

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

**IN RE:**

**LYNWOOD UTILITY CORPORATION'S  
PETITION FOR ADJUSTMENT OF  
RATES**

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**DOCKET NO. 09-00034**

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**CONSUMER ADVOCATE'S RESPONSES TO LYNWOOD UTILITY  
CORPORATION'S FIRST DISCOVERY REQUESTS**

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Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), respectfully responds to the first discovery requests of Lynwood Utility Corporation ("Lynwood" or "the Company").

**GENERAL OBJECTIONS**

1. The Consumer Advocate objects to the definitions and instructions contained in the data requests to the extent that the definitions and instructions attempt to impose on the Consumer Advocate a burden or obligation greater than required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

2. The Consumer Advocate objects to the data requests to the extent they call for information and the production of documents which are protected from disclosure by the attorney-client privilege, the attorney work product doctrine or any other applicable privilege or protection. The Consumer Advocate objects to the data requests to the extent that the Company is attempting to impose on the Consumer Advocate obligations with regard to identification of privileged documents beyond those required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

3. The Consumer Advocate objects to the Company's data requests to the extent they seek information relating to matters not at issue in this litigation or to the extent they are not reasonable calculated to lead to the discovery of admissible evidence. By providing information in response to these requests, the Consumer Advocate does not concede that such information is relevant, material or admissible into evidence. The Consumer Advocate reserves all rights to object to the use of such information as evidence.

4. The Consumer Advocate objects to the Company's data requests to the extent that the Company is attempting to impose on the Consumer Advocate obligations to supplement its responses beyond those required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

5. The Consumer Advocate objects to the Company's data requests to the extent that the Company is attempting to require the Consumer Advocate to provide information and produce documents beyond those in its possession, custody or control as that phrase is used in the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

6. The Consumer Advocate objects to the Company's data requests to the extent they seek information and documents that are readily available through public sources or are in the Company's own possession, custody or control. It is unduly burdensome and oppressive to require the Consumer Advocate to respond or produce documents that are equally available to the Company.

7. The Consumer Advocate's objections and responses to these requests are based on information now known to it. The Consumer Advocate reserves the right to amend, modify or supplement its objections and responses if it learns of new information.

8. The Consumer Advocate's responses to these requests are made without waiving or intending to waive the right to object to the use of any information provided in response to any subsequent proceeding or trial of this or any other action. The Consumer Advocate's responses to these requests are also not a waiver of any of the foregoing objections or any objections it has made or may make with respect to any similar, related or future data requests, and the Consumer Advocate specifically reserves the right to interpose any objection to further requests notwithstanding any response or lack of objections made in this responses.

9. The Consumer Advocate will supplement its responses in accordance with the requirements of state law.

10. The Consumer Advocate expressly incorporates these general objections into its responses set forth below.

Subject to and without waiving any objections stated above, the Consumer Advocate responds to the specific requests as follows:

1. Please explain why the Consumer Advocate is treating tap fees as revenue for Lynwood in this rate case when the NARUC chart of accounts provides that tap fees should be classified as contributions in aid of construction and when the Authority has treated tap fees as contributions in aid of construction in Lynwood's previous rate cases.

**RESPONSE:**

The Consumer Advocate can find no evidence the NARUC chart of accounts provides that tap fees should be classified as contributions in aid of construction. In addition, the Authority approved classifying tap fees as contributions in aid of construction in circumstances in which a prior owner was repaying to Lynwood the amount of 77 tap

fees the prior owner. The amount of tap fees waived in was excess of \$130,000.00, thus lowering Lynwood's revenues. *See* Docket 99-00507. The repayment of the waived tap fees by the prior owner was secured in the form of real property (i.e. building "lots"). While under such circumstances, treating tap fees as contribution in aid of construction may be appropriate, such circumstances no longer exist. Further, the Authority's order and decision in Docket 99-00507 is silent as to whether continuing such practice beyond the amount of tap fees waived by the prior owner. The only rate case since Docket 99-00507 was Docket 07-0007. Docket 07-0007 ended in a settlement agreement rather than a decision on the merits of Lynwood's *Petition*.

Furthermore, Mr. Dave Peters looked at how other water and waste water utilities treat tap fees. Mr. Peters looked at Pure Cycle Corporation, a major investor-owned water and wastewater company and discovered how they treat tap fees on the financial statements.

Below is an excerpt from Pure Cycle's 10KSB report about the treatment of tap fees:

- **Revenue Recognition**

- "Our revenues consist mainly of tap fees, construction fees and monthly service fees. Emerging Issues Task Force Issue No. 00-21 Revenue Arrangements with Multiple Deliverables ("EITF 00-21"), governs how to identify when goods or services, or both, that are separately delivered but included in a single sales arrangement should be accounted for individually. Based on the criteria of EITF 00-21, we account for each of the items contained in our service agreements individually. That is, we determine the proper revenue recognition for tap fees, construction fees and services fees independent of one another."
- "We recognize revenues relating to the sale of water and wastewater taps as income upon receipt of payment if the Wholesale Facilities required to provide the service are in place and operational. If the Wholesale Facilities are not in place and operational, we defer recognition of the tap fee revenue until the required facilities are completed and placed in service. We recognize construction fees received to build assets that we will own, as income over the estimated service life, which is also the estimated useful life of the assets. Additionally, we capitalize construction costs and amortize those as costs of revenue over the assets estimated useful life. We recognize water and wastewater service revenues at the end of the month in which the services are performed. Water service fees

are based upon metered water deliveries to customers. Wastewater customers are charged flat monthly fees.”

- “We also looked at GASB 33 which says governments are required to recognize capital contributions as revenue, not contributed capital. Therefore, tap fees collected in excess of the cost of connecting new customers should be reported as non-operating revenue.”

The Consumer Advocate reserves the right to supplement this response.

2. Explain the reasons why the Consumer Advocate reduced Lynwood’s regulatory expense for this docket from \$36,000 to \$18,000 in light of the regulatory expense in the amount of \$45,000 accepted for Lynwood’s 2007 rate case, Docket No. 07-00007.

**RESPONSE:**

The Consumer Advocate objects to this request to the extent the question assumes the settlement in Docket 07-0007 approved rate case expense of \$45,000. Schedule 2-9 of the settlement agreement approved by the Authority clearly indicates rate case expenses of \$26,400.

Without waiving the objection, the Consumer Advocate submits the reduction in rate case expense to \$18,000 more accurately reflects the expense of the rate case in relation to the degree in difference between the amount sought by the Company and the amount the Consumer Advocate considers reasonable. The reduction further recognizes Lynwood has not provided requested documents and materials, citing the expense and burden (*See* “Company Statement” concerning data referenced through Company discovery responses), when documents and materials of a similar nature were provided by Lynwood to the Consumer Advocate in Docket 07-0007. In our opinion, these factors contribute to a significant reduction rate case costs that are to be borne by rate-payers.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Discovery Report* ~~Petition to Intervene~~ was served via U.S. Mail or electronic mail upon:

Donald L. Scholes  
Branstetter, Stranch & Jennings, PLLC  
227 Second Avenue North, Fourth Floor  
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This the <sup>17</sup>~~16~~<sup>th</sup> day of July, 2009.



RYAN L. McGEHEE