

**BEFORE
THE TENNESSEE REGULATORY AUTHORITY**

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)	
)	

**DIRECT TESTIMONY
of
WILLIAM H. NOVAK**

**ON BEHALF OF
THE CONSUMER ADVOCATE AND PROTECTION DIVISION
OF THE
TENNESSEE ATTORNEY GENERAL'S OFFICE**

July 29, 2013

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ATTACHMENTS

Attachment WHN-1 William H. Novak Vitae

1 ***Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND***
2 ***OCCUPATION FOR THE RECORD.***

3 A1. My name is William H. Novak. My business address is 19 Morning Arbor Place,
4 The Woodlands, TX, 77381. I am the President of WHN Consulting, a utility
5 consulting and expert witness services company.¹
6

7 ***Q2. PLEASE PROVIDE A SUMMARY OF YOUR BACKGROUND AND***
8 ***PROFESSIONAL EXPERIENCE.***

9 A2. A detailed description of my educational and professional background is provided
10 in Attachment WHN-1 to my testimony. Briefly, I have both a Bachelors degree
11 in Business Administration with a major in Accounting, and a Masters degree in
12 Business Administration from Middle Tennessee State University. I am a
13 Certified Management Accountant, and am also licensed to practice as a Certified
14 Public Accountant.
15

16 My work experience has centered on regulated utilities for over 30 years. Before
17 establishing WHN Consulting, I was Chief of the Energy & Water Division of the
18 Tennessee Regulatory Authority where I had either presented testimony or
19 advised the Authority on a host of regulatory issues for over 19 years. In
20 addition, I was previously the Director of Rates & Regulatory Analysis for two
21 years with Atlanta Gas Light Company, a natural gas distribution utility with
22 operations in Georgia and Tennessee. I also served for two years as the Vice
23 President of Regulatory Compliance for Sequent Energy Management, a natural

¹ State of Tennessee, Registered Accounting Firm ID 3682.

1 gas trading and optimization entity in Texas, where I was responsible for ensuring
2 the firm's compliance with state and federal regulatory requirements.

3

4 ***Q3. ON WHOSE BEHALF ARE YOU TESTIFYING?***

5 A3. I am testifying on behalf of the Consumer Advocate & Protection Division
6 ("CAPD" or "the Consumer Advocate") of the Tennessee Attorney General's
7 Office.

8

9 ***Q4. HAVE YOU PRESENTED TESTIMONY IN ANY PREVIOUS CASES***
10 ***INVOLVING EITHER BERRY'S CHAPEL UTILITY OR LYNWOOD***
11 ***UTILITY?***

12 A4. Yes. I presented testimony on behalf of the CAPD in the last rate case for Berry's
13 Chapel Utility ("BCU" or "the Company") in TRA Docket 11-00198.

14

15 ***Q5. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS***
16 ***PROCEEDING?***

17 A5. My testimony will support and address the CAPD's positions and concerns with
18 respect to the settlement agreement between BCU and the TRA Party Staff ("the
19 Settlement Parties"). Specifically, I will address the following:

- 20 i. The calculation of the amount and refund due to customers from
21 unauthorized rate charges of BCU by the Settlement Parties; and
22 ii. The proposed application of certain unauthorized rate charges by the
23 Settlement Parties to specific odor control costs, flood recovery costs, and

1 the establishment of a financial security fund for BCU as an alternative to
2 customer refunds. In particular, I will address the proposal by the
3 Settlement Parties for the recovery of specific costs – outside of a rate case
4 – that results in an increase in rates to customers.
5

6 ***Q6. WHAT DOCUMENTS HAVE YOU REVIEWED IN PREPARATION OF***
7 ***YOUR TESTIMONY?***

8 A6. I have reviewed the proposed Settlement Agreement filed on May 31, 2013 by the
9 Settlement Parties. In addition, I have reviewed the testimony and exhibits filed
10 in this docket by both BCU and the TRA Party Staff along with the workpapers
11 supporting their calculations. I have also reviewed the responses to the data
12 requests (both formal and informal) submitted by the Settlement Parties to the
13 CAPD's discovery requests. Finally, I reviewed the TRA's Order in the
14 Company most recent rate case (Docket 11-00198).
15
16

17 **I. CALCULATION OF THE AMOUNT AND REFUND DUE FROM**
18 **UNAUTHORIZED RATE CHARGES OF BCU**
19

20 ***Q7. HAS THE COMPANY CONSISTANTLY APPLIED THE TRA***
21 ***APPROVED BILLING RATES TO THEIR CUSTOMERS?***

22 A7. No. In the Company's last rate case, the CAPD found a number of instances
23 where the Company had either voluntarily or involuntarily charged incorrect rates

1 to its customers.² The TRA Party Staff has confirmed these unauthorized rate
2 charges in this case through their customer bill audit.

3

4 ***Q8. IN WHAT AREAS HAS THE COMPANY MISCHARGED ITS***
5 ***CUSTOMER?***

6 A8. According to the TRA Party Staff, the Company has overcharged its customers by
7 \$146,121 through unauthorized changes to their tariff rates in the following
8 instances.

- 9 • \$535 from charging an unauthorized late fee to customers without approval by
10 the TRA.
- 11 • \$73,680 from an unauthorized billing increase of \$20 and \$30 per month for
12 residential and non-residential customers respectively from December 2010
13 through April 2011 without approval by the TRA.
- 14 • \$10,177 from an unauthorized increase in the minimum bill from \$15 to \$25
15 beginning in December 2010 without approval by the TRA.
- 16 • \$49,886 from refusal to cease the \$0.38 per 1,000 gallons odorization
17 surcharge approved by the TRA in Docket 08-00060 for a twelve month
18 period.
- 19 • \$11,843 from a \$0.68 per 1,000 gallons surcharge incorrectly implemented by
20 one of the Company's billing agents.

21

² Direct testimony of William H. Novak, TRA Docket 11-00198, Page 11.

1 ***Q9. CAN THE CUSTOMERS THAT PAID THESE UNAUTHORIZED RATE***
2 ***CHARGES BE SPECIFICALLY IDENTIFIED IN ORDER TO***
3 ***IMPLEMENT A PRECISE REFUND?***

4 A9. According to the TRA Party Staff, only the excess customer charges and late fees
5 totaling \$74,215 can be specifically identified to each particular customer that
6 paid them. The remaining \$71,906 in unauthorized rate charges cannot be
7 specifically identified by any practical means to the customers that paid them.
8 These unauthorized rate charges are categorized in the table below.

REFUND DISPOSITION PER PROPOSED SETTLEMENT AGREEMENT			
Charge	Customer Refunds	Assigned Refunds	Total Amount
Unauthorized Late Fees	\$535		\$535
Unauthorized Customer Charges	73,680		73,680
Unauthorized Minimum Bills		\$10,177	10,177
Unauthorized Odor Control Recovery		49,886	49,886
Unauthorized Franklin Surcharges		11,843	11,843
Total Unauthorized Charges	\$74,215	\$71,906	\$146,121

9
10 ***Q10. WHAT IS THE CAPD'S POSITION WITH RESPECT TO THE***
11 ***COMPANY'S UNAUTHORIZED RATE CHARGES?***

12 A10. We believe that the unauthorized charges need to be refunded to the customers
13 with interest and penalties. The CAPD believes that these unauthorized rate
14 charges are largely the result of mismanagement and carelessness on the part of
15 the Company. Furthermore, the Company has continued to retain these
16 unauthorized rate charges instead of returning them to the customers long after
17 they first became aware of them.
18

1 The penalty provisions of T.C.A. § 65-4-120 provide for a fine of fifty dollars
2 (\$50.00) for each day of violation or approximately one thousand five hundred
3 dollars (\$1,500) per month. Since these fines cannot be recovered from the
4 utility's customers, they act as an incentive for continued compliance with TRA
5 rules.

6

7 **II. APPLICATION OF CERTAIN UNAUTHORIZED RATE CHARGES TO**
8 **BCU ODOR CONTROL COSTS, FLOOD RECOVERY COSTS, AND A**
9 **FINANCIAL SECURITY FUND**

10

11 ***Q11. MR. NOVAK, HOW HAVE THE SETTLEMENT PARTIES PROPOSED***
12 ***THAT THE TRA TREAT UNAUTHORIZED RATE CHARGES?***

13 A11. The Settlement Parties have proposed that a portion of the unauthorized rate
14 charges (\$71,906 as detailed above) be applied to BCU's unrecovered flood and
15 odor control costs. The Settlement Parties also propose that any remaining
16 unauthorized rate charges be applied to the establishment of a financial security
17 fund for BCU.

18

19 ***Q12. DOES THE CAPD AGREE WITH THE PROPOSED TREATMENT BY***
20 ***THE SETTLEMENT PARTIES TO APPLY THE RECEIPT OF***
21 ***UNAUTHORIZED RATE CHARGES TOWARDS UNRECOVERED***
22 ***COSTS?***

23 A12. No, we do not. The proper time and place for the consideration of these types of
24 costs (flood recovery and odor control) is within the context of a rate proceeding

1 where all costs can be considered. Furthermore, it is unclear from the information
2 presented by the Settlement Parties whether the unrecovered odor control and
3 flood costs represent actual bona fide expenses of BCU or just invoiced claims
4 from the Company's vendors. In addition, some of these costs appear to be
5 related party transactions with the officers and board members of the Company
6 that bear further scrutiny. Finally, some of these costs were considered in the
7 Company's last rate case and are therefore already inherent and built-in to the
8 Company's current rate structure – therefore including them again would amount
9 to double recovery.

10

11 Again, the proper time for consideration of these types of costs is within the
12 context of a rate proceeding where they can be fully vetted. To my knowledge,
13 the TRA has never allowed for the recovery of incremental expenses outside of a
14 rate case or a special docket solely for that purpose. Instead, the CAPD believes
15 that all of BCU's unauthorized rate charges should be properly refunded back to
16 the Company's customers.

17

18 ***Q13. DOES THE CAPD AGREE WITH THE PROPOSED TREATMENT BY***
19 ***THE SETTLEMENT PARTIES FOR THE ESTABLISHMENT OF A***
20 ***FINANCIAL SECURITY FUND FROM THE UNAUTHORIZED RATE***
21 ***CHARGES THAT HAVE BEEN COLLECTED FROM BCU***
22 ***CUSTOMERS?***

1 A13. No, we do not. As stated above, we believe that all of the unauthorized rate
2 charges collected by BCU should be refunded back to the customers in the
3 manner outlined earlier in my testimony. The TRA's rules require the principal
4 amount (as opposed to the carrying costs) of financial security to be funded from
5 the utility, not the customers.³ Therefore, to confiscate amounts already owed to
6 BCU customers for the establishment of a financial security fund would be
7 improper.

8

9 ***Q14. DO YOU HAVE ANY CONCLUDING REMARKS?***

10 A14. Yes. In summary, I would recommend that the Directors reject the proposed
11 Settlement Agreement and find that it is not in the best interest of the Company's
12 customers.

13

14 ***Q15. DOES THIS COMPLETE YOUR TESTIMONY?***

15 A15. Yes it does. However I reserve the right to incorporate any new information that
16 may subsequently become available.

³ TRA Rule 1220-4-13-.07(1) regarding financial security for wastewater utilities specifically states that "all public wastewater utilities either holding or seeking to hold a CCN and owning wastewater systems shall furnish to the Authority, **prior to providing service to a customer**, acceptable financial security using a format prescribed by the Authority" (emphasis added).

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
UTILITY CORPORATION FOR
VIOLATION OF TRA RULE AND
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NOT LIMITED TO, TENN. CODE ANN.
§§ 65-4-112, 65-4-113, 65-4-201, AND 65-5-101

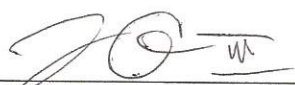
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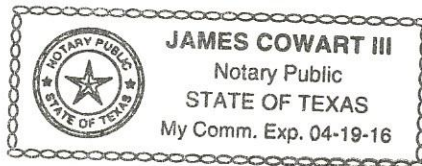
I, William H. Novak, CPA, on behalf of the Consumer Advocate Division of the Attorney General's Office, hereby certify that the attached Direct Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Division.


WILLIAM H. NOVAK

Sworn to and subscribed before me
this 26th day of July, 2013.


NOTARY PUBLIC

My commission expires: 4-19-2016



ATTACHMENT WHN-1

William H. Novak Vitae

William H. Novak

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The Woodlands, TX 77381

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Areas of Specialization

Over twenty-five years of experience in regulatory affairs and forecasting of financial information in the rate setting process for electric, gas, water and wastewater utilities. Presented testimony and analysis for state commissions on regulatory issues in four states and has presented testimony before the FERC on electric issues.

Relevant Experience**WHN Consulting – September 2004 to Present**

In 2004, established WHN Consulting to provide utility consulting and expert testimony for energy and water utilities. Complete needs consultant to provide the regulatory and financial expertise that enabled a number of small gas and water utilities to obtain their Certificate of Public Convenience and Necessity (CCN) that included forecasting the utility investment and income. Also provided the complete analysis and testimony for utility rate cases including revenues, operating expenses, taxes, rate base, rate of return and rate design for utilities in Tennessee. Assisted American Water Works Company in preparing rate cases in Ohio and Iowa. Provided commercial and industrial tariff analysis and testimony for an industrial intervenor group in a large gas utility rate case. Industry spokesman for water utilities dealing with utility commission rulemaking. Consultant for the North Carolina and Illinois Public Utility Commissions in carrying out their oversight functions of Duke Energy and Peoples Gas Light and Coke Company through focused management audits. Also provide continual utility accounting services and preparation of utility commission annual reports for water and gas utilities.

Sequent Energy Management – February 2001 to July 2003

Vice-President of Regulatory Compliance for approximately two years with Sequent Energy Management, a gas trading and optimization affiliate of AGL Resources. In that capacity, directed the duties of the regulatory compliance department, and reviewed and analyzed all regulatory filings and controls to ensure compliance with federal and state regulatory guidelines. Engaged and oversaw the work of a number of regulatory consultants and attorneys in various states where Sequent has operations. Identified asset management opportunities and regulatory issues for Sequent in various states. Presented regulatory proposals and testimony to eliminate wholesale gas rate fluctuations through hedging of all wholesale gas purchases for utilities. Also prepared testimony to allow gas marketers to compete with utilities for the transportation of wholesale gas to industrial users.

Atlanta Gas Light Company – April 1999 to February 2001

Director of Rates and Regulatory Analysis for approximately two years with AGL Resources, a public utility holding company serving approximately 1.9 million customers in Georgia, Tennessee, and Virginia. In that capacity, was instrumental in leading Atlanta Gas Light Company through the most complete and comprehensive gas deregulation process in the country that involved terminating the utility's traditional gas recovery mechanism and instead allowing all 1.5 million AGL Resources customers in Georgia to choose their own gas marketer. Also responsible for all gas deregulation filings, as well as preparing and defending gas cost recovery and rate filings. Initiated a weather normalization adjustment in Virginia to track adjustments to company's revenues based on departures from normal weather. Analyzed the regulatory impacts of potential acquisition targets.

Tennessee Regulatory Authority – Aug. 1982 to Apr 1999; Jul 2003 to Sep 2004

Employed by the Tennessee Regulatory Authority (formerly the Tennessee Public Service Commission) for approximately 19 years, culminating as Chief of the Energy and Water Division. Responsible for directing the division's compliance and rate setting process for all gas, electric, and water utilities. Either presented analysis and testimony or advised the Commissioners/Directors on policy setting issues, including utility rate cases, electric and gas deregulation, gas cost recovery, weather normalization recovery, and various accounting related issues. Responsible for leading and supervising the purchased gas adjustment (PGA) and gas cost recovery calculation for all gas utilities. Responsible for overseeing the work of all energy and water consultants hired by the TRA for management audits of gas, electric and water utilities. Implemented a weather normalization process for water utilities that was adopted by the Commission and adopted by American Water Works Company in regulatory proceedings outside of Tennessee.

Education

B.A, Accounting, Middle Tennessee State University, 1981

MBA, Middle Tennessee State University, 1997

Professional

Certified Public Accountant (CPA), Tennessee Certificate # 7388

Certified Management Accountant (CMA), Certificate # 7880

Former Vice-Chairman of National Association of Regulatory Utility Commission's Subcommittee on Natural Gas