-00030

c: Mr. Michael McClung, President, Laurel Hills Condominiums Property Owners Association, 17 Laurel Mountain Drive, Crab Orchard, TN 37723  
Mr. Donald L. Scholes, Esq.  
Ms. Melanie Davis, Esq.

Telephone (615) 741-2904, Toll-Free 1-800-342-8359, Facsimile (615) 741-8953  
[www.state.tn.us/tra](http://www.state.tn.us/tra)

BRANSTETTER, STRANCH & JENNINGS, PLLC

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OF COUNSEL:  
ROBERT E. RICHARDSON, JR.\*\*\*

\* ALSO ADMITTED IN GA  
\*\* ALSO ADMITTED IN KY  
\*\*\* ONLY ADMITTED IN OH

May 18, 2012

filed electronically in docket office on 05/18/12

Ms. Sharla Dillon  
Docket Room Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

*Via Hand Delivery*

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

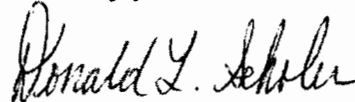
Dear Sharla:

I have enclosed an original and five copies of the Response to Notice to Appear in the  
above styled case.

This Response and this cover letter are being filed electronically by electronic mail this  
same date. Please return the additional copy of the Response stamp filed to me.

Thank you for your assistance.

Sincerely yours,



DONALD L. SCHOLES

Enclosures

c: Jean Stone  
Vance Broemel  
Michael McClung  
Robert Schwerer  
Melanie Davis



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

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

**DOCKET NO. 12-00030**

**RESPONSE TO NOTICE TO APPEAR**

On May 7, 2012, Laurel Hills Condominiums Property Owners Association (Laurel Hills) filed a Notice of Voluntary Dismissal and Withdrawal to withdraw the Petition filed in this docket. Laurel Hills filed this Notice because it has determined that it will no longer use its water system to provide water service to any person other than itself. Because Laurel Hills will no longer be serving members of the public, its water system will not be dedicated to public use. Therefore, Laurel Hills will not be a public utility as defined by T.C.A. § 65-4-101(6) and will not need a certificate of public convenience and necessity to serve the public. The attached Notice to Appear was issued to Laurel Hills shortly thereafter. Without waiving any right to object to the Authority's alleged jurisdiction over Laurel Hills, it files this Response to the Notice to Appear.

- 1. Effective July 9, 2012, Laurel Hills will no longer be a public utility as defined by T.C.A. 65-4-101(6).**

Pursuant to T.C.A. § 68-221-711(9), Laurel Hills has advised its customers and the Tennessee Department of Environment and Conservation (TDEC) that it will no longer use its water system to serve anyone but itself and will cease providing water service to other persons connected to its water system. Laurel Hills asserts that when it begins providing water service only to itself, it will no longer be a public utility as defined by T.C.A. § 65-4-101(6) because it



will no longer be serving members of the public and will not be holding itself out as serving the public; therefore, its water system will not be dedicated to a public use. To be a public utility subject to the Authority's regulation, an organization must hold itself out to serve all members of the public and not just itself or selected individuals. While no Tennessee case has directly addressed this issue in construing T.C.A. § 65-4-101(6), courts in other states have consistently reached this same conclusion in deciding whether an organization or group is a "public utility."

*In Lockwood Water Users Ass'n v. Anderson*, 168 Mont. 303, 309, 542 P.2d 1212, 1220 (1975), the Montana Supreme Court found that:

[whether] an organization or group is in fact a public utility in this respect is the factor of serving or willingness to serve the entire public within the area in which the facilities of the organization are located. If it confines its service to its own stockholders or to members of its own group, and does not serve or hold itself out as willing to serve the public, it is not ordinarily considered a public utility.

Laurel Hills has decided to only provide water to itself and will not serve or hold itself out to serve members of the public. *See Coastal States Gas Transmission Company, Inc. v. Alabama Public Service Commission, et al.*, 524 So. 2d 357, 360-62 (Ala. 1988); *Johnson City v. Milligan Utility District*, 38 Tenn. App. 520, 531, 276 S.W. 2d 748, 753 (1954).

Laurel Hills acquired the Renegade Mountain water system on May 1, 2011, and the water system was serving approximately 50 water connections at that time. Laurel Hills and the property owners in the Renegade Mountain development never entered into any contract in which Laurel Hills agreed to or obligated itself to supply potable drinking water to the property owners. Permitting these property owners to continue to be connected to its water system did not clothe Laurel Hills with any permanent status as a "public utility." To find otherwise would be an unconstitutional taking of Laurel Hills' property. In *Lockwood Water Users Ass'n*, the Montana Supreme Court correctly stated:

No one may successfully contend that it is competent for the Legislature to regulate and control in such respect a mere private business or to declare a private business to be public service or a public utility. In other words, the state may not, by mere legislative fiat or edict, by regulating orders of a commission, convert mere private contracts or a mere private business into a public utility or make its owner a common carrier. [Citing cases] So, if the business or concern is not public service, where the public has not a legal right to the use of it, where the business or operation is not open to an indefinite public, it is not subject to the jurisdiction or regulation of the commission."

168 Mont. At 309, 542 P.2d at 1220.

Laurel Hills is a private business which was not created for the purpose of providing water services to the public. Therefore, neither the Tennessee legislature nor the Authority can declare that Laurel Hills, a private business, to be a public utility unless it holds itself out to provide service to all members of the public. Since Laurel Hills will not be a public utility after July 9, 2012, the withdrawal of its Petition in this docket was an appropriate course of action.

**2. The Renegade Mountain water system operated by Laurel Hills is not financially feasible to operate as a public utility.**

When Laurel Hills acquired the Renegade Mountain water system, it acquired the water system to insure that the Laurel Hills time shares would have a continuing water supply. At the time Laurel Hills acquired the water system, the water system had approximately 50 connections. One of these connections was the Cumberland Point Condominium Association which is responsible for providing water service to the 84 units in the Cumberland Point Condominium complex. Laurel Hills has spent substantial funds in its efforts to bring the water system into compliance with the water quality regulations of the Tennessee Department of Environment and Conservation for a public water system. When TDEC performed its Sanitary Survey of the water system on October 19, 2011, the water system received an excellent score of 99 (out of 100 possible points).

Currently, the water system does not have meters in place capable of measuring the water usage of each connection. For many years the single family homes on the system paid a flat rate of \$25.00 per month for water service, and the Cumberland Point Condominiums paid a flat rate of \$20.00 per month for each condominium unit. Each single family home and each condominium unit pays the same flat rate regardless of usage. Prior to Laurel Hills purchasing the water system, no ongoing repair, maintenance and improvement to the water system had been in place for many years.

While the water system has about 50 connections, less than 10 of the single family homes on the system in the Renegade Mountain development are occupied full time. Currently, less than 25 of the units in the Cumberland Point Condominiums have full time residents. Therefore, its water system has a very small number of customers who can share the costs to operate and maintain the water system. Because the majority of the single family home and condominium units are not occupied full time, the cost per thousand gallons to operate and maintain the water system is very high.

When a water system has at least 25 connections, the water system is a public water system and is subject to all of the TDEC rules and regulations for public water systems and compliance with these regulations is mandatory. This compliance cost money which must be paid by the users of the public water system. The operation of a public water system under the jurisdiction of the Authority requires the ongoing expenditure of funds to meet all of the Authority's ongoing regulatory and filing requirements.

Despite the improvements made so far to the water system, the persons served by the system continue to assert that the water system is out of compliance with TDEC regulations and now the Authority's rules and regulations. Full compliance with the regulations of TDEC and

the Authority will substantially increase the water system's costs to serve over and above what the actual costs have been to operate the system in the past. In addition, the water system's customers who have sought to intervene in this case have requested that Laurel Hills be denied a certificate to operate the water system because it does not have the financial, managerial and technical expertise to operate a public water utility.

Laurel Hills is a Tennessee nonprofit corporation which was originally created to own, operate and maintain the common areas and facilities of the Laurel Hills time shares, and it has no ability to borrow funds to operate the water system which is not financially feasible.. Laurel Hills' experience over the last few months in operating the public water system, the extremely small customer base and usage of the present system and the continuing costs to comply with TDEC and the Authority's regulations have convinced it that the operation of the Renegade Mountain water system as a traditional water public utility is not financially feasible. Therefore, Laurel Hills concludes that it has no alternative other than to give the requisite notice to its customers and TDEC that it will no longer be providing service to the public effective July 9, 2012, and will only be providing water service to itself after that date.

**3. Laurel Hills has no funds budgeted to defend itself in a proceeding to impose civil penalties against it for its failure to operate a water system without a certificate of public convenience and necessity from the Authority since May 1, 2011.**

Since Laurel Hills acquired the water system in May of 2011, it has incurred substantial legal costs and other costs in working with and negotiating with TDEC to resolve an enforcement action against the prior owner and operator of the Renegade Mountain water system which was pending when Laurel Hills acquired the water system. Laurel Hills paid a civil penalty to TDEC in the amount of \$11,000 to resolve this pending enforcement action against the prior owner and operator. Because the prior owners and operators of the Renegade Mountain

water system had neglected the system for many years, Laurel Hills spent substantial funds to bring the water system into compliance with TDEC rules and regulations.

Laurel Hills has been sued by the users of the water system and has paid substantial legal expenses to defend against that lawsuit. Since the temporary injunction expired in this pending lawsuit, the majority of the water system's customers have paid nothing for water service for April and May of this year.

The Authority has filed and served a Notice to Appear on Laurel Hills threatening to institute a proceeding to impose civil penalties against it for operating a water system without a certificate, charging rates not approved by the Authority, not paying the Authority's inspection fee, not filing a tariff and not providing service. The Consumer Advocate has requested a meeting with Laurel Hills.

Laurel Hills simply does not have the funds budgeted to defend itself against the allegations set forth in the Notice to Appear. In the event the Authority finds that a proceeding should be instituted to determine and assess the amount of civil penalties which should be imposed, Laurel Hills will incur substantial legal, travel and other related expenses to defend itself in such a proceeding. Laurel Hills has no funds budgeted to defend itself in any civil penalty proceeding initiated by the Authority. Therefore, Laurel Hills will not be able to appear before the Authority on Monday, May 21, 2012, to defend against the allegations made against it. For the reasons set forth below, Laurel Hills does not believe any civil penalties are warranted and regrets that its financial condition will prohibit it from adequately defending itself.

- 4. The alleged statutory violations do not justify the initiation of a proceeding to impose civil penalties against Laurel Hills or the assessment of civil penalties against it for its actions in providing water service with the Renegade Mountain water system.**

The statutory violations cited in the Notice to Appear all arise from the Authority's position that Laurel Hills should have known that it was a public utility subject to its regulation and should have obtained a certificate of public convenience and necessity to operate as a public utility. To the extent Laurel Hills should have known it was a public utility either upon the acquisition of the water system on May 1, 2011 or upon the effective date of Public Chapter 430 of the 2011 Tennessee Public Acts, June 6, 2011, its actions to continue supplying water to the persons connected to its system were not taken in bad faith and do not justify the imposition of a civil penalty.

No previous owner or operator of the Renegade Mountain water system has ever obtained a certificate of public and necessity to operate a public water utility from either the Authority or its predecessor, the Tennessee Public Service Commission. On May 1, 2011, Laurel Hills believed that it was a nonutility under T.C.A. § 65-4-101(6) as a nonprofit corporation and as a property owners association. The water rate which Laurel Hills began charging effective June 1, 2011 was adopted before June 6, 2012, the effective date of Public Chapter 430 of the 2011 Tennessee Public Acts which appears to have made it a public utility under T.C.A. § 65-4-101(6).

Laurel Hills has never operated its water system pursuant to a certificate issued by the Authority; therefore, finding Laurel Hills in violation of statutes and regulations applicable to a regulated public utility which has applied for and obtained a certificate seems unreasonable.

Although Laurel Hills met with TDEC officials in June of 2011 and continued to have ongoing communications with it about the operations of the water system, TDEC never informed Laurel Hills that it needed a certificate from the Authority to operate a public water system. After the effective date of Public Chapter 430 of the 2011 Tennessee Public Acts, the Authority

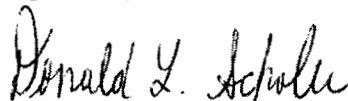
never contacted or notified the Board of Directors of Laurel Hills that it needed to obtain a certificate of public convenience and necessity to operate its water system. Laurel Hills has learned that there are several other nonprofit property owner associations and cooperatives in Tennessee which have operated public water systems in Tennessee for many years without a certificate to provide water service. To the best of its knowledge, Laurel Hills is not aware of any enforcement actions being taken by the Authority against these nonprofit associations and cooperatives for their failure to operate a public water system without a certificate from the Authority.

#### **Conclusion**

Laurel Hills has given its customers and TDEC the requisite notice required T.C.A. § 68-221-711(9) that it will cease providing water service to the public effective July 9, 2012. To the extent Laurel Hills has operated without a certificate, its actions have not been in bad faith. Laurel Hills believes it has no other choice except to stop providing water service to the public as a community water system and regrets that it has no funds budgeted to defend its against the claims and charges made against it in the Notice to Appear.

Dated May 18, 2012

Respectfully submitted,



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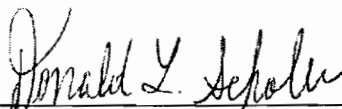
**CERTIFICATE OF SERVICE**

I hereby certify that on May 18, 2012, a true and exact copy of the foregoing Response to Notice to Appear was served upon the following by electronic mail and by depositing a copy in the United States Mail, first-class postage prepaid:

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