

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**December 7, 2012**

**IN RE:**

**PETITION FOR A DECLARATORY RULING THAT KNOB  
RIDGE APARTMENTS, L.P. IS A PUBLIC UTILITY UNDER  
TENNESSEE LAW AND SHOULD BE REGULATED BY  
THE TRA**

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**DOCKET NO.  
12-00119**

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**ORDER DECLINING ISSUANCE OF DECLARATORY RULING, DISMISSING THE  
PETITION, AND CLOSING THE DOCKET FILE**

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Upon the decision of the voting panel assigned to this docket rendered during the November 8, 2012 Authority Conference, this matter is before the Hearing Officer to make a determination, prior to December 10, 2012, concerning whether to set this matter for a contested case proceeding before the Tennessee Regulatory Authority (“Authority” or “TRA”). In addition, in the event such a proceeding is convened, the Hearing Officer is further directed to resolve any preliminary matters, including preparing a Notice to the Secretary of State as required under Tenn. Code Ann. § 4-5-224 (2011), and to prepare the matter for hearing by the panel.

**THE PETITION**

On October 11, 2012, Lexington Place Property Owner’s Association, Inc. (“Lexington” or “Petitioner”) filed a *Petition for a Declaratory Ruling that Knob Ridge Apartments, L.P. is a Public Utility under Tennessee Law and Should be Regulated by the TRA* (“*Petition*”) and attached several exhibits, including copies of Knob Ridge Apartments, L.P.’s (“Knob Ridge” or “Respondent”) Tennessee Department of Environment and Conservation, Division of Water

Pollution Control (“TDEC”) Application dated February 24, 2012, TDEC Draft Permit issued on or about March 26, 2012, Tract 2 recorded plat whereupon the proposed wastewater treatment system will be built, Lexington’s Charter & Bylaws, and the recorded plat of Lexington Place Subdivision. In its *Petition*, Lexington requests that the Authority convene a contested case proceeding, name Knob Ridge as a party to the docket, and issue a declaratory ruling, pursuant to Tenn. Code Ann. §§ 4-5-223(a) and 65-2-104 and TRA Rule 1220-1-2-.05(1), that Knob Ridge’s “operation of its proposed wastewater treatment system would constitute a public utility under Tennessee law subject to regulation by the TRA pursuant to T.C.A. § 65-4-101(6) and T.C.A. § 65-4-104, the construction of which shall not commence until issuance of a Certificate of Public Convenience and Necessity by the TRA.”<sup>1</sup>

In support of its *Petition*, Lexington states that Knob Ridge applied for and was issued State Operating Permit No. SOP-12005, a draft permit, by the TDEC for the operation of “[a] domestic wastewater treatment system consisting of septic tanks, recirculating sand filtration and subsurface drip irrigation on 1.66 acres to serve a 48 unit apartment complex located . . . along North Knob Creek Road.”<sup>2</sup> Further, Lexington states that the proposed wastewater treatment system’s drip field area will be immediately adjacent to the common boundary line shared between it and Knob Ridge, which is the southern boundary of Lexington Place Subdivision.<sup>3</sup>

In its *Petition*, Lexington states that Knob Ridge “could not construct or operate the proposed wastewater treatment system without a CCN from the TRA if said system falls within the definition of a ‘public utility.’”<sup>4</sup> To that end, Lexington contends that the proposed wastewater treatment system meets the definition of “wastewater system” under TRA Rule 1220-

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<sup>1</sup> *Petition*, p. 1 (October 11, 2012).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 4.

4-13-.02(7). Moreover, Lexington asserts that Knob Ridge is a “for-profit, limited partnership that intends to own, operate, and manage a wastewater system dedicated to use by 48 households in exchange for compensation in the form of rental payments,” and is not excluded from the TRA’s jurisdiction under the exceptions listed in Tenn. Code Ann. § 65-4-101(6).<sup>5</sup> It is on these bases that Lexington petitions the Authority for a declaratory ruling that “[Knob Ridge’s] operation of the proposed wastewater treatment system envisioned by the TDEC Application and the TDEC Draft Permit would constitute a public utility under Tennessee law subject to regulation by the TRA, the construction of which shall not commence until issuance of a CCN by the TRA.”<sup>6</sup>

#### **KNOB RIDGE’S ANSWER**

On December 5, 2012, Knob Ridge filed its *Answer to Petition* (“*Answer*”) in the docket file. In its *Answer*, Knob Ridge informs the Authority that on December 4, 2012, via correspondence with TDEC, it withdrew its February 24, 2012 Application for a State Operating Permit (No. SOP-12005), and has abandoned its plans to construct a wastewater treatment system to serve a 48-unit apartment building on its property.<sup>7</sup> Further, Knob Ridge requests that the Hearing Officer decline to convene a contested case proceeding and dismiss the *Petition* as moot.<sup>8</sup>

#### **FINDINGS AND CONCLUSIONS**

The Authority is expressly authorized to hear requests for declaratory rulings pursuant to Tenn. Code Ann. § 65-2-104 (2004) and under the procedure set forth in the Uniform

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<sup>5</sup> *Id.* at 4-5.

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

<sup>7</sup> *Answer*, p.1 (December 5, 2012).

<sup>8</sup> *Id.*

Administrative Procedures Act (“UAPA”) at Tenn. Code Ann. § 4-5-223 (2011). Tenn. Code Ann. § 65-2-104 (2004) provides that upon the petition of any interested person,

...the authority may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it or with respect to the meaning and scope of any order of the authority.<sup>9</sup>

Tenn. Code Ann. § 4-5-223 (2011) provides, in part:

(a) Any affected person may petition an agency for a declaratory order as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the agency. The agency shall:

(1) Convene a contested case hearing pursuant to this chapter and issue a declaratory order, which shall be subject to review in the chancery court of Davidson County, unless otherwise specifically provided by statute, in the manner provided for the review of decisions in contested cases; or

(2) Refuse to issue a declaratory order, in which event the person petitioning the agency for a declaratory order may apply for a declaratory judgment as provided in § 4-5-225.

(b) A declaratory order shall be binding between the agency and parties on the state of facts alleged in the petition unless it is altered or set aside by the agency or a court in a proper proceeding.

(c) If an agency has not set a petition for a declaratory order for a contested case hearing within sixty (60) days after receipt of the petition, the agency shall be deemed to have denied the petition and to have refused to issue a declaratory order.<sup>10</sup>

Consistent with the above statutes, TRA Rule 1220-1-2-.05(1) also provides for the filing of requests for declaratory orders or rulings as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the Authority.<sup>11</sup> Accordingly, the decision of whether to issue a declaratory order is within the Authority’s discretion.<sup>12</sup>

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<sup>9</sup> Tenn. Code Ann. § 65-2-104 (2004).

<sup>10</sup> Tenn. Code Ann. § 4-5-223 (2011).

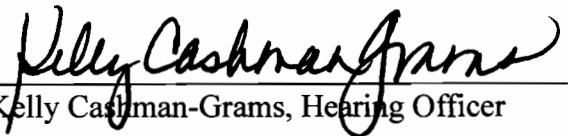
<sup>11</sup> Tenn. Comp. R. & Regs. 1220-1-2-.05(1).

<sup>12</sup> See *Consumer Advocate Div, ex rel. Tennessee Consumers v. Tennessee Regulatory Authority*, M1999-01170-COAR12CV, 2001 WL 575570 (Tenn. Ct. App. May 30, 2001), citing Tenn. Code Ann. § 4-5-223(a)(2).

Therefore, in light of Knob Ridge's abandonment of its plans and withdrawal of its Application to TDEC for a State Operating Permit to construct and operate a wastewater treatment system, the issues presented in the *Petition* are no longer in controversy and have been rendered moot. Accordingly, the Hearing Officer declines to convene a contested case, dismisses the *Petition*, and closes the docket.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition for a Declaratory Ruling that Knob Ridge Apartments, L.P. is a Public Utility under Tennessee Law and Should be Regulated by the TRA* is declined and dismissed as moot; and,
2. Docket No. 12-00119 is hereby closed.

  
Kelly Cashman-Grams, Hearing Officer