

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

December 28, 2015

IN RE:)	
)	
PETITION OF LAUREL HILLS CONDOMINIUMS)	DOCKET NO.
PROPERTY OWNERS ASSOCIATION FOR A)	12-00077
CERTIFICATE OF PUBLIC CONVENIENCE AND)	
NECESSITY)	

**ORDER RE-OPENING SHOW CAUSE PROCEEDING AND AUTHORIZING TRA PARTY
STAFF TO PURSUE ENFORCEMENT OF SETTLEMENT AGREEMENT**

This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones, and Director Kenneth C. Hill of the Tennessee Regulatory Authority (“Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on December 14, 2015, to consider a *Petition to Set Aside Settlement Agreement and Reopen Show Cause Proceedings* filed by the TRA Compliance Division acting as a Party (“Party Staff”) on December 4, 2015.

RELEVANT BACKGROUND

As directed by the Authority panel in TRA Docket No. 12-00030, *In re Petition of Laurel Hills Condominiums Property Owners Association for a Certificate of Public Convenience and Necessity* (“CCN Petition”), after due consideration of the preliminary investigation and findings of the Party Staff, this docket was initiated with the entry of the Hearing Officer’s *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*”) on July 17, 2012.¹ The *Show Cause Order* placed the burden on Respondent Laurel Hills Condominiums Property Owners Association (“Laurel Hills” or the “Utility”) to demonstrate why the TRA should not take action against it for violations of state utility law, including Tenn. Code Ann. §§ 65-4-115, 65-4-201, 65-4-301(a), and 65-5-101, 102, and 103.² Upon the joint request of Party Staff and Laurel Hills, this docket was held in abeyance pending a determination of Laurel Hills’ *CCN Petition* in Docket No. 12-00030.

On April 18, 2013, the Authority entered an *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System* (“*Divestiture Order*”) in Docket No. 12-00030. The *Divestiture Order* denied Laurel Hills’ petition for a CCN to own and operate the public water system within the development known as Renegade Mountain located in Cumberland County, Tennessee, and ordered Laurel Hills to divest its ownership of the system, maintain safe, adequate, and reliable service pending such divestment, and to charge a just and reasonable rate for service, as established by the TRA.³ Laurel Hills appealed the Authority’s *Divestiture Order* to the Tennessee Court of Appeals, which affirmed the decision of the TRA in all respects, and to the Tennessee Supreme Court, which declined to review the Court of Appeals’ Opinion.⁴ Thereafter, on November 4, 2014, the abeyance of the Show Cause docket was lifted and the Hearing Officer re-commenced the proceedings in order to prepare it for a hearing before the Authority panel.⁵

¹ *Show Cause Order* (July 17, 2012).

² *Id.*

³ *Divestiture Order* (April 18, 2013).

⁴ *Laurel Hills Condominiums Prop. Owners' Ass'n v. Tennessee Regulatory Auth.*, No. M2013-01392-COAR12CV, 2014 WL 1494126 (Tenn. Ct. App. Apr. 14, 2014), *perm. app. denied* (Oct. 15, 2014).

⁵ *Order Granting Renewed Motion to Initiate Proceedings* (December 10, 2014).

On August 17, 2015, the Authority approved a *Petition to Adopt Settlement Agreement and Settlement Agreement and Release*, as amended by the *First Addendum to the Settlement Agreement and Release* (referred to as the “*Settlement Agreement*”) filed by Laurel Hills and Party Staff on July 27, 2015 and August 13, 2015, respectively.⁶ Under the *Settlement Agreement*, Laurel Hills agreed, in order to comply with the Authority’s *Divestiture Order*, to place the water system into receivership and remove itself from the operations and management of the utility.⁷ Among other things, Laurel Hills further agreed to transfer to the Receiver legal title to the water storage tank and the water tower parcel located on Renegade Mountain and to procure an irrevocable license to ensure that the lines, pipes, pump stations, and other water system-related assets remain in their currently situated locations.⁸ In exchange, Laurel Hills would be released from claims related to the Show Cause and the TRA action against it in the Cumberland County Chancery Court.⁹ Laurel Hills was not released, however, from matters related to a breach of the *Settlement Agreement*.¹⁰ The *Settlement Agreement*, as amended by the *First Addendum*, was effective upon its approval by the Authority.¹¹

On October 3, 2015, pursuant to the *Settlement Agreement*, Party Staff filed a *Petition for Appointment of Receiver* with the Cumberland County Chancery Court requesting the appointment of a receiver to control, direct, and manage the property and business of Laurel Hills’ water system. On October 26, 2015, an *Order Appointing Receiver* was entered by Chancellor Thurman of the Cumberland County Chancery Court appointing Receivership Management, Inc. (“RMI”) as Receiver for the water system. Thereafter, during the regularly

⁶ *Order Approving Petition to Adopt Settlement Agreement and Release, as Amended by the First Addendum* (September 25, 2015).

⁷ *Id.* at Exhibit A, *Settlement Agreement*, pp. 3-4.

⁸ *Id.* at Exhibit A, *Settlement Agreement*, p. 2.

⁹ *Id.* at Exhibit A, *Settlement Agreement*, pp. 2 and 6.

¹⁰ *Id.* at Exhibit A, *Settlement Agreement*, p. 2.

¹¹ *Id.* at Exhibit A, *Settlement Agreement*, p. 8.

scheduled Authority Conference held on November 23, 2015, representatives of RMI appeared before the Authority to provide an update concerning the current status of the water system and utility. At that time, RMI informed the Authority that Laurel Hills had not transferred title to the water tower and parcel or an irrevocable license, as required under the *Settlement Agreement*.¹² On December 4, 2015, the Party Staff filed in this docket a *Petition to Set Aside Settlement Agreement and Reopen Show Cause Proceedings* (“*Petition*”). In its *Petition*, Party Staff requests that the panel set aside the *Settlement Agreement* and reopen the Show Cause proceedings to allow Party Staff to pursue enforcement action against Laurel Hills for its violations of state law and TRA Rules.

FINDINGS & CONCLUSIONS

Upon review and due consideration, in light of Laurel Hills’ apparent failure to comply with the terms of the *Settlement Agreement*, the Authority panel finds that the show cause docket should be re-opened, and proceedings re-commenced, for the purpose of determining whether civil penalties or other sanctions should be imposed upon Laurel Hills for its violations of state law and TRA Rules. The panel does not agree, however, that the *Settlement Agreement* should be set aside. Instead, the panel finds that the *Settlement Agreement* should be maintained and enforced and that Laurel Hills should be required, under court order if necessary, to produce the irrevocable license and title as required under the *Settlement Agreement*. Therefore, based upon these findings, the panel voted unanimously to re-open the Show Cause docket and re-commence the proceedings herein, and to further authorize Party Staff to pursue additional remedies in the Chancery Court, or other court of competent jurisdiction, and to enforce the provisions of the *Settlement Agreement*.

¹² Transcript of Authority Conference, pp. 13-14 (November 23, 2015).

IT IS THEREFORE ORDERED THAT:

1. This docket is re-opened and the proceedings herein re-commenced, facilitated as needed by the Hearing Officer, for the purpose of bringing the matter before the Authority panel for a determination as to whether civil penalties or other sanctions should be imposed upon Laurel Hills for its violations of state law and TRA Rules.

2. The TRA Compliance Division acting as a Party is authorized to pursue additional remedies in the Chancery Court, or other court of competent jurisdiction, and to enforce the provisions of the *Settlement Agreement*.

Chairman Herbert H. Hilliard, Vice Chairman David F. Jones, and Director Kenneth C. Hill concur.

ATTEST:



Earl R. Taylor, Executive Director