

STATE OF TENNESSEE

Office of the Attorney General



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ATTORNEY GENERAL AND REPORTER

20-00098

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August 12, 2020

**VIA ELECTRONIC FILING**

Hon. Kenneth C. Hill, Chairman  
c/o Ectory Lawless  
Tennessee Public Utility Commission  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, Tennessee 37243  
[TPUC.DocketRoom@tn.gov](mailto:TPUC.DocketRoom@tn.gov)

**Re: Complaint and Petition for the Tennessee Public Utility Commission to Convene a Show Cause Proceeding Against Thunder Air, Inc. and Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc.**

Dear Chairman Hill:

Attached for filing is the Consumer Advocate's *Complaint and Petition for the Tennessee Public Utility Commission to Convene a Show Cause Proceeding Against Thunder Air, Inc. and Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc.* ("Complaint"). As illustrated in the *Complaint*, the Consumer Advocate contends that – based on information provided in TPUC Docket No. 20-00011 and received by the Office of the Attorney General through our consumer complaint forum – the Jasper Highlands water system does not fall under any statutory exception to regulation by the Tennessee Public Utility Commission and Thunder Air, Inc.'s avoidance of Commission regulation results in harm to the public.

As required, the original version of this *Complaint* and four hard copies will follow this electronic filing as soon as possible. Further, it is our understanding that the \$25.00 filing fee is not required by TPUC when the filing is made by a State organization such as the Office of the Tennessee Attorney General. If this is incorrect and a filing fee is due, please let us know.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. P. Whitaker, III". The signature is fluid and cursive, with the "III" at the end written as a small, distinct mark.

**Daniel P. Whitaker, III**  
Assistant Attorney General

cc: William H. Horton, Esq., Counsel of Record for Thunder Air, Inc.  
Kelly Cashman Grams, Esq., TPUC General Counsel  
Monica Smith-Ashford, Esq., TPUC Deputy General Counsel  
David Foster, TPUC Director of Utilities

*Complaint and Petition for the Tennessee Public Utility Commission to Convene a Show Cause Proceeding Against Thunder Air, Inc. and Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc.*

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION  
AT NASHVILLE, TENNESSEE**

**IN RE:**

**COMPLAINT AND PETITION OF THE  
CONSUMER ADVOCATE UNIT IN THE  
FINANCIAL DIVISION OF THE OFFICE  
OF THE TENNESSEE ATTORNEY  
GENERAL AGAINST THUNDER AIR, INC.,  
a Tennessee corporation, and THUNDER AIR,  
INC. D/B/A JASPER HIGHLANDS  
DEVELOPMENT, INC.**

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**Docket No. 20-00098**

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**COMPLAINT AND PETITION FOR THE TENNESSEE PUBLIC UTILITY  
COMMISSION TO CONVENE A SHOW CAUSE PROCEEDING AGAINST  
THUNDER AIR, INC. AND THUNDER AIR, INC. D/B/A  
JASPER HIGHLANDS DEVELOPMENT, INC.**

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Herbert H. Slatery III, Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate Unit in the Financial Division of the Office of the Attorney General ("Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118, respectfully files this complaint and petitions the Tennessee Public Utility Commission ("TPUC" or "Commission") to convene a show cause proceeding requiring Thunder Air, Inc. d/b/a Jasper Highland Development, Inc. to appear before the Commission to show cause why the Commission should not issue a cease and desist order and impose civil penalties and sanctions against it for the following violations of state law:

- i. Operation of a public utility without a Certificate of Public Convenience and Necessity (CCN) in violation of Tenn. Code Ann. § 65-4-201;
- ii. Failure to pay an annual inspection fee in violation of Tenn. Code Ann. § 65-4-301(a);
- iii. Failure to file a tariff in violation of Tenn. Code Ann. § 65-5-102;

- iv. Charging rates not approved by the Commission in violation of Tenn. Code Ann. § 65-5-101 and/or 65-5-103; and
- v. Withholding or refusing to provide service to customers in violation of Tenn. Code Ann. § 65-4-115.

## **I. JURISDICTION**

The Commission is “specifically authorized and charged under Tenn. Code Ann. § 65-1-113, to ensure that the laws of this state as they relate to the [Commission's] jurisdiction over public utilities ‘are enforced and obeyed, that violations thereof are promptly prosecuted, and all penalties due the state are collected.’”<sup>1</sup> The Commission is empowered to hear the Consumer Advocate’s *Complaint & Petition* and “render an order pursuant to the powers delegated by the Tennessee General Assembly including those provided in Tenn. Code Ann. §§ 65-2-106, 65-3-105, 65-4-116, and 65-4-120.”<sup>2</sup>

## **II. RELEVANT FACTS**

1. The Consumer Advocate “has the duty and authority” by Tenn. Code Ann. § 65-4-118 to represent the interests of Tennessee consumers of public utility services by initiating a proceeding or intervening as a party in an existing proceeding before the Commission in accordance with the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 *et seq.*, and TPUC rules.

2. Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc. (“Thunder Air”) is a Tennessee corporation duly authorized to do business in the state. Thunder Air “owns approximately 9,000 acres atop Jasper mountain in Marion County, Tennessee. Moreover, Thunder Air Inc. owns a water system that provides water services to customers within its

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<sup>1</sup> *Order Requiring Laurel Hills Condominiums Property Owners Association To Appear and Show Cause Why a Cease and Desist Order and Civil Penalties & Sanctions Should Not Be Imposed Against It For Violations of State Law*, p. 2, TPUC Docket No. 12-00030 (July 17, 2012).

<sup>2</sup> *Id.*

growing development in Kimball, Tennessee.”<sup>3</sup> Thunder Air predicts that more customers will be added to the water system as the build-out of its development continues.<sup>4</sup> All tracts of land are required to connect to the water supply system, even if there is a drinking water well currently in use.<sup>5</sup>

3. By letter dated March 14, 2014, the Tennessee Department of Environment and Conservation (TDEC) issued approval of the final constructions plans for Thunder Air’s water system to serve Phase 1A and 1B of the development.<sup>6</sup> TDEC issued its approval for the construction plans for Phase 2 of the development on July 22, 2016.<sup>7</sup> Such approvals expire “one year from the stamped approval date unless construction is either underway or complete.”<sup>8</sup>

4. TDEC conducted a Sanitary Survey of Thunder Air’s water system on March 30, 2016.<sup>9</sup> In its letter to John Thornton, TDEC explained that no rating of either Approved, Provisionally Approved, or Unsatisfactory was issued since this was the initial Sanitary Survey of the system.<sup>10</sup>

A sanitary survey is an onsite evaluation and documentation of a water system's capabilities, operations, sources, facilities, treatment process, equipment, distribution network, monitoring, reporting and data

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<sup>3</sup> *Joint Petition of Tennessee-American Water Company, and Thunder Air, Inc. d/b/a Jasper Highlands Development, Inc. for Approval of an Asset Purchase Agreement and for the Issuance of a Certificate of Convenience and Necessity*, p. 2, TPUC Docket No. 20-00011 (February 3, 2020).

<sup>4</sup> *Id.*

<sup>5</sup> *Joint Petition* at Exhibit E, Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Jasper Highlands, p. 11, § 8.6.

<sup>6</sup> *Joint Petition* at Exhibit J, Letter from R. William Hench, Division of Water Resources, to Jerry Hightower, CTI Engineers, Inc, dated March 20, 2014. John Thornton of Thunder Enterprises and Donald Blansett of South Pittsburg Water System were copied on this letter. *Id.*

<sup>7</sup> *Joint Petition* at Exhibit J, Letter from R. William Hench, Division of Water Resources, to Joseph Parks, March Adams and Associates, dated July 22, 2016. John Thornton of Thunder Enterprises was copied on this letter. *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Letter to John Thornton, Owner, Thunder Enterprises, from Gary K. Burriss, Division of Water Resources, Tennessee Department of Environment and Conservation’s Initial Sanitary Survey of Community Water System, Jasper Highlands Water System, PWSID No. TN0008286 (April 1, 2016) (A copy of this Initial Sanitary Survey is attached as CA Exhibit 1).

<sup>10</sup> *Id.*

verification, pump facilities, controls and overall management needed to continually provide safe drinking water and any deficiencies that might impact the provision of safe drinking water. Sanitary surveys provide an opportunity for inspectors to establish a field presence with the owners and operators of water systems in order to educate them about proper monitoring and sampling procedures, provide technical assistance, and inform them of any upcoming changes in regulations.<sup>11</sup>

5. Thunder Air is currently seeking this Commission's approval of an asset purchase agreement along with Tennessee-American Water Company, Inc. of the Jasper Highlands water system.<sup>12</sup> Thunder Air unequivocally states that it owns the water system.<sup>13</sup> In fact, the Asset Purchase Agreement includes that "Seller [Thunder Air] owns, maintains, and operates [the water system]" and involves only two parties: Tennessee American Water Company and Thunder Air.<sup>14</sup>

6. Despite its ownership of the water system, Thunder Air seeks to evade the Commission's jurisdiction by claiming that the system is exempt<sup>15</sup> pursuant to Tenn. Code Ann. § 65-4-101(6)(B)(i), which involves "non-profit homeowners associations or organizations whose membership is limited to owners of lots in residential subdivisions."<sup>16</sup> In support of its position, Thunder Air provided a copy of the lease agreement and management agreement between Thunder Air and Jasper Highlands Property Owners' Association, Inc. (JHPOA).<sup>17</sup> Under the terms of the management agreement, the JHPOA shall claim the exemption from the

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<sup>11</sup> Sanitary Survey Manual for Community and Non-Community Public Water Supplies, Tennessee Department of Environment and Conservations, Division of Water Resources, p. 1 (February 2019) (A copy of this manual can be accessed at [https://www.tn.gov/content/dam/tn/environment/water/drinking-water-unit/wr\\_wq\\_dw-sanitary-survey-manual-02-2019.pdf](https://www.tn.gov/content/dam/tn/environment/water/drinking-water-unit/wr_wq_dw-sanitary-survey-manual-02-2019.pdf)).

<sup>12</sup> *Joint Petition*.

<sup>13</sup> *Id.* at p. 2.

<sup>14</sup> *Id.* at Exhibit A, p. 1.

<sup>15</sup> *Tennessee-American Water Company's Responses to the First Discovery Requests of the Consumer Protection and Advocate Division*, DR No. 1-4, TPUC Docket No. 18-00099 (November 6, 2018). See *Joint Petition*, p. 4.

<sup>16</sup> Tenn. Code Ann. § 65-4-101(6)(B)(i).

<sup>17</sup> *Joint Petition* at Exhibit C.

Commission's jurisdiction under Tenn. Code Ann. § 65-4-101(6)(B)(i) despite it not owning or operating the water system.<sup>18</sup>

7. Although a property owners association does exist, Thunder Air may unilaterally amend<sup>19</sup> the subdivision's covenants and has full control of the appointments<sup>20</sup> to the Board of Directors of the JHPOA. In fact, the president of the JHPOA is Dane Bradshaw, who is also president of Thunder Air, Inc. and Jasper Highlands Development, Inc.<sup>21</sup> This complete control of the subdivision's covenants and the JHPOA Board of Directors will continue until Thunder Air has conveyed all single-family residential tracts to third parties, which will then end the development period.<sup>22</sup> As of today, the development period has not yet expired.<sup>23</sup>

8. Further evidence that Thunder Air owns, operates, and controls the water system is found in the contract for water service from South Pittsburg. Under the lease agreement executed January 1, 2015, JHPOA agreed to purchase water from South Pittsburg Board of Water Works and Sewers ("South Pittsburg").<sup>24</sup> However, the water service contract involves two parties: South Pittsburg and Thunder Investments, Inc., and it was executed on November 14, 2013.<sup>25</sup> Thunder Investments, Inc. may assign the contract with South Pittsburg to another person or entity but only with South Pittsburg's written consent. No such assignment of the contract to JHPOA has been provided.<sup>26</sup>

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<sup>18</sup> *Id.* at Exhibit C, Management Agreement, § 5.A.

<sup>19</sup> *Id.* at Exhibit E, Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Jasper Highlands, p. 16 § 10.

<sup>20</sup> *Id.* at Exhibit E, Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Jasper Highlands, p. 4, § 4.3.

<sup>21</sup> *Direct Testimony of Dane Bradshaw*, p. 1, TPUC Docket No. 20-00011 (February 4, 2020).

<sup>22</sup> *Letter to Barbara Boswell, Consumer Specialist II, from Harold North, Jr., Chambliss, Bahner & Stophel, P.C.*, pp. 2-3 (February 5, 2020) (A copy of this Letter is attached as CA Exhibit 2).

<sup>23</sup> *Id.* at p. 2.

<sup>24</sup> *Id.* at Exhibit C, Lease Agreement, p. 1.

<sup>25</sup> *Id.* at Exhibit H, Water Service Contract.

<sup>26</sup> *Id.* at Exhibit H, Water Service Contract, p. 6, § 13.

9. The January 1, 2015, management agreement between Thunder Air and JHPOA characterizes Thunder Air as an agent of JHPOA, despite the existence of the November 14, 2013, water-services contract between Thunder Air and South Pittsburg.<sup>27</sup> Thus, it appears that JHPOA is simply purchasing water from Thunder Air, who has a pre-existing contract with South Pittsburg for water service.

10. Further evidence that Thunder Air owns, operates, and controls the system is the fact that the water purchased from South Pittsburg is “conveyed by piping, a pump house and other equipment installed and owned by” Thunder Air.<sup>28</sup> In its operation of the water system, Thunder Air performs the following:<sup>29</sup>

- i. Processing of payments for bills from Sequachee Valley Electric Co-Operative for electric service to Pump Station #1 and Pump Station #2.
- ii. Processing payment of bills from South Pittsburg.
- iii. Taking monthly readings of all Lot Owner water meters.
- iv. Processing all billing to Lot Owners for water service.
- v. Providing connections of all Lot Owners’ meters to the water system including providing all standards parts and labor for meter installation.
- vi. Determining all rates and fees to be paid by Lot Owners using water service.
- vii. Remitting all sales tax to the Tennessee Department of Revenue.
- viii. Enforcing guidelines and requirements for proper use of water system.
- ix. Providing customer service, including availability by telephone during normal business hours, to Lot Owners.
- x. Supervising any necessary maintenance and repairs to the water equipment.
- xi. Supervising any improvements to the water equipment.
- xii. Making reports to Jasper Highlands POA.

As the owner and operator of the water system, Thunder Air receives 100% of the meter fees billed to Lot Owners; receives fifteen percent of the total billing collected from Lot Owners for

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<sup>27</sup> *Id.* at Exhibit C, Management Agreement, p. 1

<sup>28</sup> *Id.* at Exhibit C, Management Agreement, § 5.A.

<sup>29</sup> *Id.* at Exhibit C, Lease Agreement, Schedule A.



water services before sales tax; and is paid for all expenses incurred in the performance of the above-listed duties.<sup>30</sup>

11. Thunder Air or JHPOA are authorized to promulgate rates and fees pursuant to § 8.6 of the subdivision's covenants.<sup>31</sup> Rates are currently being charged to the residents of Jasper Highlands as evidenced by testimony of Tennessee-American Water Company witness Elaine K. Chambers, who discusses, concerning the current rates being charged to the water system's customers, that Tennessee-American Water Company:

will reduce their current rates by the applicable current TAWC capital rider surcharges. This ensures that at the date of transfer of the System to TAWC, after the application of the Capital Riders to the Thunder Air Inc.'s customers, the Thunder Air customers would pay the meter and volumetric rates they were paying prior to the Effective Date of the Purchase Agreement. Thereafter, such rates will continue to include any subsequently approved Capital Recovery Riders and the Production Costs and Other Pass-Throughs Rider surcharges.<sup>32</sup>

12. On November 9, 2019, Robert Schlenkert, a resident of Jasper Highlands, filed a complaint with the Tennessee Division of Consumer Affairs.<sup>33</sup> Mr. Schlenkert states that after paying a hook-up fee of \$2,150, the developer refused to provide water service. Private drinking water wells are prohibited under the neighborhood's covenants.<sup>34</sup> At the time of this filing, the Schlenkert's residence has not be hooked up to the water system despite payment of the connection fee and efforts by the Schlenkerts to speak to Thunder Air about the issue.<sup>35</sup> In fact,

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<sup>30</sup> *Id.* at Exhibit C, Management Agreement, Schedule B.

<sup>31</sup> *Joint Petition* at Exhibit E, Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Jasper Highlands, p. 11, § 8.6.

<sup>32</sup> *Pre-Filed Testimony of Elaine K. Chambers*, p. 8, ln. 176 – p. 9, ln. 182, TPUC Docket No. 20-00011 (February 4, 2020).

<sup>33</sup> Complaint by Robert Schlenkert, Tennessee Division of Consumer Affairs, Complaint Number C201909889 (December 12, 2019). A copy of Complaint Number C201909889 is attached as CA Exhibit 3.

<sup>34</sup> *Joint Petition* at Exhibit E, Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Jasper Highlands, p. 11, § 8.6.

<sup>35</sup> Email from Jill Bynum, Directed at Members of the Property Owner's Association, Subject: Jasper Highlands POA Litigation (February 12, 2020). A copy of the Bynum email is attached as CA Exhibit 4.

despite paying to have his home connected to the Jasper Highlands water system, Mr. Schlenkert has been forced to purchase water and transport the water to his home for daily use.

### **III. ALLEGED VIOLATIONS OF STATE LAW**

The following actions, alleged to have been performed by Thunder Air, constitute violations of state law:

- A. Thunder Air is a for-profit domestic corporation that does not fall within an exception from the Commission's jurisdiction. Thunder Air owns, operates, and controls a water system that serves the Jasper Highland subdivision. Although a property-owners association exists, Thunder Air controls the appointment of board members and is authorized to unilaterally amend the subdivision covenants. As the owner of the system, Thunder Air, not the JHPOA, is seeking approval from the Commission for an asset purchase agreement with Tennessee American Water Company. Thunder Air has admitted to owning and operating a water company providing service to customers since at least March 30, 2016, without a CCN.

#### **COUNT 1:**

The failure of Thunder Air to obtain a CCN upon its purchase and operation of a water company that serves the public violates Tenn. Code Ann. § 65-4-201, which states:

No public utility shall 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 authority, 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 first obtained, in like manner, a similar certificate; provided, however, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it.

B. Thunder Air did not pay an annual inspection fee in 2016 through 2020.

### **COUNT 2**

The failure of Thunder Air to pay annual inspection fees in 2016 through 2020 violates

Tenn. Code Ann. § 65-4-301(a), which states:

(a)(1) Every public utility doing business in this state and subject to the control and jurisdiction of the authority to which the provisions of this chapter apply, shall pay to the state of Tennessee on or before April 1 of each year, a fee for the inspection, control and supervision of the business, service and rates of such public utility.

C. Jasper Highlands has not filed a tariff or schedule of its rates or charges with the Commission.

### **COUNT 3**

The failure of Thunder Air to file a tariff since constructing the water utility in

2016 violates Tenn. Code Ann. § 65-5-102, which states:

The authority has the power to require every such public utility to file with it complete schedules of every classification employed and of every individual or joint rate, toll, fare, or charge made or exacted by it for any product supplied or service rendered within this state as specified in such requirement.

- D. Thunder Air has charged, and is charging, rates and has attempted to collect money for water service without approval of the Commission.

**COUNT 4**

The actions of Thunder Air in imposing rates for water service to the public without Commission approval violates Tenn. Code Ann. § 65-5-101, which states:

(a) The Tennessee regulatory authority has the power after hearing upon notice, by order in writing, to fix just and reasonable individual rates, joint rates, tolls, fares, charges or schedules thereof, as well as commutation, mileage, and other special rates which shall be imposed, observed, and followed thereafter by any public utility as defined in § 65-4-101, whenever the authority shall determine any existing individual rate, joint rate, toll, fare, charge, or schedule thereof or commutation, mileage, or other special rates to be unjust, unreasonable, excessive, insufficient, or unjustly discriminatory or preferential, howsoever the same may have heretofore been fixed or established. In fixing such rates, joint rates, tolls, fares, charges or schedules, or commutation, mileage or other special rates, the authority shall take into account the safety, adequacy and efficiency or lack thereof of the service or services furnished by the public utility.

- E. Thunder Air withheld water service from its customer for disputes between a homeowner and Thunder Air.

**COUNT 5**

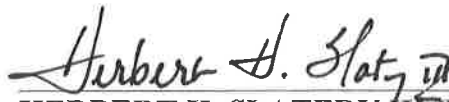
The actions of Thunder Air to withhold water service from its customers violates Tenn. Code Ann. § 65-4-115, which states:

No public utility shall adopt, maintain, or enforce any regulation, practice, or measurement which is unjust, unreasonable, unduly preferential or discriminatory, nor shall any public utility provide or maintain any service that is unsafe, improper, or inadequate, or withhold or refuse any service which can reasonably be demanded and furnished when ordered by the authority.

WHEREFORE, Petitioner respectfully requests the Commission open a docket to consider this *Complaint* against Thunder Air, Inc. and grant the Consumer Advocate's *Petition*

*to Convene a Show Cause Proceeding* requiring Thunder Air to appear before the Commission to show cause why it should not be found in violation of state law and the Commission should not immediately issue a cease and desist order and further impose civil penalties and sanctions to the maximum extent allowed by law.

RESPECTFULLY SUBMITTED,



**HERBERT H. SLATTERY III** (BPR No. 09077)  
Attorney General and Reporter  
State of Tennessee



**DANIEL P. WHITAKER III** (BPR No. 035410)  
Assistant Attorney General

**KAREN H. STACHOWSKI** (BPR No. 019607)  
Assistant Attorney General

**VANCE L. BROEMEL** (BPR No. 011421)  
Senior Assistant Attorney General

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[Vance.Broemel@ag.tn.gov](mailto:Vance.Broemel@ag.tn.gov)

**CERTIFICATE OF SERVICE**

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

Kelly Cashman Grams, Esq, General Counsel  
Tennessee Public Utility Commission  
Legal Division  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243

William H. Horton, Esq.  
735 Broad Street, Suite 306  
Chattanooga, TN 37402  
[whorton@whorton-law.com](mailto:whorton@whorton-law.com)

This the 12<sup>th</sup> day of August, 2020.

  
\_\_\_\_\_  
**DANIEL P. WHITAKER III**  
Assistant Attorney General

## **CA EXHIBIT 1.**

GKB



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
CHATTANOOGA ENVIRONMENTAL FIELD OFFICE  
1301 RIVERFRONT PARKWAY, SUITE 206  
CHATTANOOGA, TENNESSEE 37402  
PHONE (423) 634-5745 STATEWIDE 1-888-891-8332 FAX (423) 634-6389

April 1, 2016

Mr. John Thornton, Owner  
Thunder Enterprises  
P. O. Box 4737  
Chattanooga, TN 37405

Re: **Initial Sanitary Survey of Community Water System**  
Jasper Highlands Water System  
P.W.S.I.D. No. TN0008286  
Marion County, Tennessee

Dear Mr. Thornton:

On March 30, 2016, personnel with the Division of Water Resources conducted an initial sanitary survey on the Jasper Highlands Water System. The survey consisted of an inventory of the water system components, testing the chlorine residual, checking the water pressure and providing information needed for compliance with the Rules for Public Water Systems (Chapter 0400-45-01). The Division would like to thank Mr. Howard and Mr. Garth for their assistance during the survey. As this was an initial survey no rating for the system was given. In the future, the system will be given a numerical rating during each sanitary survey as well as being placed in one of three categories; Approved, Provisionally Approved or Unsatisfactory. Sanitary surveys are conducted approximately once per year.

The following items were discussed and should be addressed as applicable:

**1. Public Water System Identification Number**

Each public water system is assigned a number to aid in tracking monitoring, correspondences and compliance with the rules. The number for Jasper Highlands Water System is **TN0008286**. This number should be used in all monitoring, reports and correspondences with the Division.

**2. Record Keeping**

Enclosed is a list of record keeping requirements. Records are inspected during each sanitary survey and should be kept on site in an organized manner.

**3. Construction Projects**

Construction plans were approved by the Division of Water Resources prior to the construction beginning, as required. Any additions to the water system not shown on the approved plans should be submitted to the Division for approval before starting construction.



**4. Monthly Operation Reports**

Each public water system is required to submit a Monthly Operation Report (MOR). The MOR must contain the information as listed in the system's Drinking Water Monitoring Program (enclosed). The reports must be received in our office by the 10<sup>th</sup> of the following month. A supply of MORs was provided during the survey. The system's operator can use the provided forms or create a new form that contains the required information listed on the Drinking Water Monitoring Program.

**5. Emergency Operation Plan**

All community water systems are required to develop an Emergency Operation Plan. Information about the plan was provided during the survey. Also, anytime there is major breakdown of failure of equipment that affects the quality or quantity of the water, our office must be notified.

**6. Certified Operator**

An operator that is certified by the State is required for all community water systems. Jasper Highlands Water System is currently employing Mr. Keith Garth as the certified operator. He meets the certification requirements for the system. As the certified operator, he must be available to the system for consultation and must be in charge of decisions which affect the quantity and quality of the water.

**7. Bacteriological Monitoring**

Based on the population served by this system, one bacteriological sample must be collected and analyzed by a State certified laboratory each month. Also, a Bacteriological Monitoring Plan must be prepared and followed. Information concerning this plan was provided during the survey.

**8. Lead and Copper Monitoring**

Each community water system must monitor for lead and copper. However, if a system purchases all of its water from another water system it can be credited with the lead and copper monitoring data from the water supplier. Enclosed is a consolidation agreement which must be signed by representatives of both systems. **Please return the signed agreement by May 2, 2016.**

**9. Disinfection Byproducts Monitoring**

Disinfection byproducts are formed when chlorine is added during water treatment to make the water safe for consumption. However, the disinfection byproducts that are formed can be of health concerns if they are in excess of the Maximum Contaminant Levels. Disinfection byproducts are affected by the amount of chlorine and the age of the water in the distribution system. Jasper Highlands Water System must develop a Stage 2 Monitoring Plan for disinfection byproducts. **Please have your operator submit the plan by June 1, 2016.**

**10. Adequate Water Storage**

All community water systems serving more than 50 connections must have 24 hours of distribution storage based on the average daily water demand. The storage must be located to gravity feed the instantaneous demand in all areas of the system. Your system does not currently have 50 connections, but plans to in the future. We understand that plans are now being made to construct additional storage capacity.

**11. Flushing Program**

In order maintain an adequate chlorine residual of at least 0.2 mg/L in all parts of the distribution system, the water lines will need to be periodically flushed. The operator will need to monitor the chlorine to determine the frequency of flushing needed.

**12. Cross Connection Program**

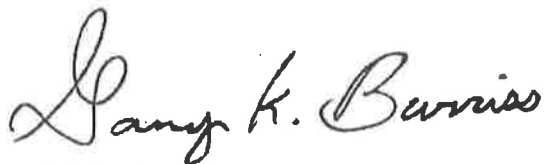
A cross connection is any plumbing that connects the water system to non-potable water or chemicals. Any connection to sprinkler systems, fire protection systems, chemical mixing or other hazardous connections must be protected with a backflow prevention device. Each device in the system must be tested annually with records kept of the test results. Information was provided during the survey for establishing a cross connection policy and a cross connection plan. **Please submit the cross connection policy and plan by June 1, 2016.**

**13. Capacity Development Plan**

This plan identifies what actions a public water system is taking to become a viable water system. The plan must include information concerning retention of a Certified Operator in direct charge, staffing and organizational structure, fiscal management and business plan. **Please submit a Capacity Development Plan by June 1, 2016.**

Again, this office extends its appreciation and thanks for the assistance during the survey and for all of the efforts to create a safe and reliable water supply for the Jasper Highlands community. The requirements may seem daunting at first, but with the assistance of your certified operator you should have no problems with achieving and maintaining compliance with the drinking water rules. Further information is available at [www.tn.gov/environment/](http://www.tn.gov/environment/). If you have any questions or if I may be of assistance, please contact me. My telephone number is (423) 634-5736 or you can email me at [gary.burris@tn.gov](mailto:gary.burris@tn.gov).

Sincerely,



Gary K. Burris  
Division of Water Resources  
Chattanooga Environmental Field Office

cc: Leesa Head, Division of Water Resources, Nashville Central Office  
cc: Clarence Howard, Sr. VP of Construction, Jasper Highlands  
cc: Keith Garth, Certified Operator

## **CA EXHIBIT 2**

# CHAMBLISS

Liberty Tower  
605 Chestnut Street, Suite 1700  
Chattanooga, TN 37450  
(423) 756-3000

CHAMBLISS, BAHNER & STOPHEL, P.C.

HAROLD L. NORTH, JR.  
DIRECT DIAL (423) 757-0244  
DIRECT FAX (423) 508-1244  
hnorth@chamblisslaw.com

February 5, 2020

VIA E-MAIL- Barbara.Boswell@tn.gov

Ms. Barbara Boswell  
Consumer Specialist II  
Tennessee Division of Consumer Affairs  
P.O. Box 20207  
Nashville, TN 372020

Re: C202000220 -- James C. and Shirley G. Long (the "Complaint")

Dear Ms. Boswell:

This firm represents Thunder Air, Inc. ("Thunder Air") and HI-Tech Data, LLC ("HI-Tech") with regard to the Complaint. The Complaint alleges that Thunder Air and HI-Tech need to (i) "turn on the internet" and (ii) "change from a POA to a home owner's assoc. to give residents a voice."

On the first issue, we are not sure why this was included in the Complaint. James C. and Shirley G. Long (the "Longs") receive Internet service through Dish Network. HI-Tech is a private company and has no obligation to provide internet to the Longs.

On the second issue, the Longs own a home in the development known as Jasper Highlands in Marion County, Tennessee. As noted in the Longs' deed (a copy is enclosed), the Longs purchased their property subject to the "Restrictive Covenants, Conditions and Restrictions (the "Covenants")... *as may be supplement and amended from time.*" The Covenants expressly permit Thunder Air, as declarant, to amend the Covenants and the Longs' deed was subject to the Covenants, as amended.

Thunder Air amended and restated the Covenants on February 7, 2018, recording the Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Jasper Highlands in Book 499, page 377 in the Register of Deeds of Marion County (the "Amended Covenants"). A copy of the Amended Covenants is enclosed with this letter. Thunder Air is the "Declarant" under the Amended Covenants. Under Section 4.3 of the Amended Covenants, the board of the Jasper Highlands Property Owner's Association is appointed by the Declarant

Ms. Barbara Boswell

February 5, 2020

Page 2

during the development period. The development period lasts until the Declarant has conveyed all single family residential tracts within Jasper Highlands to third parties.

The Development Period has not expired as the Declarant owns approximately 200 existing residential tracts within Jasper Highlands. Therefore, Declarant shall continue to appoint the board of the Jasper Highlands Property Owner's Association. Declarant's continued control of the property owner's association is customary for residential neighborhood developments and expressly permitted by the documents that the Longs' property is subject to.

Please contact me if you should have any questions concerning this response, or any other aspect of this dispute.

Very truly yours,

A handwritten signature in black ink, appearing to read "Harold L. North, Jr.", with a stylized flourish at the end.

Harold L. North, Jr.

HLN/jcg

Enclosures

cc: Mr. John Thornton

Mr. Dane Bradshaw

## **CA EXHIBIT 3**

## Online Complaint Summary

12/9/19 3:38 PM

Page 1 of 2

Board:	Consumer Affairs
License Type:	Consumer Affairs Complaints
Complaint Number:	C201909889
Incident Date:	12/09/2019
<b>Respondent</b>	
License Type:	Consumer Affairs Complaints
Organization Name:	Jasper Highlands Water System
Address:	104 Battlecreek Rd
	Marion
	South Pittsburg, TN
	37380
	US

Phone Number:

Extension:

E-mail Address:

### Complainant

First Name:	Robert
Last Name:	Schlenkert
Address:	765 River Bluffs Dr
	Marion
	Jasper, TN
	37347
	US
Phone Number:	815-245-6015
Extension:	
E-mail Address:	nvrnnuf@comcast.net

### Complaint Details

Are you an active duty service member, military dependent, or retired from active duty military service?	No
Age Range	50-59
Category	Utilities, Gas, Water, Sewer, Electricity

Give a complete statement of the facts, with dates.

I'm currently completing a home in Jasper Highlands development in Jasper, TN. The POA CCR's state that residents must hook up to the water system in the development. After paying \$2150 for hook up ,the developer refuses to provide water service. Wells are against the covenants and other nearby wells have been unsuccessful finding adequate water supply. We believe they are trying to use basic water services as leverage. The water service is called Jasper Highlands Water Service , but the water is billed to Jasper Highlands POA from South Pittsburg Water Works where the water comes from.

I believe the developer is also price gouging for water. My current water bill would be \$25.77 for out of town South Pittsburg water, but was \$105.41 from Jasper Highlands. That is over 4 times the price.

Amount Involved	2150
How did you pay?	Check
Was this product or service advertised?	No
What would you like the business to do?	Hookup water, lower price
Is this an Automobile Complaint?	No
Have you contacted the business?	Yes
With whom did you speak?	Dane Bradshaw
When did you make contact?	numerous times
Is there anyone else with firsthand knowledge of your complaint?	Yes
Have you retained an attorney in reference to your complaint?	No

#### Attestation

By submitting this complaint, I hereby attest to the accuracy or truthfulness of the content. **I Agree**

#### Confirmation

You have successfully submitted your complaint to the Tennessee Department of Commerce and Insurance and have been assigned complaint number C201909889. Please maintain this summary for your records.

This complaint will be handled in accordance with the Division's standard policies and procedures. Further, please be advised, this office cannot give legal advice. If you feel that you need legal assistance, please contact private legal counsel. A guide to free or reduced-rate legal services is available through the Tennessee Administrative Office of the Courts. Thank you for bringing this matter to our attention.



## **CA EXHIBIT 4**

**Barbara Boswell**

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**From:** shirley long <sglong10115@msn.com>  
**Sent:** Monday, February 17, 2020 9:56 AM  
**To:** Barbara Boswell  
**Subject:** Fwd: Jasper Highlands POA Litigation

Case # 202000220

John Thornton and Dane Bradshaw are now using POA money for lawyers to harass land owners. We land owners have no say against our dues being used for this purpose. See attached email.

Shirley Long

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**From:** shirley long

---

**From:** Jill Bynum <jillb@tnland.com>  
**Sent:** Wednesday, February 12, 2020 1:34:17 PM  
**To:** Jill Bynum <jillb@tnland.com>  
**Subject:** Jasper Highlands POA Litigation

Members of the Property Owner's Association,

As briefly discussed at the annual POA meeting, there was an ongoing dispute involving a property owner. With this being a POA matter, we felt it was necessary to update everyone on the situation.

- Mr. & Mrs. Schlenkert are currently renting a home on the mountain while they built their own home. Over the years while living on the mountain, there have been numerous instances where they have ignored multiple requests to adhere to the CCR's.
- Their refusal to cooperate resulted in the POA hiring an attorney to seek enforcement in hopes for resolution.
- The Schlenkert's primary residence was nearing completion and they requested water service be connected. They submitted payment for this which was reimbursed to them as soon as management learned that it had been paid.
- Our position was we would not hook up their water until they agree to: 1.) Comply with the CCR's moving forward given their history and threats to continue such behavior and 2.) Reimburse the POA for attorney fees incurred on this matter, per CCR's. We felt this was in the best interest of the community to protect everyone's investment.
- The Schlenkert's decided to file a lawsuit against the POA. Our position remained the same as stated above although POA attorney fees continue to increase to defend the lawsuit. The Schlenkert's dismissed the lawsuit last week.

We feel this is a very reasonable solution that is in the best interest of the community as this is a POA matter (not a developer/owner disagreement), evidenced by their lawsuit against the POA where additional fees were incurred that we all are currently footing the bill for. We ask that they simply agree to comply with the covenants like everyone else and refund the attorney fees all POA members are contributing towards because of their actions. If those two items can be addressed, we will gladly connect their water.

We will keep everyone updated as needed.

Thank you,

Jill Bynum  
Community Life Director  
Office: 423-265-0781 ext. 31  
Cell: 256-609-0321  
[jillb@inland.com](mailto:jillb@inland.com)  
104 Battlecreek Rd  
South Pittsburg, TN 37380  
[www.jasperhighlands.com](http://www.jasperhighlands.com)

