

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

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IN RE:

SHOW CAUSE PROCEEDING AGAINST
CUMBERLAND POINT CONDOMINIUM
PROPERTY OWNERS ASSOCIATION FOR
VIOLATIONS OF THE STATUTES AND RULES
REGULATING WASTEWATER UTILITIES

DOCKET NO. 15-00126

REQUEST FOR DISMISSAL

Comes now Tennessee Public Utility Commission ("TPUC" or "Commission") Staff acting as Party ("Party Staff") by and through counsel and requests that the Hearing Officer assigned to hear this matter dismiss it for good cause. As evidence in support of its Request to Dismiss, Party Staff would show unto the Commission as follows:

1. Cumberland Point Condominiums Property Owners Association ("CPCPOA") has operated wastewater treatment system on Renegade Mountain in Crab Orchard, Tennessee for more than twenty years.¹

2. Nine (9) properties outside of the Cumberland Point Condominiums ("CP Condos") are tied to and served by the wastewater treatment system. At the time of the filing of the Request to appoint a Hearing Officer in this matter, these nine (9) property owners ("Non-CP Customers") were not members of the CPCPOA.

3. During litigation in the Cumberland County Chancery Court concerning the wastewater system, the Non-CP Customers were joined as Plaintiffs.²

¹ *Cumberland Point Condominium Property Owners Association, et al. v. Moy Toy, LLC*, Cumberland County Chancery Court Case No. 2015-CH-923, *Amended Verified Complaint for Injunctive Relief and Damages*, p. 2 (April 27, 2016).

3. The Cumberland County Chancery Court case concerning the CPCPOA wastewater system was resolved by settlement set out in a Judgment entered by Chancellor Ronald Thurman on December 13, 2017.³

4. Subsequent to the resolution of the Cumberland County Chancery Court case, counsel for CPCPOA provided to Party Staff an Agreement for Associate Membership in Cumberland Point Condominiums Property Owners Association (“Agreement”), executed by the current property owners of Non-CP Customers properties. Said Agreement, effective January 1, 2019 grants an associate membership in the CPCPOA to the Non-CP Customers. A copy of the Agreement is attached hereto as Exhibit 1.

5. Tenn. Code Ann. § 65-4-101(6)(B)(i) provides:

“Public utility” does not mean nonprofit homeowners associations or organizations whose membership is limited to owners of lots in residential subdivisions, which associations or organizations own, construct, operate or maintain water, street light or park maintenance service systems for the exclusive use of that subdivision; provided, however, that the subdivisions are unable to obtain such services from the local utility district. None of the property, property rights or facilities owned or used by the association or organization for the rendering of such services shall be under the jurisdiction, supervision or control of the Tennessee public utility commission.⁴

6. As a result of the Agreement, the wastewater system owned and operated by CPCPOA serves only members of the property owners association. In addition, no other wastewater utility provides service on Renegade Mountain. Party Staff would, therefore, represent to the Commission that the wastewater system which is the subject of this docket, no longer meets the definition of a public utility under Tennessee law.

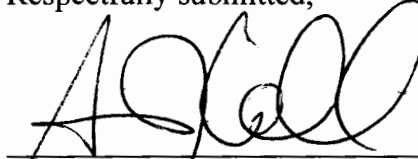
² *Id.* at 1-2.

³ *Cumberland Point Condominium Property Owners Association, et al. v. Moy Toy, LLC*, Cumberland County Chancery Court Case No. 2015-CH-923, *Judgment* (December 13, 2017).

⁴ Tenn. Code Ann. § 65-4-101(6)(B)(i) (West).

WHEREFORE, Party Staff respectfully requests that the Commission dismiss this Show Cause proceeding.

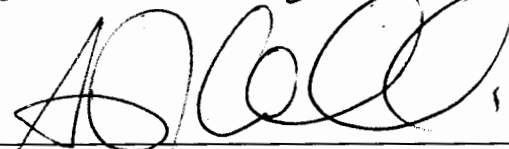
Respectfully submitted,



Aaron J. Conklin, BPR#018597
Counsel for Party Staff
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243
(615) 770-6896
aaron.conklin@tn.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing order has been served upon the Jonathan R. Hamby, Attorney for CPCPOA, Looney, Looney & Chadwell, PLLC, 156 Rector Ave., Crossville, TN 38555, jrhamby@looneychadwell.com and Wayne Irvin, Consumer Advocate Unit of the Financial Division, Tennessee Attorney General and Reporter, P.O. Box 20207, Nashville, TN 38501, wayne.irvin@ag.tn.gov on this the 25th day of January, 2019.



Aaron J. Conklin

EXHIBIT 1

AGREEMENT FOR ASSOCIATE MEMBERSHIP
IN
CUMBERLAND PONT CONDOMINIUM PROPERTY OWNERS ASSOCIATION

THIS AGREEMENT made and entered into on this the 1st day of January 2019, by and between CUMBERLAND POINT CONDOMINIUM PROPERTY OWNERS ASSOCIATION, a Tennessee not-for-profit corporation, hereinafter referred to as "Association", and JEANNE HAISER, WOODRIDGE #5000; DINA MATERDOMINI, WOODDRIDGE #5001; MARTHA BETTIS, WOODRIDGE #5002; DARRELL MCQUEEN, WOODRIDGE #5003; DONALD SANDLIN, EAGLE RIDGE #5004; BRENDA SANDLIN, EAGLE RIDGE #5005; JAMES WILLIAMS, EAGLE RIDGE #5006; CRYSTAL BRASSELL, EAGLE RIDGE #5007; TRACY WALL, RENEGADE MOUNTAIN PARKWAY; hereinafter referred to as "Associate Members".

WITNESSETH

THAT WHEREAS, the Association is the condominium association for the Cumberland Point Condominiums, and

WHEREAS, the Association operates a sewer treatment system, and

WHEREAS, Associate Members have for some time used the Association's sewer treatment system for their sewer system on Renegade Mountain, and

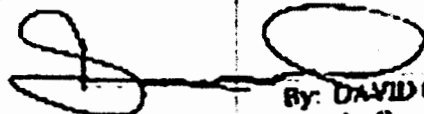
WHEREAS, the Association wishes to recognize these owners as Associate Members in the Association.

WHEREFORE, the parties hereto hereby agree as follows:

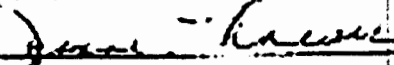
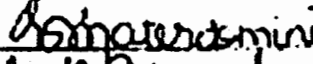
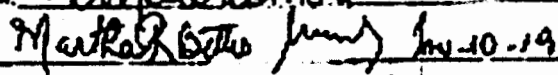
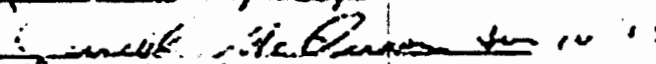
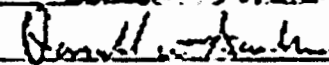
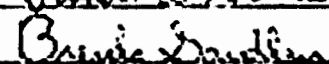
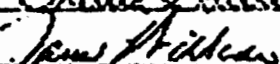
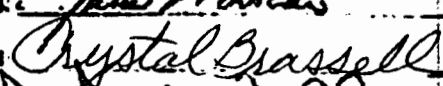
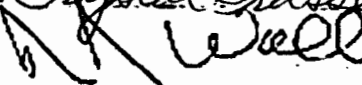
1. The above recitals are true and correct.
2. The Board of Directors of the Association has approved this Agreement and hereby creates Associate Membership status in the Association for sewer purposes only for the Associate Members.
3. The Associate Members shall vote on Association affairs, but only those involving the operation of the sewer system and no further.
4. The Associate Members for sewer system purposes only will pay a fee to the Association for sewer related services, but no further. The Associate Members shall approve of this fee by majority vote.
5. This Agreement will bind the parties hereto, their successors and assigns, as to the properties served by the sewer system where Associate Membership status is desired, for as long as sewer services are provided by the Association.
6. There will be one (1) vote for each of the nine (9) Associate Memberships created hereby.
7. The Board of Directors of the Association will still be elected by its full members with the Associate Members having no vote for the Board of Directors, and no say so in Association affairs other than as set forth herein.
8. Failure to pay the fees for such sewer services will result in such sewer services being discontinued to an Associate Member.
9. An Associate Member may surrender his or her membership at any time and cease receiving sewer services.

IN WITNESS WHEREOF, the parties hereto hereby have agreed on the date first written above.

CUMBERLAND POINT CONDOMINIUM PROPERTY OWNERS ASSOCIATION

 1/8/2019
By: DAVID CARTER
President, Cumberland Point Condominium
Property Owners Association

ASSOCIATE MEMBER'S IN AGREEMENT:

Jeanne Hesser: 
Dea Matensoni: 
Martha Betts:  June 10, 19
Dorell McQuoc:  June 10, 19
Donald Sadler:  June 15, 2019
Brenda Sadler:  June 15, 2019
James Williams: 
Crystal Brassell:  01/15/2019
Tracy Wall:  1/15/2019