

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

IN RE: PETITION OF EAGLES NEST LLC)
TO REQUIRE LAUREL HILLS)
CONDOMINIUM ASSOCIATION, INC. TO)
PERMIT CONNECTION TO WATER) Docket No. 15-00047
SYSTEM TO EAGLES NEST, LLC'S)
PROPERTY ON RENEGADE)
MOUNTAIN)

**THE CONSUMER ADVOCATE'S STATEMENT IN SUPPORT OF
EAGLES NEST'S PETITION**

The Consumer Protection and Advocate Division¹ of the Office of the Attorney General ("Consumer Advocate") supports Eagles Nest, LLC's ("Eagles Nest") *Petition to Require Laurel Hills Condominium Association, Inc. to Permit Connection to Water System to Eagles Nest, LLC's Property on Renegade Mountain* ("Petition"). The Consumer Advocate respectfully requests that Eagles Nest's connection to the water system be permitted and, in fact, mandated by the Tennessee Regulatory Authority ("TRA" or "Authority"). This result is consistent with Authority precedent, and it is proper because (1) Laurel Hills remains a public utility that must provide service under Tennessee Law; (2) Laurel Hills was not relieved of its interim duty to serve Eagles Nests when it entered a settlement agreement in Docket 12-00077; and (3) none of the reasons for which a public utility may deny service to a potential customer are present here.

FACTUAL BACKGROUND

Eagles Nest's *Petition* requests that the TRA permit the Laurel Hills Condominium Association, Inc. ("Laurel Hills") to allow Eagles Nest to connect to the water system on Renegade

¹ Note that this name has changed from "Consumer Advocate and Protection Division" to "Consumer Protection and Advocate Division."

Mountain. Laurel Hills owns the water system and has repeatedly denied Eagles Nest—a development company that owns property in Laurel Hills’ service area—the ability to connect to it.² This denial and Laurel Hills’ notorious mismanagement of its water system have resulted in various proceedings before the TRA and state chancery courts.

TRA Docket 12-00030 is particularly relevant. In that matter, the Authority issued an *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of the Water System* (“*Order*”). Per the *Order*, Laurel Hills was required to divest its water system. Pending divestiture, the *Order* provides that “Laurel Hills remains a public utility and shall follow all applicable statutes, rules and procedures.”³ Accordingly, “Laurel Hills *shall* furnish safe, adequate and proper service” pursuant to Tenn. Code Ann. § 65-4-114.⁴

In light of the Authority’s mandates in the *Order*, Eagles Nest repeatedly attempted to connect to Laurel Hills’ water system.⁵ This system continues to be the only reasonably available water source for Eagles Nest.⁶ Despite the unambiguous mandates in the *Order* to provide service pending divestiture, Laurel Hills contends that it lacks clear TRA approval to provide service to Eagles Nest.⁷

Laurel Hills further claims it is not the proper party-in-interest in this Docket because it is under obligation to place the system into voluntary receivership.⁸ This receivership is a condition of the *Settlement Agreement* between Laurel Hills and Party Staff in the show-cause Docket 15-00077, which the Authority approved at its August 17, 2015, Authority Conference. To date, however, Laurel Hills is the proper party-in-interest because the system remains in Laurel Hills’

² *Petition* at ¶ 9.

³ *Order* at 32.

⁴ *Id.* (emphasis added).

⁵ *Petition* at ¶ 9.

⁶ *Petition* at ¶ 2.

⁷ *Answer* at ¶¶ 8, 12.

⁸ *Answer* at ¶ 7.

possession and control, and it is unclear when the receivership proceedings will be initiated or resolved. In fact, there is not yet a written order confirming the Authority's approval of the *Settlement Agreement*. Meanwhile, Laurel Hills has not actually divested its water system to a receiver and is still withholding service from Eagles Nest.⁹

Though it still holds the water system and there is no reasonably foreseeable time when the system will pass into receivership, Laurel Hills contends these proceedings should be stayed pending receivership.¹⁰ It is precisely because Laurel Hills still holds the water system, however, that it is consistent with the *Order* and the *Settlement Agreement* for the Authority to maintain that Laurel Hills is a public utility and presently obligated to serve Eagles Nest.

EAGLES NEST'S PETITION SHOULD BE GRANTED

Eagles Nest is entitled to connect to Laurel Hills' water system. Laurel Hills is required to provide service to Eagles Nest because it has not actually divested its water system and so remains a public utility. As a public utility, it must provide water service to Eagles Nest, which is a potential customer within its service area. Laurel Hills' agreement to enter into voluntary receivership in the future does not negate its present duty to provide service while it still controls the water system. None of the grounds for denying service to a potential customer is present here.

I. AUTHORITY HOLDINGS CONFIRM THAT LAUREL HILLS IS A PUBLIC UTILITY UNTIL DIVESTITURE OCCURS, AND IT IS OBLIGATED TO PROVIDE SERVICE TO EAGLES NEST UNDER TENNESSEE LAW.

Requiring Laurel Hills to allow Eagles Nest to connect to its water system is consistent with the *Order* in Docket 12-00030 and does not contradict the *Settlement Agreement* in Docket 12-00077. The *Order* is explicit that prior to divestiture Laurel Hills is a public utility obligated provide water service:

⁹ Answer at ¶ 8.

¹⁰ Answer at ¶ 15.

Pending divestiture of its water utility Laurel Hills remains a public utility and shall follow all applicable statutes, rules and procedures. Specifically, Laurel Hills *shall* furnish safe, adequate and proper service and keep and maintain its property and equipment in such condition as to enable it to do so pursuant to Tenn. Code Ann. § 65-4-114.¹¹

Laurel Hills' service area includes Eagles Nest, therefore Laurel Hills must serve that development.

The *Order* is abundantly clear regarding Laurel Hills obligations while it holds the water system. It would be contrary to its own position and unfair to Eagles Nest for the Authority to now hold this Docket in abeyance because Laurel Hills considers its obligations under the *Order* ambiguous.

II. LAUREL HILLS' AGREEMENT TO PLACE THE WATER SYSTEM IN A VOLUNTARY RECEIVERSHIP DOES NOT EQUATE TO THE COMPLETION OF DIVESTITURE AND THEREFORE DOES NOT ELIMINATE ITS PRESENT DUTY TO PROVIDE SERVICE TO EAGLES NEST.

Laurel Hills' legal obligation to serve Eagles Nest is consistent with the *Settlement Agreement*. The terms of the *Settlement Agreement* contemplate that the water system will be put into receivership, but this process is neither immediate nor seamless. Assuming that Laurel Hills will comply this with the *Settlement Agreement* despite its noncompliance with the *Order*, it may be many months before the system actually passes into receivership. Only then is divestiture complete. In the interim, the *Settlement Agreement* does not relieve Laurel Hills of its duty to serve Eagles Nest. Such an interpretation of the *Settlement Agreement* would be antithetical to the Authority's clear intention in the *Order*.

Moreover, the Authority approved the *Settlement Agreement* to bring closure to the ongoing struggle surrounding Laurel Hills' refusal to provide service and divest its water

¹¹ *Order* at 32 (emphasis added).

system. It is inconsistent with this goal to read into the *Settlement Agreement* a release of Laurel Hills' duty to serve Eagles Nest prior to transferring its system to a receiver.


III. THE AUTHORITY RULE THAT PERMITS A PUBLIC UTILITY TO DENY SERVICE IS NOT APPLICABLE IN THIS MATTER.

Laurel Hills' denial of service to Eagles Nest is impermissible under TRA Rule 1220-04-3.19. That Rule presents the exhaustive list of reasons why a public utility may deny service to a potential customer. Laurel Hills has not pled that any of those conditions are present, and rightly so. Therefore, as a public utility that must abide by TRA Rules, Laurel Hills may not deny service to Eagles Nest.

IV. CONCLUSION

The Consumer Advocate respectfully requests that the TRA grant Eagles Nest's *Petition* and mandate that Laurel Hills provide water service to Eagles Nest. This is the only result that is legally consistent with the Authority's rulings and Tennessee law. Per the Authority's *Order*, Laurel Hills remains a public utility until divestiture under the *Settlement Agreement* is complete, and is therefore compelled to provide service to Eagles Nest under Tenn. Code Ann. § 65-4-114 and TRA Rule 1220-04-3.19.

RESPECTFULLY SUBMITTED,

 9/21/15
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

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This the 21 day of Sept, 2015.


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