

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 23, 2016

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

ORDER APPROVING RATE RECOMMENDATION

This matter came before Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director Robin L. Morrison of the Tennessee Regulatory Authority (“TRA” or the “Authority”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on May 9, 2016, for consideration of the *Petition for Emergency Relief* filed by Laurel Hills Water System (“LHWS,” the “water system” or the “utility”) by and through its Receiver appointed by the Chancery Court of Cumberland County, Tennessee (the “Chancery Court”).

BACKGROUND AND PETITION

In Docket No. 12-00030, the Authority denied Laurel Hills Condominiums Property Owners Association’s (“LHPOA”) petition for a Certificate of Public Convenience and Necessity and ordered LHPOA to divest its ownership of the water system.¹ In the show cause proceeding against LHPOA, Docket No. 12-00077, the Authority approved a settlement between LHPOA and the Authority’s Compliance Division (“Party Staff”) wherein the two parties agreed

¹ See *In re: Petition of Laurel Hills Condominiums Property Owners Association for a Certificate of Public Convenience and Necessity*, Docket No. 12-00030, *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System* (April 18, 2013); (affirmed on appeal; *Laurel Hills Condominium Prop. Owners’ Ass’n v. Tennessee Regulatory Auth.*, 2014 WL 1494126 (Tenn. Ct. App. Apr. 14, 2014), perm. App. Denied (Tenn. Oct. 15, 2014)).

to resolve the show cause proceeding by instituting a voluntary receivership for LHWS.² Party Staff then filed a petition for appointment of a receiver in the Chancery Court and, through its *Order Appointing Receiver* dated October 26, 2015, the Chancery Court appointed Receivership Management, Inc. (“RMI” or the “Receiver”) as Receiver for LHWS.

On January 28, 2016, LHWS, by and through its Receiver, filed with the Authority a *Petition for Emergency Relief* (“*Petition*”) requesting that the Authority issue an Order recommending to the Chancery Court³ a new rate structure due to the inadequacy of its current rate structure to meet its expenses.⁴ The *Petition* set forth several different rate options based on the inclusion or exclusion of various costs and fees into rates.⁵

On February 8, 2016, the voting panel assigned to the docket voted unanimously to convene a contested case proceeding and appointed the Authority’s General Counsel or her Designee to act as Hearing Officer to prepare the matter for a hearing before the panel.⁶ Also on February 8, 2016, the Consumer Protection and Advocate Division of the Office of the Attorney General and Reporter (“Consumer Advocate”) filed a *Petition to Intervene* in the Docket. On February 11, 2016, Party Staff filed a *Petition to Intervene* in the Docket. Both *Petitions to Intervene* were granted by the Hearing Officer on February 23, 2016.⁷ On February 25, 2016, the Hearing Officer issued her *Order Establishing Procedural Schedule* and the parties proceeded to engage in discovery.

² See *In re: Show Cause Proceeding Against Laurel Hills Condominiums Property Owners Association for Alleged Violations of Tenn. Code Ann. 65-4-201, 65-4-301(a), 65-5-102, 65-4-101 and/or 65-4-103, and 65-4-115*, Docket No. 12-00077, *Order Approving Petition to Adopt Settlement Agreement and Release, as Amended by the First Addendum* (September 25, 2015).

³ Due to the nature of the receivership proceeding in Chancery Court and its *Order Appointing Receiver*, pp. 4-5, as amended, any change in the rates of LHWS must first be approved by the Chancery Court.

⁴ *Petition*, pp. 1-2 (January 28, 2016).

⁵ *Id.* at 7-8; Exhibits D-1 through D-3.

⁶ *Order Convening a Contested Case and Appointing a Hearing Officer* (February 10, 2016).

⁷ *Correspondence Regarding Interventions* (February 23, 2016).

On March 9, 2016, Party Staff filed with the Authority a *Notice of Withdrawal* notifying the Authority of its withdrawal as a party. On April 21, 2016, the Chancery Court issued an *Amended Order Appointing Receiver*, which altered language in its original *Order Appointing Receiver* to more clearly allow, but not require, the recovery of receivership fees and costs through inclusion in customer rates.

POSITION OF THE PARTIES

Prior to the issuance of the *Amended Order Appointing Receiver*, the Consumer Advocate submitted its initial written position on March 21, 2016, setting forth its arguments opposing the recovery of receivership fees and costs through customer rates.⁸ The Consumer Advocate also filed a Motion to Dismiss on that date arguing that the Chancery Court's October 26, 2015, *Order Appointing Receiver* did not allow for the recovery of receivership fees through rates; therefore, the *Petition's* rate options which allowed for such recovery should be dismissed.⁹ On April 18, 2016, following the Chancery Court's ruling which led to its *Amended Order Appointing Receiver*, the Consumer Advocate issued an *Amended Statement of Position and Withdrawal of Motion to Dismiss*. The Consumer Advocate withdrew its previous Motion to Dismiss but renewed its argument that, from a policy standpoint, receivership fees should not be borne by customers, but rather by the Authority.¹⁰ The Consumer Advocate reiterated that it had no objection to rate option D-3, which assesses rates to customers void of any receivership fees or costs.¹¹

LHWS, by and through its Receiver, took no position as to the merits of any one rate option over another that it proposed in its *Petition*. It argued that each of the rate proposals were

⁸ CAD's *Statement of Position and Memorandum in Support of Motion to Dismiss Claims (a) and (b)*, pp. 1-2 (March 21, 2016).

⁹ CAD's *Motion to Dismiss Claims (a) and (b)* (March 21, 2016).

¹⁰ CAD's *Amended Statement of Position and Withdrawal of Motion to Dismiss*, pp. 2-6 (April 18, 2016).

¹¹ *Id.* at 2.

permitted under the Chancery Court's *Amended Order Appointing Receiver*¹² and that a recommendation for approval of one of them is needed in order to meet the expenses of the water system.¹³

THE HEARING

The Hearing in this matter was held before the voting panel during the regularly scheduled Authority Conference on May 9, 2016, as noticed by the Authority on April 29, 2016. On May 4, 2016, Robert Moore Jr., Chief Operations Officer of RMI, filed with the Authority an *Affidavit*, demonstrating LHWS's compliance with the notice requirements of TRA Rule 1220-04-01-.05. Participating in the Hearing were:

Laurel Hills Water System in Receivership – G. Everett Sinor, Jr., Esq., 3504 Robin Road, Nashville, Tennessee 37204; and Robert E. Moore, Jr., Esq., Chief Operations Officer, Receivership Management Inc., 783 Old Hickory Boulevard, Suite 255, Brentwood, Tennessee 37027, Court Appointed Receiver for Laurel Hills Water System.

Consumer Protection and Advocate Division – Erin F. Merrick, Esq. and Vance L. Broemel, Esq., Office of the Attorney General and Reporter, Post Office Box 20207, Nashville, Tennessee 37202-0207.

During the Hearing, Mr. Moore ratified, then summarized his pre-filed testimony, and was subject to cross-examination by the Consumer Advocate and additional questioning before the panel. Mr. Moore also provided the Authority with an update as to how the Receivership was proceeding, including repairs and improvements made to the water system and the prospect of its eventual sale. Members of the public were given an opportunity to offer comments, at which time John Moore, a customer of LHWS, offered comments.

¹² *Laurel Hills Water System in Receivership's Amended Statement of Position*, pp. 2-3 (April 21, 2016).

¹³ *Petition*, p. 1 (January 28, 2016).

FINDINGS AND CONCLUSIONS

At the regularly scheduled Authority Conference held on May 9, 2016, the panel considered the *Petition for Emergency Relief* filed by Laurel Hills Water System by and through its Receiver appointed by the Chancery Court of Cumberland County, Tennessee. Thereafter, based upon the testimony and the administrative record as a whole, the panel found that Rate Option D-1, as presented in the *Petition*, is just, reasonable and in the public interest. A copy of Rate Option D-1, as presented in the *Petition*, is included as Exhibit 1, and is incorporated into this Order. The Authority found that approval of Rate Option D-1 will provide the Receiver with sufficient funds to operate LHWS and to make necessary system repairs. Specifically, the Authority found that this rate option will allow recovery of operating expenses of \$3,584 per month; a provision of \$2,000 per month for system repairs and maintenance; and a provision of \$8,000 per month for ongoing receivership fees and costs.

The Authority further found that recovery of expenses in accordance with rate option D-1 results in a monthly customer water rate of \$104.49, which the Authority found to be just, reasonable, and in the public interest. It found that approval of Rate Option D-1 will allow the Receiver to collect a separate surcharge of \$6.55 per month for four months in order to make necessary pump repairs, which the Authority found to be necessary and reasonable. Finally, under Rate Option D-1, the Authority determined that it will pay the receivership fees and costs from the date of inception of the receivership until the date the rates under Rate Option D-1 become effective, which will be following approval of the rates by the Chancery Court. Based on these findings, the Authority found that Rate Option D-1, as set forth in the *Petition*, should be approved for recommendation to the Chancery Court. For the convenience of the Chancery Court, a copy of the administrative record and hearing transcript will accompany this Order.

IT IS THEREFORE ORDERED THAT:

1. As set forth in the *Petition for Emergency Relief* and expressly incorporated into this Order, Rate Option D-1 is approved by the Authority for recommendation and implementation to the Chancery Court of Cumberland County, Tennessee.

2. Consistent with the Chancery Court's April 21, 2016, *Amended Order Appointing Receiver*, the Authority reserves the ability to recover and/or recoup receivership costs and fees paid by the Authority pursuant to this rate structure through the eventual sale of the Laurel Hills Water System or by other means.

3. Any collections in the monthly provisions for maintenance, repairs and receivership fees and costs in excess of actual such expenses shall be maintained in the utility's reserves and be available for future utility expenses.

4. Any person who is aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

5. Any person who is aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Chairman Herbert H. Hilliard, Director Kenneth C. Hill and Director Robin L. Morrison concur.

ATTEST:



Earl R. Taylor, Executive Director

EXHIBIT 1

COMPARISON OF CURRENT RATE ALLOCATION WITH PROPOSED RATE ALLOCATION

BASIS: EXHIBIT D-1

<u>Current Rate Item</u>	<u>Current Rate Monthly Allocation</u>	<u>Proposed Rate Monthly Allocation</u>
Water Testing	\$600.00	\$67.00
Property Tax	\$200.00	\$0.00
Telephone Expense	\$61.00	\$0.00
Insurance Expense	\$433.00	\$0.00
Postage Expense	\$8.00	\$11.00
Engineering & Labor	\$333.00	\$500.00
Construction Costs	\$0.00	\$0.00
Depreciation	\$88.00	\$88.00
Penalties & Permits (TDEC)	\$25.00	\$25.00
Debt Interest Expense	\$0.00	\$0.00
Legal Expense	\$259.00	\$0.00
Accounting	\$242.00	\$333.00
Office Expense	\$14.00	\$0.00
Equipment Rental	\$6.00	\$0.00
Maintenance & Repair	\$0.00	\$2,000.00
Wholesale Water Expense	\$1,528.00	\$2,159.00
Electricity	\$274.00	\$401.00
Rate of Return or Margin	6.50%	\$0.00
Receiver's Fee		\$8,000.00
Pump Rate Special Assessment (4 months)		\$851.00
Estimated Number of Customers		130
Monthly Customer Use Rate (first 4 months)		\$111.04
Monthly Customer Use Rate Thereafter	\$33.10	\$104.49

