

RECEIVED

2013 JUL 19 05:11:04
IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

TRA DOCKET ROOM

IN RE:

INVESTIGATION AS TO WHETHER)
A SHOW CAUSE ORDER SHOULD BE)
ISSUED AGAINST BERRY'S CHAPEL)
UTILITY, INC., AND/OR LYNWOOD)
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)

DOCKET NO. 11-00065

**PARTY STAFF'S REPSONSES TO 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:

Berry's Chapel Utility, Inc. ("BCUI") allocated the amounts and Staff found no basis to dispute that allocation. The Consumer Advocate has been furnished with a copy of every invoice for every cost for odor control and flood damage. At this time Party Staff is unaware of any costs unsupported by an invoice.

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:

Legal bills for recovery of flood damages were submitted by the law firm of Bradley Arant Boult Cummings, LLP. The firm's invoices include several matters: recovery of flood damage expenses; settlement work in this docket, and general regulatory matters. The Party Staff has reviewed the legal bills, the narrative descriptions of the work performed, and a sample of daily time sheets, which indicate how the bills were allocated among various regulatory matters. The Party Staff has reviewed the allocation percents and has found no reason to dispute their reasonableness. Copies of the legal bills and the narrative descriptions of the legal work performed have been filed in this docket.

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:

BCUI notified Party Staff on May 9, 2013 that these adjustments needed to be excluded from flood cost. The specific charges excluded were 0.25 hours for March 1 from Invoice 780543, 1.5 hours from April 4 and 0.5 hours from April 11 from Invoice 785766 and 0.5 hours for May 31 from Invoice 790885.

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

RESPONSE:

Sludge removal costs are based on what is required to operate the facility safely. Odor control costs are those costs above and beyond the cost of sludge removal which were necessary to reduce or control the odor.

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:

Ms. Underwood reviewed Docket Nos. 11-00198, 09-00034, 08-00060 and 07-00007 to ensure that none of the invoices listed in the odor control summary, attached to her testimony as Exhibit B, were included in previous dockets. She then looked at how much the Authority allowed for sludge removal in Docket Nos. 11-00198, 09-00034 and 07-00007 and compared the amounts to the total that BCUI spent in both odor control and sludge removal. Based on the amount of

sludge removal expense allowed, she made an adjustment of \$10,684 to remove odor control expense that was previously built into rates.

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:

OBJECTION – A response to this Interrogatory is irrelevant and is unlikely to lead to the discovery of relevant information.

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:

OBJECTION – A response to this Interrogatory is irrelevant and is unlikely to lead to the discovery of relevant information.

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

RESPONSE:

OBJECTION – The response to this Interrogatory constitutes the attorney's mental impressions and trial strategy. Therefore, it is subject to the work product doctrine and is privileged.

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

RESPONSE:

OBJECTION – The response to this Interrogatory constitutes the attorney’s mental impressions and trial strategy. Therefore, it is subject to the work product doctrine and is privileged.

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

RESPONSE:

A rate making mindset would require an analysis of all revenues, expenses, and rate base to determine whether an adjustment to base rates was necessary.

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:

OBJECTION – A response to this Interrogatory is irrelevant and is unlikely to lead to the discovery of relevant information.

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:

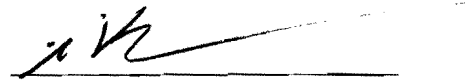
OBJECTION – These items are provided in a redacted form. The information that has been redacted relates to clients of Bradley Arant Boult Cummings, LLP other than BCUI and therefore are not relevant nor are they likely to lead to the discovery of relevant information. See attachment 1.

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:

OBJECTION – The response to this Interrogatory constitutes the attorney’s mental impressions and trial strategy. Therefore, it is subject to the work product doctrine and is privileged.

Respectfully submitted,



Shiva K. Bozarth, BPR No.22685
Legal Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Attachment 1

to

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

ATTORNEYS DAILY TIME RECORD

Thursday March 1

MONTH		DAY		YEAR	

[illegible]

Paul H. Hurd

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MONTH DAY YEAR

4/109089

Wed Apr 14

ATML

4910123

[illegible]

Filed Apr. 17 -

Jan (5-7) 70

MONTH DAY YEAR

~~W/ 3060017~~

BOULT, CUMMINGS, CONNERS & BERRY, PLC

ATTORNEYS DAILY TIME RECORD

2006

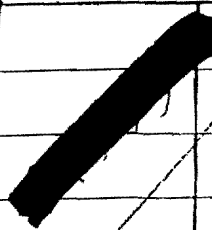












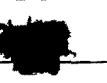

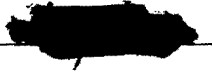









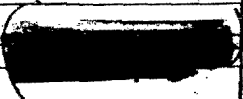



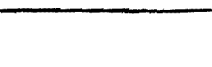
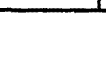

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MONTH DAY YEAR

May 8

215-168

Amelia
C. Berry
J. Berry

ACCOUNT NUMBER	MATTER	CLIENT	MATTER NAME	TIME		WORK DONE
				HOURS	TENTHS	
						
						
						
						
						
						
		(Flood)	Berry's Chapel	2	00	Met with Jim to go over rebuttal
		(Auto. car)	Berry's Chapel	1	00	Met with Jim to go over rebuttal
						
						
						

12/16/05

MONTH DAY YEAR

Mary May 21




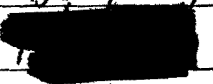



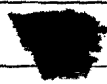

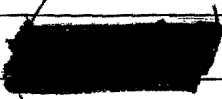











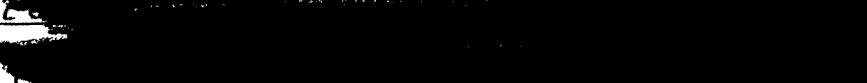



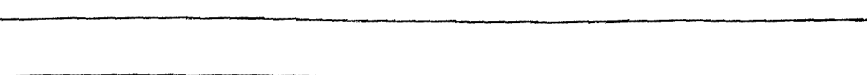
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ATTORNEYS DAILY TIME RECORD

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MONTH DAY YEAR

Tuesday May 22

ACCOUNT NUMBER	MATTER	CLIENT	MATTER NAME	TIME		WORK DONE
				HOURS	TENTHS	
		(rate case)	Berry's Chapel		3/4	Three calls to attorney's office to call to ord from Tim Forer
		(Hood)	Berry's Chapel		3/4	was getting rebuttal filed. sent Email from t
						
						
						
						
						
						
						
						
						
						
						

MONTH		DAY		YEAR	

Thursday ~~March~~ May 31

[illegible]

7					
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MONTH DAY YEAR

June 1

K 6200

Friday June 1

ACCOUNT NUMBER	MATTER	CLIENT	MATTER NAME	TIME		
				HOURS	TENTHS	
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		(flood)	Berry's Chapel	3/4	11	Fax from Jim with cross-ex questions. Call
		(rate)	Berry's Chapel	1/2	11	Studied Jim's cross-ex, Long email from Tyle
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		(regulatory)	Berry's Chapel	1	11	to call from Brian Cox on South Carolina.
		(rate)	Berry's Chapel	1/2	11	(I) Read Discussed certificate issues with Tyle
		(flood)	Berry's Chapel	1/2	11	Sent Shiva email comment on conditions.
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Call from Shiva to discuss settlement on

MONTH DAY YEAR

ATTORNEYS DAILY TIME RECORD

adjective family

[illegible]

MONTH DAY YEAR

February June 15

ATTORNEYS DAILY TIME RECORD

ACCOUNT NUMBER	MATTER	CLIENT	MATTER NAME	TIME		WORK DONE
				HOURS	TENTHS	
			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		(Floor)	Henry's Chapel	1		Attended pre-hearing conference on site. Supplemental testimony of CHD and other [REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		(note case)	Henry's Chapel	1	7	Attended Pre-hearing conference on site and supplemental testimony of CHD. Local [REDACTED]
		(regularity)	Henry's Chapel	1	12	Worked with TRM staff on certification issues. Tyler to go over certificate conditions. Supper with TRM staff, Talked again to Tyler, [REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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MONTH

DAY

YEAR

Wed June 6

ACCOUNT NUMBER	MATTER	CLIENT	MATTER NAME	TIME		WORK DONE
				HOURS	TENTHS	
			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		(flood)	Berry's Chapel	2 1/2		Met with Scott, Tyler and John to prepare for voir dire. Scott Went over Tyler's summary with him for cross examination. Prepared cross call to Scott CAD about hearing. Read Officer's order. Read comments filed.
		(rate case)	Berry's Chapel	2 1/2		
		(regulatory)	Berry's Chapel	1		
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Write filing on public notice and to fi
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Met with Tyler and John to discuss credit certificate and employment contract. T
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Read comments filed by consumers.
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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- top - arrows - tub - 1
- Therand parts -

ATTORNEYS DAILY TIME RECORD

Friday June 4th 8

[illegible]

11

Monday June 11

ATTORNEYS DAILY TIME RECORD

[illegible]

Tuesday 6/12

Revised and
Version of N.W.
with

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