

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



IN RE:

**SHOW CAUSE PROCEEDING AGAINST
LAUREL HILLS CONDOMINIUMS
PROPERTY OWNERS ASSOCIATION FOR
ALLEGED VIOLATIONS OF TENN. CODE
ANN. 65-4-201, 65-4-301(A), 65-5-102,
65-4-101 AND/OR 65-4-103, AND 65-4-115**

**DOCKET NO.
12-00077**

**APPEAL TO THE AUTHORITY TO GRANT THE PETITION TO INTERVENE
OF THE CONSUMER ADVOCATE AND PROTECTION DIVISION
OF THE OFFICE OF THE TENNESSEE ATTORNEY GENERAL**

The Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”) respectfully requests that the presiding panel of the Tennessee Regulatory Authority (“TRA” or “Authority”) grant the Consumer Advocate’s Petition to Intervene. Pursuant to Tenn. Comp. R & Regs. 1220-1-2-.06 and the Hearing Officer’s March 11, 2015, order granting interlocutory review, the Consumer Advocate requests review of the Hearing Officer’s February 4, 2015, order denying its Petition to Intervene.

On July 17, 2012, the Hearing Officer for the TRA issued an order in Docket No. 12-00030 requiring that Laurel Hills Condominiums Property Owners Association (“Laurel Hills”) appear and show cause why a cease and desist order should not be issued and why Laurel Hills should not be subject to civil penalties (“Show Cause Order”). Among the allegations against Laurel Hills were operation of a public utility without a certificate of need and necessity (“CCN”), charging rates to customers that were not authorized by the Authority, and withholding or refusing to provide service to customers. Show Cause Order at 1-2. The Show Cause Order was issued on

July 17, 2012, and a new docket involving Laurel Hills, No. 12-00077 was opened.¹ The Show Cause Order was simultaneously filed in the new docket, which is the matter currently before the Authority.

In Docket No. 12-00030, the matter leading to the present docket, Laurel Hills petitioned the Authority for a CCN to operate a water distribution system within a development known as Renegade Mountain, located in Cumberland County Tennessee. The TRA approved the Consumer Advocate's Petition to Intervene in Docket No. 12-00030. The Consumer Advocate actively participated as a party in Docket No. 12-00030, along with the TRA Party Staff ("Party Staff"). Based on the evidence developed in Docket No. 12-00030, the presiding panel of the Authority denied Laurel Hills' Petition for a CCN, and the Hearing Officer later issued the Show Cause Order. Laurel Hills appealed the Authority's denial of a CCN to the Tennessee Court of Appeals. On August 7, 2012, Laurel Hills and Party Staff agreed to hold this show cause proceeding, Docket 12-00077, in abeyance pending the outcome of Docket 12-00030 on appeal. On April 14, 2014, the Tennessee Court of Appeals affirmed the Authority's denial of a CCN for Laurel Hills in Docket 12-00030.

On November 4, 2014, the Authority granted a motion to once again initiate proceedings in this Docket 12-00077. On December 8, 2014, the Consumer Advocate filed a Petition to Intervene in this docket, pursuant to Tenn. Code Ann. § 65-4-118 (Exhibit A-1, attached). Party Staff filed an objection to the Consumer Advocate's Petition to Intervene on December 30, 2014 (Exhibit A-2), and Respondent Laurel Hills filed a brief in opposition to the Consumer Advocate's

¹ There appears to be no record of an official order of the Authority or the Hearing Officer opening the new docket, Docket No. 12-00077. The date cited above, July 17, 2012, is the date reflected on the TRA website as the date the Show Cause Order was filed in Docket 12-00077. According to the website, the Show Cause Order was the first document filed in Docket No. 12-00077, available at <http://www.state.tn.us/tra/dockets/1200077.htm>, accessed April 7, 2015.

Petition to Intervene on December 31, 2014 (Exhibit A-3). The Hearing Officer granted the Consumer Advocate's request to file replies to both Party Staff's objection and Respondent's opposition, which the Consumer Advocate filed on January 22, 2015 (Exhibits A-4, A-5). On February 4, 2015, the Hearing Officer issued its Order Denying Consumer Advocate's Petition to Intervene (Exhibit B). On February 26, 2015, the Consumer Advocate requested interlocutory review by the Authority of the Hearing Officer's Order pursuant to Tenn. Comp. R. & Regs. 1220-1-2.06(6). (Exhibit C.) The Hearing Officer granted this request on March 11, 2015 (Exhibit D).

The Consumer Advocate requests that the panel of the Authority grant the Consumer Advocate's Petition to Intervene. In support of this request, the Consumer Advocate incorporates by reference its Petition to Intervene and its replies to Party Staff's objection and Respondent's opposition. As discussed in those filings, the Consumer Advocate has the duty and authority to represent the interests of Tennessee consumers of public utility services, Tenn. Code Ann. § 65-4-118, and this docket implicates the interests of consumers. The Consumer Advocate, with the permission of the Attorney General and Reporter, is fully authorized to "participate or intervene as a party in any matter or proceeding before the [A]uthority or any other administrative, legislative, or judicial body" in accordance with the UAPA and Authority rules. *Id.* § 65-4-118(b)(1).

In ruling on the Consumer Advocate's Petition to Intervene, the Hearing Officer concluded that the Consumer Advocate's intervention would impair the interests of justice and the orderly and prompt conduct of this proceeding. (Exhibit B at 12.) However, as the Consumer Advocate stated in replying to the oppositions of its intervention, and affirmed in its request for interlocutory review, the Consumer Advocate's participation will not delay this docket in any way because the Consumer Advocate does not intend to file any discovery requests and will comply with all

deadlines and procedural schedules issued by the Authority. Further, the Consumer Advocate's enabling statute does not place any limitations on the Consumer Advocate's participation.

The Consumer Advocate asks that this matter be considered during the regularly scheduled Director's Conference in April 2015 because this docket is currently pending and, pursuant to the procedural schedule issued by the Hearing Officer on February 25, 2015, is set for hearing at the regularly scheduled Authority conference in June. The Petition to Intervene of the Consumer Advocate should be granted.

Respectfully submitted,



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Rachel.Newton@ag.tn.gov

DATE: April 9, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via U.S.

Mail or electronic mail upon:

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Branstetter, Stranch, & Jennings
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Fourth Floor
Nashville, TN 37201
Attorney for Laurel Hills Property Condominium Owners Association

Jean A. Stone, Esq.
General Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Shiva Bozarth, Esq.
Chief of Compliance
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

This the 9 day of April, 2015.



Rachel A. Newton

Exhibit

A-1

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE

IN RE:)
)
SHOW CAUSE PROCEEDING AGAINST)
LAUREL HILLS CONDOMINIUMS PROPERTY)
OWNERS ASSOCIATION FOR ALLEGED) DOCKET NO. 12-00077
VIOLATIONS OF TENN. CODE ANN 65-4-201,)
65-4-301(A), 65-5-102, 65-4-101 AND/OR 65-4-103,)
AND 65-4-115)

PETITION TO INTERVENE

Herbert H. Slatery III, Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118, respectfully petitions the Tennessee Regulatory Authority ("TRA" or "Authority") to grant the Consumer Advocate's intervention into this proceeding because consumers' interests, rights, duties or privileges may be determined or affected by the proceeding. For cause, Petitioner would show as follows:

1. The Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118 to represent the interests of Tennessee consumers of public utilities services by initiating and intervening as a party in any matter or proceeding before the Authority in accordance with the Uniform Administrative Procedures Act ("UAPA"), Tenn. Code Ann. § 4-5-101 *et seq.*, and Authority rules.

2. Laurel Hills Condominium Property Owners Association, Inc. ("Laurel Hills") owns and operates a small water distribution system in Cumberland County,

Tennessee within the development known as Renegade Mountain. Laurel Hills is the property owners association for the timeshare units of the Laurel Hills timeshare condominium complex.

3. Tenn. Code Ann. § 4-5-102(3) of the UAPA provides that:

“Contested case” means a proceeding, including a declaratory proceeding, in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing.

4. The Consumer Advocate maintains that the proceeding in this Docket No. 12-00077 is a contested case.

5. The Consumer Advocate further maintains that consumers have an interest in this proceeding.

6. Tenn. Code Ann. § 4-5-310(a) (“Interventions”) of the UAPA provides as follows:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

- (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
- (2) The petition states facts demonstrating that the petitioner’s legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
- (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

7. The Consumer Advocate maintains that it has met the three requirements of Tenn. Code Ann. § 4-5-310(a) because (1) the Petition is timely; (2) the Petitioner's "rights, duties, privileges, immunities or other legal interest may be determined" and the Petitioner also qualifies as an Intervenor under Tenn. Code Ann. § 64-5-118; and (3) the "interests of justice and the prompt conduct of the proceedings shall not be impaired".

8. On April 10, 2012, Laurel Hills filed the Petition in Docket No. 12-00030 asking that the TRA grant it a Certificate of Public Convenience and Necessity ("CCN") to operate its water distribution system.

9. The TRA denied Laurel Hills' Petition for a CCN in Docket No. 12-00030. In addition, the TRA opened a new docket, Docket No. 12-00077, and issued an *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*. ("Show Cause Docket"), July 17, 2012.

10. In the Order opening the Show Cause Docket, the TRA ordered 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 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.

Show Cause Order at 1.

11. These alleged violations of laws directly affect the interests and rights of customers of Laurel Hills, particularly charging unauthorized rates and withholding service.

12. The TRA Party Staff may enter a settlement agreement with Laurel Hills in this proceeding. If such a settlement is adverse to consumers' interests and if the Consumer Advocate is not allowed to intervene as a party, its ability to contest such an adverse settlement agreement would be impaired.

13. Laurel Hills appealed the TRA's decision to deny its request for a CCN to the Tennessee Court of Appeals, Appeals Docket No. M2013-01392-COA-12-CV. On April 14, 2014, the Court of Appeals denied Laurel Hills appeal.

14. Laurel Hills then filed a Rule 11 Application for Permission to Appeal to the Tennessee Supreme Court. The Application was denied October 15, 2014.

15. Subsequent to the denial of the Application for Permission to Appeal, the TRA Party Staff filed a Renewed Motion to Initiate Proceedings in the Show Cause Docket, October 21, 2014.

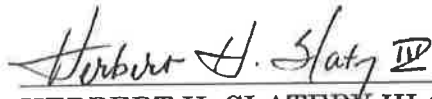
16. At a status conference before the Hearing Officer in the Show Cause Docket on November 20, 2014, a hearing date of January 15, 2014 was set.

17. If granted intervention, the Consumer Advocate will adhere to the procedural schedule. Furthermore, the Consumer Advocate does not intend to file any discovery requests.

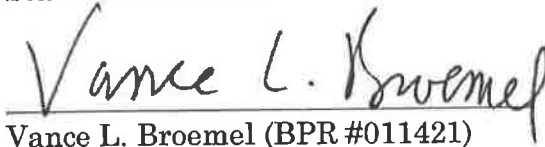
18. Only by participating in this proceeding can the Consumer Advocate work adequately to protect the interests of consumers.

WHEREFORE, Petitioner respectfully asks the Authority to grant the Petition to Intervene.

RESPECTFULLY SUBMITTED,



HERBERT H. SLATTERY III (BPR #09077)
Attorney General and Reporter
State of Tennessee



Vance L. Broemel (BPR #011421)
Assistant Attorney General
Consumer Advocate and Protection Division
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Dated: December 8, 2014

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition to Intervene was served via U.S. Mail or electronic mail upon:

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Melanie Davis, Esq.
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Shiva Bozarth, Chief of Compliance
Tennessee Regulatory Authority
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Nashville, TN 37243

Jean Stone, General Counsel
Tennessee Regulatory Authority
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Nashville, TN 37243

This the 8th day of December 2014.


VANCE L. BROEMEL

Exhibit

A-2

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

IN RE
12-00030
T. ROOM

PETITION TO SHOW CAUSE WHY A CEASE AND
DESIST ORDER AND CIVIL PENALTIES &
SANCTIONS SHOULD NOT BE IMPOSED
AGAINST LAUREL HILLS CONDOMINIUM
PROPERTY OWNERS ASSOCIATION

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DOCKET NO. 12-00077

OBJECTION TO INTERVENTION REQUESTS

Comes now Tennessee Regulatory Authority ("TRA" or "Authority") Staff acting as a Party ("Party Staff") appointed in Docket No. 12-00030 to prosecute this Show Cause proceeding against Laurel Hills Property Owner's Association ("Laurel Hills") for violations of statutes and regulations under the jurisdiction of the Authority to oppose the intervention of the Consumer Advocate and Protection Division of the Office of the Attorney General ("Advocate"). In support of this objection Party Staff would show as follows:

Who is Entitled to Represent Parties
in a Show Cause Proceeding

1. Party Staff asserts that this case is nothing more or less than an enforcement action against Laurel Hills for violations of the law.
2. The only parties that are entitled under the law to participate in a Show Cause proceeding are Party Staff appointed by the TRA and the respondent utility. The statute allows the Authority "to issue orders on its own motion citing persons under its jurisdiction to appear before it and

show cause why the authority should not take such action as the authority shall indicate in its show cause order....”¹

3. The Show cause statute does not contemplate third party intervention when the only issue is whether there has been a violation of the law.
4. The TRA is authorized to exercise “practically plenary authority over the utilities within its jurisdiction.”² This broad grant of authority empowers the TRA to conduct an enforcement action relying upon counsel employed by the Authority for that purpose.
5. It is the Authority that is responsible for ensuring the public good. The mission of the Authority is “to promote the public interest by balancing the interests of utility consumers and providers....”³
6. An enforcement action is the Authority fulfilling its role of enforcing the law for the public good.

Travel of the Case

7. On July 7, 2012, the Authority issued an Order requiring Laurel Hills to show cause why a cease and desist order, civil penalties, and other sanctions should not be levied against them for violations of state law.⁴
8. On August 8, 2012, the parties entered into an Agreed Order to hold the Show Cause proceeding in abeyance pending the outcome of Laurel Hills’ appeal of the Authority’s decision in TRA Docket No. 12-00030.⁵
9. On October 21, 2014, Party Staff filed a motion to reinstate the Show Cause proceeding as Laurel Hills’ had exhausted their appeals of TRA Docket No. 12-00030.⁶

¹ Tenn. Code Ann. §65-2-106

² *Tenn. Cable Television Assoc. v. Tenn. Public Service Comm.* 844 S.W.2d 151, 159 (Tenn. Ct. App., 1992).

³ Tennessee Regulatory Authority Mission Statement

⁴ *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*, July 7, 2012.

⁵ *Agreed Order*, August 8, 2012

⁶ *Renewed Motion to Initiate Proceedings*, October 22, 2014.

10. On December 8, 2014, the Advocate filed a Petition to Intervene (“Petition”) in this Show Cause proceeding.⁷

The petition for Intervention is
Inadequate to Allow Intervention

11. The Advocate’s Petition is devoid of any facts that would create a basis for intervention.
12. The Advocate claims that the “consumers have an interest in this proceeding” without any explanation about what facts lead them to this conclusion.⁸ Later the Advocate argues that the interests and rights of customers are at issue in this case.⁹ However, again there is no explanation about what consumer rights or interests are at issue.
13. The reason the Advocate is silent regarding the interests they seek to protect is because there are none. This is simply an enforcement action against the company for violations of the law.
14. The Advocate raises the specter of a Settlement Agreement that could possibly affect in some unnamed way the interests of the consumers. While Party Staff cannot imagine for the Advocate what consumer interests might be harmed in this theoretical settlement that require protection. Party Staff can state unequivocally that this not the appropriate time for an intervention solely on speculative grounds. If and when a Settlement Agreement is filed then the Advocate can seek intervention. Perhaps in that hypothetical future the Advocate will even be able to identify the basis for such an intervention.
15. The Advocate here takes the position that it is entitled to intervene in any case before the Authority on only its word that some consumer some where might be affected by the outcome of the case whatever that outcome might be.


In conclusion the Advocate has not established any basis upon which they can rightfully be allowed to intervene in this Show Cause proceeding.

⁷ *Petition to Intervene*

⁸ *Petition paragraph 5.*

⁹ *Petition paragraph 11.*

Respectfully Submitted,


Shiva K. Bozarth, BPR No.22685
Chief, Compliance Division
Tennessee Regulatory Authority
500 Deaderick Street
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

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

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This the 30th day of December, 2014.


Shiva K. Bozarth

Exhibit A-3

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

December 31, 2014

* ALSO ADMITTED IN GA
** ONLY ADMITTED IN OH

Chairman, Tennessee Regulatory Authority
c/o Sharla Dillon, Dockets and Records Manager
502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243

via Email and US Mail

Re: Laurel Hills Condominiums Property Owners' Association v. Tennessee
Regulatory Authority
Docket No. 12-00077


Dear Sharla:

I have enclosed an original and five copies of the Respondent's Opposition To The
Consumer Advocate Divisions' Motion To Intervene.

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

Thank you for your assistance.

Sincerely yours,



BENJAMIN A. GASTEL

Enclosure

c: Shiva Bozarth

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

In Re:

SHOW CAUSE PROCEEDING AGAINST
LAUREL HILLS CONDOMINIUMS
PROPERTY OWNERS ASSOCIATION FOR
ALLEGED VIOLATIONS OF TENN. CODE
ANN. 65-4-201, 65-4-301(A), 65-5-102, 65-4-
101 AND/OR 65-4-103 AND 65-4-115

Docket No. 12-00077

**RESPONDENT'S OPPOSITION TO THE CONSUMER ADVOCATE DIVISIONS'
MOTION TO INTERVENE**

On December 8, 2014, the Attorney General's Consumer Advocate Division (the "CAD") filed a motion to intervene in the above-captioned show cause proceeding (the "Proceeding"). Respondent Laurel Hills Condominiums Property Owners' Association ("Laurel Hills") hereby files this opposition to the two motions.

The CAD seeks intervention in this case as a result of unidentified interests that customers have in the Proceeding. This Proceeding strictly entails whether Laurel Hills purportedly violated state law and has no impact on any customers of Laurel Hills.¹

Tenn. Code Ann. § 65-2-106 states the following:

The [Tennessee Regulatory Authority] is empowered and authorized in the exercise of the powers and jurisdiction conferred upon it by law to issue orders on its own motion citing persons under its jurisdiction to appear before it and show cause why the authority should not take such action as the authority shall indicate in its show cause order appears justified by preliminary investigation made by the authority under the powers conferred upon it by law. All such show cause orders shall fully and specifically state the grounds and bases thereof, and the respondents named in the orders shall be given an opportunity to fully reply thereto.

¹ Certain customer intervenors also filed motions to intervene and Laurel Hills opposed those interventions on substantially the same grounds as those asserted here.

This Proceeding is initiated under this code section and on its very terms, this Proceeding is brought on the Tennessee Regulatory Authority's (the "TRAs") own motion and only one party is contemplated: the Respondent. The case is litigated based on the finding of the preliminary investigation made by the TRA. *Id.* The TRA then functionally acts as a prosecutor of this civil enforcement proceeding and no other entity can assume that role.

This is consistent with Tennessee law on similar enforcement actions brought by other agencies. For example, in *State v. Brown and Williamson Tobacco Corp.*, 18 S.W.3d 186 (Tenn. 2000), the Supreme Court held that where the State brings suit in its official capacity as sovereign to enforce state law, third parties "do not have a substantial legal interest in the State's suit entitling them to intervene." *Id.* at 92.

Here, the TRA is not seeking to prosecute any other entity other than Laurel Hills for alleged violations of the state law. The TRA seeks to impose a civil penalty on Laurel Hills for purported violations of state law and enjoin it from continuing such purported violations. The case against Laurel Hills necessarily rises or falls based on the preliminary investigation undertaken by the TRA and Respondent must be given a full opportunity to defend the action. Given this dynamic and the issues in play it is simply unclear what role the CAD seeks to assume and they do not attempt whatsoever to define such a role. In fact they cite to no statute, law, or even fact that would justify their intervention in this Proceeding.

Put simply, the CAD have no interest in this Proceeding and have failed to carry their burden of demonstrating an interest. Including them in this proceeding would only add to the cost and expense of this Proceeding without any appreciable benefit gained by their inclusion. The Motion to Intervene should be denied.

Respectfully submitted this 31st day of December, 2014.



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Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served on the following by U. S. Mail, postage prepaid:

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Nashville, TN 37243-0500

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

This the 31st day of December, 2014.



Benjamin A. Gastel

Exhibit

A-4

IN RE:

DOCKET NO.
12-00077

Comes now the Consumer Advocate and Protection Division of the Tennessee Attorney General's Office ("Consumer Advocate") and files this reply to the Objection of the Party Staff of the Tennessee Regulatory Authority ("TRA" or "Authority") to the Consumer Advocate's Petition to Intervene in this matter. In support of its Petition to Intervene and in response to the Party Staff's Objection to Intervention Requests ("Objection"), the Consumer Advocate submits the following:

- The Consumer Advocate maintains that consumers have an interest in this proceeding and that it has properly given notice to the Authority as to why Consumer Advocate intervention is necessary. In its Petition to Intervene, the Consumer Advocate noted that the alleged violations of the law by Laurel Hills Condominium

Property Owners Association (“Laurel Hills”) “directly affect the interests and rights of customers of Laurel Hills in this proceeding, particularly charging unauthorized rates and withholding service.” Petition to Intervene at ¶ 11. The Consumer Advocate also noted the specific facts that led to the conclusion that consumers have an interest in this docket, namely the allegations set forth in the *Order Requiring Laurel Hills Condominiums Property Owners Association to Appear and Show Cause Why a Cease and Desist Order and Civil Penalties and Sanctions Should Not Be Imposed Against It for Violations of State Law* (“Show Cause Order”) issued on July 17, 2012. *Id.* at ¶ 10. Also, the Consumer Advocate noted the legal bases for intervention under both its enabling statute, Tenn. Code Ann. § 65-4-118, and the provisions governing intervention under the Uniform Administrative Procedures Act (“UAPA”), Tenn. Code Ann § 4-5-310. Thus, the Petition to Intervene outlines the consumer interest in this proceeding from both legal and factual perspectives.

Although the Consumer Advocate contends that its Petition to Intervene is sufficiently detailed, a petition to intervene need not be exhaustive or overly detailed in order to be granted; it need only set forth the interests of the parties in a manner that is sufficient for the hearing officer to make a determination.¹ The Authority has granted intervention to the Consumer Advocate and other parties whose petitions to intervene contained less detail than the Consumer Advocate’s Petition to Intervene

¹ See Tenn. Code Ann. § 4-5-310, which requires only that the petition state “facts demonstrating that the petitioner’s legal rights, duties, privileges, immunities, or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law.” The Consumer Advocate’s enabling statute, Tenn. Code Ann. § 65-4-118, does not place any requirements on the petition to intervene.

in this docket. As examples, petitions to intervene and orders granting the petitions for the following dockets are attached as EXHIBIT 1: *In Re Complaint of US LEC of Tennessee, Inc., Against Electric Power Board of Chattanooga*, Docket No. 02-00562; *In Re Tennessee Wastewater Service, Inc., Petition to For Rate Increase*, Docket No. 09-00017; *In Re Petition for Regulatory Exemption Pursuant to T.C.A. § 65-5-108(b)*, Docket No. 08-00192.

The Consumer Advocate has the duty and authority to represent the interests of Tennessee consumers of public utility services in any matter or proceeding before the Authority or any other administrative, legislative, or judicial body. Tenn. Code Ann. § 65-4-118(b)(1). The statute places no limitations on the Consumer Advocate's participation. This show cause docket affects not only the legal rights of Laurel Hills but also its customers. If a utility engages in wrongdoing of the type alleged by TRA Party Staff, the consumer interest is necessarily implicated. There is nothing speculative about the Consumer Advocate's duty to represent the consumers who have potentially been harmed by Laurel Hills. Charging unauthorized rates and refusing to provide service to customers are clearly matters of interest to consumers, not just issues between the TRA and Laurel Hills. Therefore it is proper for the Consumer Advocate to intervene in this matter because its enabling statute gives it the authority to represent the interests of Tennessee consumers of public utilities services. By not intervening in this matter, the Consumer Advocate might even be viewed as abrogating its responsibility under the law.

The consumer advocate division has the duty and authority to represent the interests of Tennessee consumers of public utilities services. The

division may, with the approval of the attorney general and reporter, participate or intervene as a party in any matter or proceeding before the authority or any other administrative, legislative or judicial body and initiate such proceeding, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the rules of the authority.

Tenn. Code Ann. § 65-4-118(b)(1). The word “may” in this statute confers discretion on the Attorney General to determine the proceedings in which the Consumer Advocate should participate. The Attorney General has given his approval to intervene into this docket. It has been argued in other proceedings before the Authority that the “may” in this statute is permissive with respect to the TRA, but the structure of the statute does not support this position. In terms of statutory construction, the only other word that could be substituted for “may” would be “shall,” which would have demanded that the Consumer Advocate intervene in all proceedings before the Authority if it received approval from the Attorney General to do so. The permissive aspect of the statute refers to the discretion of the Attorney General, not other parties or agencies.

Without intervention, the Consumer Advocate would not be able to fully participate in these proceedings or be able to appeal a decision that is adverse to customers, nor would it be able to represent consumer interest if Laurel Hills were to appeal a decision of the Authority. If the TRA were to deny the Consumer Advocate’s Petition to Intervene, the TRA would be denying a voice to the very consumers affected in this proceeding and who the Consumer Advocate has the statutory duty and authority to represent.

The need for representation of Consumer Advocate interests has recently been demonstrated by settlement agreements or attempts at resolution which were entered into by TRA Party Staff and the respondent utility, but were rejected by the Authority. For example, in the matter of *In re Show Cause Proceeding Against Tennessee Wastewater Systems, Inc., For Material Non-Compliance And/Or Violation of Tenn. R. 1220-04-13, et seq.*, (“TWSI Show Cause”), Docket No. 14-00041, the TRA Party Staff did not call for the revocation of a utility’s Certificate of Convenience and Necessity (“CCN”), but instead attempted its own resolution of the case. The attempted resolution was rejected by the Authority panel.²

Similarly, in *In re Investigation As To Whether A Show Cause Order Should Be Issued Against Berry’s Chapel Utility, Inc., And/Or Lynwood Utility Corporation For Violation Of TRA Rule And Tennessee Statutes, Including But Not Limited To, Tenn. Code Ann. §§ 65-4-112, 65-4-113, 65-4-201, And 65-5-101*, (“Berry’s Chapel Show Cause”) Docket No. 11-00065, the TRA Party Staff and the utility entered into a settlement agreement but the Consumer Advocate opposed it. The TRA panel then did not accept the proposed resolution.³ These cases demonstrate the importance of Consumer Advocate participation when consumer interests are at stake. The Consumer Advocate stresses that by citing these cases it is not criticizing the TRA Directors, Advisory Staff or Party Staff.

² See *Order Revoking Tennessee Wastewater Systems, Inc.’s Amendment to Its Certificate of Convenience and Necessity For A Portion of Campbell County Known As Villages At Norris Lake*, August 11, 2014.

³ See *Transcript of Authority Conference*, November 25, 2013.

2. The TRA Party Staff's Specific Objections Are Insufficient to Deny The Consumer Advocate's Petition To Intervene.

In its Objection to the Consumer Advocate's Petition to Intervene, TRA Party Staff cites the Authority's mission statement in support of its assertion that "[i]t is the Authority that is responsible for ensuring the public good," implying that this is sufficient to represent the interests of consumers and that participation by the Consumer Advocate is unnecessary. Objection at ¶ 5. The acceptance of the position that the Authority's involvement is sufficient to represent the interests of consumers would render Tenn. Code Ann. § 65-4-118 a nullity. Under this statute, it is the "duty and authority" of the Consumer Advocate to represent the interests of Tennessee consumers of public utilities.

The TRA's mission statement, as stated by TRA Party Staff, is "to promote the public interest by balancing the interests of utility consumers and providers," implying that this charge to balance interests obviates the need for consumer representation. Objection at ¶ 5. Thus, Party Staff essentially admits that this docket involves the interest of consumers. Furthermore, it should be noted that Party Staff argues that it is the role of the Authority to "balance" the interest of utility consumers and providers. However, the utility provider is a party to this proceeding and is able to argue for itself. There is, however, no one to represent the consumer interest in this proceeding if the Consumer Advocate does not intervene.

In its Objection, Party Staff contends that if it enters into a settlement with Laurel Hills, then that would be the appropriate time to consider Consumer Advocate intervention. Objection at ¶ 14. This position is simply impractical as a procedural

matter. If intervention were considered at the point a settlement is proposed, the progression of this docket would come to a halt. First, the Authority would have to consider the Consumer Advocate's petition to intervene, and there may be a need for one or more hearings regarding the matter. Also, if granted intervention at this point, the Consumer Advocate would likely have to meet with the parties, perhaps multiple times, in order to obtain the information that led to the proposed settlement. As is the case with many settlement agreements, some significant information would likely be exchanged in an informal setting such as a meeting between the two parties, instead of in the form of documents filed as a matter of public record.

Therefore, not only would the Authority's consideration of any settlement proposal be delayed by requiring the Consumer Advocate to wait to intervene, consumers would be at a disadvantage in the proceedings because the Consumer Advocate may find itself in the position of evaluating a settlement proposal without all the information considered in entering into the agreement. The Consumer Advocate is not only authorized to participate as a party, but it makes much more sense from a practical and policy perspective for the Consumer Advocate, TRA Party Staff, and Laurel Hills to be on the same page as early in the process as possible. In its Petition to Intervene, the Consumer Advocate stated that it will comply with all procedural schedules issued by the Authority and it does not intend to file any discovery requests. Petition to Intervene at ¶ 17. Therefore, the interests of the TRA and Laurel Hills in a prompt and orderly proceeding will not be impaired.

Party Staff asserts that the TRA is vested with “practically plenary authority over the utilities within [the TRA’s] jurisdiction” and that such a “broad grant of authority empowers the TRA to conduct an enforcement action relying upon counsel employed by the Authority for that purpose.” Objection at ¶ 4. Party Staff cites *Tenn. Cable Television Ass’n v. Tenn. Public Service Comm’n*, 844 S.W.2d 151 (Tenn. Ct. App. 1992) in support of its position. The Authority does have broad discretion to carry out its substantive duties, such as setting rates, as discussed in *Tenn. Cable*. However, the holding in this case cannot be extended to state that the Authority has the same power over the administrative agency contested case procedures, which apply to the TRA through the UAPA. Nor can the holding be extended to the issue of Consumer Advocate intervention, as that issue was not at all involved in that case.


The General Assembly intended for the UAPA to apply to all administrative agencies unless they were specifically exempted. *Mid-South Indoor Horse Racing, Inc., v. Tennessee State Racing Commission*, 798 S.W.2d 531, 536 (Tenn. Ct. App. 1990). The TRA is not exempt from the UAPA. Therefore, it is incumbent on the Authority to conduct its proceedings in accordance with the UAPA, which allows intervention in contested cases such as this show cause proceeding. Tenn. Code Ann. § 4-5-310.

Party Staff claims that the show cause statute does not “contemplate third party intervention when the only issue is a violation of the law.” Objection at ¶ 3. However, the show cause statute, Tenn. Code Ann. § 65-2-106, expressly provides that “show cause proceedings shall otherwise follow the provisions of this chapter

with reference to contested cases.” Furthermore, Tenn. Code Ann. § 65-2-107 expressly contemplates intervention in contested cases, as does the UAPA and the Consumer Advocate’s enabling statute. Tenn. Code Ann. §§ 4-5-310, 65-4-118. None of the statutes referenced in this paragraph make an exception for cases involving a violation of the law.

For the reasons stated here and in the initial petition, the Consumer Advocate’s Petition to Intervene should be granted.

Respectfully submitted,

A handwritten signature in cursive script, reading "Rachel Newton", written in dark ink.

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DATE: January 22, 2015

Exhibit

A-5

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

IN RE:

SHOW CAUSE PROCEEDING
AGAINST LAUREL HILLS
CONDOMINIUMS PROPERTY OWNERS
ASSOCIATION FOR ALLEGED
VIOLATIONS OF TENN. CODE ANN.
65-4-201, 65-4-301(A), 65-5-102, 65-4-101
AND/OR 65-4-103, AND 65-4-115

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DOCKET NO.
12-00077

**REPLY OF THE CONSUMER ADVOCATE AND PROTECTION DIVISION
OF THE ATTORNEY GENERAL'S OFFICE
TO RESPONDENT LAUREL HILLS' OBJECTION TO PETITION TO INTERVENE**

Comes now the Consumer Advocate and Protection Division of the Tennessee Attorney General's Office ("Consumer Advocate") and files this Reply to the Respondent's Opposition to the Consumer Advocate Division's Petition to Intervene ("Opposition"). In support of its Petition to Intervene and in response to the Opposition of Laurel Hills Condominiums Property Owners Association ("Laurel Hills"), the Consumer Advocate submits the following:

1. Consumers Have A Clear Interest In This Docket, And Laurel Hills Has Been Properly Notified Of The Necessity For The Consumer Advocate's Intervention In This Contested Case Proceeding.

The Consumer Advocate maintains that consumers have a specific interest in this proceeding and that it has properly given notice to Laurel Hills as to why Consumer Advocate intervention is necessary. In its Petition to Intervene, the Consumer Advocate noted that the alleged violations of the law by Laurel Hills "directly affect the interests and rights of customers of Laurel Hills in this proceeding,

particularly charging unauthorized rates and withholding service.” Petition to Intervene at ¶ 11. The Consumer Advocate also noted the particular facts that led to the conclusion that consumers have an interest in this docket, namely the allegations set forth in the *Order Requiring Laurel Hills Condominiums Property Owners Association to Appear and Show Cause Why a Cease and Desist Order and Civil Penalties and Sanctions Should Not Be Imposed Against It for Violations of State Law* (“Show Cause Order”) issued on July 17, 2012. *Id.* at ¶ 10. Also, the Consumer Advocate noted the legal bases for intervention under both its enabling statute, Tenn. Code Ann. § 65-4-118, and the provisions governing intervention under the Uniform Administrative Procedures Act (“UAPA”), Tenn. Code Ann § 4-5-310. Thus, the Petition to Intervene outlines the consumer interest in this proceeding from both legal and factual perspectives.

Although the Consumer Advocate contends that its Petition to Intervene is sufficiently detailed, a petition to intervene need not be exhaustive or overly detailed in order to be granted; it need only set forth the interests of the parties in a manner that is sufficient for the hearing officer to make a determination.¹ The Authority has granted intervention to the Consumer Advocate and other parties whose petitions to intervene contained less detail than the Consumer Advocate’s Petition to Intervene in this docket. As examples, petitions to intervene and orders granting the petitions

¹ See Tenn. Code Ann. § 4-5-310, which requires only that the petition state “facts demonstrating that the petitioner’s legal rights, duties, privileges, immunities, or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law.” The Consumer Advocate’s enabling statute, Tenn. Code Ann. § 65-4-118, does not place any requirements on the petition to intervene.

for the following dockets are attached as EXHIBIT 1: *In Re Complaint of US LEC of Tennessee, Inc., Against Electric Power Board of Chattanooga*, Docket No. 02-00562; *In Re Tennessee Wastewater Service, Inc., Petition to For Rate Increase*, Docket No. 09-00017; *In Re Petition for Regulatory Exemption Pursuant to T.C.A. § 65-5-108(b)*, Docket No. 08-00192.

The Consumer Advocate has the duty and authority to represent the interests of Tennessee consumers of public utility services. Tenn. Code Ann. § 65-4-118. The Consumer Advocate, with the permission of the Attorney General and Reporter, is fully authorized to “participate or intervene as a party in any matter or proceeding before the [A]uthority or any other administrative, legislative, or judicial body” in accordance with the UAPA and Authority rules. *Id.* § 65-4-118(b)(1). The statute places no limitations on the Consumer Advocate’s participation.

This show cause docket affects not only the legal rights of Laurel Hills but also its customers. If a utility engages in wrongdoing of the type alleged by TRA Party Staff, the consumer interest is necessarily implicated. There is nothing speculative about the Consumer Advocate’s duty to represent the consumers who have potentially been harmed by Laurel Hills. Charging unauthorized rates and refusing to provide service to customers are clearly matters of interest to consumers, not just issues between the TRA and Laurel Hills. Therefore it is proper for the Consumer Advocate to intervene in this matter because its enabling statute gives it the authority to represent the interests of Tennessee consumers of public utilities services. By not

intervening in this matter, the Consumer Advocate might even be viewed as abrogating its responsibility under the law.

The consumer advocate division has the duty and authority to represent the interests of Tennessee consumers of public utilities services. The division may, with the approval of the attorney general and reporter, participate or intervene as a party in any matter or proceeding before the authority or any other administrative, legislative or judicial body and initiate such proceeding, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the rules of the authority.

Tenn. Code Ann. § 65-4-118(b)(1). The word "may" in this statute confers discretion on the Attorney General to determine the proceedings in which the Consumer Advocate should participate. The Attorney General has given his approval to intervene into this docket. It has been argued in other proceedings before the Authority that the "may" in this statute is permissive with respect to the TRA, but the structure of the statute does not support this position. In terms of statutory construction, the only other word that could be substituted for "may" would be "shall," which would have demanded that the Consumer Advocate intervene in all proceedings before the Authority if it received approval from the Attorney General to do so. The permissive aspect of the statute refers to the discretion of the Attorney General, not other parties or agencies.

Without intervention, the Consumer Advocate would not be able to fully participate in these proceedings or be able to appeal a decision of the Authority that it believes is adverse to consumers, nor would it be able to represent consumer interests if Laurel Hills were to appeal a decision of the Authority. Therefore, in denying the Consumer Advocate its Petition to Intervene, the TRA would be denying

a voice to the very consumers affected in this proceeding and who the Consumer Advocate has the statutory duty and authority to represent.

The need for representation of Consumer Advocate interests has recently been demonstrated by settlement agreements or attempts at resolution that were entered into by TRA Party Staff and the respondent utility, but were rejected by the Authority. For example, in the matter of *In Re Show Cause Proceeding Against Tennessee Wastewater Systems, Inc., For Material Non-Compliance And/Or Violation of Tenn. R. 1220-04-13, et seq.*, (“TWSI Show Cause”), Docket No. 14-00041, the TRA Party Staff did not call for the revocation of a utility’s Certificate of Convenience and Necessity (“CCN”), but instead attempted its own resolution of the case. The attempted resolution was rejected by the Authority panel.²

Similarly, in *In Re Investigation As To Whether A Show Cause Order Should Be Issued Against Berry’s Chapel Utility, Inc., And/Or Lynwood Utility Corporation For Violation Of TRA Rule And Tennessee Statutes, Including But Not Limited To, Tenn. Code Ann. §§ 65-4-112, 65-4-113, 65-4-201, And 65-5-101* (“Berry’s Chapel Show Cause”), Docket No. 11-00065, the TRA Party Staff and the utility entered into a settlement agreement opposed by the Consumer Advocate. The TRA panel then did not accept the settlement.³ These cases demonstrate the importance of Consumer Advocate participation when consumer interests are at stake. However, by citing

² See *Order Revoking Tennessee Wastewater Systems, Inc.’s Amendment to Its Certificate of Convenience and Necessity For A Portion of Campbell County Known As Villages At Norris Lake*, August 11, 2014.

³ See *Transcript of Authority Conference*, November 25, 2013.

these cases, the Consumer Advocate stresses that it is not criticizing the TRA Directors, Advisory Staff, or Party Staff.

2. Laurel Hills' Specific Objections Are Insufficient To Deny the Consumer Advocate's Petition To Intervene.

In its Opposition to the Consumer Advocate's Petition to Intervene, Laurel Hills cites a section of Tenn. Code Ann. § 65-2-106 in support of its position that the Consumer Advocate should not be allowed to intervene. Opposition at ¶ 3. Laurel Hills contends that "only one party: the Respondent" is contemplated in this show cause proceeding because the TRA "functionally acts as a prosecutor of this civil enforcement proceeding and no other entity can assume that role." *Id.* Laurel Hills claims that its position is "consistent with Tennessee law on similar enforcement actions brought by other agencies." *Id.* at ¶ 4. In support of this argument, Laurel Hills cites *State v. Brown and Williamson Tobacco Corp.* 18 S.W.3d 186 (Tenn. 2000).

The show cause statute, Tenn. Code Ann. § 65-2-106, expressly provides that "show cause proceedings shall otherwise follow the provisions of this chapter with reference to contested cases" and Tenn. Code Ann. § 65-2-107 expressly contemplates intervention in contested cases. Intervention in contested cases is also allowed under the UAPA, at Tenn. Code Ann. § 4-5-310, and by the Consumer Advocate's enabling statute, Tenn. Code Ann. § 65-4-118.

The Consumer Advocate does not attempt to assume any role other than its statutorily defined role as a representative of the interests of consumers of public utility services in Tennessee. This show cause docket is a contested case proceeding governed by the UAPA, and labeling it a "civil enforcement action" does not make it

something other than what it is. Under the UAPA, the TRA is an administrative agency, not a law enforcement agency or other entity that is designed to bring actions outside the realm of the UAPA. The UAPA defines an agency as a “state board, commission, committee, department, officer, or any other unit of state government authorized or required by any statute or constitutional provision to make rules or to determine contested cases.” The statute governing exemptions from the UAPA, Tenn. Code Ann. § 4-5-106, does not exclude the Authority or show cause proceedings.

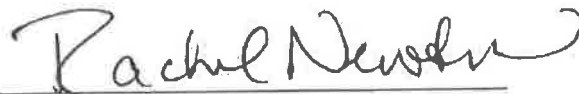
Furthermore, the holding of *Brown and Williamson* does not apply to this proceeding. It is distinguishable from this show cause proceeding in several ways. First, the case in *Brown and Williamson* was an action brought by the State of Tennessee through the Attorney General in a chancery court, not an action initiated by an administrative agency that is subject to the UAPA. Furthermore, the substantive statutes giving rise to the suit in *Brown and Williamson* were the Tennessee Consumer Protection Act and the Tennessee Trade Practices Act. Actions under these statutes are not contested cases under the UAPA, and neither the State of Tennessee nor the Attorney General is an administrative agency as defined by the UAPA. Therefore, the holding of this case cannot be extended to apply to contested case proceedings before an administrative tribunal such as the TRA.

Consumer Advocate intervention will not impede Laurel Hills’ “full opportunity to defend the action” as contended by the Respondent. Opposition at ¶ 5. Laurel Hills provides no support for this statement other than its effort to characterize this proceeding as something other than a contested case. The Consumer

Advocate will not attempt to impede Laurel Hills' defense of the allegations brought by the TRA. In fact, the Consumer Advocate is very interested in hearing the responses to these allegations because they involve wrongdoing against customers of Laurel Hills, whose interests the Consumer Advocate has the statutory duty and authority to represent. Finally, as previously stated, the Consumer Advocate does not intend to file any discovery requests and will comply with all procedural schedules issued by the Authority.

For the reasons stated here and in the initial petition, the Consumer Advocate's Petition to Intervene should be granted.

Respectfully submitted,



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DATE: January 22, 2015

Exhibit B

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 4, 2015

IN RE:

SHOW CAUSE PROCEEDING AGAINST LAUREL
HILLS CONDOMINIUMS PROPERTY OWNERS
ASSOCIATION FOR ALLEGED VIOLATIONS OF
TENN. CODE ANN 65-4-201, 65-4-301(A), 65-5-102, 65-
4-101 AND/OR 65-4-103, AND 65-4-115

DOCKET NO.
12-00077

ORDER DENYING CONSUMER ADVOCATE'S PETITION TO INTERVENE

This matter is before the Hearing Officer of the Tennessee Regulatory Authority ("Authority" or "TRA") upon a *Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Tennessee Attorney General ("Consumer Advocate or "CAPD") on December 8, 2014.

BACKGROUND

On July 17, 2012, the Hearing Officer in this docket issued an *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* ("Show Cause Order"). The *Show Cause Order* was issued as a result of proceedings held in TRA Docket No. 12-00030, in which Laurel Hills Condominiums Property Owners Association ("Laurel Hills") applied for a Certificate of Public Convenience and Necessity ("CCN"). On April 18, 2013, the panel in TRA Docket No. 12-00030 issued an *Order* denying the CCN and ordering Laurel Hills

to divest its water system.¹ Laurel Hills appealed the panel's decision to the Court of Appeals and to the Tennessee Supreme Court.

On October 21, 2014, Compliance Division Staff, acting as a Party ("Party Staff"), filed the *Renewed Motion to Initiate Proceedings* ("Motion") requesting that the Hearing Officer set this matter for Hearing. In support of the *Motion*, Party Staff stated:

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.²

During the regularly scheduled Authority Conference held on November 4, 2014, the panel considered the *Motion*. The panel found that since the appellate court proceedings had concluded in TRA Docket No. 12-00030, abeyance of further TRA proceedings was no longer warranted and, therefore, unanimously voted to grant Party Staff's *Motion*.

PETITION TO INTERVENE

In its *Petition to Intervene*, the Consumer Advocate states that this proceeding is a contested case proceeding and "consumers have an interest in the proceeding."³ According to the Consumer Advocate, it has met the three requirements of Tenn. Code Ann. § 4-5-310(a) because:

(1) the Petition is timely; (2) the Petitioner's 'rights, duties, privileges, immunities or other legal interest may be determined and the Petitioner also qualifies as an Intervenor under Tenn. Code Ann. § 65-5-118; and (3) the 'interests of justice and the prompt conduct of the proceedings shall not be impaired.[']

¹ See *In re: Petition of Laurel Hills Condominiums Property Owners Association for a Certificate of Public Convenience and Necessity*, TRA Docket No. 12-00030, *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System* (April 18, 2013) ("Order"). A full account of the TRA proceedings prior to and subsequent to the issuance of the *Show Cause Order* is set forth in TRA Docket No. 12-00030.

² *Renewed Motion to Initiate Proceedings*, p. 1 (October 21, 2014). In addition, Party Staff filed in TRA Docket No. 12-00030 a copy of the Mandate issued from the Tennessee Court of Appeals and related appellate court filings. 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).

³ See *Petition to Intervene* p. 2 (December 8, 2014).

The CAPD maintains that the alleged violations against Laurel Hills directly affect the interests and rights of Laurel Hills' customer, "particularly charging unauthorized rates and withholding service."⁴ In addition, the CAPD asserts that if there is a settlement agreement that is adverse to consumers' interests, it will not be able to contest such a settlement agreement if it is not allowed to intervene.⁵ The CAPD states that "[o]nly by participating in this proceeding can the Consumer Advocate work adequately to protect the interests of consumers."⁶

RESPONSES TO CAPD PETITION TO INTERVENE

LAUREL HILLS

Laurel Hills filed *Respondent's Opposition to the Consumer Advocate Divisions' Motion to Intervene* ("Respondent's Opposition") on January 2, 2015. Laurel Hills states the Consumer Advocate "seeks intervention in this case as a result of unidentified interests that customers have in the Proceeding. This Proceeding strictly entails whether Laurel Hills purportedly violated state law and has no impact on any customers of Laurel Hills."⁷ Laurel Hills states that in a show cause action only one party is contemplated by the statute and that the "TRA then functionally acts as a prosecutor of this civil enforcement proceeding and no other entity can assume that role."⁸ Quoting *State v. Brown and Williamson Tobacco Corp.*, Laurel Hills asserts "the Supreme Court held that where the State brings suit in its official capacity as sovereign to enforce state law, third parties 'do not have a substantial legal interest in the State's suit entitling them to intervene.'"⁹ Laurel Hills argues that in this proceeding, the TRA seeks to impose a civil penalty against Laurel Hills for purported violations of state law and enjoin it from continuing such purported violations.¹⁰ Further,

⁴ *Id.* at 4.

⁵ *Id.*

⁶ *Id.* at 5.

⁷ *Respondent's Opposition*, p. 1 (January 2, 2015).

⁸ *Id.* at 2.

⁹ *Id.* citing *State v. Brown and Williamson Tobacco Corp.*, 18 S.W.3d 186 (Tenn. 2000).

¹⁰ *Id.*

Laurel Hills argues “it is simply unclear what role the CAD [Consumer Advocate] seeks to assume and they do not attempt whatsoever to define such a role. In fact, they cite to no statute, law, or even fact that would justify their intervention in this Proceeding.”¹¹ In addition, Laurel Hills maintains that “[i]ncluding them [the CAPD] in this proceeding would only add to the cost and expense of this Proceeding without any appreciable benefit gained by their inclusion.”¹²

TRA PARTY STAFF

TRA Party Staff filed its *Objection to Intervention Requests* on December 30, 2014 stating that “[t]he only parties that are entitled under the law to participate in a Show Cause proceeding are Party Staff appointed by the TRA and the respondent utility.”¹³ Party Staff states this proceeding is an enforcement action against Laurel Hills and “the Show [C]ause statute does not contemplate third party intervention when the only issue is whether there has been a violation of the law.”¹⁴ Party Staff argues that the Consumer Advocate’s *Petition to Intervene* is “devoid of any facts that would create a basis for intervention.”¹⁵ Further, Party Staff asserts that the Consumer Advocate has been silent regarding the interests they seek to protect because there are none and this proceeding “is simply an enforcement action against the company for violations of law.”¹⁶

REQUESTS TO REPLY

On December 22, 2014, the Hearing Officer issued an *Order Extending Time to Respond to Petition to Intervene and Holding Procedural Schedule in Abeyance*, which gave Party Staff until January 30, 2015 to respond to the CAPD’s *Petition to Intervene*, and held the procedural schedule in abeyance until a new schedule was issued.

On January 22, 2015, the Consumer Advocate filed a *Request of the Consumer Advocate*

¹¹ *Id.*

¹² *Id.*

¹³ See *Objection to Intervention Requests*, p. 1 (December 30, 2014).

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 3.

¹⁶ *Id.*

and Protection Division of the Attorney General's Office to File a Reply to Party Staff's Objection to the Consumer Advocate's Petition to Intervene ("Request to Reply to Party Staff") and its Reply of the Consumer Advocate and Protection Division of the Attorney General's Office to the Party Staff's Objection to Petition to Intervene ("Reply to Party Staff"). The Consumer Advocate also filed its *Request of the Consumer Advocate and Protection Division of the Attorney General's Office to File a Reply to Respondent Laurel Hills' Objection to Consumer Advocate's Petition to Intervene ("Request to Reply to Respondent")* and its *Reply of the Consumer Advocate and Protection Division of the Attorney General's Office to Respondent Laurel Hills' Objection to Petition to Intervene ("Reply to Laurel Hills")*.

Both Requests to Reply state "[t]he Consumer Advocate believes that a reply would be helpful to the Authority in determining the status of its Petition to Intervene because significant legal issues concerning the Consumer Advocate's duties and responsibilities have been raised" by Party Staff and Laurel Hills in their Objections.¹⁷ Since there have been no objections filed to the Requests to Reply, the Hearing Officer will grant them.

In its *Reply to Party Staff*, the CAPD argues that consumers have a specific interest in this proceeding and that it has properly given notice to Party Staff as to why intervention is necessary.¹⁸ According to the CAPD, the legal rights of Laurel Hills' customers are at issue in this docket and "if a utility engages in wrongdoing of the type alleged by TRA Party Staff, the consumer interest is necessarily implicated."¹⁹ The CAPD contends that "[c]harging unauthorized rates and refusing to provide service to customers are clearly matters of interest to consumers, not just issues between the TRA and Laurel Hills. Therefore it is proper for the Consumer Advocate to intervene in this matter because its enabling statute gives it the authority to represent the interests of Tennessee consumers

¹⁷ *Request to Reply to Respondent*, p. 1 (January 22, 2015); *Request to Reply to Party Staff*, p. 1 (January 22, 2015).

¹⁸ *Reply to Party Staff*, p. 1 (January 22, 2015).

¹⁹ *Id.* at 3.

of public utilities services.”²⁰ The Consumer Advocate also argues that “[w]ithout intervention, the Consumer Advocate would not be able to fully participate in these proceedings or be able to appeal a decision of the Authority that it believes is adverse to consumers, nor would it be able to represent consumer interests if Laurel Hills were to appeal a decision of the Authority.”²¹ To support its argument, the Consumer Advocate cites two instances where Settlement Agreements between the Respondent and Party Staff in show cause dockets were rejected by the Authority and asserts that these instances demonstrate “the importance of Consumer Advocate participation when consumer interests are at stake.”²²

In its reply to the specific arguments presented by TRA Party Staff, the Consumer Advocate argues that Party Staff’s role is to balance the interests of consumers and providers. Further, the CAPD argues, Laurel Hills argues for itself, but there is “no one to represent the consumer interest in the proceeding if the Consumer Advocate does not intervene.”²³ Citing *Mid-South Indoor Horse Racing, Inc. v. Tennessee State Racing Commission*, the Consumer Advocate argues that “the General Assembly intended for the UAPA [Uniform Administrative Procedures Act] to apply to all administrative agencies unless they were specifically exempted. The TRA is not exempt from the UAPA.”²⁴ Therefore, the TRA “must conduct its proceedings in accordance with the UAPA, which allows intervention in contested cases such as this show cause proceeding.”²⁵

The CAPD’s *Reply to Laurel Hills* mirrors the argument outlined in its *Reply to Party Staff* except for its response to specific arguments made by Laurel Hills. Countering an argument put forth by Laurel Hills, the Consumer Advocate asserts that “[t]his show cause docket is a contested case proceeding governed by the UAPA, and labeling it a ‘civil enforcement action’ does not make

²⁰ *Id.*

²¹ *Id.* at 4.

²² *Id.* at 5.

²³ *Id.* at 6.

²⁴ *Id.* at 8.

²⁵ *Id.*

it something other than what it is.”²⁶ Asserting that Laurel Hills’ reliance on *Brown and Williamson* is misplaced, the CAPD argues that “the case in *Brown and Williamson* was an action brought by the State of Tennessee through the Attorney General in a chancery court, not an action initiated by an administrative agency that is subject to the UAPA.”²⁷ Therefore, the CAPD concludes, “the holding of this case cannot be extended to apply to contested case proceedings before and administrative tribunal such as the TRA.”²⁸ The Consumer Advocate maintains that its intervention will not impede Laurel Hills’ ability to defend this action. Finally, the Consumer Advocate states that it does not plan to file any discovery requests and will comply with the procedural schedule.²⁹

FINDINGS & CONCLUSIONS

Under Tenn. Code Ann. § 65-2-107, “[a]ll persons having a right under the provisions of the laws applicable to the authority to appear and be heard in contested cases as defined in this chapter shall be deemed parties to such proceedings for the purposes of this chapter. In addition, the authority may upon motion allow any interested person to intervene and become a party to any contested case.” Along with its own statutes and rules, contested case proceedings before the Authority are governed by the provisions of Tenn. Code Ann. § 4-5-101, *et seq.*, the UAPA. Tenn. Code Ann. § 4-5-310 establishes the following criteria for considering mandatory and permissive requests for intervention:

- (a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:
 - (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
 - (2) The petition states facts demonstrating that the petitioner’s legal rights, duties, privileges, immunities or other legal interest may be determined in

²⁶ *Reply to Laurel Hills*, p. 6 (January 22, 2015).

²⁷ *Id.* at 7.

²⁸ *Id.*

²⁹ *Id.* at 8.

the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

(b) The agency may grant one (1) or more petitions for intervention at any time, upon determining that the intervention sought is in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.

Further, the UAPA provides that a Hearing Officer may, at any time, limit or impose conditions upon or otherwise modify an intervenor's participation in the proceedings. Similarly, TRA Rule 1220-01-02-.08 directs that requests for intervention before the Authority are to be made and considered as follows:

(1) Petitions for intervention shall be granted in accordance with T.C.A. § 4-5-310 and T.C.A. § 65-2-107.

(2) A petition for intervention shall set forth with particularity those facts that demonstrate that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Intervention may be denied or delayed for failure to provide such specific facts.

(3) A petition for intervention shall be filed at least seven (7) days prior to the date of the contested case hearing.

Timeliness

Under Tenn. Code Ann. § 4-5-310(a)(1) and TRA Rule 1220-01-02-.08(3), a petition for intervention must be filed at least seven (7) days prior to the date of the contested case hearing. The current proceeding is not subject to any particular statutory deadline and is in its early stages. The Consumer Advocate filed its *Petition to Intervene* prior to the formal commencement of discovery and before the establishment of a hearing date. Therefore, the Hearing Officer considers the Consumer Advocate's *Petition to Intervene* timely-filed.

Content & Requisite Showing

Tenn. Code Ann. 4-5-310(a)(2) and TRA Rule 1220-01-02-.08(2) require that a petition to

intervene state particular facts that demonstrate a legal right or interest held by the petitioner may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Tenn. Code Ann. § 65-4-118(b)(1) provides a general basis for the qualification of the Consumer Advocate as an intervening party to represent the interests of Tennessee public utility consumers, as follows:

The consumer advocate division has the duty and authority to represent the interests of Tennessee consumers of public utilities services. The division may, with the approval of the attorney general and reporter, participate or intervene as a party in any matter or proceeding before the authority or any other administrative, legislative or judicial body and initiate such proceeding, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the rules of the authority.³⁰

Thus, according to the statute, with the approval of the Attorney General and upon satisfaction of the requisite showing for intervention under the UAPA and the TRA's Rules, the Consumer Advocate may be permitted to intervene as a party for the purpose of representing those Tennessee consumers of public utility services that have legal rights or interests that may be determined in proceedings before the TRA. Tenn. Code Ann. § 65-4-118(b)(1) provides for the Consumer Advocate's qualification as an intervenor under law, but in no way confers upon the Consumer Advocate an automatic or absolute right to participate in any particular Authority proceeding.

In the current proceeding, the Consumer Advocate asserts that consumers have an interest in this proceeding and that it has met the three (3) requirements for intervention and should, therefore, be allowed to intervene. According to the Consumer Advocate, "these alleged violations of law directly affect interests and rights of the customers of Laurel Hills, particularly charging unauthorized rates and withholding service."³¹ The Hearing Officer disagrees. Laurel Hills was denied a CCN and ordered to divest itself of the water system in TRA Docket No. 12-00030, and both the customers of Laurel Hills and the Consumer Advocate participated fully in that docket.

³⁰ Tenn. Code Ann. § 65-4-118(b)(1).

³¹ *Petition to Intervene*, p. 4 (December 8, 2014).

TRA Docket No. 12-00030 was appealed and the TRA's ruling was upheld by the Court of Appeals. As a result, the consumers' rights and interests in being charged and paying only rates authorized by the TRA and in receiving safe, adequate, and proper service have been adjudicated by the Authority and affirmed by the Court of Appeals.

This show cause docket has been initiated for the purpose of determining whether Laurel Hills has violated the law and, if so, what penalty should be imposed. Further, in its October 16, 2013 Order, the Chancery Court of Cumberland County ordered Laurel Hills to continue to provide water service to its customers until further order and set the rate for water service at \$33.10, the rate recommended by the TRA in Docket No. 12-00030. The outcome of the Authority's show cause proceeding neither impacts the provision of water service nor the rates that consumers are required to pay for the service. The Hearing Officer has already held that the customers of Laurel Hills do not have a legal interest that will be determined in this proceeding and denied the *Petition to Intervene* filed by actual customers of Laurel Hills.³² Thus, as Laurel Hills' customers do not have a legal interest in this proceeding, neither does the Consumer Advocate.

The Consumer Advocate contends that it should be allowed to intervene based on the possibility of the parties reaching a settlement agreement that might not be in the interests of the consumers. Once again, the legal rights or interests of consumers are not at issue in this proceeding. Any potential settlement agreement that might be reached, if any at all, would be an agreement between Laurel Hills and Party Staff in an attempt to resolve the violations and potential penalties against Laurel Hills and would not impact the rights or interests of consumers. This argument fails to show that a legal interest would be decided in this proceeding and does not provide sufficient basis for granting the Consumer Advocate's *Petition to Intervene*.

Moreover, if based on Laurel Hills' violation of law the Authority were to determine that a

³² See *Order Denying Petitions to Intervene*, p. 8 (February 2, 2015).

refund is due to customers, any calculations regarding the amount or method of refunding customers would be considered in a separate docket. At such time, the Consumer Advocate would then have an opportunity to file a petition to intervene in the new docket. In this regard, the Consumer Advocate's arguments appear to put the cart before the horse. The instant docket in which it seeks to intervene is where the Authority will consider whether there has been a violation of law and, if so, whether and to what extent a penalty should be imposed. Consumers do not have a legal right or interest in this proceeding because the issues involve a determination of whether Laurel Hills has violated state law or the TRA Rules. Therefore, the Hearing Officer finds that the Consumer Advocate has failed to show a factual basis to establish that the legal rights or interests of the customers of Laurel Hills may be determined in this proceeding, the Consumer Advocate's request to intervene does not satisfy the requirements for the mandatory intervention.

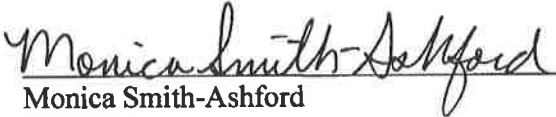
Procedural Due Process

Finally, Tenn. Code Ann. 4-5-310(a)(3) requires that the Hearing Officer grant a petition for intervention only upon determining that "the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing intervention." Both Party Staff and the Respondent, Laurel Hills, have objected to the Consumer Advocate's request to intervene in this matter. Thus, weighing the impact of the proceedings upon the general rights and interests presented by the Consumer Advocate against the interests of justice, including the rights of the Respondent to fundamental fairness and due process and the need for orderly and prompt proceedings, the Hearing Officer is unable to find that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing intervention. Furthermore, considering the purpose and specific considerations at issue in this docket, granting the Consumer Advocate's request for intervention appears contrary to the interests of justice and increases the likelihood for disruption in the administration of these proceedings.

Upon due consideration, the Hearing Officer concludes that while the *Petition to Intervene* was timely filed, the Consumer Advocate has failed to establish that the legal rights, duties, privileges, immunities or other legal interest of the customers of Laurel Hills may be determined in this proceeding. In addition, given the nature of this matter, the Hearing Officer cannot conclude that allowing intervention would not impair the interests of justice or the orderly and prompt conduct of this proceeding. For these reasons, the Hearing Officer determines that the Consumer Advocate's *Petition to Intervene* should be denied. Further, the Hearing Officer finds that the interests of justice and prompt conduct of the proceedings do not warrant allowing intervention under Tenn. Code Ann. § 4-5-310(b). Although these findings are based on the specific facts and circumstances of this case, this ruling is consistent with previous decisions of the Authority in recent proceedings of this nature.³³

IT IS THEREFORE ORDERED THAT:

The *Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Tennessee Attorney General is denied.


Monica Smith-Ashford
Hearing Officer

cc: Docket File
Interested Parties

³³ See *In re: Show Cause Proceeding Against Tennessee Wastewater Systems, Inc. for Material Non-Compliance and/or Violation of State Law and Tenn. R. & Regs. 1220-04-13, et seq.*, Docket No. 14-00041, *Initial Order Denying Consumer Advocate's Petition to Intervene* (May 1, 2014); see also *In re: Show Cause Proceeding Against Tennessee Wastewater Systems, Inc. for Material Non-Compliance and/or Violation of State Law and Tenn. R. & Regs. 1220-04-13, et seq.*, Docket No. 14-00041, *Order Denying Petition to Appeal and Affirming the Initial Order of the Hearing Officer* (June 4, 2014).

Exhibit

C

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

IN RE:)	
)	
SHOW CAUSE PROCEEDING)	
AGAINST LAUREL HILLS)	
CONDOMINIUMS PROPERTY OWNERS)	DOCKET NO. 12-00077
ASSOCIATION FOR ALLEGED)	
VIOLATIONS OF TENN. CODE ANN.)	
65-4-201, 65-4-301(A), 65-5-102, 65-4-101)	
AND/OR 65-4-103, AND 65-4-115)	

**REQUEST OF THE CONSUMER ADVOCATE AND PROTECTION DIVISION
OF THE ATTORNEY GENERAL'S OFFICE
FOR PERMISSION FOR INTERLOCUTORY REVIEW**

Comes now the Consumer Advocate and Protection Division of the Tennessee Attorney General's Office ("Consumer Advocate") and requests permission from the Hearing Officer of the Tennessee Regulatory Authority ("TRA" or "Authority") for an interlocutory review of the Hearing Officer's denial of the Consumer Advocate's Petition to Intervene.

The Authority's rules allow for an interlocutory review of the decision of a Hearing Officer pursuant to Tenn. Comp. R. & Regs. § 1220-1-2.06(6). On February 4, 2015, the Hearing Officer issued an order denying the Consumer Advocate's Petition to Intervene in this docket. The Consumer Advocate submits that it has established the required criteria for intervention in this proceeding. In support of its Request, the Consumer Advocate incorporates by reference its Petition to Intervene and its Replies to the Objections of TRA Party Staff and the Respondent utility Laurel Hills. The aforementioned documents are attached as Exhibit A. In the Order Denying the Consumer Advocate's Petition to Intervene, the Hearing Officer concluded that that the interests of justice and the orderly and prompt conduct of the proceedings would be impaired by the Consumer Advocate's intervention. The Consumer Advocate submits that this conclusion

is not supported by the record in this docket. As stated in its Replies, the Consumer Advocate does not intend to file any discovery requests or delay the progress of this docket in anyway. The Consumer Advocate has reviewed the procedural schedule filed in this docket on February 25, 2015, and it will comply with all deadlines contained therein.

TRA rules state that “[p]ermission for an interlocutory review shall not be unreasonably withheld.” Tenn. Comp. R. & Regs. § 1220-1-2.06(6). A Petition to Intervene by the Consumer Advocate has been denied by a Hearing Officer in only one prior docket, in the matter of *In Re Show Cause Proceeding Against Tennessee Wastewater Systems, Inc., For Material Non-Compliance And/Or Violation Of Tenn. R. & Regs. 1220-04-13, et seq.*, Docket No. 14-0041. In the Initial Order Denying the Consumer Advocate’s Petition to Intervene, the Hearing Officer granted the Consumer Advocate permission for review to the presiding panel of the Authority pursuant to Tenn. Comp. R. & Regs. § 1220-1-2.06(6).

The Consumer Advocate submits that its request for interlocutory review is reasonable, and respectfully seeks permission from the Hearing Officer for an interlocutory review by the Authority panel of the Hearing Officer’s order.

Respectfully submitted,

Herbert H. Slatery III
Tennessee Attorney General and Reporter

A handwritten signature in cursive script, reading "Rachel Newton".

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Consumer Advocate and Protection Division
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply was served via U.S.

Mail or electronic mail upon:

Benjamin Gastel, Esq.
Branstetter, Stranch, & Jennings
227 Second Avenue N
Fourth Floor
Nashville, TN 37201
Attorney for Laurel Hills Property Condominium Owners Association

Shiva Bozarth, Esq.
Chief of Compliance
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Melanie Davis, Esq.
Kizer & Black
329 Cates Street
Maryville, TN 37801

This the 26 day of Feb, 2015.



Rachel A. Newton

Exhibit

D

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

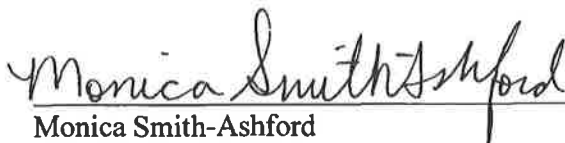
IN RE:	March 11, 2015)	
)	
SHOW CAUSE PROCEEDING AGAINST LAUREL)	DOCKET NO.
HILLS CONDOMINIUMS PROPERTY OWNERS)	12-00077
ASSOCIATION FOR ALLEGED VIOLATIONS OF)	
TENN. CODE ANN 65-4-201, 65-4-301(A), 65-5-102, 65-)	
4-101 AND/OR 65-4-103, AND 65-4-115)	

ORDER GRANTING INTERLOCUTORY REVIEW

This matter is before the Hearing Officer of the Tennessee Regulatory Authority ("Authority" or "TRA") upon a request for interlocutory review filed by the Consumer Advocate and Protection Division of the Tennessee Attorney General ("Consumer Advocate") on February 26, 2015.¹

In an Order issued February 4, 2015, the Hearing Officer denied a Petition to Intervene filed by the Consumer Advocate. The Consumer Advocate now seeks interlocutory review of the Hearing Officer's Order by the panel. Pursuant to Tenn. Comp. R. & Regs. 1220-1-2-.06(6), any party who wishes to seek interlocutory review by the Authority of a Hearing Officer decision on a preliminary motion must make application by motion to the Hearing Officer. Since there has been no objection filed to the Consumer Advocate's *Request*, the Hearing Officer grants the Consumer Advocate's *Request* for interlocutory review by the panel.

IT IS HEREBY ORDERED.


Monica Smith-Ashford
Hearing Officer

cc: Docket File
Interested Parties

¹ See *Request of the Consumer Advocate and Protection Division of the Attorney General's Office for Permission for Interlocutory Review ("Request")* (February 26, 2015).