

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 2, 2015

IN RE:)	
)	
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 DENYING PETITIONS TO INTERVENE

This matter is before the Hearing Officer of the Tennessee Regulatory Authority (“Authority” or “TRA”) upon *Petitions to Intervene* filed by Gary Haiser *et al.* and Eagles Nest, LLC (“Eagles Nest”) on November 18, 2014.

BACKGROUND

On July 17, 2012, 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*”) was issued by the Hearing Officer. 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.

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*

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*.

PETITIONS TO INTERVENE

On November 18, 2014, Gary Haiser *et al.* and Eagles Nest (together “Petitioners”) filed Petitions to Intervene seeking to intervene in these proceedings pursuant to Tenn. Code Ann. § 4-5-310 and Tenn. Code Ann. § 65-2-107. Gary Haiser *et al.* state that they are customers of Laurel Hills and participated fully in the prior hearing in this matter and “obviously have a continuing vested interest in the outcome of these proceedings as pertains to their water. The Customer Interveners [Gary Haiser *et al.*] legal rights relating to water for their homes from Laurel Hills or its successor may be determined in this proceeding.”³

In its *Petition to Intervene*, Eagles Nest states it is the owner of property on Renegade

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 *Id.* at 1-2.

Mountain and seeks to obtain water services from Laurel Hills.⁴ Eagles Nest asserts that before its preliminary plat can be considered by the Cumberland County Planning Commission, it must verify the water pressure at or near the Eagles Nest property, and Laurel Hills has denied access resulting in significant delay in the construction work.⁵ The petition states that Eagles Nest “asks for permission to intervene so that it can address its concerns regarding Laurel Hills and to request relief that will allow it to proceed to obtain the necessary water pressures testing, to obtain taps, if desired, and become a water customer of Laurel Hills even during the pendency of this proceeding.”⁶

RESPONSES TO PETITIONS TO INTERVENE

LAUREL HILLS

Laurel Hills filed *Respondent’s Opposition to Motions to Intervene* on December 8, 2014, and Party Staff filed its *Objection to Intervention Requests* on December 8, 2014. Laurel Hills states Gary Haiser *et al.* does not have an interest in this proceeding and have failed to carry their burden of demonstrating an interest. Laurel Hills states that in a show cause action only one party is contemplated by the statute and the “TRA then functionally acts as a prosecutor of this civil enforcement proceeding and no other entity can assume that role.”⁷ 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.’”⁸ 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 “it is simply unclear what role the Customer Intervenors seek to assume and they do

⁴ See [Eagles Nest] *Petition to Intervene*, p. 1 (November 18, 2014).

⁵ *Id.* at 1-2.

⁶ *Id.* at 2.

⁷ See *Respondent’s Opposition to Motions to Intervene*, p. 2 (December 8, 2014).

⁸ *Id.* citing *State v. Brown and Williamson Tobacco Corp.*, 18 S.W.3d 186 (Tenn. 2000).

not attempt whatsoever to define such a role.”⁹ In addition, Laurel Hills maintains that “[i]ncluding them in this proceeding would only add to the cost and expense of this Proceeding without any appreciable benefit gained by their inclusion.”¹⁰

Regarding Eagles Nest’s *Petition to Intervene*, Laurel Hills states that Eagles Nest admits it is not a customer of Laurel Hills, only that it seeks to become one. Like Gary Haiser *et al.*, Laurel Hills argues that Eagles Nest “fails to demonstrate how this alleged denial of service gives it an interest in this Proceeding.”¹¹ In addition, Laurel Hills points out that it does not have a CCN “under which to operate and Laurel Hills’ authority, let alone any obligation, to extend service to new customers is, at best, a legal gray area.”¹²

TRA PARTY STAFF

TRA Party Staff filed its *Objection to Intervention Requests* on December 5, 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 “[t]he 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 Gary Haiser *et al.* and Eagles 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 intervention” as required by the TRA Rules.¹⁵ Party Staff maintains that “[t]he 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.”¹⁶ With regard to the Eagles Nest petition, Party

⁹ *Id.* at 2.

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 3.

¹² *Id.*

¹³ See *Objection to Intervention Requests*, p. 1 (December 5, 2014).

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 4.

Staff asserts that “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.”¹⁷

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 the Tennessee Uniform Administrative Procedures Act (“UAPA”), Tenn. Code Ann. § 4-5-101, *et seq.* Tenn. Code Ann. § 4-5-310 establishes the following criteria for considering requests for mandatory and permissive 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 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

¹⁷ *Id.*

proceedings.¹⁸

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.¹⁹ 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.²⁰

Both 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.

Gary Haiser *et al.* state they “obviously have a continuing vested interest in the outcome of these proceedings as pertains to their water.”²¹ Gary Haiser *et al.* was admitted as a party and participated fully in the Laurel Hills CCN docket, TRA Docket No. 12-00030, because the outcome could impact their water service. In Docket No. 12-00030, Laurel Hills was denied a CCN and ordered to divest itself of the water system. This docket, however, is the TRA's enforcement proceeding that deals strictly with determining whether Laurel Hills violated certain provisions of

¹⁸ Tenn. Code Ann. § 4-5-310.

¹⁹ Tenn. Code Ann. § 4-5-310(c) and (d).

²⁰ Tenn. Comp. R. & Regs. 1220-01-02-.08.

²¹ [Gary Haiser et al.] *Petition to Intervene*, p. 1 (November 18, 2014).

law and if so, what penalty should be imposed. Whether the Authority imposes a penalty based on a violation of state law or TRA rules does not impact the water service provided by Laurel Hills and thus, Gary Haiser *et al.* has no interest in the outcome of these proceedings. Gary Haiser et al. did not assert and the Hearing Officer is not aware of any other provision of law under which they may be allowed to intervene.

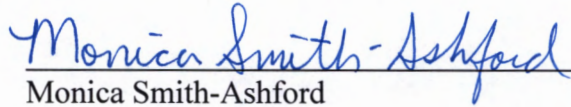
The claims asserted by Eagles Nest as justification to intervene in this docket are also misplaced. Eagles Nest is not currently a customer of Laurel Hills and in fact, has no relationship to Laurel Hills other than a desire to receive water service. Eagles Nest seeks to intervene “so that it can address its concerns regarding Laurel Hills and to request relief that will allow it to proceed to obtain the necessary water pressures testing, to obtain taps, if desired and become a water customer of Laurel Hills during the pendency of this proceeding.”²² Even if the Authority could approve Eagles Nest’s requests, it would not take such action in the current show cause docket. In the Order initiating the show cause proceeding there are certain allegations set forth against Laurel Hills. It is the TRA’s a duty to ensure the laws of the state are enforced as it relates to public utilities and the sole purpose of this docket is to determine whether the TRA should take action against Laurel Hills for the alleged violations of law. The issues Eagles Nest seeks to have addressed cannot be properly addressed in this docket.

Upon due consideration, the Hearing Officer finds that the Petitions to Intervene were timely filed; however, the Petitioners have failed to meet the burden of establishing that their legal rights or interests may be determined in this proceeding, nor have they proved that the Petitions should be granted under any other provision of law. Further, the Hearing Officer finds that the interest of justice and prompt conduct of the proceedings do not warrant granting the Petitions to Intervene. For these reasons, the Petitions to Intervene filed by Gary Haiser et al. and Eagles Nest are denied.

²² [Eagles Nest] *Petition to Intervene*, p. 2 (November 18, 2014).

IT IS THEREFORE ORDERED THAT:

1. The *Petition to Intervene* filed by Gary Haiser *et al.* is denied.
2. The *Petition to Intervene* filed by Eagles Nest, LLC is denied.


Monica Smith-Ashford
Hearing Officer

cc: Docket File
Interested Parties