

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

IN RE:)	
PETITION OF LAUREL HILLS WATER)	
SYSTEM IN RECEIVERSHIP FOR)	DOCKET NO. 16-00012
APPROVAL OF ADJUSTMENTS OF ITS)	
RATES AND CHARGES)	

PETITION TO INTERVENE

Herbert H. Slatery III, Attorney General and Reporter for the State of Tennessee, by and through the Consumer Protection and Advocate Division of the Office of the Attorney General ("Consumer Advocate" or "Petitioner"), pursuant to Tenn. Code Ann. § 65-4-118, respectfully petitions the Tennessee Regulatory Authority ("TRA" or "Authority") to grant the Consumer Advocate's intervention into this proceeding because consumers' interests, rights, duties or privileges may be determined or affected by the *Petition of Laurel Hills Water System in Receivership for Approval of Adjustments of its Rates and Charges* ("Petition"). The *Petition* sets forth three options for a rate increase; the first two options represent an increase from the current \$33.10 per month to a minimum of \$104.49 per month. In addition, as will be shown, the first two options involve a shift of Receivership costs to consumers that appear to be in conflict with the *Order Appointing a Receiver* issued by the Chancery Court of Cumberland County, October 26, 2015. For cause, Petitioner would show as follows:

1. The Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118 to represent the interests of Tennessee consumers of public utilities services by initiating and intervening as a party in proceedings before the Authority in accordance with the Uniform Administrative Procedures Act and Authority rules.

2. Laurel Hills Water System (“LHWS”) is a small water distribution system on Renegade Mountain in Cumberland County, Tennessee.

3. LHWS is under the control of Receivership Management, Inc. (“the Receiver”). The Receiver gained control of the water system on October 26, 2015, by order of the Chancery Court of Cumberland County.

4. In its *Petition* filed on January 28, 2016, in TRA Docket 16-00012, LHWS asserts that its current rates do not provide sufficient revenue to address “significant pending maintenance issues.” *Petition* at ¶ 9. LHWS also projects that its “total post-receivership losses prior to the prospective institution of a new rate” are approximately \$52,226.20. *Petition* at ¶ 11.

5. LHWS requests emergency relief of its rates pursuant to Tenn. Code Ann. § 65-5-103(b)(2), citing “increased expenses of maintenance and repair, the need for adequate cash flow to meet existing needs, and the institution of the receivership proceeding, as well as the lack of adequate information provided to the TRA at the time the TRA adopted the current rate.” *Petition* at ¶ 12. As background, the TRA approved the current rate of \$33.10 per month in an *Order* dated April 18, 2013, at which time the Laurel Hills Condominium Property Owners Association operated the water system. *Petition* at ¶ 5.

6. In the *Petition*, the Receiver sets forth three different rate increase proposals and requests that the TRA “recommend” one of the three to the Chancery Court that appointed the Receiver. The first two proposals, labeled as “a” and “b” in the *Petition*, represent an increase from the current rate of \$33.10 per month to \$104.49 per month, with option “a” being reduced after a certain period. Option “c” proposes an increase to \$42.95 per month. The three options proposed by the Receiver include a number of different components, accordingly, the three

proposals are reproduced here in full because certain components will be referred to in the remaining portion of this *Petition to Intervene*:

- a. The emergency rates can be calculated to provide that receivership costs that post-date the approval of the new rates be allocated to the LHWS rate-payers, but that receivership costs that pre-date the approval of the new rates be recouped by the Authority through the eventual sale of the LHWS or by other means. Using this method

(See Exhibit D-1), the following rates are proposed:

Customer Use Rate: \$104.49 per month

Pump Repair Special Assessment: \$6.55 per month for 4 months

Customer Tap Fee: \$1,000.00 per connection

Connection Charge/Reconnection Charge: Previous unpaid Customer Use Rate Amounts

The requested rates will result in an increase of \$77.94 per month for all customers for the first four (4) months while being specially assessed for the pump repairs, and an increase of \$71.39 per month thereafter.

The emergency rate request will result in an approximate increase in water rate revenues of \$41,588.00 for the first four (4) months after institution of the new rate, and \$114,546.00 of additional revenue per annum after the special assessment is completed.

- b. The emergency rates can be calculated to provide that receivership costs that post-date the approval of the new rates, as well as receivership costs that pre-date the approval of the new rates, along with pre-receivership losses, be allocated to the LHWS rate-payers, with all receivership costs that pre-date the approval of the new rates being paid in a special assessment over a period of twenty-four (24) months. Using this method

(See Exhibit D-2), the following rates are proposed:

Customer Use Rate: \$104.49 per month

Pump Repair Special Assessment: \$6.55 per month for 4 months

Previous Losses Special Assessment: \$16.74 per month for 24 months

Customer Tap Fee: \$1,000.00 per connection

Connection Charge/Reconnection Charge: Previous unpaid Customer Use Rate Amounts

The requested rates will result in an increase of \$94.68 per month for all customers for the first four (4) months while being specially assessed for the pump repairs and the pre-rate increase losses, an increase of \$88.13 for all

customers for months five (5) through twenty-four (24) while being specially assessed for the pre-rate increase losses, and an increase of \$71.39 per month thereafter.

The emergency rate request will result in an approximate increase in water rate revenues of \$50,292.80 for the first four (4) months after institution of the new rate, \$234,434.00 of additional revenue for months five (5) through twenty-four (24) after institution of the new rate, and \$114,456.00 of additional revenue per annum after the special assessments are completed.

- c. The emergency rates can be calculated to provide that receivership costs that post-date the approval of the new rates, as well as receivership costs that pre-date the approval of the new rates be recouped by the Authority through the eventual sale of the LHWS or by other means. Using this method

(See Exhibit D-3), the following rates are proposed:

Customer Use Rate: \$42.95 per month

Pump Repair Special Assessment: \$6.55 per month for 4 months

Customer Tap Fee: \$1,000.00 per connection

Connection Charge/Reconnection Charge: Previous unpaid Customer Use Rate Amounts

The requested rates will result in an increase of \$16.40 per month for all customers for the first four (4) months while being assessed for the pump repairs, and an increase of \$9.85 per month thereafter.

The emergency rate request will result in an approximate increase in water rate revenues of \$9587.20 for the first four (4) months after institution of the new rate, and \$18,543.60 of additional revenue per annum after the special assessment is completed.

Petition, TRA Docket No. 16-00012 (Jan. 28, 2016) at ¶ 13, pp. 7-8.

7. Based on a review of the *Petition*, options “a,” and “b,” which both involve payment of fees and costs of the Receiver by consumers in rates, appear to be in conflict with the terms of the *Order Appointing Receiver* issued by the Chancery Court of Cumberland County, No. 2012-CH-560 (Oct. 26, 2015), attached as **Exhibit A**. The *Order Appointing Receiver* provides as follows with regard to payment of costs and fees of the Receiver:

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 tracing 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.

Order Appointing Receiver at ¶ 10, p. 4, attached as **Exhibit B** (emphasis added). Thus, under the *Order Appointing Receiver*, the Receiver’s fees and costs are to be paid out of the assets of the utility, if available; if there are no such assets, the TRA is to pay, with the possibility of later “recoupment,” i.e., in the event of a sale.

8. Options “a,” and “b” as set forth by the Receiver, however, propose that consumers pay in rates the fees and costs of the Receiver, even though the *Order Appointing Receiver* makes no reference to such a method. Thus, options “a,” and “b” appear to be an improper attempt to shift the recovery of the Receiver’s fees and costs to the rates of consumers.

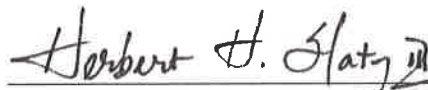
9. Option “c” may also burden customers with the Receiver’s fees and costs, depending on what constitutes “other means” for the Authority to recoup its expenditure.

10. This attempt to shift costs to consumers is not only in conflict with the Chancery Court’s *Order Appointing Receiver*, it is also in conflict with statements by the TRA Party Staff in Docket No. 12-00077 that the appointment of a Receiver would have no impact on consumers. The TRA requested the appointment of a Receiver as a result of a Settlement Agreement in TRA Docket No. 12-00077 between TRA Party Staff and Laurel Hills Condominium Property Owners Association; in which the Association agreed to a “voluntary receivership.” *Settlement Agreement and Release*, TRA Docket No. 12-00077, July 27, 2015, at p.3.

11. The TRA Party Staff, in Docket No. 12-00077, in a hearing at the TRA told the Consumer Advocate and the customers of Laurel Hills that nothing done in Docket No. 12-00077 would affect consumers' rates, even though it was known that the resolution of Docket No. 12-00077 involved the appointment of a Receiver: "First, as I said, on consumer impact, there is simply none in this case." Transcript of TRA Conference, June 29, 2015, at 56:1-5 (reference to "receivership"); and 57:12-13 (no "impact"). Now, however, it appears that the Receiver is asking the TRA to recommend action that would certainly "impact" consumers' rates.

WHEREFORE, the Consumer Advocate respectfully asks the Authority to grant this *Petition to Intervene*.

RESPECTFULLY SUBMITTED,



HERBERT H. SLATTERY III (BPR #09077)
Attorney General and Reporter
State of Tennessee



ERIN MERRICK (BPR #033883)
Assistant Attorney General
Vance L. Broemel (BPR #011421)
Senior Counsel
Consumer Protection and Advocate Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
(615) 741-8722
(615) 741-1026 - FAX

Dated: Feb 8, 2016

CERTIFICATE OF SERVICE

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

Robert E. Moore, Jr., Esq.
Receivership Management, Inc.
1101 Kermit Drive, Suite 735
Nashville, TN 37217
Phone: 615-370-0051
Fax: 615-373-4336
Email: rmoore@receivermgmt.com

G. Everett Sinor, Jr.
Attorney at Law
3504 Robin Road
Nashville, Tennessee 37204
Phone: 615-969-9027
Email: Everett.Sinor@gmail.com

Laurel Hills Water System in Receivership
Post Office Box 25
Crossville, Tennessee 38555

This the 8 day of Feb, 2016.



ERIN MERRICK

**IN THE CHANCERY COURT OF CUMBERLAND COUNTY, TENNESSEE
THIRTEENTH JUDICIAL DISTRICT
AT CROSSVILLE**

TENNESSEE REGULATORY AUTHORITY)

Petitioner,)

v.)

**LAUREL HILLS CONDOMINIUMS
PROPERTY OWNERS ASSOCIATION**)

Respondent.)

**No. 2012-CH-560
Chancellor Thurman**

FILED 10:25 AM
Date 10-26 2015 at 10:25 PM
Entered: 10-26-15
SUE TOLLETT, CLERK & MASTER
Cumberland County, Crossville, TN
BY U

ORDER APPOINTING RECEIVER

1. Pursuant to the motion filed on October 26, 2015, by the Petitioner, Tennessee Regulatory Authority ("Authority"), pursuant to T.C.A. § 65-3-105¹ and T.C.A. § 29-1-101, and upon good cause shown, the Court appoints Receivership Management, Inc. of Brentwood, Tennessee as Receiver for the water system controlled by Respondent, Laurel Hills Condominium Property Owners Association ("Laurel Hills").

2. The appointment of Receivership Management, Inc. as Receiver of Laurel Hills' water system is based upon, arises out of and/or is derived from the activities described in the Petition for Appointment of Receiver. Through this appointment, the Court deems the Receiver as a party to these proceedings.

3. Receivership Management, Inc., as Receiver, is directed forthwith to take exclusive custody, control and possession of all bank accounts, goods, chattels, causes of action,

¹ The provisions of T.C.A. § 65-3-105 are made applicable to public utilities regulated by the Petitioner pursuant to T.C.A. § 65-4-105.

credits, monies, investments, stocks, shares, effects, books and records of account and other papers and property or interests owned or held by the Respondent relating in whole or in part to the water system, with full power to sue for, collect, receive and take possession of such properties and to conserve and administer them under the general supervision of the Court.

4. Receivership Management, Inc., as Receiver of Laurel Hills' water system, shall forthwith contact all financial, agency, trust or depository institutions ("financial institutions") maintaining accounts on behalf of Respondent, Laurel Hills relating in whole or in part to the water system and employ whatever lawful means necessary to secure the funds in these, and any other accounts, for the Receivership, and to amend the signature cards so that only those persons approved by the Receiver shall be permitted to withdraw upon such accounts.

5. Receivership Management, Inc., as Receiver of Laurel Hills' water system, shall secure from any financial institution, wherever located, where Laurel Hills maintains property or accounts, the funds within financial institution accounts and all financial information concerning all such accounts. Said financial institution shall provide those funds and the information to the Receiver.

6. All persons, firms, corporations and associations, including but not limited to Respondent, Laurel Hills, and its officers, directors, stockholders, members, subscribers, agents and all other persons in active concert or participation with it, are prohibited and enjoined from the transaction of further business of the Respondent's water system; from the waste, transfer or disposition of property of the Respondent's water system; from doing any act or thing whatsoever to interfere with the taking control, possession and administration by the Receiver of the receivership properties or to in any way interfere with the Receiver, or to harass or interfere with the Receiver, or to interfere in any manner with the exclusive jurisdiction of this Court over

the receivership properties; from the institution or further prosecution of any actions or proceedings, except within this receivership itself; from the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the Respondent; from the withholding from the Receiver of books, accounts, documents or the records relating to the business of the Respondent; from any other threatened or contemplated action that might lessen the value of the Respondent's assets or prejudice the rights of investors, creditors or any proceeding under the Receivership; or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the Respondent or against its assets or any party thereof or from enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, any receivership property or attempting to foreclose, forfeit, alter or terminate any interests of the Respondent, in any property, whether such acts are part of a judicial proceeding or otherwise, until further order of this Court; from accelerating the due date of any obligation or claimed obligation; and that this Court further authorizes the Receiver to apply outside of Tennessee for the relief above described.

7. Pursuant to Tenn. Code Ann. § 65-3-105 and Tenn. Code Ann. §§ 29-1-101 *et seq.*, the officers, managers, directors, trustees, owners, employees or agents of Respondent, Laurel Hills, and any other persons with authority over or in charge of any segment of the Respondent's affairs and persons in control of assets, books and records of the receivership entities, or their physical locations, including but not limited to any offices of the Respondent, are required to cooperate with the Receiver in the carrying out of the Receivership. The term "person" shall include any person who exercises control directly or indirectly over activities of the Respondent through any holding company or other affiliate of the Respondent. "To cooperate" shall include, but shall not be limited to, the following: (1) to reply promptly in

writing to any inquiry from the Receiver requesting such a reply; (2) to make available to the Receiver any books, bank and investment accounts, documents or other records or information or property of or pertaining to the Respondent and/or in possession, custody or control of the Respondent, which relate to, arise out of or are derived from the activities described in the Petition for Appointment of Receiver, Restraining Order, and Temporary and Permanent Injunction Complaint. No person shall obstruct or interfere with the Receiver in the conduct of this Receivership.

8. All customers of and vendors/suppliers to Laurel Hills are hereby ordered to cooperate with reasonable requests of the Receiver regarding information and documentation concerning services received from Laurel Hills or services or goods provided to Laurel Hills.

9. No person shall obstruct or interfere with the Receiver in the conduct of this Receivership, and efforts to obstruct will be dealt with by the Court upon the Receiver's filing for contempt.

10. Receivership Management, Inc., as Receiver, is authorized to employ such counsel, professional advisors, clerks or assistants as deemed necessary. The persons employed under this section shall serve at the direction of the Receiver. 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. The Receivership fees and expenses will generally consist of services rendered by the Receiver's president, Jeanne B. Bryant, billed at \$ 163/hour, expenses and costs of other staff employed by the Receiver, normal overhead costs of the Receiver and professional fees and expenses incurred by the Receiver, the hourly billing rate of its principal counsel. The Receiver will present motions monthly to the Court for approval of the Receivership fees and costs. If the motions are unopposed after being on file for ten (10) calendar days, then the Court shall order their approval, absent question raised by the Court upon its review. If a motion for approval of Receivership fees and costs is opposed, it will be set for hearing at the next available time on the Court's docket in Cumberland County, Tennessee or elsewhere if circumstances so dictate.

11. If the taxation to, and payment of, Receivership fees and costs by the Authority becomes onerous to the Authority, it may move the Court to relieve it of the obligation of such taxation and payment. The Receiver reserves the ability to move the Court to be relieved of its position if payment of Receivership fees and costs is jeopardized or not otherwise provided for.

12. The Receiver is ordered to make an accounting to the Court no less frequently than semi-annually. The report shall include the Receiver's opinion as to the likelihood that additional action under T.C.A. § 65-3-105 and/or §§ 29-1-101, *et seq.* will be necessary.

13. The Receiver may take such action as it deems necessary or appropriate to reform, revitalize and/or rehabilitate Laurel Hills' water system. It shall have all the powers of the directors, officers and managers, whose authority shall be suspended, except as such is

re-delegated by the Receiver. It shall have full power to direct and manage, to hire and discharge employees, subject to any contract rights they may have, and to deal with the property and business of Laurel Hills' water system. The 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. The Receiver may consult and cooperate with other state and federal authorities who may have jurisdiction over any parts of the property and business of Laurel Hills' water system, including, but not limited to, any ancillary liquidator who may be appointed. In addition, the Receiver shall have any other powers given by state law.

14. If it appears to the Receiver that there has been criminal or tortuous conduct, or breach of any contractual or fiduciary obligation detrimental to Laurel Hills, by any officer, manager, agent, broker, employee or other person, it may pursue all appropriate legal remedies on behalf of Laurel Hills's water system, including, but not limited to, the making of criminal referrals to the appropriate state and/or federal authorities/law enforcement agencies and the institution of civil actions on behalf of Laurel Hills' water system or on behalf of Laurel Hill's water system's creditors and claimants.

15. If the Receiver determines that reorganization, consolidation, conversion, merger, dissolution, liquidation or other transformation of Laurel Hills' water system is appropriate, it shall prepare a plan to effect such changes, including, if necessary, the liquidation and sale of all of Laurel Hill's water system assets. Upon application of the Receiver for approval of the plan, and after such notice and hearing as the Court may prescribe, the Court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the Court, fair and equitable to all parties concerned. If the plan is approved, the Receiver shall carry out the plan.

16. The Receiver shall have the power to avoid fraudulent transfers. Every transfer made or suffered and every obligation incurred by Laurel Hills within one (1) year prior to the filing of a successful Petition for Receivership is fraudulent as to then existing and future creditors, if made or incurred without fair consideration, or with actual intent to hinder, delay or defraud either existing or future creditors. Transfers which are considered fraudulent may be voided by the Receiver, except as to a person who, in good faith, is a purchaser, lienholder or obligee, who, in good faith, has given a consideration less than fair for such transfer, lien or obligation, may retain the property, lien or obligation as security for repayment. The Court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and, in that event, the Receiver shall succeed to and may enforce the rights of the purchaser, lienholder or obligee.

17. Laurel Hills and/or its counsel will immediately inform the Receiver of all legal proceedings to which Laurel Hills is a party or in which Laurel Hills is involved (e.g., receipt of a subpoena, etc.). Any court in this State before which any action or proceeding in which Laurel Hills is a party, or is obligated to defend a party, shall stay the action or proceeding for one hundred twenty (120) days and such additional time as is necessary for the Receiver to obtain proper representation and prepare for further proceedings. The Receiver shall take such action respecting the pending litigation as it deems necessary in the interest of justice and for the protection of creditors, investors and the public. The Receiver shall immediately consider all litigation pending outside this State and shall petition the Courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of Laurel Hills.

18. No statute of limitations or defense of laches shall run with respect to any action by or against Laurel Hills's between the filing of the Petition for Order directing Receivership

Management, Inc. to serve as Receiver for Laurel Hills's water system and the entry of the Order granting or denying this Petition. Any action against Laurel Hills that might have been commenced when the Petition was filed may be commenced for at least sixty (60) days after this Order Appointing Receiver is entered. Any such action filed against Laurel Hills, as well as actions pending against Laurel Hills, may be subject to dismissal if the Court approves, as part of any plan recommended to it (as referenced in Paragraph 14 above), that all claims as against Laurel Hills' water system be handled through a unified proof of claim process within the Receivership. The Receiver may, upon entry of this Order, within one (1) year, or such other longer time as applicable law may permit, institute an action or proceeding on behalf of Laurel Hills' water system upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the Petition upon which this Order is entered.

19. The Receiver, and its employees, agents, representatives or counsel, shall not be held personally responsible for any claims against Laurel Hills' water system which existed, arose, matured or vested prior to the Receiver's appointment.

20. The Receiver, and its employees, agents, representatives or counsel, shall not be held personally responsible for amounts of funds, goods or services already provided or extended to Laurel Hills' water system, or which will be provided or extended to Laurel Hills' water system in the future.

21. Pursuant to T.C.A. § 29-1-104, the Receiver will post a bond of \$ Waived with the Cumberland County Clerk & Master within five (5) business days of the entry of this Order. This Order will be effective, however, during the five (5) day period and will be effective thereafter. The beneficiary of the bond will be the Laurel Hills' water system Receivership

estate and, therefore, the costs of the bond will be paid with funds available to Laurel Hill's Receivership estate or will be taxed as costs and paid by the Authority as outlined in Paragraph 10 above.

It is so ORDERED, this the 26th day of October, 2015.


RONALD THURMAN, CHANCELLOR

Submitted for Entry By:


Shiva K. Bozarth, BPR No.22685
Chief of Compliance
Tennessee Regulatory Authority
502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243

Counsel for Tennessee Regulatory Authority

CERTIFICATE OF SERVICE

I certify that I have served a copy of the forgoing document on the following persons by depositing a copy of same in the U.S. Mail, postage prepaid, addressed to them at the addresses shown below:


Donald Scholes
Benjamin Gastel
227 Second Avenue North
Fourth Floor
Nashville, Tennessee 37201

Melanie Davis
329 Cates Street
Maryville, Tennessee 37801

Vance Broemel
Consumer Advocate and Protection Division
Tennessee Attorney General and Reporter
P.O. Box 20207
Nashville, Tennessee 37202

Roger York
456 North Main Street, Suite 201
Crossville, Tennessee 38555

This the 21st day of October, 2015.



Shiva K. Bozarth