

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

IN RE:)
)
CONSUMER ADVOCATE'S PETITION) **DOCKET NO. 11-00005**
FOR A DECLARATORY ORDER THAT)
BERRY'S CHAPEL UTILITY, INC., IS A)
PUBLIC UTILITY UNDER TENNESSEE)
LAW AND SHOULD BE REGULATED)
BY THE TRA

**CONSUMER ADVOCATE'S RESPONSE IN OPPOSITION TO BERRY'S CHAPEL'S
MOTION TO CONTINUE ORAL ARGUMENT AND TO STAY PROCEEDING**

The Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter ("Consumer Advocate"), respectfully submits this Response in Opposition to Berry's Chapel's Motion to Stay Proceeding. For cause the Consumer Advocate would show as follows:

1. In its Motion to Continue Oral Argument and to Stay Proceeding, Berry's Chapel states that it has changed its corporate form once again, and is now claiming to be a nonprofit cooperative utility. This alleged nonprofit cooperative corporation, however, has no members. Its Articles of Amendment merely state that it "will have members." Thus, the hallmark of a cooperative, that it serves and is responsive to its members, is lacking. See Consumer Advocate's Initial Brief at pages 18-20. Certainly no representative of the residents served by Berry's Chapel has come forward with any evidence that the members of the community served by Berry's Chapel have become members of this new entity.

2. In its Motion to Continue Oral Argument and to Stay Proceeding, Berry's Chapel has, in effect, acknowledged that mere incorporation under the Nonprofit Incorporation Act is not sufficient to evade regulation by the TRA as a public utility. Moreover, Berry's Chapel is no longer alleging that it is a mere nonprofit corporation. Accordingly, there is now no ground to oppose the Consumer Advocate's Petition for a Declaratory Order that Berry's Chapel Is a Public Utility Under Tennessee Law and Should Be Regulated by the TRA. The hearing on that issue should proceed as scheduled on Monday, April 4, 2011.
3. If the hearing does not proceed as scheduled, Berry's Chapel will continue to evade regulation by the TRA. Those persons it serves will continue to be subject to rate hikes and without any protection from the TRA. If Berry's Chapel should argue that there is no need to act until the people of Cottonwood have heard the offer from Berry's Chapel, that would be rewarding a utility that has defied regulation by the TRA with yet another period of time in which it is responsible to no one but the three persons who created Berry's Chapel. Since there is absolutely no evidence that the people of Cottonwood wish to or will become members of Berry's Chapel as it now stands, this should not be a reason to delay the proceeding.

For the foregoing reasons, the TRA should deny Berry's Chapel's Motion to Continue Oral Argument and to Stay Proceeding.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script that reads "Vance L. Broemel". The signature is written in dark ink and is positioned above a horizontal line.

VANCE L. BROEMEL (BPR #11421)

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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 15th day of April, 2011.

Vance L. Broemel
VANCE L. BROEMEL