

November 4, 2011

FILED ELECTRONICALLY IN DOCKET OFFICE ON 11/04/11

Dr. Kenneth Hill  
Chairman, Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

Re: Docket 08-00060  
Report on Unrecovered Odor Control Costs

Dear Dr. Hill:

As you know, Berry's Chapel Utility, Inc., operates the Williamson County wastewater system formerly owned by Lynwood Utility Corporation. Since the issuance of the TRA's Order on August 5, 2011 declaring Berry's Chapel to be a regulated utility (and to have been regulated since it took over the system on September 1, 2010), the company has been working with the TRA staff and the Consumer Advocate and Protection Division to correct the myriad of legal and financial problems faced by the company during the last year. Those problems include a year-long legal fight over whether Berry's Chapel is regulated by the TRA and continuing financial losses, aggravated by nearly \$220,000 in flood damages, which threaten the company's ability to survive.<sup>1</sup>

To address those problems, the company has taken a number of steps. First, it has informed the CAPD and the Staff that the company does not intend to press its appeal of the TRA's ruling on August 5, 2011 that Berry's Chapel has been a regulated utility since September 1, 2010. Second, the company has filed all of the quarterly and annual financial reports which, as a regulated utility, it should have filed during the last twelve months. Third, the utility has recently filed to recover, by means of a surcharge, the costs of repairing damage from the May, 2010 flood. Fourth, the utility has proposed to refund to customers, through a credit against the flood surcharge, all unregulated "service fees" collected from customers during the last year. Fifth, the company is in the process of preparing a general rate case to allow the company to cover its ongoing expenses and pay its debt holders.

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<sup>1</sup> The company's most recent audited financial report showed a loss of \$341,181 during the period September 1, 2010 through June 30, 2011. The auditor concluded, "Because of the operating losses of the Utility and the working capital deficiency as of June 30, 2011, the Utility's continuance as a going concern is dependent upon its ability to increase revenues to reach profitable levels of operation."

One other loose end remains. In Docket 08-00060, the TRA approved the imposition of a surcharge of \$0.38 per 1,000 gallons to address the ongoing problem of bad odors at the utility's treatment facility. As the Authority is aware, residents living in the vicinity of the company's plant have complained for years of persistent odor issues. That problem has, at last, been fixed, as demonstrated by the absence of further complaints, and the company is gradually paying off the costs of the measures taken to correct the odor problem.

The Authority's Order allowing recovery of the odor control surcharge was issued on April 29, 2009. The surcharge was first billed in July, 2009. At that time, the company's unrecovered costs related to the odor control issue were \$41,683.93.<sup>2</sup> During the period July 1, 2009 to June 30, 2010, the company paid Waste Management \$29,254.71 to make frequent trips to the plant to remove wet sewage. That was the only way to control the odor problem. From July 1, 2010 through June 30, 2011, the payments to Waste Management totaled \$27,072.24. During that same two-year period, the company recovered \$48,572.98 from customers. The surcharge, in other words, did not fully cover the ongoing payments to Waste Management, much less reduce the prior expenses for odor control.

To eliminate the odor control payments to Waste Management, Berry's Chapel purchased a sludge compactor unit in 2011. The cost of the unit has been capitalized in the company's plant account and has not been counted as an odorization-related expense. As a result of the installation of this unit, the payments to Waste Management for odor control have been eliminated. No such payments have been charged to odorization control since July 1, 2011. The only remaining odor control costs are administrative and regulatory expenses.

As of July 1, 2011, there is an unrecovered balance of \$43,963.04 in the odor control account. This balance, plus additional regulatory expenses related to the odorization issue, should be paid off over approximately the next year and a half.

Finally, the company acknowledges that the TRA-approved Settlement Agreement required the company to file a report with the Authority after collecting the surcharge for twelve months. That report should have been filed in July-August, 2010. However, as the Authority is aware, Lynwood was dissolved on August 31, 2010 and the system was taken over by Berry's Chapel on September 1, 2010. As a non-profit corporation, Berry's Chapel took the position that it was not regulated by the Authority. Consistent with that position and acting on advice of the company's attorney at that time, the utility did not file a report on the odorization surcharge. Such a report, had it been filed, would have shown that, as of June 30, 2010, the company had unrecovered odor control expenses of \$48,325.66. Pursuant to the Settlement Agreement, the company should have consulted with the CAPD and the Staff about the shortfall but, in any event, would have presumably been "permitted to recover any balance of the \$30,973.02 that was not recovered." Settlement Agreement, at 6.

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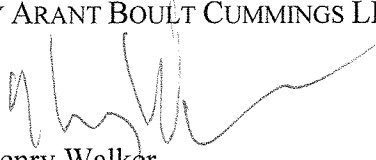
<sup>2</sup> When the Settlement Agreement between the company and the CAPD was signed in February, 2009, the unrecovered costs were \$30,973.02. By the time the company actually started billing the surcharge in July, 2009, the unrecovered costs had grown by \$10,000.

In sum, the odor control problem has now been fixed and, as a result of the company's investment in new plant, the payments to Waste Management for odor control have ended. Absent unexpected problems, the surcharge should be eliminated in approximately eighteen months.

Sincerely,

BRADLEY ARANT BOULT CUMMINGS LLP

By:

  
Henry Walker

HW/mkc

cc: Ryan McGehee  
Consumer Advocate and Protection Division

Exhibit 1  
Page 1/5**BERRYS CHAPEL UTILITY INC**  
**UNRECOVERED ODOR CONTROL COST 6/30/11**

TRA APPROVED RECOVERY @ 1/31/08	\$30,973.02
Recoveries July 2009 = June 2010	<u>\$23,237.98</u>
	<u>\$7,735.04</u>
Cost incurred after 1/31/2008 filing	
2008 Legal Fees	\$1,940.00
2008 Consultant Fees	<u>\$1,125.00</u>
	<u>\$3,065.00</u>
2009 Legal Fees	\$5,520.91
2009 Consultant Fees	<u>\$2,125.00</u>
	<u>\$7,645.91</u>
2010 Consultant Fees 11/1/10 to 6/30/10	<u>\$625.00</u>
Waste Management 7/1/09 to 6/30/10	<u>\$29,254.71</u>
Account Balance 6/30/2010	<u>\$48,325.66</u>
2010 Consultant Fees 7/1/10 to 8/31/10	\$250.00
Consultant Fees 9/1/10 to 6/30/11	\$875.00
Waste Management 7/1/10 to 8/31/10	\$7,085.96
Waste Management 9/1/10 to 6/30/11	\$12,761.42
Recoveries 7/1/10 to 8/31/10	-\$5,348.72
Recoveries 9/1/10 to 6/30/11	\$19,986.28
Account Balance 6/30/11	<u><u>\$43,963.04</u></u>

Exhibit 1  
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**BERRYS CHAPEL UTILITY INC**  
**UNRECOVERED ODOR ODOR CONTROL**

EXPENSES	DEFERRED	
2355 7/1/2010	Visions, Inc.	\$125.00
2404 8/1/2010	Visions, Inc.	\$125.00
7/1/10 to 8/31/10		<u>\$250.00</u>
9/1/ to 3/31/11	Visions, Inc.	<u>\$875.00</u>
2373	Waste Mgt.	\$1,338.17
2374		\$400.00
2396		\$2,381.74
2440		\$2,966.02
7/1/ to 8/31/10		<u>\$7,085.93</u>
7029	Waste Mgt.	\$2,742.32
7048		\$2,818.41
7142		\$3,483.40
7220		\$3,717.29
9/1/to 3/31/11		<u>\$12,761.42</u>
	Recoveries	
July Billing Summaries		\$2,537.81
August		\$2,810.91
7/1/ to 8/31/10		<u>\$5,348.72</u>
September=June		<u>\$19,986.28</u>

*Exhibit 1*  
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**LYNWOOD UTILITY CORPORATION  
 2009 DEFERRED ODOR CONTROL COST @ 12/31/09**

DATE	PAYEE	CK#	AMOUNT	AMOUNT
1/2/2009	VISIONS	1501	500.00	
2/2/2009	VISIONS	1552	375.00	
2/26/2009	BRANSTETTER STRANCH	1578		1,080.00
3/2/2009	VISIONS	1591	125.00	
4/1/2009	VISIONS	1641	375.00	
4/21/2009	BRANSTETTER STRANCH	1661		1,162.51
4/30/2009	BRANSTETTER STRANCH	1681		405.00
4/30/2009	BRANSTETTER STRANCH	1681		933.41
5/1/2009	VISIONS	1698	125.00	
6/19/2009	BRANSTETTER STRANCH	1780		1,677.50
8/3/2009	VISIONS	1844	125.00	
8/20/2009	BRANSTETTER STRANCH	1869		195.00
9/1/2009	VISIONS	1892	125.00	
9/22/2009	BRANSTETTER STRANCH	1925		67.50
10/1/2009	VISIONS	1942	125.00	
11/2/2009	VISIONS	2000	125.00	
12/1/2009	VISIONS	2039	125.00	
			<u>2,125.00</u>	<u>5,520.92</u>

8/20/2009	WASTE MANAGEMENT	1883		2,793.54
10/5/2009	WASTE MANAGEMENT	1956		1,412.95
10/23/2009	WASTE MANAGEMENT	1992		2,248.22
11/12/2009	WASTE MANAGEMENT	2030		2,206.51
12/22/2009	WASTE MANAGEMENT	2083		2,328.05

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<u>10,989.27</u>
<u>18,265.44</u>
<u>29,254.71</u>

LYNWOOD UTILITY CORPORATION  
ODOR CONTROL COST @ 6/30/2010

Exhibit 1  
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DATE	PAYEE	CK#	AMOUNT
1/26/2010	WASTE MANAGEMENT	2141	\$3,741.74
3/4/2010	WASTE MANAGEMENT	2191	\$3,336.60
4/9/2010	WASTE MANAGEMENT	2242	\$3,107.85
5/11/2010	WASTE MANAGEMENT	2275	\$3,587.66
6/4/2010	WASTE MANAGEMENT	2315	\$140.00
6/8/2010	WASTE MANAGEMENT	2316	\$4,351.59
			<u>\$18,265.44</u>

1/10/2010	VISIONS INC.	2098	\$125.00
4/5/2010	VISIONS INC.	2226	\$125.00
3/31/2010	VISIONS INC.	JV	\$125.00
5/4/2010	VISIONS INC.	2268	\$125.00
6/1/2010	VISIONS INC.	2307	\$125.00
			<u>\$625.00</u>

**LYNWOOD UTILITY CORPORATION  
ODOR CONTROL COST DEFERRED**

CK#	LEGAL FEES	
1096	Branstetter, Stranch & Jennings	\$ 40.00
1211	Branstetter, Stranch & Jennings	\$ 700.00
1252	Branstetter, Stranch & Jennings	\$ 485.00
1381	Branstetter, Stranch & Jennings	\$ 555.00
1404	Branstetter, Stranch & Jennings	\$ 160.00
	Total 2008	<u>\$ 1,940.00</u>
1578	Branstetter, Stranch & Jennings	\$ 1,080.00
1661	Branstetter, Stranch & Jennings	\$ 1,162.50
1681	Branstetter, Stranch & Jennings	\$ 405.00
1681	Branstetter, Stranch & Jennings	\$ 933.41
1780	Branstetter, Stranch & Jennings	\$ 1,677.50
1869	Branstetter, Stranch & Jennings	\$ 195.00
1935	Branstetter, Stranch & Jennings	\$ 67.50
	Total 2009	<u>\$ 5,520.91</u>