

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT  
NASHVILLE, TENNESSEE

2015 APR 21 AM 11:39  
T.R.A. DOCKET NO. 12-00077

IN RE: )  
)  
PETITION TO SHOW CAUSE WHY A CEASE AND ) DOCKET NO. 12-00077  
DESIST ORDER AND CIVIL PENALTIES & )  
SANCTIONS SHOULD NOT BE IMPOSED )  
AGAINST LAUREL HILLS CONDOMINIUM )  
PROPERTY OWNERS ASSOCIATION )

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**OBJECTION TO CONSUMER ADVOCATE'S  
APPEAL TO THE AUTHORITY TO GRANT INTERVENTION**

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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 Condominium 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:

**Procedural History**

1. 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.<sup>1</sup>
2. On August 8, 2012, the parties entered into an Agreed Order to hold the Show Cause

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<sup>1</sup> 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.

proceeding in abeyance pending the outcome of Laurel Hills' appeal of the Authority's decision in TRA Docket No. 12-00030.<sup>2</sup>

3. 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.<sup>3</sup>
4. On December 8, 2014, the Advocate filed a Petition to Intervene ("Petition") in this Show Cause proceeding.<sup>4</sup>
5. On February 4, 2015, the Hearing Officer denied the Advocate's Petition finding that neither the customers nor the Advocate have a legal interest in the outcome in this case.<sup>5</sup> The Hearing Officer went on to state "the legal rights or interests of consumers are not at issue in this proceeding."<sup>6</sup>
6. On February 26, 2015, the Advocate requested permission to file an interlocutory appeal.
7. On March 11, 2015, the Hearing Officer granted the Advocate's request for permission to file an interlocutory appeal.
8. On April 9, 2015, the Advocate filed an 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 ("Appeal").

### **Argument**

9. Party Staff asserts that this case is nothing more or less than an enforcement action against Laurel Hills for violations of the law.
10. 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

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<sup>2</sup> *Agreed Order*, August 8, 2012

<sup>3</sup> *Renewed Motion to Initiate Proceedings*, October 22, 2014.

<sup>4</sup> *Petition to Intervene*

<sup>5</sup> *Order Denying Consumer Advocate's Petition to Intervene*, p. 10 (February 4, 2015).

<sup>6</sup> *Id.*

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....”<sup>7</sup>

11. The Show cause statute does not contemplate third party intervention when the only issue is whether there has been a violation of the law.
12. The TRA is authorized to exercise “practically plenary authority over the utilities within its jurisdiction.”<sup>8</sup> This broad grant of authority empowers the TRA to conduct an enforcement action relying upon counsel employed by the Authority for that purpose.
13. In their Appeal the Advocate states unequivocally that they are entitled to intervene in any and all matters before the Authority that the Attorney General desires to intervene in without regard to whether there is a consumer or other basis for intervention.<sup>9</sup> This position is flawed because it ignores the fact that the Advocate’s intervention must perforce interfere with the “orderly and prompt conduct” of a case.
14. When a party is added to litigation all other parties are obligated to prepare for that party to present evidence, take a position, and attack the positions and evidence of the other parties. Just because the Advocate indicates they will not engage in discovery in no way prevents them from presenting evidence or engaging in cross examination and argument regarding the other parties’ evidence. Party Staff is forced to either engage in discovery to attempt to identify what the Advocate will present or litigate blindly.
15. Party Staff is unsure what the Advocate’s position is regarding the civil penalties sought against Laurel Hills. Will Party Staff be placed in a position where it must argue against

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<sup>7</sup> Tenn. Code Ann. §65-2-106

<sup>8</sup> *Tenn. Cable Television Assoc. v. Tenn. Public Service Comm.* 844 S.W.2d 151, 159 (Tenn. Ct. App., 1992).

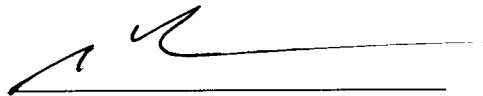
<sup>9</sup> *Appeal to the Authority to Grant the Petition to Intervene of the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General*, p. 4

both Laurel Hills and the Advocate on the actual amount of civil penalties? Does the Advocate intend to argue for a different calculation of civil penalties than either Laurel Hills or Party Staff? If so then how will Party Staff prepare for this argument without additional time and resources being expended? All of this leaves aside the very real concerns about Laurel Hills' due process rights.

16. The Advocate claims that the "consumers have an interest in this proceeding" without any explanation about what facts lead them to this conclusion.<sup>10</sup> Later the Advocate argues that the interests and rights of customers are at issue in this case.<sup>11</sup> However, again there is no explanation about what consumer rights or interests are at issue. 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.
17. No one should be allowed to intervene in a proceeding before the TRA simply on their say so. They must be obligated to demonstrate that their participation serves a purpose and will not interfere with an orderly and prompt hearing.

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

Respectfully Submitted,



Shiva K. Bozarth, BPR No.22685  
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<sup>10</sup> *Petition paragraph 5.*

<sup>11</sup> *Petition paragraph 11.*

## **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 20<sup>th</sup> day of April, 2015.

  
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Shiva K. Bozarth