

STATE OF TENNESSEE

Office of the Attorney General



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June 20, 2011

Mr. Henry Walker, Esq.
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1600 Division Street, Suite 700
PO Box 340025
Nashville, Tennessee 37203

filed electronically in docket office on 06/20/11

***Re: Petition of Lynwood Utility Corporation For Approval Of a Cost Recovery
Mechanism For Deferred Odor Elimination Costs - Docket No. 08-00060***

Dear Henry,

This letter is in regards to Lynwood Utility Corporation/Berrys Chapel ("Company") and Docket 08-00060, a matter before the Tennessee Regulatory Authority ("Authority"). In that matter, the Company sought to recover from consumers certain expenses for odor control measures outside of base rates. The matter was resolved by the approval of a settlement agreement between the Company and the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"). For your convenience, I've attached a copy of the Authority order approving the settlement, dated April 29, 2009, which also includes a copy of the signed agreement. As of this date, the Company has not complied with the settlement agreement approved by the TRA.

In summary, the settlement agreement allowed a volumetric surcharge to be collected from consumers to allow Lynwood recovery of \$30,973.02 over a twelve month period. The average monthly charge was \$0.38 per 1,000 gallons. Per Company tariff page No. 1, Revised Page 9, the effective date of the surcharge was April 30, 2009. The surcharge was intended to collect a fixed amount over a twelve month period.

Among the provisions of the settlement agreement was a requirement for the Company to provide and account for the money collected from the surcharge and to file a formal report with the TRA in Docket 08-00060 at the end of the twelve month period. The report was to disclose whether the surcharge had over-collected or under-collected the \$30,973.02. In consultation with the Consumer Advocate and the TRA Staff, the Company was to arrange for refunds of any over-collection or be permitted to recover the balance of the \$30,973.02 that was not recovered.

However, the Company has never filed a report in Docket 08-00060 or consulted with the Consumer Advocate and TRA Staff regarding this issue. Since the surcharge went into effect in on April 30, 2009, the twelve month period authorized for the surcharge has come and gone. The disposition of the surcharge is unknown at this time. For well over one year, the Company has not complied with the terms of a settlement agreement approved by the TRA.

As you know, the TRA has traditionally granted surcharges for specific expenses in only extraordinary circumstances. We consider the breach of a settlement agreement which entails authorizing a surcharge a serious matter of not only the regulation of public utilities by the TRA but also the possible damage to the credibility of the breaching public utility. The Company should, with all speed, attempt to remedy this breach and disclose how long the surcharge has been in effect beyond April of 2010 and fully comply with the settlement agreement which was intended to resolve Docket 08-00060.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. McGehee', with a long horizontal flourish extending to the right.

Ryan L. McGehee
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202-0270
(615) 532-5512

CC: TRA Docket 08-00060

Attachment Enclosed

IN THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 29, 2009

IN RE:

PETITION OF LYNWOOD UTILITY
CORPORATION FOR APPROVAL OF A
COST RECOVERY MECHANISM FOR
DEFERRED ODOR ELIMINATION COSTS

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DOCKET NO.
08-00060

ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before Chairman Eddie Roberson, Director Sara Kyle, and Director Mary W. Freeman, of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this docket, at a Hearing held on March 30, 2009, for consideration of the proposed *Settlement Agreement* ("*Settlement Agreement*") between Lynwood Utility Corporation ("Lynwood" or "Company") and the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") (collectively, "the parties") in this docket.

BACKGROUND

On January 4, 2007, Lynwood filed a petition with the Authority requesting an increase in rates. A settlement agreement between the Company and the Consumer Advocate was submitted on July 11, 2007. The hearing was conducted on August 20, 2007, at which time four current customers addressed the panel regarding their concerns about odor problems. The panel delayed consideration of the settlement agreement until the Company could provide information and proposals to the Authority concerning a plan to correct the odor problems. At the September 10, 2007 Authority Conference, the panel approved the settlement agreement and

instructed the Company to file a petition if it wished to defer recovery of its odor elimination costs in the future. Lynwood suggested it be allowed to implement its immediate odor control actions before filing a petition.

TRAVEL OF THE CASE

On April 17, 2008, Lynwood filed the current petition to recover its odor elimination costs incurred as of January 31, 2008 ("*Petition*"). On May 6, 2008, the Consumer Advocate filed a petition to intervene. On May 13, 2008, the Authority filed an *Order Suspending Proposed Rate Increase for Ninety Days, Convening a Contested Case, and Appointing a Hearing Officer*. On August 8, 2008, the Hearing Officer filed an *Order Re-Suspending Proposed Rate Increase for Additional Ninety Days*.

The Hearing Officer filed the *Order Setting Procedural Schedule and Re-Suspending Proposed Rate Increase for Additional Ninety Days* on October 24, 2008. On November 14, 2008, a notice was filed by the parties that they had agreed to suspend the procedural schedule until November 21, 2008. On November 21, 2008, the Consumer Advocate filed the *Consumer Advocate's Motion for Agreed Suspension of Procedural Schedule*. On February 10, 2009, the Hearing Officer filed an *Order Re-Suspending Proposed Rate Increase for Additional Ninety Days*.

On February 25, 2009, the Company and the Consumer Advocate filed the *Settlement Agreement Among Lynwood and the Consumer Advocate and Protection Division* ("*Settlement Agreement*"). The Hearing in this matter was set for the regularly scheduled Authority Conference held on March 30, 2009. The Authority issued the agenda for said Authority Conference on March 20, 2009.

THE HEARING

The Hearing in this matter was held before the voting panel assigned to this docket on March 30, 2009. Participating in the Hearing were the following parties and their respective attorneys:

Lynwood Utility Corporation – Donald L. Scholes, Esq., Branstetter, Stranch & Jennings, PLLC, 227 Second Avenue North, Fourth Floor, Nashville, Tennessee 37201.

Consumer Advocate and Protection Division – Timothy C. Phillips, Esq., Office of the Attorney General, P.O. Box 20207, Nashville, Tennessee 37202.

At the Hearing, Mr. Scholes presented a summary of the *Settlement Agreement* filed in this docket on February 25, 2009. The *Settlement Agreement* filed by the parties relate to specific issues which the parties stipulated to, as contained in the following language and more fully set forth in the *Settlement Agreement*:

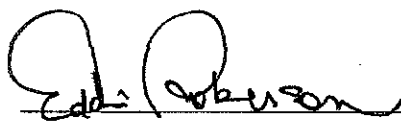
1. Lynwood will be allowed to recover \$30,973.02 in deferred odor elimination costs over a twelve month period.
2. Based on the annual average of volumes of billed water for years 2005-2007, the average monthly surcharge per 1,000 gallons will be \$0.38 for twelve months.
3. At the end of the authorized twelve month period, the Company will provide a full accounting to the TRA in a report filed in this docket disclosing how much was collected under the surcharge. The report will disclose whether the Company under or over collected. After consulting with appropriate TRA Staff and the Consumer Advocate, the Company will arrange for timely refunds for any over collection or be permitted to recover any balance of the \$30,973.02 that was not recovered.

Counsel for the Consumer Advocate expressed support for the *Settlement Agreement*.

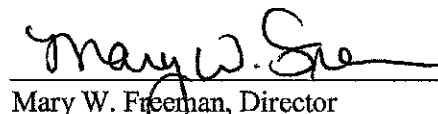
The panel provided an opportunity for public comment but no one sought intervention at the Hearing. Thereafter, the panel deliberated the merits of the *Settlement Agreement* and unanimously voted to accept the *Settlement Agreement*.

IT IS THEREFORE ORDERED THAT:

The *Settlement Agreement Among Lynwood and the Consumer Advocate and Protection Division* filed by Lynwood Utility Corporation and the Consumer Advocate and Protection Division of the Office of the Attorney General, attached hereto as Exhibit 1, is accepted and approved and is incorporated into this Order as if fully rewritten herein.


Eddie Roberson, Chairman


Sara Kyle, Director


Mary W. Freeman, Director

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:

**PETITION OF LYNWOOD UTILITY
CORPORATION FOR APPROVAL OF COST
RECOVERY MECHANISM FOR DEFERRED
ODOR ELIMINATION COSTS**

No. 08-00060

Filed electronically 2/25/09

**SETTLEMENT AGREEMENT AMONG LYNWOOD AND THE CONSUMER
ADVOCATE AND PROTECTION DIVISION**

For the sole purpose of settling this case, Tennessee Regulatory Authority ("TRA") docket number 08-00060, Robert E. Cooper, Jr., the Tennessee Attorney General and Reporter, through the Consumer Advocate and Protection Division ("Consumer Advocate") and Lynwood Utility Corporation ("Lynwood" or "Company"), respectfully submit this Settlement Agreement. Subject to the TRA's approval, these parties agree to the following:

1. Lynwood is incorporated under the laws of the State of Tennessee and is engaged in the waste water treatment within the State. Its principal Tennessee office is located at 321 Billingsly Ct. Suite 4, Franklin, Tennessee 37067.
2. In TRA Docket 07-0007, the TRA ordered Lynwood to respond to the odor complaints by some of Lynwood's customers. The TRA directed Lynwood to file a petition to recover the costs associated with the odor complaints.
3. Under this agreement Lynwood will be allowed to recover \$30,973.02 of the \$45,252.05 amount originally claimed by Lynwood.

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4.

Exhibit 1

4. The average monthly residential bill will increase by \$1.90 for consumers using 5,000 gallons of water per month. Calculations for the volumetric surcharge are attached at Exhibit 1.

5. Lynwood is a regulated public utility pursuant to the laws of the Tennessee, and its public utility operations are subject to the jurisdiction of the TRA.

6. Lynwood serves approximately 830 residential consumers in and around the Cottonwood, River Landing and Legends Ridge areas of Williamson County and Walnut Grove Elementary School.

7. On July 11, 2007, the Consumer Advocate and Lynwood submitted a settlement agreement to resolve the Company's most recent rate case in Docket 07-00007. On August 20, 2007, the Hearing Panel considered the settlement agreement. The Hearing Panel also considered the public comments made by seven Lynwood consumers. Many of the public comments made by consumers focused on concerns related to odor issues.

8. In light of the odor concerns expressed by consumers, the Hearing Panel deferred considering the settlement agreement until the Company outlined an odor improvement plan. The Hearing Panel further ordered the TRA Staff to present a report of how the Company intended to address the odor problems with the Lynwood plant.

9. On August 31, 2007, the TRA staff submitted the "Odor Control Measures Report" for Lynwood. The report, based upon input from the Company and other information collected by the TRA staff, outlined the following odor corrective action.

- a. Immediate Action: Installation of odor control equipment at three of six system locations. In addition, the Company was making efforts to remove sludge.
- b. Short Term Action (three to six months): The Company will install odor control equipment at a fourth location and monitor the odor and chemical dosing at all locations where odor control equipment is installed. In addition, the Company would evaluate, based upon performance, whether odor control equipment should be installed at the remaining two locations in the system.
- c. Long Term: If the current sludge handling system and odor control equipment is not effective at controlling odor, the Company will need a completely new sludge handling system, estimated to cost \$250,000.00.

10. On September 10, 2007, at a regularly scheduled Authority Conference, the TRA Staff presented Odor Control Measures Report to the Hearing Panel. The Hearing Panel then deliberated upon the settlement agreement resolving the Company's petition to raise rates and ultimately approved it.

11. The Hearing Panel recognized that implementing the corrective action listed in the Staff's report would require the Company to incur costs not contemplated in the settlement agreement resolving the rate case in Docket 07-0007. The Company was directed to file a petition to recover the costs of implementing the odor control measures.

12. On April 17, 2008, Lynwood filed a petition requesting permission to recover deferred odor elimination costs of \$31,012.27 in Account 186.7 opening this docket. The Company sought to recover this amount from consumers through a volumetric surcharge over a

six month period. Lynwood further requested the Authority to approve a continuing consumer surcharge for recovery of future investments to address odor control issues every six months.

13. On May 6, 2008, the Consumer Advocate filed a petition to intervene. The petition was subsequently granted without objection.

14. In subsequent discussions, Lynwood provided the Consumer Advocate with additional costs of \$14,239.78 that the Company intended to seek recovery from consumers. Recovery of this additional amount was intended by the Company to be recovered in a six month period via a surcharge after the full recovery of the initial \$31,012.27. Thus, within a twelve (12) month period of time, the Company proposed recovering a total of \$45,252.05 from consumers. This settlement agreement addresses all of these costs.

15. The parties to this Settlement Agreement have engaged in discovery, the Company has pre-filed testimony and the parties have undertaken extensive settlement discussions to resolve all disputed issues in this case. As a result of the information obtained during discovery and the discussions between the settling parties, and for the purpose of avoiding further litigation and resolving this matter upon acceptable terms, the settling parties have reached this Settlement Agreement. In furtherance of this Settlement Agreement, the settling parties have agreed to the settlement terms set forth below, subject to approval by the Hearing Panel.

16. Effective upon approval of this settlement by the Hearing Panel, Lynwood will be authorized to implement a surcharge to recover \$30,973.02 over a twelve (12) month period.

17. The customers of Lynwood are billed through the City of Franklin and HB&TS Utility District serving as billing agents on behalf of the Company. The surcharge will appear as a line item on each bill of the Lynwood customers billed through the City of Franklin and a

monthly bill insert explaining the surcharge for three consecutive months. Lynwood will arrange for monthly bill inserts for three consecutive months or a line item on each bill explaining the surcharge to go to the Lynwood customers billed through HB&TS Utility District to the extent possible. In the event the City of Franklin or HB&TS Utility District ceases to provide billing on behalf of Lynwood, the Company will furnish such agreed notice in any successive billing service. The parties do not envision additional costs will be incurred as a result. Acceptable language for the line item on each bill and the bill insert are attached herewith as Exhibit 2.

18. Lynwood will provide an explanation of the surcharge in response to customer inquiries regarding the surcharge, in accordance with the acceptable notice language attached as Exhibit 2.

19. The breakdown of the costs that Lynwood will be authorized to recover is limited to only those set forth as follows.

- a. Chemical costs billed from ADC associated with odor control – \$6,501.35,
- b. Chemical costs billed from Brenntag Mid South, Inc. - \$665.39,
- c. Labor Associated with Odor Control Measures Performed by Tennessee Contractors, Inc. – \$4,292.56,
- d. Sludge Removal Performed by Waste Management of Nashville Hauling - \$6,542.37,
- e. Sludge Removal Performed by First Response, Inc. - \$7,062.60,
- f. Legal service fees associated with odor control - \$4,784.75, and
- g. Accounting service fees associated with odor control - \$1,125.00

20. Based on the annual average of volumes of billed water for the years 2005-2007, the average monthly surcharge per 1,000 gallons used will be \$0.38 for a twelve (12) month period.

21. At the end of the authorized twelve (12) month period, the Company will provide a full accounting to the TRA in a report filed in this docket disclosing how much was collected under the surcharge. The report will disclose whether the Company under or over collected. After consulting with the appropriate TRA Staff and the Consumer Advocate, the Company will arrange for timely refunds for any over collection or be permitted to recover any balance of the \$30,973.02 that was not recovered.

22. This Settlement Agreement addresses all costs associated with the immediate and short term goals provided in the Odor Control Measures Report in Docket 07-00007 and similar measures taken by Lynwood to improve odor in the operation of its system during these time frames. Prior to incurring any additional costs associated with odor control measures Lynwood will file a petition and obtain approval from the TRA. All pre-filed testimony and exhibits are introduced into evidence without objection, and the settling parties waive their right to cross-examine all witnesses with respect to all such prefiled testimony and exhibits. If, however, questions should be asked by any person, including a Director, who is not a party to this stipulation, the settling parties may present testimony and exhibits to respond to such questions and may cross-examine any witnesses with respect to such testimony and exhibits. The parties agree to support this Settlement Agreement when presented to the Hearing Panel.

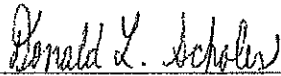
23. The provisions of this Settlement Agreement are agreements reached in compromise and solely for the purpose of settlement of this matter. They do not necessarily reflect the positions asserted by any party, and no party to this Settlement Agreement waives the

right to assert any position in any future proceeding, in this or any other jurisdiction. None of the signatories to this Settlement Agreement shall be deemed to have acquiesced in any ratemaking, regulatory or procedural principle. This Settlement Agreement shall not have any precedential effect in any future proceeding or be binding on any of the settling parties in this or any other jurisdiction except to the limited extent necessary to implement the provisions hereof.

24. The terms of the Settlement Agreement have resulted from extensive negotiations between the signatories and the terms hereof are interdependent. If the TRA does not accept the settlement in whole, the settling parties are not bound by any position or term set forth in this Settlement Agreement. In the event that the TRA does not approve this Settlement Agreement, each of the signatories to this Settlement Agreement will retain the right to terminate this Settlement Agreement. In the event of such action by the TRA, within twenty (20) business days, any of the signatories to this Settlement Agreement would be entitled to give notice of exercising its right to terminate this Settlement Agreement; provided, however, that the signatories to this Settlement Agreement could, by unanimous written consent, elect to modify this Settlement Agreement to address any modification required by, or issues raised by, the TRA. Should this Settlement Agreement terminate, it would be considered void and have no binding precedential effect, and the signatories to this Settlement Agreement would reserve their rights to fully participate in all relevant proceedings notwithstanding their agreement to the terms of this Settlement Agreement.

This the 25 day of February, 2009.

FOR LYNWOOD UTILITY CORPORATION

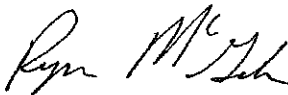


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**LYNWOOD UTILITY CORPORATION
ODOR CONTROL SURCHARGE CALCULATION**

<u>YEAR</u>	<u>GALLONS "000"</u>	
2005	78,710	
2006	79,740	
2007	<u>89,188</u>	
	247,638	
	<u>÷ 36</u>	
	6,879	Average Use per month
	<u>x 12</u>	Month recovery period
	82,546	

Deferred Odor Cost \$30,973.02
 ÷ 82,546

Surcharge per "000" usage \$.3752

mydocsformsratecaseodorcontrolsurchgecal

Exhibit #2

Docket 08-00060 – Settlement Agreement

Important Notice to waste-water customers of Lynwood Utility Corporation

The bills of waste-water customers of Lynwood Utility Corporation include a mandatory surcharge of \$0.38 per 1000 gallons of water used in order to cover the expenses incurred by Lynwood to implement an odor control plan ordered by the Tennessee Regulatory Authority. Based on the average usage of Lynwood's customers, the surcharge will raise average monthly bills by \$1.90. The surcharge is set at this time to expire in twelve months, ending on XX/XX/2010 and is subject to the oversight of and modification or extension by the Tennessee Regulatory Authority.