

G. Everett Sinor, Jr.
Attorney at Law

April 1, 2016

Ms. Sharla Dillon
Dockets and Records Manager
Tennessee Regulatory Authority
Andrew Jackson Building
502 Deaderick Street, Fourth Floor
Nashville, Tennessee 37243

RE: *Filing of the Petitioner's Response to the CAD's Motion to Dismiss Claims (a) and (b)*

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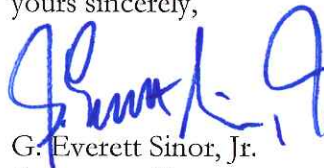
Dear Ms. Dillon:

Please find enclosed herewith an original and four (4) copies of the Laurel Hills Water System in Receivership's Response to the Consumer Advocate's Motion to Dismiss Claims (a) and (b), for filing in docket number 16-00012.

Should you have any questions, please do not hesitate to contact me.

Thanking you for your consideration of this matter, I remain,

yours sincerely,

A handwritten signature in blue ink, appearing to read "G. Sinor, Jr.", is written over the typed name.

G. Everett Sinor, Jr.
Attorney at Law

Enclosure

cc: Shiva K. Bozarth, Esq.
Donald Scholes, Esq. and Benjamin Gastel, Esq.
Melanie Davis, Esq.
Vance Broemel, Esq.
Roger York, Esq.

BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE:

PETITION OF LAUREL HILLS WATER
SYSTEM IN RECEIVERSHIP FOR
APPROVAL OF ADJUSTMENT OF ITS
RATES AND CHARGES

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) Docket No. 16-00012
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)

RESPONSE AND MEMORANDUM IN OPPOSITION TO THE CONSUMER ADVOCATE
DIVISION OF THE ATTORNEY GENERAL & REPORTER'S MOTION TO DISMISS
CLAIMS (a) AND (b)

COMES NOW, the petitioner, Laurel Hills Water System in Receivership, and files this, its response and memorandum in opposition to the Consumer Advocate Division of the Tennessee Attorney General and Reporter's [hereinafter the "Attorney General"] motion to dismiss claims (a) and (b) in the above-styled matter, filed pursuant to Tenn. Comp. R. & Regs., tit. Tenn. Reg. Auth., Rule 1220-1-2-.06(2) and the amended procedural schedule entered in the above-styled matter on March 8, 2016.

I. All Material Facts Are Undisputed

There do not appear to be any material facts in dispute. On October 26, 2015, by order¹, the Cumberland County Chancery Court [hereinafter the "Receivership Court"] appointed Receivership Management, Inc. [hereinafter the "Receiver"] receiver of the Laurel Hills Water System. This receivership estate was established upon the petition of the Tennessee Regulatory Authority [hereinafter the "Authority"] pursuant to a settlement

¹ See the Attorney General's Motion to Dismiss, Exhibit A (*Order Appointing Receiver*, Entered October 26, 2015).

reached with Laurel Hills Condominiums Property Owners Association [hereinafter "Laurel Hills Condos POA"].

On January 28, 2016, the petitioner initiated the instant matter before the Authority by filing a "Petition for Emergency Relief", seeking the institution of higher rates, as it was and remains abundantly clear to the Receiver that the current rate of \$33.10 per customer per month is inadequate. Options (a) and (b) provide in different ways that all or a substantial portion of "receivership costs and expenses" be recouped by the Authority from customers of the Laurel Hills Water System through a substantial increase in rates. Option (c) provides that the Authority recoup amounts paid to the Receiver "through the eventual sale of the LHWS or by other means." As things currently stand before the Authority, there has been no objection to any rating element in the petition, nor to the amount of fees and expenses submitted to the Receivership Court. Rather, the sole dispute appears to be centered on who should have the ultimate responsibility for compensating the Receiver for its fees, costs and expenses.

The Order Appointing Receiver states the following with regard to the reimbursement of the Receiver's costs and expenses:

The compensation of the Receiver, counsel, clerks and assistants and all expenses of taking possession of Laurel Hills' water system and conducting the proceeding (hereinafter "Receivership fees and costs") shall be submitted monthly, shall be approved by the Court and shall be paid out of the funds or assets of Laurel Hills' water system, if such funds are available. If, through the progression of the Receivership, funds or assets of Laurel Hills' water system are not available to pay Receivership fees and costs, then those fees and costs will be taxed as court costs to be paid by the Authority to the Receiver. In such instance(s), the Receiver will present the Receivership fees and costs to the Court for approval as a request for interim taxing of costs while simultaneously invoicing the Receivership fees and costs to the Authority, who will pay the Receivership fees and costs upon approval of the

Court. The Authority reserves the ability to recoup amounts so paid if later there are assets or funds available for such recoupment. ...²

In each of its three (3) reports to the Receivership Court, the Receiver has represented that the estate lacks the assets to pay such fees and costs, and, therefore, such fees and costs should be taxed to the Authority on an interim basis, with the Authority having the ability to recoup the payment of such fees and costs as provided in the Order Appointing Receiver.

II. The Receiver's Authority is Broad: Prudential Concerns

The receivership estate was created under the authority of Tenn. Code Ann. §§ 65-3-105 and 29-1-101. Though Tenn. Code Ann. § 65-3-105 applies to proceedings instituted by the Tennessee Department of Transportation, the powers provided by that section have also been provided to the Authority by virtue of Tenn. Code Ann. § 65-4-105(a).

Tenn. Code Ann. § 65-3-105 provides the Authority with the power to enforce its statutes "by mandamus or mandatory injunction, or by other summary proceedings provided by law." Tenn. Code Ann. § 29-1-103 grants authority to the Receivership Court to "appoint receivers for the safekeeping, collection, management, and disposition of property in litigation in such court, whenever necessary to the ends of substantial justice, in like manner as receivers are appointed by courts of chancery." This is plenary authority permitting the Receivership Court and, by extension, the Receiver to act as equity courts have traditionally acted to "the ends of substantial justice."

The Authority and the Laurel Hills Condos POA are parties to the action in the Receivership Court that created the receivership estate. Rather than describe the Receiver as a party to that action, it is perhaps more accurate to characterize the Receiver as "an

² *Id.*, at pp. 4-5, ¶ 10. It should be noted that the Authority has filed a Motion to Alter or Amend the Order Appointing Receiver which would modify the language quoted above, and other language in such order. That motion is set to be heard in the Receivership Court on April 7, 2016.

officer of the Court,” and to be “regarded as the *hand* of the Court”³, as this characterization has long been acknowledged.⁴ The Receiver’s powers are limited only by the Order Appointing Receiver⁵, as the Chancellor’s powers are plenary to achieve “the ends of substantial justice.”

The Order Appointing Receiver to create the Laurel Hills Water System receivership estate provides that “[t]he Receiver is empowered to petition the appropriate regulatory authority or tribunal to address changes in the rates charged for Laurel Hills’ water system’s services.”⁶ The Order Appointing Receiver further provides that the Receiver “conserve and administer [water system properties] under the general supervision of the Court.”⁷ The Order Appointing Receiver further provides that the Receiver “shall have all powers of the directors, officers and managers ...”.⁸ The Order Appointing Receiver further provides that the Receiver “shall have full power to ... deal with the property and business of Laurel Hills’ water system.”⁹ The Order Appointing Receiver further provides that “[i]n addition, the Receiver shall have any other powers given by state law.”¹⁰

The “appropriate regulatory authority or tribunal” referenced in the Receivership Court’s Order Appointing Receiver is the Tennessee Regulatory Authority. As understood by the Receiver, public utility waterworks systems are permitted to seek recompense for the management and operation of the water system through rates paid by customers. Indeed, it is contemplated that they do so, else no water system could operate profitably.

³ *Gibson’s Suits in Chancery* (8th ed.) (2004) at p.24-2, § 24.01 (emphasis in original) (citing *French v. Buffatt*, 161 Tenn. 500, 33 S.W.2d (1930)). See also *KMC Co. v. Nabors*, 572 S.W.2d 255 (1977).

⁴ *Waters v. Carroll*, 17 Tenn. (9 Yer.) 102 (1836).

⁵ *Gibson’s Suits in Chancery* (8th ed.) (2004) at p.24-12, § 24.20.

⁶ *Order Appointing Receiver*, ¶ 13, p. 6.

⁷ *Id.*, ¶ 3, p.2.

⁸ *Id.*, ¶ 13, p.5.

⁹ *Id.*, ¶ 13, p.6.

¹⁰ *Id.*, ¶ 13, p.6.

Notwithstanding the foregoing, a legitimate argument can be made that the language in the Order Appointing Receiver separates “Receivership fees and costs” from “Laurel Hills’ Water system’s services,” such that “receivership fees and costs” should not properly be considered as a part of the water services provided to the customers of the Laurel Hills water system. The Attorney General appears to take that point of view, while the Authority appears to have taken a contrary view in previous filings with the Receivership Court. The Receiver takes no position on the proper interpretation of the pertinent language of the Order Appointing Receiver as currently written; rather the Receiver would state that there appears to be no language within such order that prohibits the Authority from making any recommendation it so chooses to the Receivership Court with respect to the rates paid by customers of the Laurel Hills Water System.

The Order Appointing Receiver specifically states that “[t]he Authority reserves the ability to recoup amounts so paid [i.e., “receivership fees and costs] if later there are assets or funds available for such recoupment.” Can one reasonably interpret this language to authorize recoupment of “amounts so paid” through the receivership estate via an increase in rates paid by customers of the water system? Again, the Receiver takes no position on the proper interpretation of this language of the Order Appointing Receiver as written, other than to state that there appears to be no language within such order that prohibits the Authority from making any recommendation it so chooses to the Receivership Court with respect to the rates paid by customers of the Laurel Hills Water System.

The exact language of the Order Appointing Receiver authorizes the Receiver to “petition the appropriate regulatory authority or tribunal to address changes in the rates charged for Laurel Hills’ water system’s services.”¹¹ Note the use of the phrase “address

¹¹ *Order Appointing Receiver*, ¶ 13, p. 6 (emphasis supplied).

changes”—the phrase used is not “request changes”. Can management and operational fees be merely considered by the Authority in this process? Can consideration be given to “receivership fees and costs” being categorized as traditional management and operational expenses? Can “receivership fees and costs” be “address[ed]” by the Authority in this proceeding?

In the instant petition for emergency relief, the petitioner has requested that the Authority recommend to the Receivership Court an appropriate rate for customers of the Laurel Hills Water System in Receivership. It seems no harm comes to any interested person if the Authority chooses at its own discretion to more formally state its position on the payment of “receivership fees and costs”, and the manner, if any, by which it chooses to recoup amounts paid to the Receiver. It is the Authority that has the duty and obligation to regulate “public utility” water systems in the State of Tennessee. It was the Authority that filed suit with the Receivership Court to institute the receivership estate for the protection of the Laurel Hills Water System customers. Furthermore, it is the Authority that has the burden under the Order Appointing Receiver to pay receivership fees and costs on an interim basis as a taxation of costs in the Receivership Court. Again, it seems prudent to allow the Authority, if it so chooses, to more formally state its position on the payment and recoupment of “receivership fees and costs”.

III. The Authority’s Motion to Alter or Amend the Order Appointing Receiver

The Authority filed in the Receivership Court a Motion to Alter or Amend the Order Appointing Receiver. That motion is currently scheduled to be heard on April 7, 2016. By all appearances, the Authority’s motion seeks to alter or amend the Order Appointing Receiver so as to ensure that any obligation the Authority has to pay the Receiver’s fees, costs and expenses will be offset by increases in the rates paid by customers of the Laurel Hills Water System.

The pendency of the Authority's Motion to Alter or Amend the Order Appointing Receiver with the Receivership Court is another reason why options (a) and (b) should not be dismissed. If the Authority's motion is granted in full by the Receivership Court, then options (a) and (b) would and be and should be legitimately considered by the Authority in the instant matter. In other words, even if the Authority is inclined to grant the Attorney General's Motion to dismiss options (a) and (b), consideration of such motion is premature as the dispute is not yet ripe. Should the Order Appointing Receiver be modified by the Receivership Court in any material way, the Receiver would respectfully request the ability to reserve the right to amend this response to the Attorney General's Motion to Dismiss, as well as its response to the Attorney General's Statement of Position.

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IV. Conclusion

For the foregoing reasons, the Attorney General's motion to dismiss claims (a) and (b) should be denied.

DATED: April 1, 2016.

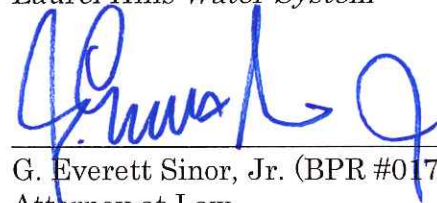
Respectfully submitted,

Laurel Hills Water System in Receivership

By: 

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*Court Appointed Receiver for
Laurel Hills Water System*

*by J. Sinor, Jr.
with permission
granted by phone
on 4/1/16*



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Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing Response to the Attorney General's Motion to Dismiss has been served upon the parties hereto and the other persons listed below, at:

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Chief of Compliance
Counsel for Tennessee Regulatory Authority
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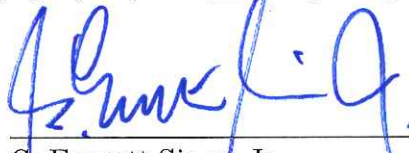
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via the United States Mails, postage prepaid, this ^{1st} day of April, 2016.



G. Everett Sinor, Jr.