

BRANSTETTER, STRANCH & JENNINGS, PLLC

ATTORNEYS AT LAW  
227 SECOND AVENUE NORTH

FOURTH FLOOR

NASHVILLE, TENNESSEE 37201-1631

TELEPHONE (615) 254-8801 ~ FACSIMILE (615) 250-3937

CECIL D. BRANSTETTER, SR., 1920-2014

R. JAN JENNINGS\*

JOE P. LENISKI, JR.

DONALD L. SCHOLES

MIKE STEWART

JAMES G. STRANCH, III

J. GERARD STRANCH, IV

MICHAEL J. WALL

ASSOCIATES:

RAQUEL L. BELLAMY

KARLA M. CAMPBELL

BEN GASTEL\*

SEAMUS T. KELLY

OF COUNSEL:

ROBERT E. RICHARDSON, JR. \*\*

December 5, 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 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 Motions to Intervene, Respondent's Notice of Deposition to the Tennessee Regulatory Authority and Respondent's First Set of Discovery Requests to the Tennessee Regulatory Authority.

This cover letter and the above are being filed electronically by electronic mail this same date. Please return the additional copy of each 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:

Docket No. 12-00077

SHOW CAUSE PROCEEDING AGAINST  
LAUREL HILLS CONDOMINIUMS  
PROPERTY OWNERS ASSOCIATION FOR

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**RESPONDENT'S FIRST SET OF DISCOVERY REQUESTS TO THE  
TENNESSEE REGULATORY AUTHORITY**

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To: Tennessee Regulatory Authority Investigative Staff  
c/o Shiva Bozarth, Esq.  
Compliance Division  
Tennessee Regulatory Authority  
502 Deaderick Street 4th Floor  
Nashville, TN 37243

This Discovery Request is hereby served upon the Tennessee Regulatory Authority's Investigative Staff, ("Investigative Staff"), pursuant to Rules 26, 33, 34 and 36 of the Tennessee Rules of Civil Procedure and Tenn. Comp. R. & Reg. 1220-1-2-.11. We request that full and complete responses be provided pursuant to the Tennessee Rules of Civil Procedure. The responses are to be produced at the Office of the Branstetter, Stranch, and Jennings PLLC, c/o Benjamin A. Gastel, 227 Second Ave. N, Nashville TN 37201 on the date indicated in the operative Scheduling Order in the above-identified Show Cause Proceeding (the "Proceeding").

To the extent that you object and/or do not respond to any request below on a ground not applicable under the Tennessee Open Records Act (Tenn. Code Ann. § 10-7-501 *et. seq.*), please consider the below requests a formal requests for records under that Act. Laurel Hills will concede for purposes of such a request that your responses to the below requests shall not be due until the time for responding to discovery requests are due pursuant to the schedule set in the Proceeding.

### **REQUESTS FOR PRODUCTION**

1. Produce all documents you intend to use at the Hearing in this Proceeding.
2. Produce all documents that support your contention that Laurel Hills terminated water service to certain customers in February 2012.
3. Produce all documents that support your contention that Laurel Hills purchased a water system in May of 2011.
4. Produce all documents related to the Cumberland Point Condominium Association.
5. Produce all documents related to fines imposed by the TRA related whatsoever to the wastewater system now operated by Berry's Chapel Utility District.
6. Produce documents sufficient to identify all other public utilities the TRA knows or reasonably believes are currently operating without a Certificate of Public Convenience and Necessity.
7. Produce all non-privileged documents related to Laurel Hills Property Owner's Condominium Association ("Laurel Hills") that are not otherwise filed in this docket or Docket No. 12-00030.
8. Produce all documents related to any investigation undertaken by the TRA involving Laurel Hills. By way of limitation, Laurel Hills will agree to limit the scope of this

request to those documents that the TRA does not reasonably believe are already in the possession of Laurel Hills or its counsel (i.e. those documents previously filed in public dockets involving Laurel Hills).

9. Produce documents sufficient to identify all TRA staff members, employees, agents, or representatives involved in any investigation involving Laurel Hills.
10. Produce all communications by, to, and/or from the Crab Orchard Utility District.
11. Produce all communications by, to, and/or from any customer of Laurel Hills.
12. Produce all communications by, to, and/or from Eagles Nest LLC and its respective employees, officers, board members, representatives, and agents.
13. Produce all documents related to your response to any Interrogatory that is contemporaneously served herewith.
14. Produce all documents related to any denial of any Request for Admission that is contemporaneously served herewith.

### **Interrogatories**

1. Describe in detail the fine the TRA seeks to impose upon Laurel Hills in this Proceeding by stating the amount currently sought, whether the amount is continuing to accrue, and if so how, and a detailed calculation for any such amount.
2. Identify all TRA staff members, employees, agents, or representatives involved in any investigation involving Laurel Hills.
3. Identify all witnesses you intend to call at the Hearing in this Proceeding by stating the person's name, title, company (if applicable), address, phone number, and a brief description of the witness's knowledge regarding the issues in this Proceeding.


4. Identify all statutes and/or regulations that you allege Laurel Hills has violated and the dates on which such alleged violations occurred and (if applicable) continued to occur.
5. Identify all fines imposed by the TRA in the last ten years pursuant to any statute referenced in your response to Interrogatory No. 4 by stating the entity or person fined, the amount of the fine, and the docket number in which the TRA imposed the fine.
6. Identify all statutes and/or regulations that you allege provide the TRA's authority to impose a fine in this Proceeding.
7. Identify all public utilities that the TRA knows that or believes currently operate, own, manage, or control and/or construct any public utility system (including any such plant or equipment) without a CCN by stating the public utility's name, address, service area (approximately), number of customers (if known), and the date upon which the public utility first operated, owned, managed, controlled, or constructed such system.
8. Identify all dates upon which you claim that Laurel Hills withheld water service from its customers.
9. For all Requests for Admission served contemporaneously herein that are not admitted, state all facts supporting your denial of any Request for Admission.

#### **Requests for Admission**

1. Admit that Laurel Hills has been under Court order since February 3, 2012 to operate the water system.
2. Admit that Laurel Hills attempted to terminate its provision of water service to members of the public on a permanent basis as of July 9, 2012.
3. Admit that Laurel Hills did not own or operate any water system prior to May 1, 2011.
4. Admit that Laurel Hills appealed the TRA's Order denying it a CCN.

5. Admit that such state appellate courts did not issue their final mandate related to appeal referenced in Request No. 4 until October 16, 2014.
6. Admit that Laurel Hills filed a tariff on July 20, 2012.
7. Admit that such tariff was accepted by the TRA on July 31, 2012.
8. Admit that the TRA's prior to April 18, 2013, Laurel Hills could not have known the amount of any annual inspection fee it allegedly owed under Tenn. Code Ann. § 65-4-301(a).
9. Admit that except for a period of time in February 2012, Laurel Hills has supplied water to all of its customers.
10. Admit that prior to May 1, 2011, the water system now operated by Laurel Hills did not have a certified operator as required by Tennessee Department of Environmental and Conservation regulations.
11. Admit that Laurel Hills does not have authority to extend service to new customers.

Served this 5th day of December, 2014.



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Benjamin A. Gastel, BPR #28699  
Branstetter, Stranch & Jennings, PLLC  
227 Second Avenue North, 4<sup>th</sup> Floor  
Nashville, Tennessee 37201  
Tel: 615-254-8801  
Fax: 615-255-5419  
*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:

Shiva Bozarth, Esq.  
Tennessee Regulatory Authority Investigative Staff  
Compliance Division  
Tennessee Regulatory Authority  
502 Deaderick Street 4th Floor  
Nashville, TN 37243

Vance Broemel  
Consumer Advocate Division  
Office of Attorney General  
P.O. Box 20207  
425 5th Avenue North, 2nd Floor  
Nashville, TN 37243-0500

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

This the 5<sup>th</sup> day of December, 2014.

  
\_\_\_\_\_  
Benjamin A. Gastel

**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

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**RESPONDENT'S NOTICE OF DEPOSITION TO THE TENNESSEE REGULATORY  
AUTHORITY**

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PLEASE TAKE NOTICE that pursuant to Rule 26.01 and 30.02(6) of the Tennessee Rules of Civil Procedure, Respondent, Laurel Hills, by and through his undersigned counsel, will take the deposition of the Tennessee Regulatory Authority (the "TRA"), on January 14, 2015 at the offices of Branstetter, Stranch, and Jennings PLLC, 227 Second Ave. N, Fourth Floor, Nashville, TN 37201, beginning at 9:00 a.m. central time and continuing day-to-day until complete. Pursuant to Tenn. R. Civ. P. 30.02(6), the TRA shall designate and produce one or more designated representative(s), as may be required, to testify on behalf of the TRA concerning the topics identified in Exhibit A.

The deposition will be taken before a person authorized by law to administer oaths, pursuant to Tenn. R. Civ. P. 28. The deposition will be recorded stenographically and may also be recorded by videotape as authorized under Rule 30.02(2). Plaintiffs reserve the right to use any videotaped portion of the deposition testimony at a hearing or trial in this matter.



Respectfully submitted this 5th day of December, 2014.



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Benjamin A. Gastel, BPR #28699  
Branstetter, Stranch & Jennings, PLLC  
227 Second Avenue North, 4<sup>th</sup> Floor  
Nashville, Tennessee 37201  
Tel: 615-254-8801  
Fax: 615-255-5419  
*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:

Shiva Bozarth, General Counsel, BPR #22685  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505  
*Attorney for TRA Staff*

Vance Broemel  
Consumer Advocate Division  
Office of Attorney General  
P.O. Box 20207  
425 5th Avenue North, 2nd Floor  
Nashville, TN 37243-0500

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

This the 5th day of December, 2014.



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Benjamin A. Gastel

## **EXHIBIT A**

The aforementioned deposition will cover the following topics:

1. All fines the TRA seeks to impose in this proceeding on Laurel Hills.
2. All previous fines imposed by the TRA in the last ten years on any public utility for non-compliance with any statute identified in the Show Cause Order dated July 17, 2012 ("Order").
3. All entities that the TRA currently believes or knows that is operating, managing, and/or owning any public utility system.
4. All facts related to Laurel Hills identified in the Order.

**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

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**RESPONDENT'S OPPOSITION TO MOTIONS TO INTERVENE**

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On November 18, 2014, certain customers of Laurel Hills Condominiums Property Owners' Association (the "Customer Intervenor") and Eagles Nest, LLC ("Eagles Nest") filed motions 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.

**I. Customer Intervenor's Motion Must Be Denied For Lack Of Interest In This Proceeding**

The Customer Intervenor filed a two page petition to intervene in this Proceeding on the specious ground that because they participated in the proceeding related to Laurel Hills' attempts to obtain a Certificate of Public Convenience and Necessity (a "CCN"), Dkt. No. 12-00030 (the "CCN Proceeding") that it should be permitted to intervene here. This logic simply ignores the nature of this Proceeding.

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.

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 Customer Intervenors seek 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 Customer Intervenors 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.

**II. Eagles Nest Motion Must Be Denied As It Is An Inappropriate Proceeding To Address Eagles Nest's Concerns**

Eagles Nest's attempts to intervene are even more groundless. Eagles Nest readily admits that it is not a customer of Laurel Hills only that it sought to become one. Eagles Nest utterly fails to demonstrate how this alleged denial of service gives it an interest in this Proceeding. Moreover, as the TRA is readily aware, Laurel Hills does not have a CCN under which to operate and Laurel Hills' authority, let alone obligation, to extend service to new customers is, at best, a legal gray area. *See* Tenn. Code Ann. § 65-4-201(a) (preventing public utilities from constructing any "line, plant, or system" without obtaining a CCN).

The proper method for Eagles Nest to bring its concerns to the TRA is to file an appropriate action for declaratory relief under Tenn. Code Ann. § 65-2-104 and not attempt to intervene in a show cause proceeding that is utterly unrelated to Laurel Hills' authority to extend service to a new customer. The motion to intervene should be denied.

Respectfully submitted this 5th day of December, 2014.



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Benjamin A. Gastel, BPR #28699  
Branstetter, Stranch & Jennings, PLLC  
227 Second Avenue North, 4<sup>th</sup> Floor  
Nashville, Tennessee 37201  
Tel: 615-254-8801  
Fax: 615-255-5419  
*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:

Shiva Bozarth, General Counsel, BPR #22685  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505  
*Attorney for TRA Staff*

Vance Broemel  
Consumer Advocate Division  
Office of Attorney General  
P.O. Box 20207  
425 5th Avenue North, 2nd Floor  
Nashville, TN 37243-0500

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

This the 5th day of December, 2014.



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Benjamin A. Gastel