

G. Everett Sinor, Jr.
Attorney at Law

December 14, 2017

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

RE: *Filing of Petitioner's Statement of Position in Docket No. 17-00098*

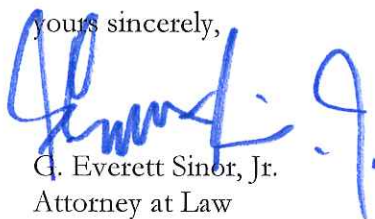
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Dear Ms. Dillon:

Please find enclosed herewith one original and four (4) copies of the following, for filing in docket number 17-000098, Petitioner's Statement of Position, as required by applicable rule.

Should you have any questions, please do not hesitate to contact me. Thanking you for your consideration of this matter, I remain,

yours sincerely,



G. Everett Sinor, Jr.
Attorney at Law

Enclosure

cc: Aaron Conklin, Esq.
Scott D. Hall, Esq.
James L. Gass, Esq.
Vance Broemel, Esq. and Daniel P. Whitaker, Esq.
Roger York, Esq.
Gregory C. Logue, Esq. and Daniel J. Moore, Esq.

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:

PETITION OF RECEIVERSHIP MANAGEMENT,
INC., SOLELY IN ITS CAPACITY AS RECEIVER
OF THE LAUREL HILLS WATER SYSTEM
IN RECEIVERSHIP FOR A PROVISIONAL
CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY

DOCKET NO.
17-00098

PETITIONER'S STATEMENT OF POSITION

COMES NOW, the petitioner, Receivership Management, Inc., solely in its capacity as Receiver for the Laurel Hills Water System in Receivership [hereinafter the "Petitioner" or the "Receiver"], and submits this, its statement of position and response to the intervenor's, Renegade Mountain Community Club [hereinafter "RMCC"], statement of position.

Background & Standard for Review

The Laurel Hills Water System receivership estate was created by order of the Cumberland County Chancery Court on October 26, 2015 for the purpose of placing into receivership the Laurel Hills Water System [hereinafter the "LHWS"].¹ The estate was created upon the joint petition of the Tennessee Public Utilities Commission [hereinafter the "Commission"] and the Laurel Hills Condominiums Property Owners Association [hereinafter the "LHCPOA"] and addresses a provision of an undated settlement agreement

¹ See Order Appointing Receiver, entered October 26, 2015, in *Tennessee Public Utilities Commission v. Laurel Hills Condominiums Property Owners Association*, Cumberland County Chancery Court, Docket No. 2012-CH-560.

entered into by those two (2) parties, but which is believed to have been entered into in July and/or August of 2015.² The Petitioner in the instant matter was appointed as Receiver of the Laurel Hills Water System receivership estate on October 26, 2015.³ A fuller description of the background of this matter is contained within the petition filed in the instant matter, and so will not be recounted here.

Financial, Managerial & Technical Capability & Competence

When reviewing applications for certificates of public convenience and necessity [hereinafter "CCN"], the Commission has traditionally looked at the financial, managerial & technical capability and competence of the entity seeking the CCN. Evidence to be presented on the hearing of this petition will establish the following:

Financial: Current financial projections show the LHWS breaking even on a month to month basis and further reflect that the LHWS is now solvent and has sufficient cash to meet its needs.⁴ Rates for LHWS customers have been established by the Cumberland County Chancery Court, effective July 1, 2016; these rates were recommended by the Commission after a hearing in early 2016.⁵ These established rates appear to be sufficient to maintain the solvency of the LHWS.⁶ A copy of the LHWS's tariff (which reflects these rates) was filed by the Petitioner in the instant matter on November 16, 2017, with a proposed effective date of January 17, 2017.

² See TPUC Docket No. 12-00077. The Order Approving Petition to Adopt Settlement Agreement Release, as Amended by the First Addendum, was entered by the Commission on September 15, 2015. The original settlement agreement is dated July 27, 2015, but the first addendum is undated.

³ Id.

⁴ See Petitioner's Late-Filed Exhibit C, filed on November 10, 2017. Reference is also made to each of the Receiver's twenty-one (21) reports, filed with the Cumberland County Chancery Court in the receivership action, Docket No. 2012-CH-560.

⁵ See TPUC Docket No. 16-00012.

⁶ It should be noted that this statement concerning the financial status of the LHWS includes the Receiver's fees as well as Mr. Sinor's fees, but excludes Mr. Matherne's fees (counsel for the Receiver who is pursuing the condemnation/clarification action), which have always been taxed on an interim basis to the Commission by the Cumberland County Chancery Court, and which the Receiver presumes will continue to be so taxed for the foreseeable future.

Managerial: Both the Commission and the LHCPOA acceded to the Petitioner's appointment as Receiver of the LHWS. The LHCPOA has not taken formal issue with the Receiver's activities since its appointment. It should be noted that Mr. Michael McClung, who is the director and chairman of the RMCC, possesses, upon information and belief, a controlling interest in the operations of the LHCPOA. The Receiver has been involved in the operation of over eighty (80) receivership estates and other similar matters of various types, from gas companies to insurance companies to federal pension and health plans. Indeed, since the creation of the instant receivership estate and the transfer of the LHWS to the Receiver, the LHWS has demonstrated a measure of stability unknown during the time that the LHCPOA owned and operated the water system.

Technical: The Receiver has contracted with a water system operator duly licensed by the Tennessee Department of Environmental Conservation, Mr. Gerald Williams, to provide on-site operation/engineering services for the LHWS. Mr. Williams is employed by the Crab Orchard Utility District [hereinafter the "COUD"] as a water system operator and has provided invaluable expertise and assistance to the LHWS, and did so prior to the creation of the receivership estate. As evidenced by the Receiver's numerous reports to the Cumberland County Chancery Court, Mr. Williams' work is greatly appreciated; his efforts on behalf of the LHWS have helped rehabilitate and stabilize the water system and reduced the wholesale water bill paid by the LHWS.

For these reasons, the Petitioner has demonstrated the financial, managerial & technical capability and competence necessary to procure a CCN from the Commission.

No Interference

There has been and will be no interference with the operations of any other water system, as no other water system, whether defined as a "public utility" or not, has either

the ability or the willingness to provide water service in the service area identified by the Petitioner.

Legal Basis to File Petition

Tenn. Code Ann., tit. 65, pt. 2 governs both the need for and issuance of certificates of public convenience and necessity. Public utilities, as that term is defined in Tenn. Code Ann. § 65-4-101, shall not “establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the commission, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having obtained, in like manner, a similar certificate ...”.⁷

The term “public utility” is defined by law and specifically includes “receivers, appointed by any court whatsoever, that ... operate ... within the state, any ... water ... system ...”⁸ Furthermore, the Cumberland County Chancery Court, in its Amended Order Appointing Receiver⁹, grants the Receiver broad authority to act as any other public utility would.

⁷ Tenn. Code Ann. § 65-4-201(a).

⁸ Tenn. Code Ann. § 65-4-101(6)(A).

⁹ The original Order Appointing Receiver was amended on April 21, 2016, however, the general powers granted to the Receiver were not altered in the amended language. Cumberland County Chancery Court, Docket No. 2012-CH-560.

Just a few specific provisions illustrating this are as follows: The Amended Order Appointing Receiver provides that the Receiver “may take such action as it deems necessary or appropriate to reform, revitalize and/or rehabilitate the Laurel Hills water system.”¹⁰ The Amended Order Appointing Receiver further provides that the Receiver “shall have all powers of the directors, officers and managers ...”.¹¹ The Amended Order Appointing Receiver further provides that the Receiver “shall have full power to ... deal with the property and business of Laurel Hills’ water system.”¹² The Amended Order Appointing Receiver further provides that “[i]n addition, the Receiver shall have any other powers given by state law.”¹³

Thus, the Petitioner has ample legal authority to seek and obtain a CCN from the Commission.

Responses to the RMCC’s Statement of Position

In reviewing the RMCC’s statement of position, it appears that its sole basis for seeking denial of the instant petition is that it alleges that “there is no legal or factual basis for the Receiver to continue its Petition with the TPUC.” This is a confusing statement. The applicable statute specifically authorizes the Petitioner to file this petition. Furthermore, the order that created the receivership estate and appointed Receivership Management, Inc. as receiver is replete with language granting the Receiver broad, plenary authority to operate, reform, rehabilitate and revitalize the LHWS. Such powers would surely include petitioning the Commission for a CCN. Certainly nothing in the Amended Order Appointing Receiver or in any other order issued by the Cumberland County Chancery Court prohibits the filing of such a petition.

¹⁰ Amended Order Appointing Receiver, ¶ 13, p.6-7.

¹¹ Id.

¹² Id.

¹³ Id.

There are other confusing statements in RMCC's statement of position that deserve comment:

1. RMCC states that the Receiver "is now attempting to be regulated by the TPUC as opposed to the Chancery Court. The Receiver is now attempting to usurp the power and authority of the Chancery Court over the receivership and its assets such that the TPUC will also now have the ability to set water rates and other charges for the LHWS to the exclusion of the Chancery Court's jurisdiction and potentially adversely and not in the best interests of the LHWS's water customers."¹⁴ This is false. Nothing in the petition intends to usurp the power and authority of the Cumberland County Chancery Court, and nothing in the petition is inconsistent with any order of that Court. Indeed, the tariff filed by the LHWS specifically includes and references the Order by the Cumberland County Chancery Court setting the rates and rate structure.¹⁵ Nowhere has the Petitioner made any attempt with the instant petition to usurp the Cumberland County Chancery Court's authority.
2. RMCC states that "the effect of the Petition could be to allow the Receiver to charge rates in excess of the rates set by the Chancery Court and undercut the Chancery Court's authority to oversee the activities of the Receiver."¹⁶ This is false, and would be impossible even if that was the Petitioner's desire. As stated above, the tariff filed by the LHWS specifically includes and references the Order by the Cumberland County Chancery Court setting the rates and rate structure.

¹⁴ See RMCC's Statement of Position, filed December 11, 2017, ¶ 14.

¹⁵ See Notice of Filing of Tariff, filed November 16, 2017.

¹⁶ See RMCC's Statement of Position, filed December 11, 2017, ¶ 15.

3. RMCC states that the Petitioner has no “factual basis to be applying for a CCN, whether provisional or otherwise, since the Receiver already has a water rate established by the Chancery Court as well as the ability to assess other charges on water customers of the system.”¹⁷ This is a confusing statement. There is currently no CCN that has been issued by the Commission (or ever been issued by the Commission) with respect to this water system, and the Receiver qualifies as a “public utility” as stated above. “Public utilities” are required by law to possess CCNs.¹⁸ Moreover, RMCC is well aware that a CCN is required as evidenced by the failed attempt by its related entity, LHCPOA, to obtain a CCN, such failure resulting in the creation of the instant receivership estate.¹⁹
4. RMCC states that the Receiver “has never made any provision for funding of cash reserves required for deferred maintenance, emergency repairs, and needed improvements and upgrades to the LHWS ...”²⁰ This is false. The LHWS has been reserving Five Hundred Dollars (\$500.00) per month for repairs—this was included in Late-filed Exhibit C to the petition in the instant matter. In fact, repairs very recently made to asphalt just outside the Laurel Hills condominium unit complex were paid for with monies previously reserved for repairs.

Conclusion

The Petitioner has both a legal and factual basis to petition for and obtain a CCN from the Commission, which will be proven upon a hearing of this matter. The Petitioner would also refer the Commission to the Statement of Position of the Intervenor, the

¹⁷ See RMCC’s Statement of Position, filed December 11, 2017, ¶ 17.

¹⁸ Tenn. Code Ann., tit. 65, pt. 2.

¹⁹ See TPUC Docket No. 12-00030; see also *Laurel Hills Condominium Property Owners Association v. Tennessee Regulatory Authority*, 2014 WL 1494126, 2014 Tenn. App. LEXIS 205 (April 14, 2014).

²⁰ See RMCC’s Statement of Position, filed December 11, 2017, ¶ 20.

Consumer Protection and Advocate Division of the Tennessee Attorney General and Reporter's office [hereinafter the "Consumer Advocate"]. The Consumer Advocate states that "[b]ased on the record to date and the history of Receivership Management, Inc. in TPUC v. Laurel Hills Condominiums Property Owners Association, Cumberland County Chancery Court, No. 2012-CH-560, the Consumer Advocate supports the petition of Receivership Management, Inc. for a provisional Certificate of Public Convenience and Necessity (CCN)".

DATED: December 14, 2017.

Respectfully submitted,

Receivership Management, Inc., solely in its
Capacity as Receiver of the Laurel Hills
Water System in Receivership

By: 

Robert E. Moore, Jr. (BPR #018600)

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Court Appointed Receiver for

Laurel Hills Water System


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Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing Statement of Position has been served upon the parties hereto and the other persons listed below, at:

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via the United States Mails, postage prepaid, and electronic mail, this 14th day of December, 2017.


G. Everett Sinor, Jr.