

IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

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

CONSUMER PROTECTION AND ADVOCATE DIVISION'S
STATEMENT OF POSITION AND
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS CLAIMS (a) AND (b)

The Consumer Protection and Advocate Division of the Office of the Attorney General ("Consumer Advocate") opposes claims or proposals that include the recovery of Receivership fees and costs through consumer rates. Laurel Hills Water System in Receivership ("LHWS" or the "Receiver") described three proposed rate increases in its *Petition for Emergency Relief* ("*Petition*"), identified as (a), (b), and (c). Proposals (a) and (b) seek the immediate recovery of Receivership fees and costs in consumers' rates, which is contrary to the *Order Appointing Receiver* issued by the Chancery Court of Cumberland County on October 26, 2015, No. 2012-CH-560 ("*Order*") (attached as Exhibit A). The Consumer Advocate has moved to dismiss proposals (a) and (b), and files this memorandum in support of that motion. Proposal (c) appears consistent with the *Order*, and the Consumer Advocate does not oppose proposal (c).

I. THE CHANCERY COURT'S ORDER GOVERNS THE RECEIVERSHIP AND THE RECEIVER.

The Chancery Court appointed the Receiver and set forth the Receiver's duties and powers in the *Order*. The *Order* outlines the governance and management of the Receivership, and the Tennessee Regulatory Authority ("TRA" or "Authority") itself proposed the precise terms of the *Order* in its *Petition for Appointment of Receiver*, filed in Chancery Court on October 14, 2015.

The *Order* is binding on the Receiver and the Authority, as both are parties to the Chancery Court proceedings. Therefore, both the Receiver and the Authority are obligated to act consistent with the terms of the *Order* in proceedings before the TRA. In fact, obstruction or interference with the conduct of the Receivership as described in the *Order* may result in contempt. *Order* at ¶ 9.

As explained below, rate proposals (a) and (b) are contrary to the plain language of the *Order* and must be dismissed.

II. THE *ORDER* DOES NOT ALLOW THE RECOVERY OF RECEIVERSHIP FEES AND COSTS IN RATES.

The *Order* is explicit that Receivership fees and costs “will be taxed as court costs *to be paid by the Authority*” if the funds and assets of the water system are unavailable. *Order* at ¶ 10 (emphasis added). “Orders, like other written instruments, should be enforced according to their plain meaning,” and “[i]f the language of the order is clear, then the literal meaning of the language in the order controls.” *Konvalinka v. Chattanooga-Hamilton Cty. Hosp. Auth.*, 249 S.W.3d 346, 359 (Tenn. 2008) (citations omitted). The *Order* is clear on its face. As there are no available funds or assets of the water system, *Petition* at ¶¶ 6-13, the only possible conclusion from the plain language of the *Order* is that the Authority is obligated to pay Receivership fees and costs.

Declaring who *does pay* Receivership fees and costs also determines who *does not pay*—everyone else. It is a well-established drafting principle that the expression of one thing implies the exclusion of others (“*expressio unius est exclusio alterius*”). See generally, *Rich v. Tenn. Bd. of Medical Examiners*, 350 S.W.3d 919, 927 (Tenn. 2011). Therefore, expressly naming only the Authority as the party responsible for paying Receivership fees and costs likewise prohibits charging these expenses to anyone else, including customers.

Even if the Authority shirks its obligation to pay Receivership fees and costs, the Receiver cannot request a rate increase to cover these expenses. The Receiver is empowered to request rate

changes solely “for Laurel Hills’ water system’s services,” *Order* at ¶ 13, but these services are emphatically *not* Receivership fees and costs. Receivership fees are costs are precisely these: “[t]he compensation of the Receiver, counsel, clerks and assistants and all expenses of taking possession of Laurel Hills’ water system and conducting this proceeding (hereinafter ‘Receivership fees and costs’).” *Order* at ¶ 10. This is an exhaustive list. As the quoted text indicates, any references to these particular expenses later in *Order* are labeled “Receivership fees and costs.” When particular language is used in one part of the *Order* and omitted elsewhere, then a different meaning is intended. *See, e.g., Loughrin v. United States*, 134 S. Ct. 2384, 2390 (2014) (“[The U.S. Supreme Court has] often noted that when ‘Congress includes particular language in one section of a statute but omits it an another’—let alone in the very next provision—this Court ‘presume[s]’ that Congress intended a difference in meaning.”); *Hamdan v. Rumsfeld*, 548 U.S. 557, 578 (2006) (“a negative inference may be drawn from the exclusion of language from one statutory provision that is included in other provisions of the same statute”). Here, the particular term “Receivership fees and costs” is expressly defined in Paragraph 10 and used thereafter to refer to a precise list of expenses. Accordingly, when Paragraph 13 of the *Order* empowers the Receiver to request rate changes solely “for Laurel Hills’ water system’s services,” this language means something different from “Receivership fees and costs.”

Again applying the principle that the expression of one things implies the exclusion of others, empowering the Receiver to request a rate change for “for Laurel Hills’ water system’s services,” without listing any other expenses, implies that the Receiver is not empowered to request a recovery of Receivership fees and costs through rates. Therefore, proposals (a) and (b) in the *Petition* should be dismissed outright as impermissible requests.

Although the Receiver's proposals (a) and (b) are contrary to the *Order*, the Consumer Advocate believes that the Receiver acted in good faith when filing its *Petition* and proposing these two options. It appears that TRA Party Staff, who has since withdrawn from this Docket, suggested that the Receiver recover Receivership fees and costs from consumers. *Response of LHWS to the Consumer Advocate's Second Discovery Request*, Docket 16-00012, at 2. The Consumer Advocate further believes that the Receiver operates the Receivership with expertise and integrity, and that the Receiver should receive his due compensation. To that end and consistent with the *Order*, the Receiver submitted two invoices for Receivership fees and costs to the Chancery Court, together totaling \$23,052.86, and moved that these expenses be taxed to and paid by the Authority. *Receiver's First Report and Motion for Approval of Fees and Expenses and Interim Taxation of Costs*; *Receiver's Second Report and Motion for Approval of Fees and Expenses and Interim Taxation of Costs*. The Authority approved these expenses and did not object to the Receiver's motions. *Receiver's First Report and Motion for Approval of Fees and Expenses and Interim Taxation of Costs* at ¶ 12; *Receiver's Second Report and Motion for Approval of Fees and Expenses and Interim Taxation of Costs* at ¶ 23. Nevertheless and despite a court order taxing costs to the TRA, (**Exhibit A**), the Authority has not paid the Receiver anything. *Response of LHWS to the Consumer Advocate's First Discovery Request*, Docket 16-00012, at 1-2.

Instead, the Authority filed a *Motion for Clarification* asking that the Chancery Court "interpret the [*Order*] to state the Receiver's fees, costs, or expenses are permitted to be included in rates requested by the Receiver." At a hearing on the *Motion for Clarification* on March 4, 2016, the Chancellor agreed with the Consumer Advocate's position, presented herein, and confirmed that per the *Order* the Authority is responsible for paying Receivership fees and costs.

Hearing Tr. 14:21-23 (“the order says what it means and means what it says, and I [Chancellor] tend to agree with the Consumer Advocate, the way the order is written”), 19:17-18 (“At the present time, the way that order reads, I [Chancellor] think the TRA pays for it.”), Mar. 4, 2016 (Exhibit B).

Therefore, proposals (a) and (b) should be dismissed as contrary to the *Order*.


III. PROPOSAL (c) APPEARS TO CONFORM TO THE *ORDER*.

Proposal (c) of the *Petition* properly divides costs that the Authority should pay and costs that consumers should pay. Consistent with the *Order*, proposal (c) provides that all Receivership fees and costs will be paid by the Authority, while customer rates will experience a relatively modest increase to pay for other expenses currently in rates. *Petition* at 8, Ex. D-3. Accordingly, the Consumer Advocate does not oppose proposal (c).

IV. PROPOSALS (a) AND (b) SHOULD BE DISMISSED.

Because the *Order* requires the TRA to pay Receivership fees and costs and because the *Order* does not empower the Receiver to request a rate increase to cover Receivership fees and costs, proposals (a) and (b) in the *Petition* should be dismissed. The Consumer Advocate does not oppose proposal (c).

RESPECTFULLY SUBMITTED,


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

Dated: 3/21/16

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:

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

G. Everett Sinor, Jr.
Attorney at Law
3504 Robin Road
Nashville, Tennessee 37204
Phone: 615-969-9027
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Laurel Hills Water System in Receivership
Post Office Box 25
Crossville, Tennessee 38555

This the 21st day of March, 2016.


Erin Merrick

EXHIBIT

A

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

TENNESSEE REGULATORY AUTHORITY)

Petitioner,)

v.)

**LAUREL HILLS CONDOMINIUMS
PROPERTY OWNERS ASSOCIATION**)

Respondent.)

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

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

ORDER APPOINTING RECEIVER

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Receivership Management, Inc., as Receiver, is authorized to employ such counsel, professional advisors, clerks or assistants as deemed necessary. The persons employed under this section shall serve at the direction of the Receiver. The compensation of the Receiver, counsel, clerks and assistants and all expenses of taking possession of Laurel Hills' water system and conducting the proceeding (hereinafter "Receivership fees and costs") shall be submitted monthly, shall be approved by the Court and shall be paid out of the funds or assets of Laurel Hills' water system, if such funds are available. If, through the progression of the Receivership, funds or assets of Laurel Hills' water system are not available to pay Receivership fees and costs, then those fees and costs will be taxed as court costs to be paid by the Authority to the Receiver. In such instance(s), the Receiver will present the Receivership fees and costs to the Court for

approval as a request for interim taxing of costs while simultaneously invoicing the Receivership fees and costs to the Authority, who will pay the Receivership fees and costs upon approval of the Court. The Authority reserves the ability to recoup amounts so paid if later there are assets or funds available for such recoupment. The Receivership fees and expenses will generally consist of services rendered by the Receiver's president, Jeanne B. Bryant, billed at \$ 160/hour, expenses and costs of other staff employed by the Receiver, normal overhead costs of the Receiver and professional fees and expenses incurred by the Receiver, the hourly billing rate of its principal counsel. The Receiver will present motions monthly to the Court for approval of the Receivership fees and costs. If the motions are unopposed after being on file for ten (10) calendar days, then the Court shall order their approval, absent question raised by the Court upon its review. If a motion for approval of Receivership fees and costs is opposed, it will be set for hearing at the next available time on the Court's docket in Cumberland County, Tennessee or elsewhere if circumstances so dictate.

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

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

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

re-delegated by the Receiver. It shall have full power to direct and manage, to hire and discharge employees, subject to any contract rights they may have, and to deal with the property and business of Laurel Hills' water system. The Receiver is empowered to petition the appropriate regulatory authority or tribunal to address changes in the rates charged for Laurel Hills' water system's services. The Receiver may consult and cooperate with other state and federal authorities who may have jurisdiction over any parts of the property and business of Laurel Hills' water system, including, but not limited to, any ancillary liquidator who may be appointed. In addition, the Receiver shall have any other powers given by state law.

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

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

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

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

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

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

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

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


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

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

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


RONALD THURMAN, CHANCELLOR

Submitted for Entry By:


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

Counsel for Tennessee Regulatory Authority

CERTIFICATE OF SERVICE

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


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

Melanie Davis
329 Cates Street
Maryville, Tennessee 37801

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

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

This the 21st day of October, 2015.



Shiva K. Bozarth

EXHIBIT

B

March 4, 2016 hearing transcript

23 operator of this water system. To say that those costs
24 are not to be included in fees would make this water
25 system wholly different than any other water system or

13

1 other utility in the state of Tennessee.

2 This water system is in the operation of
3 a receiver for the benefit of the consumers. The
4 consumers should bear the cost of operating that system,
5 just as they would if a normal -- if a regular operator
6 were operating the system.

7 The TRA is not the beneficiary of this
8 water system. The TRA is simply trying to fulfill its
9 obligation to ensure that customers receive water at
10 fair and reasonable rates.

11 THE COURT: Well, that's the reason I
12 sent this to the TRA. One is, I didn't think it would
13 appropriately be before the Court. I thought the agency
14 would be responsible for it. And, in fact, it was,
15 because the rates went from about twenty or thirty
16 dollars to a hundred and something dollars. It was
17 astronomical as to what was going on.

18 MR. BOZARTH: Yes, Your Honor.

19 THE COURT: I think there were some fines
20 paid because of some activities involved in this case.
21 The order, the order says what it means and means what
22 it says, and I tend to agree with the Advocate, the way
23 the order is written.

24 Having said that, since ultimately there's
25 going to be an issue about what an appropriate rate

14

March 4, 2016 hearing transcript

19 ultimately the folks using the water should pay for it
20 based on the rates. I don't know what should be
21 included in that rate though, and I think, until you
22 have a hearing, and y'all come up with a proposed rate,
23 then you could come to me, and then I can decide what's
24 appropriate or not. I just -- I don't have enough
25 information before me right now.

‡

19

1 Your argument is that everything should be
2 included?

3 MR. BOZARTH: Yes, Your Honor.

4 THE COURT: Your argument is that y'all
5 weren't in on the negotiations, at least your clients
6 were not in on the negotiations, and certain expenses
7 they've charged are not appropriate?

8 GEN. MERRICK: Correct, Your Honor.

9 THE COURT: And I think primarily the
10 expenses you're talking about is the problem the
11 receiver had making the owners comply with the court
12 order? I suspect what it is. And it may be, if -- I'm
13 just trying to glean what I'm hearing here today. If
14 that's true, it may be that the property owners may need
15 to be sanctioned for their noncompliance and they may
16 need to reimburse. They may need to be brought back in
17 this.

18 I think it's Moy Toy, or, I don't know,
19 there's about four or five different shells in this.
20 And, I don't remember, I think Moy Toy owns it, and then
21 there's another one and another one. They've set up two
22 or three --

1 other utility in the state of Tennessee.

2 This water system is in the operation of
3 a receiver for the benefit of the consumers. The
4 consumers should bear the cost of operating that system,
5 just as they would if a normal -- if a regular operator
6 were operating the system.

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22 it says, and I tend to agree with the Advocate, the way
23 the order is written.

24 Having said that, since ultimately there's
25 going to be an issue about what an appropriate rate

1 sort that out down the road. Am I clear? Do y'all
2 understand what I'm -- where I'm getting with this?

3 MR. BOZARTH: Yes, Your Honor.

4 THE COURT: Y'all can clean up any
5 procedural problems, due process problems, at a
6 subsequent hearing, and if there's a problem, I can
7 weigh the equities and adjust the rate, or let the
8 person responsible for the bills pay the bills.

9 GEN. MERRICK: If I may clarify briefly,
10 Your Honor? Are you envisioning that the consumers
11 would pay these costs and then the TRA could pay back
12 the equities adjust? Or, are you saying the TRA would
13 pay --

14 THE COURT: I'm saying, at --

15 GEN. MERRICK: -- recover from the
16 consumers as the equity adjusts?

17 THE COURT: At the present time, the way
18 that order reads, I think the TRA pays for it. I think
19 ultimately the folks using the water should pay for it
20 based on the rates. I don't know what should be
21 included in that rate though, and I think, until you
22 have a hearing, and y'all come up with a proposed rate,
23 then you could come to me, and then I can decide what's
24 appropriate or not. I just -- I don't have enough
25 information before me right now.