

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

IN RE:)	
)	
INVESTIGATION AS TO WHETHER)	
A SHOW CAUSE ORDER SHOULD BE)	
ISSUED AGAINST BERRY’S CHAPEL)	DOCKET NO. 11-00065
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, AND)	
65-5-101.)	

MOTION TO DECIDE ADMISSIBILITY OF EXHIBITS

Robert E. Cooper, Jr., Attorney General for the State of Tennessee, by and through the Consumer Advocate and Protection Division, respectfully moves the Hearing Officer for an order allowing the Consumer Advocate to present an exhibit summarizing the prior Tennessee Regulatory Authority (“TRA”) orders in Docket Nos. 07-00007, 08-00060, 09-00034, and 11-00198/11-00180 for the costs of sludge removal, chemicals, accounting, legal, rate case and regulatory expenses in the interest of judicial economy (“Proposed Exhibit”, Appendix A). The Consumer Advocate also respectfully requests a ruling on whether a demonstrative may be permitted if the foundation is properly laid (“Proposed Demonstrative”, Appendix B).

I. Background

Per the Pre-Hearing Order, the Consumer Advocate exchanged exhibits with the Party Staff and Berry’s Chapel, with copies of the support for the numbers used in the chart. The next afternoon, the Party Staff indicated that it would object to the document being filed as an exhibit

and would object to it being used as a demonstrative if the necessary foundation is not laid. The Consumer Advocate asked what information the Party Staff specifically objected to. The Party Staff indicated that it objected to a column that was totaling two other costs and references. The Consumer Advocate removed the column totaling the two other columns and explained that the references are the citations from the TRA Orders. The Consumer Advocate also took the single document and separated it into two documents, which are shown in Appendix A and B of this Motion. The Consumer Advocate resubmitted the documents seeking whether the parties would agree to Appendix A being an exhibit and Appendix B being a demonstrative. Again, the Party Staff stated it objected to the documents without providing specifics. The Consumer Advocate asked the parties to take notice that it would use the underlying orders to get the same information in. The Party Staff clarified that it did not object to the underlying orders coming into evidence, but it did object to use of the summaries as either evidence or a demonstrative prior to closing arguments. The Party Staff indicated that the Consumer Advocate should notify the Hearing Officer that there are objections. The Consumer Advocate replied to the Party Staff and Berry's Chapel agreeing that the Hearing Officer should be notified but asked if the parties could discuss modifications to see if an agreement could be reached without involving the Hearing Officer. The Party Staff indicated that it was unwilling to agree to it.

The Consumer Advocate contacted the Hearing Officer and provided the documents in Appendix A and B, as well as unmarked copies of the documents in Appendix C. As a result of that email and several other emails, the Hearing Officer requested the Consumer Advocate to file this Motion or, alternatively, try to reach an agreement with the Party Staff and Berry's Chapel. Unfortunately, an agreement could not be reached.

At the time of this Motion, neither the Party Staff nor Berry's Chapel has provided any modifications to the documents that would make them acceptable, and both the Party Staff and Berry's Chapel have agreed the orders from Docket Nos. 07-00007, 08-00060, 09-00034, and 11-00198/11-00180 are admissible evidence.

II. Appendix A: Exhibit Summarizing Select Authorized Costs Approved in Tariffs

Ms. Tiffany Underwood is a witness for the Party Staff who pre-filed testimony in support of the Settlement Agreement in this Docket No. 11-00065. In her testimony on pages 1 to 2, Ms. Underwood indicates that she reviewed Berry's Chapel's last three rate case filings (Docket Nos. 07-00007, 09-00034 and 11-00198) and the odor control docket (Docket No. 08-0006) in preparing her testimony. She also testified that the authorized expenses in the Settlement have not been presented to the TRA in any other docket. Direct Testimony of Tiffany Underwood, Docket No. 11-00065, pgs. 2 and 3. As discussed in the Consumer Advocate's *Initial Brief* in Part II.B, one of the issues in this case is whether the prior rates included or should have included the costs sought for recovery in this Settlement.

Before the Consumer Advocate can cross examine Ms. Underwood on the substance of the facts underlying this issue, it must get the facts of the authorized costs from the relevant prior orders and tariffs admitted as evidence in this Docket. Given that there are 24 numbers in the chart in Appendix A, this will require several questions for each number to get the evidence in the record. Unfortunately for everyone involved, the process of getting the evidence in the record will be long and tedious.

In an effort to promote judicial economy, and get to the heart of the issues, the chart in Appendix A provides a summary of the authorized costs directly stated in the orders or adopted by reference in the orders, as shown in Appendix C. It provides only data from the previous

orders. The chart itself is not an argument, but rather, the facts in it are necessary evidence for the Consumer Advocate to make other arguments not listed in the chart.

The Tennessee Rule of Evidence contemplates the admission of such summaries in Rule 1006 in the interest of convenience. There are many cases on this Rule, but a case often referenced is *Stewart v. Follis*, 205 S.W. 444 (Tenn. 1918). In that case, the Court considered whether summary evidence could be admitted. *Id.* In that case, the Court noted that the report in question was “quite a book in itself, is very long, very minute, and very exact, embracing thousands of figures.” *Id.* at 445. The Court also declared:

“When the facts sought to be proved are of such a character, and the papers are so voluminous or numerous, that the examination thereof during the trial would consume much time, and it would be difficult for the jury” (and we may add for the court) “to understand and reach the necessary result, the rule requiring the production of the papers themselves is so relaxed that the court may, in its discretion, permit a competent witness, who has examined the papers with reference to the points sought to be established, to testify to the result of such examination.”

Id. at 445-46 (citing 2 Encyc. Ev. p. 284, citing cases from California, Connecticut, Iowa, Louisiana, Maryland, Minnesota, Missouri, Nebraska, and Texas.) (emphasis added). The Court held in that case that the report in question could not be admitted because “we have not before us the witnesses who did all the work.” *Id.* at 446.

The chart in Appendix A differs from the report considered in *Stewart*. The chart here is a summary of orders. It is not expansive like a book. It is not long. It is not very minute. And, it embraces 24 figures as opposed to thousands. Thus, the chart in Appendix A is much simpler and straightforward than the report reviewed in *Stewart*.

Another difference in this case from *Stewart* is the witness testifying she reviewed the dockets and asserts the costs sought for recovery in this Settlement have not been presented or otherwise covered in prior rates—Ms. Underwood—is available in this case. Moreover, unlike in *Stewart*, Ms. Underwood works for the agency that created the underlying data in Appendix A. She even testified that her responsibilities include “working on rate cases”. Underwood Testimony, pg. 1. Thus, Ms. Underwood is the best witness to discuss the costs if her pre-filed testimony statements are to be relied upon.

Even if the Hearing Officer is not convinced that Rule 1006 applies, the Consumer Advocate respectfully requests the Hearing Officer decide the chart in Appendix A is admissible as an exhibit to save time during the hearing. As often stated, the TRA is not bound by the rules of evidence. The Directors and Advisory Staff are sophisticated and can weigh any evidence accordingly. The Consumer Advocate does not seek to introduce the chart as conclusive evidence, but rather as competent evidence that can be weighed for what it is worth.

The Consumer Advocate has offered to modify the chart for any specific issues raised by the other parties. Even though the parties did not request modification of the first chart submitted, the Consumer Advocate made a modification by deleting a column that totaled two other columns (simple math) in an effort to come to an agreement. There are no assumptions in the chart. There are no arguments in the chart. It contains only data and references to where the data came from. There is no judgment or opinion. The accuracy of the chart can be, and should be, verified before the hearing. Indeed, the Consumer Advocate has asked the Party Staff and Berry’s Chapel several times to specify its problems with the data in the chart. After all, the purpose of exchanging exhibits before the hearing should not be to provide the opponents with the advantage of an opportunity to sandbag the other attorneys and save objections until the

hearing. Rather, exchanging exhibits beforehand should be to improve judicial economy; evidentiary arguments can and should be made before the hearing so that the hearing can be on the merits.

At least one purpose of pre-hearing motions is so that the hearing itself can be reserved for the merits of the argument. These hearings are time compressed as it is and the Directors' time is very valuable. If there is a way to get procedural issues out of the way before a hearing so the substance of the issues can be addressed, it should be done. The Consumer Advocate's proposed chart is merely trying to get to the substance of the issues at the hearing in as efficient procedure as possible.

III. Appendix B: Demonstrative

The Consumer Advocate respectfully requests Appendix B be considered for allowance as a demonstrative providing that the proper foundation be laid. The chart in Appendix B is the same as the chart in Appendix A except for the additional columns of the costs authorized in this Settlement, as provided in Ms. Underwood's testimony on Schedules 1E and 1F. Neither the Party Staff nor Berry's Chapel have indicated an issue with this being a demonstrative if the proper foundation is laid. The Consumer Advocate asserts that if the chart in Appendix A is allowed as an exhibit, the remaining foundation required is for the costs authorized in this Settlement.

IV. Appendix C: Supporting Documentation with Identifying Markings

At the request of the Hearing Officer, the Consumer Advocate has provided the supporting documents with markings to identify the source of the data in the chart in Appendix A. The Consumer Advocate provided similar copies to the Party Staff and Berry's Chapel when it provided the original document for its initial review. The references of /A through /G in the

upper-right hand corner correlate with the letter references in the chart of Appendix B. As previously discussed, Appendix B is the same as Appendix A, except for the additional data of costs authorized in this Docket. Thus, pages 3-14 of Appendix C contains the supporting documentation for the columns referenced with /C to /G in Appendix B, and columns referenced with /A to /D in Appendix A.

V. Conclusion

For the reasons stated, the Consumer Advocate's motion to consider admissibility of exhibits should be granted and the Consumer Advocate should be permitted to use the chart in Appendix A as an exhibit and the chart in Appendix B as a demonstrative (if the proper foundation is laid).

Respectfully submitted,



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Consumer Advocate and Protection Division

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Dated: Sept. 6, 2013

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 September 6, 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 Street, Suite 700
Nashville, TN 37203


Charlena Aumiller

Appendix

A

Select Costs	Select Authorized Costs Approved in Tariffs			
	Rate Case 07-00007 /A	Odor Control Surcharge 08-00060 /B	Rate Case 09-00034 /C	Rate Case 11-00198 & Flood Damage 11-00180 /D
Sludge removal	20,000.00	13,604.97	34,617.00	39,691.00
Chemicals	20,870.00	7,166.74	42,450.00	44,093.00
Accounting (excluding Tax Accounting)	-	1,125.00	29,684.00	24,944.00
Legal Expenses	-	4,784.75	8,899.00	12,695.00
Rate Case Expense	26,400.00	-	36,000.00	64,000.00
Regulatory Expense (legal fees portion)	-	-	-	6,000.00
Total of Select Costs	67,270.00	26,681.46	151,650.00	191,423.00

/A: Per *Order Approving Settlement Agreement*, Docket No. 07-00007, Ex. Schedules 2 and 2-9 (Dec. 11, 2007). The order does not provide the precise amount of accounting and legal expenses included in "Contractual Services", which had an authorized recovery of \$196,147.

/B: Per *Order Approving Settlement Agreement*, Docket No. 08-00060, pg. 5 (Apr. 29, 2009).

/C: Per *Final Order*, Docket No. 09-00034, pgs. 5, 7 (Nov. 3, 2009). Footnote 6 cites approval of undisputed expenses, which are shown in *Supplemental Direct Testimony of Dave Peters*, Sch. 2 (Aug. 14, 2009).

/D: Per *Final Order*, Docket No. 11-00198, pgs. 8, 11-12 (Aug. 21, 2012). Footnote 56 cites the detail of the regulatory expenses shown in *Rebuttal Testimony of James B. Ford, Secretary-Treasurer to Berry's Chapel Utility, Inc.*, pg. 10 (May 22, 2012). The *Final Order* includes authorized cost recovery under both Docket No. 11-00198 and 11-00180, which were consolidated in *Order Consolidating Dockets and Amending Procedural Schedule*, Docket Nos. 11-00180 and 11-00198 (May 7, 2012).

Appendix

B

Select Costs	This Settlement		Select Authorized Costs Approved in Tariffs			
	Odor Control /A	Flood Damage /B	Rate Case 07-00007 /C	Odor Control Surcharge 08-00060 /D	Rate Case 09-00034 /E	Rate Case 11-00198 & Flood Damage 11-00180 /F
Sludge removal	25,516.67		20,000.00	13,604.97	34,617.00	39,691.00
Chemicals			20,870.00	7,166.74	42,450.00	44,093.00
Accounting (excluding Tax Accounting)	3,490.00		-	1,125.00	29,684.00	24,944.00
Legal Expenses	11,068.25	19,781.25	-	4,784.75	8,899.00	12,695.00
Rate Case Expense			26,400.00	-	36,000.00	64,000.00
Regulatory Expense (legal fees portion)			-	-	-	6,000.00
Total of Select Costs	40,074.92	19,781.25	67,270.00	26,681.46	151,650.00	191,423.00

/A: Per Ms. Underwood's Testimony, Schedule 1E. Per the invoices in Ms. Underwood's testimony, the period of costs range from 2008 to 2012.

/B: Per Ms. Underwood's Testimony, Schedule 1F. Per invoices in Ms. Underwood's testimony, the period of costs range from August 2011 to February 2013.

/C: Per *Order Approving Settlement Agreement*, Docket No. 07-00007, Ex. Schedules 2 and 2-9 (Dec. 11, 2007). According to *Petition*, Sch. 2.7 (Jan. 4, 2007), accounting and legal expenses were a component of "Contractual Services", which had an authorized recovery of \$196,147. Per *Petition*, Sch. 2.8 (Jan. 4, 2007), \$16,800 was requested for accounting expenses, and \$12,000 was requested for legal expenses. The precise amount of accounting and legal expenses included in "Contractual Services" is not provided in the order.

/D: Per *Order Approving Settlement Agreement*, Docket No. 08-00060, pg. 5 (Apr. 29, 2009).

/E: Per *Final Order*, Docket No. 09-00034, pgs. 5, 7 (Nov. 3, 2009). Footnote 6 references approval of undisputed expenses shown in *Supplemental Direct Testimony of Dave Peters*, Sch. 2 (Aug. 14, 2009).

/F: Per *Final Order*, Docket No. 11-00198, pgs. 8, 11-12 (Aug. 21, 2012). Footnote 56 cites the detail of the regulatory expenses shown in *Rebuttal Testimony of James B. Ford, Secretary-Treasurer to Berry's Chapel Utility, Inc.*, pg. 10 (May 22, 2012). The *Final Order* includes authorized cost recovery under both Docket No. 11-00198 and 11-00180, which were consolidated in *Order Consolidating Dockets and Amending Procedural Schedule*, Docket Nos. 11-00180 and 11-00198 (May 7, 2012).

Appendix C

BCUI
Docket No. 11-00065
Show Cause
Odor Expenses

Ms. Underwood's
Testimony

1A

	BCUI	Staff	Differences	
2008 Legal Fees	1,940.00	-	(1,940.00)	A/
2008 Consulting Fees	1,125.00	125.00 ②	(1,000.00)	D/
2009 Legal Fees	5,520.91	5,105.00 ③	(415.91)	F/
2009 Consulting Fees	2,125.00	2,125.00 ②	-	Dec 08 Invoice
2010 Consulting fees Jan 10 to June 10	625.00	500.00 ②	(125.00)	G/
Waste Management July 09 to June 10	29,254.71	18,430.71 ①	(10,824.00)	H/
2010 Consulting fees July 10 to Aug. 10	250.00	250.00 ②	-	
Consulting fees Sept. 10 to June 11	875.00	-	(875.00)	I/
Waste Management July 10 to Aug. 10	7,085.96	7,085.96 ①	-	
Waste Management Sept. 10 to June 11	12,761.42	-	(12,761.42)	C/
Visions Inc.	1,190.00	490.00 ②	(700.00)	B/
Additional Legal Fees Odor	6,378.75	5,963.25 ③	(415.50)	E/
Total Additional Expenses	69,131.75	40,074.92	(29,056.83)	

Σ① 25,516.67 Sludge Removal
Waste mgmt
Σ② = 3,490 Consulting/
Visions
Σ③ 11,068.25 Legal fees/
Branstetter
+ Walkers

A/ Check Nos. 1096, 1231, 1252, 1381 and 1404 considered in Docket No. 0800060

B/ Check Nos. 7415 was Def. Flood Cost according to invoice and financials

C/ Check Nos. 7142 and 7220 considered in Docket No. 11-00198. Check Nos. 7029 and 7048 were classified as sludge.
D/ Check No. 1282 and 1366 were recovered in Docket No. 0800060. Check No. 1468 does not appear to have been charged to the odor account.

E/ Invoice No. 758932 appears to have only 3 hours worth of odor work at \$405 per hour.

F/ Invoice 1681 included \$10.91 for reimbursement for lunch and \$405 associated with a general matter instead of odorization.

G/ JV Entry no support.

H/ Check No. 2315 for \$140 was for flood work according to check stub and \$10,684 of sludge was built into rates.

I/ Invoices provided were not charged to odor.

BCUI
Docket No. 11-00065
Show Cause
Flood Expenses

*Ms. Underwood's
Testimony*

B

Check No.	Invoice No.	Co. Amt	Staff Amt	Difference	
	8298	738044	708.75	708.75	-
	8333	753664	-	-	-
	8298	775411	405.00	405.00	-
	8298	780543	708.75	605.00	(103.75) A/
	8333	785766	4,357.50	3,527.50	(830.00) B/
	1029	790885	7,366.25	7,158.75	(207.50) C/
	1283	795169	4,565.00	4,565.00	-
	1283	801590	933.75	933.75	-
	1283	807363	1,037.50	1,037.50	-
	1283	813125	415.00	415.00	-
	1283	835463	425.00	425.00	-
					-
Total		20,922.50	19,781.25	(1,141.25)	

A/ .25 hours removed should have been allocated to regulatory
B/ 2.0 hours removed should have been allocated to regulatory
C/ 0.5 hours removed should have been allocated to regulatory

*→ All invoices listed are
for legal fees, as shown
in Tiffany Underwood's
Direct Testimony, Flood
Expense Tab.*

Docket No. 07-00007

Order/Settlement

Settlement

Company
Exhibit
Schedule 2

**Lynwood Utility Corporation
2006 Rate Case**

Pro-forma Income for the year ended December 31, 2006

			2006
Revenues			
Sewer Fees	464,813		464,813
Inspection Fees	4,500		4,500
Late charges	6,717		6,717
	<u>476,030</u>		<u>476,030</u>
Expenses:			
Operating & Maintenance			
Salaries & Wages/ benefits	5,685		5,685
Purchased Sewage Treatment			<u>20,000</u>
Sludge Removal Treatment	17,592	2,408 A/	51,815
Purchased Power	51,815		<u>20,870</u>
Chemicals	20,870		4,816
Material & Supplies	4,816		196,147
Contractual Services	291,421	(95,274) A/	5,000
Rents	16,667	(11,667) A/	306
Utilities	1,224	(918) A/	9,554
Insurance Expense	9,554		25,933
Testing	25,933		44,556
Customer Accounting	42,118	2,438 B/	27,075
Property Taxes and Other	30,510	(3,435) C/	2,410
Miscellaneous Expense	2,410		414,167
	<u>520,615</u>		
Depreciation Expense	138,300	(1,960) D/	136,340
Amort of Cont. in Aid	(66,520)		(66,520)
Amort of Rate Case Cost		8,800 E/	8,800
Total Expenses	592,395	(99,608)	492,787
Income (Loss)	<u>(116,365)</u>	<u>99,608</u>	<u>(16,757)</u>

- A/ Agreed upon adjustment with Consumer Advocates
B/ Schedule 2.1
C/ Schedule 2.11
D/ Schedule 4
E/ Schedule 2.9

→ This number is mentioned in the note of both the Proposed Exhibit 7 and the Proposed Demonstrative. It includes regulatory expenses, which were broken out in the Petition on Schedules 2-7 and 2-8, but were not broken out in the final Settlement. The Schedules from the Petition are provided in the following pages.

Docket No. 07-00007
Order/Settlement


Company
Exhibit
Schedule 2-9

Lynwood Utility Corporation
2006 Rate Case

Line
No.

Rate Case Expense

1	Prior Balance	\$ -
2	<u>Legal Expenses</u>	<u>14,000 A/</u>
3	<u>Accounting (\$600 per Month)</u>	<u>12,400 B/</u>
5	Proforma Balance	<u>\$ 26,400</u>

A/ Estimated expense Branstetter, Kilgore, Stranch & Jennings

B/ Estimated expense - Vision, Inc.

C/ Amortization over 3 years at \$8,800 per year

Company
Exhibit
Schedule 2-7

Lynwood Utility Corporation
2006 Rate Case

Contractual Services

Prior Balance		\$ 243,762
Adjustments:		
Accounting Services	(45,000)	
Transportation Exp	(9,000)	
Outside Contractor Cost	(69,440)	
Regulatory Expense	(25,000)	
3% Cost Increase	<u>2,860</u>	
Total adjustments		(145,580)
		<u>\$ 98,182</u>

Per this Schedule and Schedule 2-8 on the next page, the Utility sought to break out regulatory expenses from the Contractual Services in its Petition. For unknown reasons, the regulatory expenses were not broken out, as indicated on the Settlement Exhibit, Schedule 2.

Petition: 07-00007

Company
Exhibit
Schedule 2-8

Lynwood Utility Corporation
2006 Rate Case

Line
No.

Regulatory Expenses

1	Prior Balance	\$	-
2	Legal Expenses	12,000	A/
3	Accounting (\$600 per Month)	7,200	B/
4	Consulting Expenses (\$800 per Month)	9,600	C/
5	Proforma Balance	\$	28,800

\$16,800

A/ Estimated expense
B/ Estimated expense - Bookkeeping
C/ Estimated expense - Vision, Inc.

These numbers are
provided in the Note
on both the Proposed
Exhibit and the
Proposed Demonstrative.

6/14

Order: Docket No.
08-00060

/D

monthly bill insert explaining the surcharge for three consecutive months. Lynwood will arrange for monthly bill inserts for three consecutive months or a line item on each bill explaining the surcharge to go to the Lynwood customers billed through HB&TS Utility District to the extent possible. In the event the City of Franklin or HB&TS Utility District ceases to provide billing on behalf of Lynwood, the Company will furnish such agreed notice in any successive billing service. The parties do not envision additional costs will be incurred as a result. Acceptable language for the line item on each bill and the bill insert are attached herewith as Exhibit 2.

18. Lynwood will provide an explanation of the surcharge in response to customer inquiries regarding the surcharge, in accordance with the acceptable notice language attached as Exhibit 2.

19. The breakdown of the costs that Lynwood will be authorized to recover is limited to only those set forth as follows.

- a. Chemical costs billed from ADC associated with odor control - \$6,501.35, (1) $\rightarrow \Sigma (1) = 71,606.74$
- b. Chemical costs billed from Brenntag Mid South, Inc. - \$665.39, (1)
- c. Labor Associated with Odor Control Measures Performed by Tennessee Contractors, Inc. - \$4,292.56,
- d. Sludge Removal Performed by Waste Management of Nashville Hauling - \$6,542.37, (2) $\rightarrow \Sigma (2) = 13,604.97$
- e. Sludge Removal Performed by First Response, Inc. - \$7,062.60, (2)
- f. Legal service fees associated with odor control - \$4,784.75, and
- g. Accounting service fees associated with odor control - \$1,125.00

7/14



V(b). Expenses⁶

V(b)1. SLUDGE REMOVAL EXPENSE

The Company increased its 2008 test year Sludge Removal Expense of \$31,470 by 10% (\$3,147) based upon information from Waste Management, Inc., resulting in attrition period Sludge Removal of \$34,617.⁷ The Consumer Advocate forecasts Sludge Removal Expense at \$31,470 which is the Company's 2008 test year amount, citing that the test year contained nonrecurring expenses which are being addressed in Docket 08-00060.⁸ In rebuttal, the Company stated that the Consumer Advocate's forecasted Sludge Removal Expense is based upon the misunderstanding that a portion of the expense in the test year is being recovered via the sewer surcharge approved in Docket 08-00060.⁹ The Company stated that it removed all charges funded by the sewer surcharge from the test period expense.¹⁰

The panel found that the Company provided sufficient evidence that the test year expense is normalized and contains no expense that is being recovered in the current surcharge. Therefore, the panel voted unanimously to adopt the Company's forecast of \$34,617 as the proper attrition period Sludge Removal Expense.

V(b)2. PURCHASED POWER EXPENSE

The Company increased its 2008 test year Purchased Power Expense by \$10,466 to reflect the anticipated 20% rate increase from the Tennessee Valley Authority and Middle Tennessee Electric Membership Corporation resulting in attrition period Purchased Power Expense of \$62,794.¹¹ The Consumer Advocate forecasted Purchased Power Expense at the

⁶ The panel voted unanimously to accept the undisputed expense amounts projected by the parties for Purchased Wastewater, Chemicals, Materials and Supplies, Engineering Inspections, Testing, Repairs and Maintenance, Billing and Collection Fees, Bad Debt, Accounting and Bookkeeping, Tax Accounting, Accounting-Other, Legal, Management, Rent, Insurance, and Other Miscellaneous Expenses totaling \$332,127.

⁷ James B. Ford, Pre-filed Direct Testimony, p. 4 (March 5, 2009).

⁸ Post-Hearing Brief of the Consumer Advocate, p. 8 (September 11, 2009).

⁹ James B. Ford, Rebuttal Testimony, p. 3 (July 31, 2009).

¹⁰ *Id.*

¹¹ James B. Ford, Pre-filed Direct Testimony, p. 4 (March 5, 2009).

Lynwood Utilities Corp. TRA Docket #09-00034
Comparison of Rate Making Components
Company vs. Consumer Advocate
For 12 Months Ending December 31, 2008

Schedule 2

Line #	Company 2008 Actual	ADJUSTMENTS	Consumer Advocate
1	Sewer Revenue - Usage Based	\$521,605 A/ \$0	\$521,605
2	Tap Fees	\$17,500 B/ (\$45,500) C/	\$63,000
3	Penalty Fees	\$8,163 D/ \$0	\$8,163
4	Inspection Fees	\$1,000 E/ \$0	\$0
5	Total Revenues	\$548,268 (\$45,500)	\$592,768
6	Purchased Wastewater	\$2,551 F/ \$0	\$2,551
7	Sludge Removal	\$34,617 G/ \$3,147	\$31,470
8	Purchased Power	\$62,794 H/ \$10,466 I/	\$52,328
9	Chemicals	\$42,450 J/ \$0	\$42,450
10	Materials & Supplies	\$20,502 K/ \$0	\$20,502
11	Engineering Inspections	\$2,701 L/ \$0	\$2,701
12	Testing	\$31,488 M/ \$0	\$31,488
13	Repairs & Maintenance	\$89,030 N/ \$0	\$89,030
14	Operations Management	\$28,800 O/ \$1,000	\$27,800
15	Billing and Collection Fees	\$44,966 P/ \$0	\$44,966
16	Bad Debt Expenses	\$10,334 Q/ \$0	\$10,334
17	Accounting and Bookkeeping	\$16,635 R/ \$0	\$16,635
18	Tax Accounting	\$2,850 S/ \$0	\$2,850
19	Accounting - Other	\$13,049 T/ \$0	\$13,049
20	Legal	\$8,899 U/ \$0	\$8,899
21	Management	\$16,000 V/ \$0	\$16,000
22	Rent	\$10,344 W/ \$0	\$10,344
23	Insurance	\$18,699 X/ \$0	\$18,699
24	Other Misc. Expenses	\$1,629 Y/ \$0	\$1,629
25	Taxes Other Than Income Taxes	\$20,716 Z/ (\$845)	\$21,561
26	Regulatory Expenses	\$33,524 AA/ \$8,371 BB/	\$25,153
27	Depreciation & Amortization, Net	\$121,569 CC/ (\$6,766) DD/	\$128,335
28	Total Operating Expense	\$ 634,147 \$ 15,373	\$ 618,775
29	Net Operating Income ("NOI")	\$ (85,879) \$ (60,873)	\$ (26,007)
Rate Base			
30	Plant In Service	\$3,122,341 EE/ \$ 211,089 FF/	2,911,252
31	Deferred Debits and Deposits	143,618 GG/ -	143,618
32	Cash Working Capital	52,574 HH/ 12,729 II/	39,845
33	Total	\$3,318,533 \$ 223,818	\$ 3,094,715
Less Deductions:			
34	Accumulated Depreciation	1,602,052 JJ/ 38,248 KK/	1,563,804
35	Contributions In Aid of Construction	687,524 LL/ (280,578) MM/	968,102
36	Total Deductions	2,289,576 (242,330)	2,531,906
37	Rate Base (line 38- Line 44)	1,028,957 466,148	562,809

Σ (A) \$332,327
Undisputed
Expenses cited in
Final of Final
Order

Σ (\$29,684)

The panel found that the amount paid to Mr. Ring is reasonable and should not be based on the amount paid to other managers of much smaller companies. Therefore, the panel voted to adopt the Company's forecast for the Operations Management Expense of \$28,800.

V(b)4. REGULATORY EXPENSE

The Company forecasted Regulatory Expense of \$33,524 which included an annual amortization of the rate case expense resulting from this proceeding of \$12,000 (\$36,000 over three years).¹⁹ The Consumer Advocate forecasts Regulatory Expense of \$25,153 which is \$8,371 less than the Company projection. The difference is comprised of \$6,000 in current rate case expense amortization and \$2,371 described as a non-recurring expense.²⁰

The Regulatory Expense was not broken out to identify individual costs like legal. As such, the CAPS did not include a number in the charts.

→ Shown in charts.

The panel found that the Company's documentation showed that the regulatory costs are actual expenses and that the expenses incurred are reasonable. Therefore, the panel did not find sufficient evidence to reduce the Company forecasted Regulatory Expense by one-half. The panel further found that there was not sufficient evidence to explain why \$2,371 of the Company's forecasted regulatory expense should be considered non-recurring. Therefore, the panel voted unanimously to adopt the Company's forecast of \$33,524 Regulatory Expense to be the proper attrition period amount for this expense.

V(b)5. COLLECTION SYSTEMS EXPENSE

The Company projected \$121,569 for depreciation and amortization expense.²¹ This amount consists of the 2008 test year net depreciation and amortization, inclusive of expense related to the Collection Systems Plant. The Consumer Advocate's original forecast was \$107,727, exclusive of the Collection Systems Plant.²² In its supplemental testimony, however, the Consumer Advocate agreed with the Company that the Tennessee Department of

¹⁹ James B. Ford, Pre-filed Direct Testimony, p. 5, Schedule E-5 and E-5/1 (March 5, 2009).

²⁰ Dave Peters, Direct Testimony, p. 4 and Schedule 6 (June 19, 2009).

²¹ James B. Ford, Pre-filed Direct Testimony, Schedule R/E (March 5, 2009).

²² Dave Peters, Direct Testimony, p. 5 (June 19, 2009).

Final Order
Docket No. 11-00198 + 11-00180

16

the City of Franklin's tariff are not known and those terms are subject to change in the future. Therefore, there is no way to craft a comparable and/or fair late payment assessment for those customers billed directly by Berry's Chapel.

OPERATING EXPENSES

Generally, the Consumer Advocate's methodology for forecasting operating expenses consists of starting with actual test period expense, normalizing for non-recurring items, out-of-period expense and accruals, eliminating non-documented and/or inappropriate expenses and adjusting for known changes during the attrition period. For those expenses that are driven primarily by inflation, the Consumer Advocate then applied its inflation factor. The panel finds that this is the correct approach to use and adopts the inflation factor used by the Consumer Advocate, as noted previously.

After reviewing the Company information, along with the Consumer Advocate's adjustments, the panel adopts the Consumer Advocate's forecasts for the following operating expenses: Purchased Water of \$7,462, Sludge Removal of \$39,691, Purchased Power of \$62,171, Chemicals of \$44,093, Engineering Inspections of \$4,027, Testing of \$14,326, Repairs & Maintenance of \$49,404, Operations Management of \$56,001, Billing & Collection Fees of \$35,559, Bad Debt Expenses of \$6,868, Accounting & Bookkeeping of \$16,274, Tax Accounting of \$857, Accounting-Other of \$8,670, Legal of \$12,695, Taxes Other Than Income of \$41,040, and Depreciation Expense of \$145,116.

300-24944

For five of the expense categories, however, the panel finds that the Company made compelling rebuttal arguments to some of the expense amounts eliminated by the Consumer Advocate. Accordingly, the panel adopts amounts different than the Consumer Advocate's forecast for the following expense categories: Materials and Supplies, Rent, Insurance, Other Miscellaneous Expense, and Regulatory Expense.

Final Order
Docket Nos 11-00198 +
11-00180

\$48,613 in the original filing. In his Rebuttal Testimony, Mr. Ford increases the total to \$71,780.⁴⁷ The Consumer Advocate started with 2011 actual expense, normalized and made adjustments for unsupported items, non-recurring expense, duplications, and inappropriate expense and then grew this amount by 2% for inflation to arrive at the forecasted attrition period amount of \$18,409.⁴⁸

It was discovered that a missing invoice for office supplies in the amount of \$261 was inadvertently deducted twice in the Consumer Advocate's normalizing process.⁴⁹ With this correction, the calculation of the normalized test period is \$18,309. When grown by 2% inflation, the corrected Consumer Advocate attrition period expense is \$18,675.⁵⁰ At the Hearing on May 31, 2012, Mr. Ford clarified that the invoices for gas that the Consumer Advocate disallowed (totaling \$3,931) were for the truck used for utility business.⁵¹ The panel adopts the corrected Consumer Advocate amount of \$18,675 plus \$4,010⁵² for gas to arrive at an attrition period expense of \$22,685 for Other Miscellaneous Expense.

Regulatory Expense - Mr. Ford's testimony indicates that he grew the \$48,898 test period amount by \$21,500⁵³ to arrive at his forecasted amount of \$70,398 for the attrition period.⁵⁴ In Rebuttal Testimony, Mr. Ford adjusted this expense downward to \$51,937 to include, in addition to rate case expense, the actual 2011 booked regulatory expenses of \$19,937.⁵⁵ The regulatory expense of \$19,937 includes TRA Inspection Fee, Tennessee Department of Environment and Conservation ("TDEC") permit fee, the cost of TRA reporting, the cost of Comptroller's assessment reporting, the cost of monthly reporting to TDEC, and other

⁴⁷ James B. Ford, Pre-Filed Rebuttal Testimony, Schedules JBF-5/3 and JBF-5/4 (May 22, 2012).

⁴⁸ Dave Peters, Pre-Filed Direct Testimony, p.12 and attached workpaper Schedule 2 (April 23, 2012).

⁴⁹ Transcript of Proceedings, pp. 10-11 (June 8, 2012).

⁵⁰ Id. at 11.

⁵¹ Transcript of Proceedings, pp. 97-99 (May 31, 2012).

⁵² This amount is \$3,931 increased by 2% inflation factor.

⁵³ This amount is derived from current rate case expense of \$43,000 amortized over 2 years.

⁵⁴ James B. Ford, Pre-Filed Direct Testimony, Schedule R/E (November 15, 2011).

⁵⁵ James B. Ford, Pre-Filed Rebuttal Testimony, Schedule JBF-5/6 (May 22, 2012).

Final Order
Docket Nos. 11-00198+
11-00180

miscellaneous expenses related to regulatory reporting.⁵⁶ Mr. Peters' testimony outlines the significant differences between the Consumer Advocate and the Company in Regulatory Expense for the attrition period. Further, Mr. Peters states that the Company's amount of \$70,398 is more than a 100% increase over the amount awarded for regulatory expenses in the Company's last rate case.⁵⁷ The 2011 actual amount is \$57,037.⁵⁸ The Consumer Advocate, therefore, included only the current rate case expense of \$43,000, amortized over three years or \$14,333.⁵⁹

In its Rebuttal Testimony, the Company adjusted attrition period expense to include actual booked regulatory expenses for 2011, as noted above, and a forecasted amount of \$64,000 for this rate case, amortized over two years.⁶⁰ At the hearing on May 31, 2012, Mr. Ford enumerated the regulatory expenses that made up the \$14,000 excluded by the Consumer Advocate.⁶¹ Additionally, during Cross Examination by the Consumer Advocate, Mr. Ford testified that the \$41,000 for legal expense was low, since he already had bills totaling \$55,000 - \$60,000.⁶²

Based on Mr. Ford's testimony at the Hearing, the panel adopts the Company position on rebuttal of \$51,937 for Regulatory Expense as it compares favorably to the actual 2011 expense discussed in the Consumer Advocate's Direct Testimony. This amount includes a total of \$64,000 in rate case expense amortized over two years.

⁵⁶ James B. Ford, Pre-Filed Rebuttal Testimony, p. 10 (May 22, 2012).

⁵⁷ Dave Peters, Pre-Filed Direct Testimony, p. 14 (April 23, 2012).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ James B. Ford, Pre-Filed Rebuttal Testimony, Schedule JBF-5/6-1 (May 22, 2012).

⁶¹ Transcript of Proceedings, p. 22 (lines 22-25) through p. 23 (lines 1-9) (May 31, 2012).

⁶² Transcript of Proceedings, p. 71 (lines 14-22) (May 31, 2012).

→ This shows the break out of
~~the~~ regulatory expenses.
See the next page.

Docket Nos. 11-00198 + 11-00180
Rebuttal Testimony of Ford
Filed on 5/22/12.

d. Dye, Van Mol & Lawrence (DVL) aids BCUI \$2,945.00
in customer communications that have been of large customers and
TRA concern. Meetings with the customers and Homeowners
Associations revealed many customer concerns and a poor level of
trust of the company. DVL was retained to assist the company
in providing better customer knowledge of the problem BCUI was
facing. The level of distrust was increased when the CAPD
attorneys wrote directly to 75 customers (without BCUI knowledge)
requesting that the customer dispute their bill and complain to the TRA.
This increased expenses related to Regulatory costs (both internal and legal)
and at December 31, 2011, past due accounts have increased to
approximately \$25,000 with several customers having
past due balances between \$600 and \$1,000. The CAPD implied
that if BCUI tried to collect these balances a civil action would be
taken against BCUI by the Attorney General Office. As a result,
no further collection actions were taken on these accounts.

e. Gas – fuel for BCUI F150 truck \$3,931.00

Total Misc Expenses that CAPD should not deduct: \$10,441.00

11) Regulatory Expenses

- a. Rate Case expense – see JBF – 5/6 for Rate Case
Expenses of \$64,000 (\$32,000 for 2 years) which is
low considering all of the detail and problems that
CAPD has had. Legal costs will increase by additional
\$20,000 over the \$41,000 and expenses will be \$4,000
over the estimate due to very large amounts of detail
requested by CAPD (4 times prior case) (\$32,000).
BCUI last rate case expenses were amortized over
2 years.
- b. Ongoing regulatory expense that the CAPD does not consider is
TRA inspection fee of \$3,000, TDEC permit fee of \$2,000.
Cost of TRA reporting (Qrt & Annual reports) \$4,000,
Comptroller Assessment reporting \$2,000, Monthly Testing
Reporting to TDEC \$3,000 and other misc filing
Requirements by TRA (Financial Security filings, Surcharge Tracking
filings) \$6,000 along with other miscellaneous items.
The estimate of \$24,000 makes BCUI annual amount reasonable
and CAPD deductions should not be made for: \$14,000