

IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

IN RE: )  
)  
INVESTIGATION AS TO WHETHER )  
A SHOW CAUSE ORDER SHOULD BE )  
ISSUED AGAINST BERRY'S CHAPEL )  
UTILITY, INC., AND/OR LYNWOOD ) DOCKET NO. 11-00065  
UTILITY CORPORATION FOR )  
VIOLATION OF TRA RULE AND )  
TENNESSEE STATUTES, INCLUDING BUT )  
NOT LIMITED TO, TENN. CODE ANN. )  
§§ 65-4-112, 65-4-113, 65-4-201, AND 65-5-101 )

---

**FIRST DISCOVERY REQUEST OF THE CONSUMER ADVOCATE AND  
PROTECTION DIVISION TO THE TENNESSEE REGULATORY AUTHORITY  
PARTY STAFF**

---

To: Tennessee Regulatory Authority  
c/o Shiva Bozarth  
460 James Robertson Parkway  
Nashville, TN 37243

This Discovery Request is hereby served upon the Tennessee Regulatory Authority Party Staff ("TRA Party Staff"), pursuant to Rules 26, 33, 34 and 36 of the Tennessee Rules of Civil Procedure and Tenn. Comp. R. & Reg. 1220-1-2-.11. We request that full and complete responses be provided pursuant to the Tennessee Rules of Civil Procedure. The responses are to be produced at the Office of the Tennessee Attorney General and Reporter, Consumer Advocate and Protection Division, 425 Fifth Avenue North, Nashville, Tennessee 37243, c/o Charlena S. Aumiller, Assistant Attorney General, on or before July 17, 2013.

**PRELIMINARY MATTERS AND DEFINITIONS**

Each discovery request calls for all knowledge, information and material available to the TRA Party Staff, as a party.

These discovery requests are to be considered continuing in nature, and are to be supplemented from time to time as information is received by the TRA Party Staff which would make a prior response inaccurate, incomplete, or incorrect. In addition, the Attorney General requests that the TRA Party Staff supplement responses hereto with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, and the identity of each person expected to be called as an expert at hearing, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony.

These discovery requests are to be interpreted broadly to fulfill the benefit of full discovery. The singular of any discovery request includes the plural and the plural includes the singular. To assist you in providing full and complete discovery, the Attorney General provides the following definitional guidelines.

The terms "and" and "or" shall be construed conjunctively or disjunctively as necessary to include any information that might otherwise be construed outside the scope of these requests.

The term "communication" means any transmission of information by oral, graphic, pictorial or otherwise perceptible means, including but not limited to personal conversations, telephone conversations, letters, memoranda, telegrams, electronic mail, newsletters, recorded or handwritten messages, or otherwise.

For purposes of these discovery requests, the term "you" shall mean and include: the TRA Party Staff, including the expert witness or the attorney.

The term "person" or "persons" as used herein refers to any natural person, corporation, firm, company, sole proprietorship, partnership, business, unincorporated association, or other entity of any sort whatsoever. Where a company or organization is the party being served, all responses must include the company's response. Moreover, the TRA Party Staff's designated person for responding must assure that the TRA Party Staff person provides complete answers. A complete answer must provide a response which includes all matters known or reasonably available to the company.

The term “identity” and “identify” as used herein, with respect to any person, means to provide their name, date of birth, current residence address, current residence telephone number, current business (physical and mailing) address, current business telephone number, and the occupation or job title of that person; with respect to an entity, those terms mean to provide the name by which said entity is commonly known, the current (physical and mailing) address of its principal place of business, and the nature of business currently conducted by that entity; with respect to any document, those terms mean to provide the date of the document, the nature of the document, the title of the document, the reference number (if any) of the document, and the current location of the document, including the identity of the person or entity in possession of the document.

The term “document” as used herein, means any medium upon which intelligence or information can be recorded or retrieved, such as any written, printed, typed, drawn, filmed, taped, or recorded medium in any manner, however produced or reproduced, including but not limited to any writing, drawing, graph, chart, form, work paper, spreadsheet, note, photograph, tape recording, computer disk or record, or other data compilation in any form without limitation. Produce the original and each copy, regardless of origin or location, of any book, pamphlet, periodical, letter, note, report, memorandum (including memoranda, note or report of a meeting or conversation), spreadsheet, photograph, videotape, audio tape, computer disk, e-mail, or any other written, typed, reported, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, which is in your possession, custody or control or which was, but is no longer, in your possession, custody, or control. If any such document was, but no longer is, in your possession or control, state what disposition was made of it and when. If a document exists in different versions, including any dissimilar copies (such as a duplicate with handwritten notes on one copy), each version shall be treated as a different document and each must be identified and produced.

If you produce documents in response to these discovery requests, produce the original of each document or, in the alternative, produce a copy of each document and identify the location

of the original document. If the “original” document is itself a copy, that copy should be produced as the original.

If any objections are raised on the basis of privilege or immunity, include in your response a complete explanation concerning the privilege asserted.

If you contend that you are entitled to refuse to fully answer any of these discovery requests, state the exact legal basis for each such refusal.

If any of the interrogatories are not answered on the basis of privilege or immunity, include in your response to each such interrogatory a written statement evidencing:

- (a) the nature of the communication;
- (b) the date of the communication;
- (c) the identity of the persons present at such communication; and
- (d) a brief description of the communication sufficient to allow the Authority to rule on a motion to compel.

If, for any reason, you are unable to answer a discovery request fully, submit as much information as is available and explain why your answer is incomplete. If precise information cannot be supplied, submit 1) your best estimate, so identified, and your basis for the estimate and 2) such information available to you as comes closest to providing the information requested. If you have reason to believe that other sources of more complete and accurate information exist, identify those sources.

If any information requested is not furnished as requested, state where and how the information may be obtained or extracted, the person or persons having knowledge of the procedure and the person instructing that the information be excluded.

**Provide all responses in the native format in which they are maintained such as Microsoft Excel or Microsoft Word with all formulas intact.**

## **FIRST DISCOVERY**

1. Please identify any costs categorized as odor control or flood damage that do not have a detailed invoice supporting it (*e.g.*, Visions invoices for odor control, etc.) or is an allocation (*i.e.*, indirect cost rather than a directly identifiable cost) and explain how the TRA Party Staff determined that the cost was actually for odor control or flood damage.

**RESPONSE:**

2. For all costs calculated using an allocation method (*e.g.*, the 50/50 allocation of flood damage legal fees, etc.), please explain what the allocation is, who determined it, and what is it based on (*i.e.*, how was this allocation method determined).

**RESPONSE:**

3. Please refer to the Direct Testimony of Tiffany Underwood, Schedule 1F. Please identify which specific charges are excluded under notes A-C, and the basis she determined that these should be recorded to “regulatory”.

**RESPONSE:**

4. Please explain the difference between the underlying services that are recorded as sludge removal expense or odor control costs.

**RESPONSE:**

5. When vendors work on both sludge removal and odor control (*e.g.*, Waste Management), please explain how Ms. Underwood ensured that the invoice was not already recovered under sludge removal expense.

**RESPONSE:**

6. Please provide details of all consumers contacted determining that there is no longer an odor problem (*i.e.*, please provide details including but not limited to who was contacted along with the person's contact information, when the contact occurred, what the consumer was asked about odor problems, and what the consumer said about odor problems).

**RESPONSE:**

7. Please provide details of all consumers contacted inquiring if they have any issues with receiving less than 100% recovery of illegal and unauthorized charges from the utility.

**RESPONSE:**

8. Please identify the party to the settlement who is representing consumers and/or other ratepayers.

**RESPONSE:**

9. Please identify and explain the TRA Staff's rights, interest, and/or claims in the flood damage costs and odor control costs.

**RESPONSE:**

10. Refer to the Direct Testimony of Tiffany Underwood, p. 3, lines 9-10. Define “rate making mindset” as utilized by Ms. Underwood.

**RESPONSE:**

11. Refer to the Direct Testimony of Tiffany Underwood, p. 3, lines 9-10. How would Ms. Underwood’s analysis and testimony have differed if she had used a “rate making mindset”?

**RESPONSE:**

12. Refer to the Direct Testimony of Tiffany Underwood, p. 14, lines 9-16. Provide the time sheets and any additional documents (other than the legal invoices attached in her testimony) Ms. Underwood relied upon, considered, or otherwise reviewed in preparing her testimony and the resulting settlement amount of flood damage legal fees intended to offset customer refunds.

**RESPONSE:**

13. When the TRA Directors opened Docket No. 11-00065, Director Hill Stated the docket was to “address the ramifications of the decision in 11-00005.” Please explain by what authority the TRA Party Staff has included in the Settlement Agreement the recovery of attorney’s fees for flood damage (Settlement Agreement, ¶¶ 12-13) and odor control expenses (Settlement Agreement, ¶¶ 11, 13).

**RESPONSE:**

RESPECTFULLY SUBMITTED,



Charlena S. Aumiller (# 031465)  
Assistant Attorney General  
Office of the Attorney General and Reporter  
Consumer Advocate and Protection Division  
P. O. Box 20207  
Nashville, TN 37202-0207  
(615) 741-8726


Dated: 7/11/13

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail on July 11<sup>th</sup>, 2013, upon:

Shiva Bozarth, Esq.  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

Henry Walker, Esq.  
Bradley Arant Boult  
Cummings, LLP  
1600 Division St., Suite 700  
Nashville, TN 37203



Charlena S. Aumiller