

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

September 25, 2015

IN RE:)	
)	
PETITION OF LAUREL HILLS CONDOMINIUMS)	DOCKET NO.
PROPERTY OWNERS ASSOCIATION FOR A)	12-00077
CERTIFICATE OF PUBLIC CONVENIENCE AND)	
NECESSITY)	

**ORDER APPROVING PETITION TO ADOPT SETTLEMENT AGREEMENT AND
RELEASE, AS AMENDED BY THE FIRST ADDENDUM**

This matter came before Vice Chairman David F. Jones, Director Kenneth C. Hill, and Director James M. Allison of the Tennessee Regulatory Authority (“Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on August 17, 2015, to consider a *Petition to Adopt Settlement Agreement* (“*Petition*”) and the attached *Settlement Agreement and Release* (“*Settlement Agreement*”) filed on July 27, 2015, as amended by the *First Addendum to the Settlement Agreement and Release* (“*First Addendum*”) filed on August 13, 2015 (attached as collective Exhibit A).

RELEVANT BACKGROUND

As directed by the Authority panel in TRA Docket No. 12-00030, this docket was initiated after due consideration of the preliminary investigation and findings of the TRA Staff acting as a Party (“Party Staff”) on July 17, 2012, with the entry of the Hearing Officer’s *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 (“Show Cause Order”).*¹ The *Show Cause Order* places the burden on Respondent Laurel Hills Condominiums Property Owners Association (“Laurel Hills” or the “Utility”) to demonstrate why the TRA should not take action against it for violations of state utility law, including Tenn. Code Ann. §§ 65-4-115, 65-4-201, 65-4-301(a), and 65-5-101, 102, and 103.² On August 8, 2012, upon the joint motion of Party Staff and Laurel Hills (collectively, the “Parties”), the Hearing Officer entered an *Agreed Order* holding the show cause proceedings in abeyance pending the resolution of TRA Docket No. 12-00030, *In re Petition of Laurel Hills Condominiums Property Owners Association for a Certificate of Public Convenience and Necessity (“CCN Petition”)*, which had commenced on April 10, 2012.³

On April 18, 2013, the Authority entered an *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System (“Divestiture Order”)* in TRA Docket No. 12-00030.⁴ The *Divestiture Order* denied Laurel Hills’ petition for a CCN to own and operate the public water system within the development known as Renegade Mountain located in Cumberland County, Tennessee, and ordered Laurel Hills to divest its ownership of the system, maintain safe, adequate, and reliable service pending such divestment, and to charge a just and reasonable rate for service, as established by the TRA.⁵ Laurel Hills appealed the Authority’s *Divestiture Order* to the Tennessee Court of Appeals, which affirmed the decision of the TRA in all respects, and to the Tennessee Supreme Court, which declined to review the Opinion.⁶ Thereafter, on November 4, 2014, finding that abeyance of the show cause action was

¹ *Show Cause Order* (July 17, 2012).

² *Id.*

³ *Agreed Order* (August 8, 2012).

⁴ On August 23, 2012, the Consumer Advocate was granted intervention in TRA Docket No. 12-00030, and thereafter, actively participated as party throughout the CCN proceedings.

⁵ *Divestiture Order* (April 18, 2013).

⁶ *Laurel Hills Condominiums Prop. Owners’ Ass’n v. Tennessee Regulatory Auth.*, No. M2013-01392-COAR12CV, 2014 WL 1494126 (Tenn. Ct. App. Apr. 14, 2014), *perm. app. denied* (Oct. 15, 2014)

no longer warranted, the Authority granted Party Staff's motion and ordered the Hearing Officer to prepare this matter for hearing.⁷

PETITION TO ADOPT SETTLEMENT AGREEMENT & RELEASE, AS AMENDED

In the *Petition*, the Parties assert that Laurel Hills has been unable to find a new owner for the water system and is willing to place the water system into receivership in order to comply with the Authority's *Divestiture Order*. According to the *Petition*, a voluntary receivership will reduce the TRA's costs, which it could incur should it force Laurel Hills into receivership, and might shorten the time frame during which the system would operate in receivership.⁸

Upon the proposed *Settlement Agreement*, the Parties agree that Laurel Hill and its employees, et al., will be released from claims related to the Show Cause and other TRA proceedings against Laurel Hills, the construction, ownership and operation of the water system accrued as of the date of approval of the *Settlement Agreement* by the Authority, and the TRA action pending against it in the Cumberland County Chancery Court.⁹ Laurel Hills is not released, however, from matters related to a breach of the *Settlement Agreement*.¹⁰

In exchange, Laurel Hills agrees to place the water system into a receivership of the TRA's choosing and remove itself from the operations and management of the water system.¹¹ Laurel Hills agrees to make all records related to the operations of the water system immediately available to the Receiver, including current customer information, current accounting records, and current maps and schematics.¹² Laurel Hills will transfer to the Receiver legal title to: 1) all

⁷ *Order Granting Renewed Motion to Initiate Proceedings* (December 10, 2014).

⁸ *Petition*, p. 2 ¶¶ 9-10.

⁹ *Settlement Agreement*, p. 2 (July 27, 2015). Upon transfer of the water system to the Receiver, counsel for Laurel Hills and the TRA agree to negotiate in good faith for the dismissal of the Cumberland County Chancery Court proceeding. *Id.* at 6.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 3. The Chancery Court will ultimately choose the Receiver; this provision means that Laurel Hills will not object to the Receiver recommended by the TRA.

¹² *Id.* at 3.

water transmission lines; 2) all water service lines; 3) all water meters and valves; 4) the pumping station; 5) the water storage tank located on Renegade Mountain; subject to restrictions¹³ 6) all other tangible assets used in the water system; 7) all accounts receivable; 8) all rights under any contracts related to water service; 9) all service rights; and 10) all other general intangible rights related to the provision of water service.¹⁴ In addition, Laurel Hills will cooperate with the Receiver and make its personnel available to ensure the orderly transfer and continued operation of water service.¹⁵ Laurel Hills will also obtain an irrevocable license to ensure that the lines, pipes, pump stations, and other water system-related assets have a valid property right to remain where they are located on the effective date of the *Settlement Agreement*.¹⁶

Further, the Parties agree that the legal fees included in rates in Docket No. 12-00030 may continue to be included in rates if approved by the Authority in a new rate case. All other attorney fees and costs are the responsibility of each Party.¹⁷ Laurel Hills will continue to pay the water bills owed to Crab Orchard Utility District as of the date of approval of the *Settlement Agreement* through the date of transfer to the Receiver. All accrued accounts receivable owed by customers to Laurel Hills on the date of transfer shall be collected by the Receiver and paid to Laurel Hills.¹⁸

In addition, in an effort to address concerns raised by Cumberland County, Tennessee, about restrictions on the placement of an emergency antenna on the water tower, the *First Addendum* modifies certain terms and conditions concerning the water tower and the parcel upon

¹³ See *First Addendum* (August 13, 2015).

¹⁴ *Settlement Agreement*, pp. 3, 10 (July 27, 2015).

¹⁵ *Id.* at 4.

¹⁶ *Id.*

¹⁷ *Id.* at 5.

¹⁸ *Id.*

which the water tower is situated.¹⁹ Originally, the *Settlement Agreement* contained a reverter clause for the water tower parcel to the title owner if the water tower were not used for water utility purposes.²⁰ The *First Addendum* allows Cumberland County, Tennessee, an opportunity to purchase for fair market value, subject to certain conditions, an easement for a single 911 communications antenna to be used solely for emergency communications.²¹ The *Settlement Agreement* also calls for the water tower to be painted in standard or neutral colors, for routine maintenance and landscaping, and contains restrictions on fencing and buildings on the parcel unrelated to utility purposes.²² Finally, the developer of the Renegade Mountain Community is given an easement to use the water tower to place the name of the development and to light the tower its own expense.²³

The *Settlement Agreement*, as amended by the *First Addendum*, will become effective upon approval by the Authority.²⁴ Upon completion of Laurel Hills' obligations under the *Settlement Agreement*, the Parties will execute an Agreed Order of Dismissal with Prejudice, dismissing the Show Cause Proceeding with prejudice.²⁵

THE HEARING

The Hearing in this matter was convened by the voting panel on August 17, 2015, as noticed by the Authority on August 7, 2015. Participating in the Hearing were the Parties and their respective counsel:

TRA Party Staff – **Shiva K. Bozarth, Esq.**, Chief, Compliance Division, Andrew Jackson State Office Bldg., 502 Deaderick Street, 4th Floor, Nashville, TN 37243; and,

¹⁹ See Letter from Rep. Cameron Sexton to Chairman Hilliard (August 11, 2015).

²⁰ *Settlement Agreement*, p. 4 (July 27, 2015).

²¹ *First Addendum* (August 13, 2015).

²² *Settlement Agreement*, p. 4 (July 27, 2015).

²³ *Id.* at 5.

²⁴ *Id.* at 8.

²⁵ *Id.* at 6.

Laurel Hills – **Benjamin Gastel, Esq. and Grace Stranch, Esq.**, Branstetter, Stranch & Jennings, PLLC, 227 2nd Avenue North, Ste. 400, Nashville, TN 37201.

During the Hearing, the *Settlement Agreement*, as amended by the *First Addendum*, was presented to the panel. The Parties were questioned and discussed, as requested, the scope and terms of the agreement as each understood them to the satisfaction of the TRA Staff and Directors. In addition, members of the public were given the opportunity to speak, and one citizen speaking on behalf of the Renegade Mountain Community Club offered comments.²⁶

FINDINGS & CONCLUSIONS

Following the Hearing, the panel deliberated the merits of the proposed *Settlement Agreement*, as amended by the *First Addendum*. Upon review and due consideration, the panel found that the terms of the agreement are consistent with law and promote the public interest. The panel finds that approval of the *Settlement Agreement*, as amended by the *First Addendum*, relieves an unqualified and uncertificated entity that has, by necessity, has been operating the water utility pursuant to the TRA's *Divestiture Order* and under Order of the Cumberland County Chancery Court. Although the *Settlement Agreement* does not impose a monetary fine, in light of Laurel Hills' willingness to now surrender utility operations and ownership to a qualified receiver, the panel finds that the resulting actions demonstrated in this proceeding are sufficient to dissuade other utilities from engaging in similar improper conduct. Further, the removal of Laurel Hills from the operations and ownership of the water system and the subsequent institution of a qualified receiver is an important step toward certainty for the water system customers on Renegade Mountain. Based upon these findings, the panel voted

²⁶ Mr. Wendell Harkleroad, General Manager of Eagles Nest, LLC, a development company that owns 100 acres on Renegade Mountain, read into the record a letter written by John Moore, President of the Renegade Mountain Community Club. *Transcript of Authority Conference*, pp. 35-39 (August 17, 2015).

unanimously to approve the *Petition* and the *Settlement Agreement*, as amended by the *First Addendum*.

IT IS THEREFORE ORDERED THAT:

1. The *Petition to Adopt Settlement Agreement* and the *Settlement Agreement and Release* filed on July 27, 2015, as amended by the *First Addendum to the Settlement Agreement and Release* filed on August 13, 2015, attached to this Order as collective Exhibit A, is approved and adopted, and incorporated into this Order as if fully rewritten herein.

2. The settlement of any issue pursuant to the *Settlement Agreement and Release*, as amended by the *First Addendum to the Settlement Agreement and Release*, shall not be cited by the Parties or any other entity as binding precedent in any other proceeding before the Authority or any court, state or federal.

3. Any party aggrieved by the decision in this matter may file a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days of the date of this Order.

Vice Chairman David F. Jones and Director Kenneth C. Hill concur. Director James M. Allison concurred with the motion.

ATTEST:



Earl R. Taylor, Executive Director

Exhibit A

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE is made and entered into this 27th day of July, 2015, by, between, and among Laurel Hills Condominiums Property Owners Association (“Laurel Hills”), a Tennessee non-profit corporation, on the one hand, and the Tennessee Regulatory Authority (“TRA” or “Authority”) Staff acting as a Party (“Party Staff”) appointed in Docket No. 12-00030, on the other hand.

The TRA currently has a docket pending (Docket Number 12-00077, the “Show Cause Proceeding”) against Laurel Hills relating to Laurel Hills alleged violation of state law in the operation of a water system located on Renegade Mountain (the “Renegade Mountain Water System”). In the Show Cause Proceeding, Party Staff seeks to fine Laurel Hills for these alleged violations.

On April 13, 2013, in a separate but related proceeding (Docket Number 12-00030, the “CCN Proceeding”), the TRA denied Laurel Hills a certificate of public convenience and necessity to operate the Renegade Mountain Water System and ordered Laurel Hills to divest the water system. The CCN Proceeding has not resulted, to date, in Laurel Hills divesting the Renegade Mountain Water System.

Recognizing that bona fide disputes and controversies exist as to the claims against and the liability of Laurel Hills, the undersigned have entered into this Settlement Agreement and Release in order that each and every aspect of such disputes and controversies and all claims can be resolved between Party Staff and Laurel Hills and that the risk and cost of any further litigation between them can be forever avoided.

IT IS THEREFORE AGREED AS FOLLOWS:

I.

RELEASE, ACQUITTAL, AND DISCHARGE

In consideration of the items fully detailed in Section II below, the TRA hereby completely releases, acquits, and forever discharges the following:

- (a) Laurel Hills and its employees, representatives, attorneys, assigns, predecessors, successors, corporate parents, subsidiaries, affiliates, divisions, officers, members, managers, and/or directors.

All of the individuals or entities named or referred to above are hereinafter collectively referred to as the "Released Parties." The Released Parties are completely released, acquitted, and discharged from the following claims:

- (a) All claims that are asserted in the Show Cause Proceeding or in any way related to any TRA proceeding against Laurel Hills; and
- (b) Any and all known or unknown claims related to the Show Cause Proceeding or the construction, ownership, and operation of the Renegade Mountain Water System by the Released Parties that have accrued as of the Effective Date.
- (c) The Released Claims shall include all claims pending in Cumberland County Chancery Court, Dkt. No 2012-CH-560 (the "Cumberland County Proceeding").

All of the aforementioned claims are referred to as the "Released Claims." The Released Claims shall not include any breach of this Settlement Agreement and Release.

II.

PAYMENTS AND CONSIDERATION

As consideration for the promises, agreements, obligations, releases, and representations, and any and all other undertakings included in this Settlement Agreement and Release, Laurel Hills and TRA agree to the following terms:

- (a) Laurel Hills shall agree to place the Renegade Mountain Water System into voluntary receivership and forever remove itself from the operations and management of the Renegade Mountain Water System;
- (b) Laurel Hills shall agree to place the Renegade Mountain Water System into voluntary receivership and agree to the TRA's choice of receiver (the "Receiver");
- (c) Laurel Hills shall agree to make all records Laurel Hills has related to the water operations available on the Effective Date to the Receiver. Such records shall include a list of all current customers and contact information, all current accounting records, all current maps and schematics related to the Renegade Mountain Water System, and generally all records Laurel Hills has necessary for the efficient management of the Renegade Mountain Water System. Such records shall be made available to the Receiver immediately;
- (d) Laurel Hills shall agree to transfer title to all assets identified on Schedule A and execute any document reasonably necessary to effectuate such transfer of legal title to said assets.

- (e) Laurel Hills shall agree to cooperate with the Receiver and make any personnel reasonably available to the Receiver in order to ensure the orderly transfer and continued operation of water service during the transfer process to the Receiver.
- (f) Laurel Hills shall procure an irrevocable license from the current registered title holder to ensure that the lines, pipes, pump station, and other water system-related assets have a valid property right to remain in the locations where they are found on the Effective Date.
- (g) Laurel Hills shall effectuate the transfer of the water tower and water tower parcel located on Renegade Mountain from the current title holder to the Receiver subject to the following conditions:
 1. The deed of conveyance containing a reverter clause for the parcel to revert to the current title holder if the water tower or any replacement thereof is not used for water utility purposes or if the parcel ceases to be used as part of the Renegade Mountain Water System for utility purposes. However, the TRA, the receiver, and their successors in title are not obligated to utilize the water tower in utility operations;
 2. The deed containing a deed restriction calling for the use of a standard or neutral color scheme for the painting of the water tower, routine maintenance of the water tower parcel to include its landscaping, restricting such activities as chain link/barb wire fencing and, buildings or structures unrelated to utility purposes or structures not required for the support or maintenance of the water tower;

3. The subsequent conveyance of an easement or license to the current title holder as the developer of Renegade Mountain to use the water tower for placement of the name of the development and to light the tower at the sole cost and expense of the developer.
- (h) The parties agree that the legal fees awarded to Laurel Hills in the TRA Order of April 13, 2013 in the CCN Proceedings which are currently included in the water rate may continue to be part of the rate charged in the future as provided in said order if subsequently approved by the Authority in a new rate case.
- (i) The parties agree, except as provided in this agreement, that the payment of their respective attorneys' fees and costs, including referral fees, and the repayment or compromise of any and all claims and liens, including but not limited to subrogation, property damage, and attorneys' liens or claims, or any other liens or third-party claims, will be the sole responsibility of each party.
- (j) The parties agree that Laurel Hills will continue to pay the water bills owing to Crab Orchard Utility District up to the Effective Date.. All outstanding bills owed to Crab Orchard Utility District or any other utility service provider on the date of transfer of the water system shall be the responsibility of Laurel Hills and all accrued accounts receivable owed by water customers to Laurel Hills as of the date of transfer of the water system shall be collected by the Receiver and paid to Laurel Hills.

III.

DISMISSAL WITH PREJUDICE AND COSTS

The parties hereby agree to execute through their respective attorneys an Agreed Order of Dismissal with Prejudice dismissing with prejudice the Show Cause Proceeding upon completion of Laurel Hills' obligations under this Agreement..

The parties acknowledge that the Cumberland County proceeding will only be dismissed upon full and final transfer of ownership of the Renegade Mountain Water System to the Receiver. Upon transfer of the Renegade Mountain Water System to the Receiver, counsel for Laurel Hills and counsel for the TRA shall mutually agree to negotiate in good faith the orderly dismissal of the claims in the Cumberland County Proceeding.

V.

**REPRESENTATIONS AND WARRANTIES
OF THE LAUREL HILLS**

The Laurel Hills expressly warrants and represents to the TRA that:

1. It is legally competent to execute this Settlement Agreement and Release.
2. It is the legal owner of the Renegade Mountain Water System.
3. It understands and agrees that this Settlement Agreement and Release is in its best interest.
4. It understands and agrees that this Settlement Agreement and Release terminates the Show Cause Proceeding.
5. It has had the benefit of professional advice of attorneys of its own choosing, and it is fully satisfied with that advice, and has relied solely and completely upon its own judgment, together with that professional advice.
6. No promise or representation of any kind has been expressed or implied to it by the TRA, or by anyone acting for them, except as is expressly stated in this Settlement Agreement and Release.

7. It is not relying upon any advice of the TRA, or of their counsel or representatives, as to the legal and tax consequences of this Settlement Agreement and Release.
8. It has read, had explained to it by its attorney to its satisfaction, and understands the dismissal with prejudice to be entered in the Show Cause Proceeding, and has authorized its entry.

VI.

ADDITIONAL DOCUMENTS

All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basis and intent of this Settlement Agreement and Release.

VII.

SEVERABILITY

A determination that the application of any provision of this Settlement Agreement and Release to any person or circumstance is unenforceable, invalid, or illegal shall not affect the enforceability, validity, or legality of such provision as it may apply to other persons or circumstances.

VIII.

ENFORCEMENT

The parties acknowledge and agree that they shall have available to them all remedies at law and in equity to enforce the terms of this Agreement, including, but not limited to, the contempt powers of the courts.

**IX.
EFFECTIVENESS**

This Settlement Agreement and Release shall become effective immediately upon approval by the Authority.

SIGNATURE ON FOLLOWING PAGE

Approved:



Benjamin A. Gastel
Counsel for Laurel Hills



Shiva Bozarth
Counsel for the Tennessee Regulatory Authority Party Staff

SCHEDULE A

LIST OF ASSETS TO BE CONVEYED TO THE RECEIVER

1. All water transmission lines;
2. All water service lines;
3. All water meters and valves;
4. The pumping station;
5. The water storage tank located on Renegade Mountain (subject to the conditions set forth in the above agreement);
6. All other tangible assets used in the Renegade Mountain Water System (as defined above);
7. All accounts receivable;
8. All rights under any contracts related to water service;
9. All service rights;
10. All other general intangible rights related to the provision of water service.

**FIRST ADDENDUM TO
SETTLEMENT AGREEMENT AND RELEASE**

THIS FIRST ADDENDUM TO SETTLEMENT AGREEMENT AND RELEASE is made and entered into this ____ day of August, 2015, by, between, and among Laurel Hills Condominiums Property Owners Association (“Laurel Hills”), a Tennessee non-profit corporation, on the one hand, and the Tennessee Regulatory Authority (“TRA” or “Authority”) Staff acting as a Party (“Party Staff”) appointed in Docket No. 12-00030, on the other hand.

Laurel Hills and TRA agree to the following terms and conditions which shall either add to or modify the Settlement Agreement and Release in the following respects:

1. The terms and conditions set out in Section II, Paragraph(g) are hereby modified to the extent Laurel Hills will effectuate the transfer of the water tower and water tower parcel to the Receiver with a modified reverter clause and/or deed restrictions to allow the opportunity for an easement for a single 911 communications antenna owned, operated, and maintained by Cumberland County to be placed on top of the water tank subject to the following conditions:

- (a) the antenna be used solely for emergency communications;
- (b) the antenna be designed, constructed, and installed according to plans and specifications, i.e. height, type, etc. as represented by the County, and approved by the current title holder;
- (c) full compensation (including transaction costs) paid to the current title holder at appraised value for the easement and related easement rights;
- (d) all deed restrictions currently set out in Paragraph(g) above-referenced except as modified herein; and
- (e) the easement document be executed by the current title holder and such transaction be effected before conveyance of the fee title to the water tower and the water tower parcel to the Receiver.

2. Except as amended herein, all terms, conditions, and provisions of the Settlement Agreement and Release shall remain unaffected and in full force and effect as written.

Approved:



Benjamin A. Gastel
Counsel for Laurel Hills



Shiva Bozarth
Counsel for the Tennessee Regulatory Authority Party Staff