

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)	

**MOTION TO STRIKE *LETTER AND ATTACHED MOTION TO ALTER OR AMEND*
*FILED ON MARCH 22, 2016, AND TRANSCRIPT OF PROCEEDINGS, MARCH 4, 2016***

Comes the Consumer Protection and Advocate Division of the Office of the Attorney General (“Consumer Advocate”), and files this *Motion to Strike Letter and Attached Motion to Alter or Amend filed on March 22, 2016, and Transcript of Proceedings, March 4, 2016*, (“*Motion to Strike*”) pursuant to Tennessee Regulatory Authority (“TRA”) Rules and Regs. 1220-1-2-.06. Neither was filed by a party to this proceeding and neither was filed on behalf of a party to this proceeding. As such, these filings are improper, unduly prejudicial, and confusing to the parties, and they obfuscate the issues presently before the TRA in this Docket No. 16-00012.¹ Accordingly, the *Letter and Attached Motion to Alter or Amend filed on March 22, 2016*, (“*Letter and Attached Motion to Alter or Amend*”) and *Transcript of Proceedings, March 4, 2016*, (“*Transcript*”) should be stricken from this Docket No. 16-00012.

**I. THE *LETTER AND ATTACHED MOTION TO ALTER OR AMEND*
SHOULD BE STRICKEN FROM THE RECORD.**

The *Letter and Attached Motion to Alter or Amend*, dated March 16, 2016, from Shiva Bozarth, apparently in his capacity as Chief of Compliance of the TRA, to the Cumberland County Clerk and Master was filed in this Docket on March 22, 2016. It is not clear whom Mr.

¹ Given the pressing interests at stake in this Docket, it would be unfortunate if delay were to result from confusing and extraneous filings.

Bozarth represents in this Docket, if anyone. The Compliance Division is not a party to this case; in fact, TRA Party Staff withdrew from this Docket on March 9, 2016. There is no record of who, whether a party or not, filed this *Letter and Attached Motion to Alter or Amend*. We merely know the sender and recipient, neither of whom are parties here.

The *Letter and Attached Motion to Alter or Amend* is a cover letter to the Cumberland County Clerk and Master with an attachment entitled *Motion to Alter or Amend Order Appointing Receiver* (“*Motion to Alter or Amend*”) in the matter of *Tennessee Regulatory Authority v. Laurel Hills Condominiums Property Owners Association*, Chancery Court of Cumberland County, Tennessee, No. 2012-CH-560. It appears that the Compliance Division wishes to have the TRA Directors who will hear this Docket consider the *Letter and Attached Motion to Alter or Amend*, as part of the evidentiary record.²

The Compliance Division cannot have it both ways—it either is a party or it is not. And since the Compliance Division is not a party in this docket, the Consumer Advocate objects to any attempt by the Compliance Division to offer this *Letter and Attached Motion to Alter or Amend* as part of the evidentiary record in this case.³ As the Compliance Division acting as TRA Party Staff withdrew from this Docket on March 9, 2016, it is fundamentally unfair for it to continue to make filings as a party. This injustice is even more pronounced when, as here, the filing at issue would serve only to confuse and obfuscate the issues before the TRA.

² Of course, Mr. Bozarth or another TRA employee may have inadvertently misfiled it in this Docket, in which case the Consumer Advocate would be willing to accept its prompt withdrawal.

³ The Consumer Advocate also objects to any attempt by the Compliance Division to file a response to this *Motion to Strike*. Only parties are permitted to file responses to preliminary motions. TRA Rules & Regs. 1220-1-2-.06(2). Further, as a former party, the Compliance Division is conflicted from assisting or advising the tribunal or hearing officer regarding this Docket in any way. Tenn. Code Ann. § 4-5-303; *Memorandum*, TRA Docket 16-00012, filed Feb. 25, 2016. This prohibition includes making filings such as pleadings setting forth a position in the docket, as such filings will become part of the evidentiary record that will assist and/or advise the tribunal and/or hearing officer as they consider this matter.

The filing deals with legal questions that are beyond the TRA's jurisdiction. The *Motion to Alter or Amend* attached to the *Letter and Attached Motion to Alter or Amend* seeks to make major changes in the *Order Appointing Receiver* ("Order") granted on October 26, 2016, by the Chancery Court of Cumberland County. The *Order* makes it clear that Receivership fees and costs may not be recovered in rates. In the *Motion to Alter or Amend*, however, the Chief of Compliance for the TRA (as distinguished from counsel for the TRA) has asked the Chancery Court to radically revise the *Order* to allow the recovery of Receivership fees and costs in rates.

While the recovery of Receivership fees and costs in rates is a critical issue in the current Docket, the TRA is not a venue for hearing or determining matters that are properly before Chancery Court. The *Motion to Alter or Amend* is currently pending in Chancery Court, and the Chancellor has neither heard nor ruled on it. Thus, it is immaterial to this Docket and unduly prejudicial to the parties by making unaccepted legal arguments from another forum part of this evidentiary record. Filing the *Motion to Alter or Amend* in this Docket makes the unsubstantiated implication that the *Motion to Alter or Amend* will ultimately be successful in Chancery Court. The implication that anyone can accurately predict how the Chancellor may rule in future is unfounded. It undermines this TRA proceeding that must be based on the facts and law as they *are*, not as they may or may not be.

The *Motion to Alter or Amend* further confuses the issue of Receivership fees and costs because the Compliance Division has already made one unsuccessful attempt to change the *Order*. The Compliance Division filed a *Motion for Clarification* in Chancery Court requesting a ruling that the *Order* allowed the recovery of Receivership fees and costs in rates. At a hearing on the *Motion for Clarification* on March 4, 2016, however, the Chancellor denied the Compliance Division's *Motion for Clarification*.

It appears that the Compliance Division, even though it is not a party, may be planning to attempt to introduce in the hearing in this Docket its *Motion to Alter or Amend* or whatever decision comes from the Chancery Court as a result of the Compliance Division's *Motion to Alter or Amend*. To the extent that actual, future rulings in Chancery Court are related to this Docket, it is the parties in this matter who should determine whether they are ethically bound to include those rulings in the record of this Docket. Therefore, it is not necessary, and it is altogether improper, for a non-party to introduce into this evidentiary record filings from Chancery Court that have no binding significance on this Docket.

The Consumer Advocate notes that on the day before this *Letter and Attachment* was filed, the Consumer Advocate filed its *Statement of Position and Memorandum in Support of Motion to Dismiss Claims (a) and (b)* ("*Statement of Position*"). In this *Statement of Position*, the Consumer Advocate refers to and relies upon the only *Order* that is in effect, the very *Order* that is the subject of the *Motion to Alter or Amend*. Therefore, it is improper and unduly prejudicial for a non-party to attempt to undermine this *Statements of Position*, which is properly based on the now-controlling *Order*, by filing unaccepted legal arguments on issues that are not within the TRA's jurisdiction.

II. THE *TRANSCRIPT* IS IMPROPERLY FILED.

The *Transcript* documents a hearing before the Chancery Court of Cumberland County on the TRA's *Motion for Clarification* in case 2012-CH-560 and was filed by the court reporter. The court reporter is not a party to this case, and it is not clear on whose behalf she filed the *Transcript*; and if she did it file on behalf of party, it is unclear why that party did not file the *Transcript* itself with a corresponding justification.

To the extent that the *Transcript* or portions are the *Transcript* are necessary or proper to adjudicate the issues in this Docket, it is the parties themselves who must make that determination. For example, the Consumer Advocate cited portions of the *Transcript* in its *Statement of Position* and filed those portions as an exhibit. But it is emphatically not the province of a non-party to make this determination for the parties. Therefore, the *Transcript*, as filed by the court reporter, should be stricken from this Docket.

III. CONCLUSION

For the aforementioned reasons, the *Letter and Attached Motion to Alter or Amend* and *Transcript* should be stricken from the record, and this *Motion to Strike* should be GRANTED.

RESPECTFULLY SUBMITTED,

 3/24/14
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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:

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This the 24th day of March, 2016.



ERIN MERRICK