

# TENNESSEE REGULATORY AUTHORITY



460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

March 1, 2012

Henry Walker  
Bradley Arant Boult Cummings LLP  
1600 Division Street, Suite 700  
Nashville TN, 37203

Re: Docket No. 11-00065: 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 Rules 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

Dear Mr. Walker:

As part of TRA Investigative Staff's inquiry into the above-referenced matter, additional information is required. Please provide the information requested below by March 8, 2012.

## **Section 1 – Certification and Ownership**

1. Please describe the efforts of Berry's Chapel Utility, Inc. ("BCUI") to acquire a certificate of convenience and necessity after BCUI was brought under TRA jurisdiction on the effective date of Public Chapter 430 on June 6, 2011. If BCUI takes the position that it currently possesses Lynwood Utility Corporation's ("Lynwood") certificate of convenience and necessity, describe the efforts of BCUI to seek approval of the transfer of the certificate.
2. Provide a list of the members of BCUI. For each member of BCUI, provide a copy of membership application completed by the member.
3. How are membership applications distributed to potential members? What information related to BCUI's ownership, operations and financial state is distributed with a membership application?
4. Provide a list of the owners of BCUI.

5. What is the difference between owners of BCUI and members of BCUI? Are all owners of BCUI members? Are all members of BCUI also owners?
6. Were individuals eligible to become members of BCUI consulted about the merger of Lynwood and BCUI before the transaction was consummated? If so, provide any materials provided to the individuals.
7. Provide copies of the deeds to any property owned by Lynwood that was transferred to BCUI through the merger.
8. Provide a copy of attached document (7) "Action Without Meeting – Southern Utility Shareholder – Plan of Merger" referenced in the August 18, 2010 letter from Donald Scholes to Tyler Ring.

## **Section 2 – Financial Matters**

9. The Agreement and Plan of Merger requires "... the Lynwood sewer treatment and collection system shall be transferred to the books and records of Berry's Chapel at the fair market value on the effective date with an approximate value of \$5,580,000." Explain the difference between the reported fair market value of Lynwood of approximately \$5.5 million as required by the merger agreement and the \$2.4 million purchase price. For the purpose of this question and question 11 below, purchase price refers to the sum of promissory notes issued to John Ring and Tyler Ring as consideration for the Lynwood sewer system per section 4(a) of the Agreement and Plan of Merger. Who performed the valuation of the property transferred? What method was used to determine the fair market valuation of Lynwood's sewer treatment and collection system? Provide all studies and work papers that led to the valuation of Lynwood's sewer treatment and collection system. For what business purpose is the fair market value of Lynwood's sewer treatment and collection system established in the Agreement and Plan of Merger?
10. Is the debt issued by Tennessee Commerce Bank backed by the personal guarantees of the owners of Lynwood?
11. How was the \$2.4 million purchase price of Lynwood determined? Who performed the analysis to determine the price of the property transferred? What method was used to determine the purchase price? Provide all studies and work papers that led to the determination of the purchase price of Lynwood paid by BCUI.
12. Provide copies of all documents BCUI provided to Lattimore, Black, Morgan & Cain PC related to the value of Lynwood's sewer treatment and collection system.

13. Are the members or customers of BCUI potentially subject to claims from creditors if BCUI defaults on any debt obligation?
14. Are the owners of BCUI potentially subject to claims from creditors if BCUI defaults on any debt obligation?
15. As discussed in the October 21, 2011 Independent Auditors' Report prepared by Lattimore, Black, Morgan & Cain PC, describe the customer fund account acquired through the merger with Lynwood. From what Lynwood accounts did the monies in the BCUI customer fund account originate?
16. Provide the audit engagement letter from Lattimore, Black, Morgan & Cain PC.
17. Provide the Management Representation Letter dated 10/21/11.
18. Describe all misstatements noted and fixed during the audit performed by Lattimore, Black, Morgan & Cain PC.
19. Explain why the Statement of Operations and Changes in Customer Fund Balance and the Statement of Cash Flows was not audited by Lattimore, Black, Morgan & Cain PC.
20. BCUI has represented that it is trying to acquire loans targeted to non-profit organizations. If BCUI is successful in acquiring loans, for what purposes will funds be used? Will funds be used to retire the existing indebtedness of BCUI including amounts owed to the former owners of Lynwood?

### **Section 3 – Other Questions**

21. In a letter dated January 20, 2012, the Tennessee Department of Environment and Conservation ("TDEC") found that BCUI was in violation of its NPDES permit and the Tennessee Water Quality Control Act. Detail all actions being taken to cure the deficiencies identified in the TDEC performance audit.
22. Provide the residential addresses of each Director of BCUI. Indicate if the Director receives wastewater service from BCUI.
23. As described in the Minutes of the BCUI Board Of Directors Meeting held March 11, 2011, the Board voted to retain consultants Dye Van Mol for public relations work.

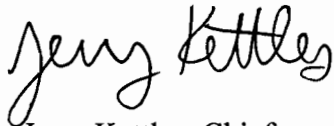
Provide all correspondence between the Directors of BCUI and Dye Van Mol including any contract between BCUI and Dye Van Mol.

24. As described in the Minutes of the BCUI Board Of Directors Meeting held March 11, 2011, the Board approved the purchase of a \$1,000,000 liability policy. Provide the annual premium amount of the policy.

If you have any questions, please call me at 615-741-2904, ext. 153. I can also be reached by e-mail at [Jerry.Kettles@tn.gov](mailto:Jerry.Kettles@tn.gov). Please respond by sending the original and 13 copies either by U.S. Mail or express mail. Alternatively, you may send the original and four (4) copies along with an electronic file to:

Ms. Sharla Dillon, Docket Room Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505  
[Sharla.Dillon@tn.gov](mailto:Sharla.Dillon@tn.gov)

Sincerely,

A handwritten signature in cursive script that reads "Jerry Kettles".

Jerry Kettles, Chief  
Economic Analysis & Policy Division  
TRA Investigative Staff