

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 4, 2013

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

PRE-HEARING ORDER

This matter came before the Hearing Officer of the Tennessee Regulatory Authority ("Authority" or "TRA") on August 27, 2013, for a pre-hearing conference with the parties, the Tennessee Regulatory Authority staff participating as a party ("Party Staff"), Berry's Chapel Utility, Inc. ("Berry's Chapel"), and the Consumer Advocate and Protection Division of the Office of the Attorney General of the State of Tennessee ("Consumer Advocate") (collectively, the "Parties").

PRE-HEARING CONFERENCE

In accordance with the public notice issued August 15, 2013, the Hearing Officer convened the pre-hearing conference at approximately 2:00 p.m. CDT on August 27, 2013, in the Hearing Room on the Ground Floor of the TRA at 460 James Robertson Parkway, Nashville, Tennessee. The Parties were in attendance and represented as follows:

For Party Staff:

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

For Berry's Chapel:

Henry Walker, Esq., Bradley, Arant, Boulton, Cummings, LLP, Roundabout Plaza
1600 Division Street, Suite 700, Nashville, TN 37203;

For the Consumer Advocate:

Vance Broemel, Esq., and **Charlena Aumiller, Esq.**, Office of the Attorney General,
Consumer Advocate and Protection Division, 425 5th Ave. N, John Sevier Building, P.O.
Box 20207, Nashville, TN 37243.

Pursuant to Tenn. Code Ann. § 4-5-306 and TRA Rule 1220-1-2-.12, the pre-hearing conference was held to resolve certain matters before the hearing on the merits, including any outstanding procedural matters or pending motions, and to establish the orderly conduct of the hearing.

I. PROCEDURAL MATTERS RE HEARING

A. Hearing Date

The purpose of the Hearing is to consider the merits of the proposed Settlement Agreement filed by Party Staff and Berry's Chapel on May 31, 2013. The Consumer Advocate has stated that its witness, Mr. William Novak, is scheduled to be out of the country and will be unavailable to appear on September 9, 2013. Despite Mr. Novak's unavailability, the parties requested to proceed, as much as possible, with a hearing on September 9, 2013. As a result, the parties agreed between themselves to allow Mr. Novak's pre-filed testimony to be entered into the record in lieu of his personal appearance and without cross-examination by Party Staff and Berry's Chapel during the Hearing. Nevertheless, the Authority may have questions for Mr. Novak concerning his testimony. During the pre-hearing conference, the Hearing Officer advised the parties that their preferences would be considered and, subject to the approval of the panel, a notice of the hearing would be issued setting the date and time for the Hearing.

Thereafter, on August 30, 2013, the Hearing Officer issued a *Notice of Hearing* setting the Hearing to begin at **9:00 a.m. CDT on Monday, Sept 9, 2013**, and to include, at that time, public comment, opening statements by the parties, and the presentation of witness testimony.

The proceedings will be suspended briefly for the regularly scheduled Directors Meeting and Authority Conference. Thereafter, the Hearing will continue until the witness testimony concludes or at 4:00 p.m. CDT, *whichever occurs first*. The Hearing will reconvene in **October 2013 (the date and time provided by separate notice)** for the conclusion of witness testimony and additional questioning, if any, and closing arguments. Additional public comment will also be allowed.

B. Public Comment

As included in the *Notice of Hearing* issued August 30, 2013, members of the public are encouraged to participate by filing written comments in the docket file and/or presenting verbal comments during the Hearing. Any member of the public that would like to comment *by telephone* during the Hearing may do so by sending a request to the Hearing Officer at kelly.grams@tn.gov and copying such request to Sharla Dillon, Docket Manager, at sharla.dillon@tn.gov. Requests to participate in public comment *by telephone* must be received ***no later than Thursday, September 5, 2013***. Due to logistical considerations, requests for telephone comment received after September 5, 2013, may not be accepted.

C. Opening Statements

After all preliminary matters are considered, if any, each party shall be permitted a maximum of fifteen (15) minutes to present an opening statement. As agreed by the Parties, the order of presentation will be as follows: 1) Party Staff, 2) Berry's Chapel, and 3) the Consumer Advocate.

C. Witnesses

A total of three witnesses have been identified by the Parties. By agreement of the Parties, presentation of the witnesses shall be as follows:

- 1) Berry's Chapel - Terry Buckner

2) TRA Party Staff - Tiffany Underwood

3) Consumer Advocate - William H. Novak

During direct examination, witnesses will limit the summary of their pre-filed direct testimony to ten (10) minutes. In addition, the Parties have been advised that all witnesses are subject to recall for rebuttal purposes and should remain available throughout the length of the proceedings.

A. Redirect and Authority Questions

Redirect examination of a witness is allowed. Nevertheless, the parties are cautioned that redirect examination is to be limited to matters elicited during cross-examination that require clarification. It is not appropriate to raise new issues during redirect examination. Re-cross examination is not permitted unless a new issue is raised during the immediately preceding redirect examination. Further, the Authority's Advisory Staff has an opportunity to ask questions following the completion of cross-examination, before any redirect examination. The Directors have the opportunity to ask questions following cross-examination, but may also interject questions any time during a witness's testimony.

F. Confidential Information

With regard to the disclosure of confidential information during the Hearing, the Parties are instructed to notify the Chairman/Presiding Director before beginning a line of questioning that is likely to involve the disclosure of confidential information. Parties should contemplate and discuss such areas of questioning in advance of the Hearing and attempt consolidation of such questions to reduce the time and number of instances that the panel would have to clear the Hearing Room or take special measures to maintain the confidentiality of protected information.

G. Demonstrative Exhibits and Other Exhibits

The Parties were instructed to exchange among themselves any demonstrative exhibits

related to a witness's pre-filed testimony before that witness appears on the stand. In addition, it is a party's responsibility to bring a sufficient number of copies of all exhibits that a party intends to reference or discuss with a witness. In general, at a minimum, copies of an exhibit should be provided to the court reporter, each Director, Legal Staff, and each Authority Division Chief. A party should use its own judgment and discretion in determining the total number of copies it has on hand, but twelve (12) copies of each exhibit may be used as a starting guideline. Delaying or interrupting the proceedings in order to make copies is disfavored and, in the discretion of the panel, may not be permitted. A party should have its own copy of all exhibits, including those appended to pre-filed testimony, available for reference during the Hearing.

Further, the Parties were directed to inform the Hearing Officer of any visual display aids, including any technology requests or requirements, which might be needed during the Hearing. So that the appropriate arrangements and accommodations may be made, all such requests and information should be provided via email to the Hearing Officer at kelly.grams@tn.gov *no later than 12:00 noon on September 6, 2013.*

H. Notice of Official Notice

During the pre-hearing conference, the Consumer Advocate requested that certain consumer correspondence and complaints concerning Berry's Chapel and matters at issue in the proposed Settlement Agreement be made part of the administrative record in this docket. Following discussion by the Parties concerning the Consumer Advocate's request, the Hearing Officer directed that, as to any current consumer correspondence and/or complaints, the Consumer Advocate submit an appropriate written request to TRA General Counsel and/or Advisory Staff.¹

¹ On August 28, 2013, the Consumer Advocate filed a data request, directed to the TRA Chief of the Consumer Services Division, requesting that complaints or comments received by the Authority concerning Berry's Chapel

In addition, in accordance with Tennessee Code Annotated §§ 4-5-313(6) and 65-2-109(2) and (4), on August 30, 2013, the Hearing Officer issued a *Notice of Official Notice* that the voting panel of Directors will take official notice of customer correspondence and complaints, if any, concerning Lynwood Utility Corporation a/k/a Berry's Chapel Utility, Inc. that have been filed in the following TRA Dockets: 08-00060, 11-00005, 11-00174, 11-00198, and 13-00052. Further, the notice provided that, to rebut or contest the material so noticed, any party may file a written response before the conclusion of the Hearing, request additional time in which to file a written response, or offer verbal comments during the Hearing.

I. Closing Arguments/Post-Hearing Briefs

During the pre-hearing conference, the Consumer Advocate informed the Hearing Officer that the parties had discussed, but not reached agreement, concerning the summation of proof. The Consumer Advocate requested to file post-hearing briefs in lieu of a closing argument; whereas, the Party Staff and Berry's Chapel preferred to present closing arguments and forgo post-hearing briefs. Finding that the parties had already filed substantive briefs on the legal issues, the Hearing Officer concluded that an expansion on the scope of closing arguments would best serve the Authority and should be utilized in this matter.

Therefore, each party is permitted a maximum of fifteen (15) minutes to present a closing argument, which may include discussion of the witness testimony and other proof, if any, and the positions of the parties on the legal issues presented in the Briefs filed in the docket file. As agreed by the Parties, Party Staff will present its closing arguments first, and may designate a

related to the instant docket, 11-00065, and to the issues therein, filed in Docket No. 11-00198 beginning May 31, 2013, be placed in the instant docket. In addition, on August 28, 2013, pursuant to Tenn. Code Ann. § 65-4-118(b)(2), the Consumer Advocate filed a Request for Information, directed to TRA General Counsel, requesting that any emails, letters or other correspondence, received by the TRA concerning Berry's Chapel beginning July 2010 that relate to the instant docket or to the issues therein, be produced to it within ten days.

portion of its allotted time for rebuttal. Berry's Chapel and the Consumer Advocate will present closing arguments after Party Staff's initial remarks.

II. General Outline of Presentation of Proof @ Hearing

September 9, 2013 (beginning @ 9:00 a.m. CDT)

Public Comments (if any)

Opening Statements:

Party Staff (15 minutes)

Utility/Berry's Chapel (15 minutes)

Intervenor/Consumer Advocate (15 minutes)

Witness Testimony:

Utility witness

TERRY BUCKNER

*Witness Summary of Direct

Limited to ten (10) minutes

Cross-examination

Intervenor/Consumer Advocate

Cross-examination

Party Staff

Questions

TRA Advisory Staff and/or Directors²

Re-direct examination

Utility/Berry's Chapel

Party Staff witness

TIFFANY UNDERWOOD

*Witness Summary of Direct

Limited to ten (10) minutes

Cross-examination

Intervenor/Consumer Advocate

Cross-examination

Utility/Berry's Chapel

Questions

TRA Advisory Staff and/or Directors

Re-direct examination

Party Staff

² The TRA Advisory Staff has an opportunity to question a witness between cross and re-direct examination. Directors may ask questions at any time, including between cross and re-direct examination.

October 2013 (Date & Time TBD)

Intervenor witness

HAL NOVAK

****** By agreement of the Parties, Mr. Novak's pre-filed testimony will be entered into record without cross-examination by Party Staff and Berry's Chapel.

Questions

TRA Advisory Staff and/or Directors

Re-direct examination

Intervenor/Consumer Advocate

Public Comments (if any)

Closing Arguments:

****** Includes Argument as to witness testimony and other proof, if any, and the positions of the parties on the issues addressed in the Legal Briefs filed in the docket file.

Party Staff (15 minutes – may reserve time for rebuttal)

Utility/Berry's Chapel (15 minutes)


Intervenor/Consumer Advocate (15 minutes)

Party Staff (with time reserved)

Questions by TRA Advisory Staff and/or Directors

IT IS THEREFORE ORDERED THAT:

1. The Hearing is scheduled to commence at **9:00 a.m. CDT on September 9, 2013**, and will conclude in **October 2013** (the date and time that the Hearing will be reconvened will be provided by separate notice).
2. The Hearing shall be conducted in accordance with this Pre-Hearing Order unless otherwise ordered by the Chairman/Presiding Director.
3. Requests for visual aids or technology or information concerning the technical requirements of the parties should be provided via email to the Hearing Officer at kelly.grams@tn.gov **no later than 12:00 noon on September 6, 2013.**


Kelly Cashman-Grams, Hearing Officer