

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

T.R.A. DOCKET ROOM

IN RE:

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

)
)
)
)
)
)

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 current customers and/or prospective customers of Laurel Hills. 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 November 28, 2014, some of the customers of Laurel Hills (“customers”)⁷ and some potential customers of Laurel Hills (“Eagle’s Nest”)⁸ filed separate motions to intervene in this Show Cause proceeding.

The Requests for Intervention are

Inadequate to Allow Intervention

11. Neither the customers nor Eagle’s Nest cites any statutory or regulatory authority for their intervention in this Show Cause proceeding.
12. The consumers and Eagle’s Nest have failed to set forth with any particularity the facts that demonstrate that its rights are at issue in this case or the legal grounds for its intervention. The Authority’s rules for intervention require that the Petitioner “set forth particularity those facts that demonstrate the petitioner’s legal rights, duties, privileges, immunities or other legal interests.”⁹
13. Instead the customers’ claims rely upon ill-defined factual basis to support their request to intervene. They claim they have a “continuing vested interest in the outcome” of the Show Cause proceeding.¹⁰ It is unclear from the pleadings what this vested interest is or how it continues over from Docket No. 12-00030. The customers also allege that “legal rights relating to water for their homes from Laurel Hills or its successor **may** be determined in this proceeding.”¹¹ The consumers do not declare what rights are at issue in this proceeding.
14. There is a very good reason for the lack of clarity and uncertainty. The consumers’ access to water supply is not an issue in this case. In fact nothing in the present case will change the rates for water service or affect the current conditions for water service for Laurel Hills’ current customers.

⁷ *Petition to Intervene*, filed on behalf of Laurel Hills’ current consumers.

⁸ *Petition to Intervene*, filed on behalf of Eagles Nest.

⁹ Tenn. Comp. R. & Regs. 1220-01-02-.08-(2)


¹⁰ *Petition to Intervene*, filed on behalf of Laurel Hills’ current consumers, p.1.

¹¹ *Id.* at p. 1 – 2. Emphasis added.

15. Eagle's Nest requests intervention so that "it can express concerns about Laurel Hills and to request relief that will allow it to proceed to obtain the necessary water pressure testing, to obtain taps, if desired, and become a water customer of Laurel Hills even during the pendency of this proceeding."¹²
16. The time for expressing concerns about Laurel Hills or its fitness to operate a water system is past. The Authority has already made its determination on those issues. Since Laurel Hills was denied a Certificate of Convenience and Necessity ("CCN") it does not have a service territory. There is no precedent or clear legal guidance to state whether an uncertificated utility can be obligated to serve customers that it has not historically served.
17. Certainly this Show Cause proceeding arising out of Laurel Hills' past and present failure to comply with the requirements of the law is an improper forum to determine whether in the future the uncertificated utility should be obligated to serve a group of consumers who have never had access to the water service from Laurel Hills.

In conclusion neither the consumers nor Eagle's Nest has established any basis upon which they can rightfully be allowed to intervene in this Show Cause proceeding.

Respectfully Submitted,



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

¹² *Petition to Intervene*, filed on behalf of Eagles Nest, p. 2.

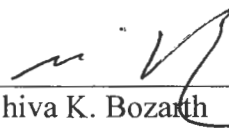
CERTIFICATE OF SERVICE

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:

Donald Scholes, Esq.
Branstetter, Stranch, & Jennings
227 Second Avenue North
Fourth Floor
Nashville, Tennessee 37201

Melanie Davis
Kizer & Black
329 Cates Street
Maryville, Tennessee 37801

This the 8th day of December, 2014.



Shiva K. Bozarth