

BEFORE THE TENNESSEE REGULATORY AUTHORITY

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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

T.R.A. DOCKET ROOM

DOCKET NO. 11-00065

SETTLEMENT AGREEMENT

Comes now the Tennessee Regulatory Authority staff participating as a party ("Party Staff") and Berry's Chapel Utility, Inc. ("BCUI") who respectfully request that the Tennessee Regulatory Authority ("TRA" or the "Authority") approve the following settlement of all outstanding issues in this show cause proceeding. In support of this settlement, the parties also submit the attached testimony from Party Staff analyst Tiffany Underwood and BCUI's regulatory accountant, Terry Buckner.

I. Basis for Agreement

1. BCUI is a wastewater treatment system operating in Williamson County, Tennessee.
2. On September 1, 2010, BCUI acquired the system from Lynwood Utility Corporation ("Lynwood") without prior approval from the Authority.
3. On September 17, 2010, the Authority received notice from BCUI that since BCUI was a non-profit corporation, BCUI was a "non-utility" and exempt from the TRA's regulation under T.C.A. § 65-4-101.
4. On June 6, 2011, T.C.A. §65-4-101 was amended to state that non-profit entities such as BCUI are subject to regulation by the Authority.
5. On August 5, 2011, the Authority issued an Order declaring that BCUI, remained subject to the Authority's jurisdiction prior to the amendment of T.C.A. § 65-4-101.

6. On December 21, 2012, the Court of Appeals for the Middle District of Tennessee affirmed the Authority's decision that BCUI remained a public utility subject to the Authority's jurisdiction prior to the statutory amendment.
7. On June 7, 2012, the Authority approved *nunc pro tunc* the transfer of Lynwood's Certificate of Convenience and Necessity to BCUI in Docket No. 12-00046.
8. There are two open dockets involving BCUI including a petition to approve alternate form of financial security (11-00174) and a petition to defer certain flood related expenses (13-00052). The Consumer Advocate has also disputed shut off valve costs in a tariff filing (Tariff 2012-00374).
9. During the period when BCUI believed it was not under the Authority's jurisdiction, BCUI imposed several charges and other fees that were not approved by the TRA. These fees included: a twenty dollar per month facilities charge applied to all residential customers; late payment fees collected from water customers of Mallory Valley Utility District ("Mallory Valley"); an increase in the minimum customer bill; the continuation of an odor-control surcharge which had previously been approved by the TRA for a one-year period.
10. Party Staff acknowledges that when BCUI attempted to operate unregulated they did so under the advice of counsel and BCUI believed the increases in paragraph 9 were legally made. BCUI now acknowledges that operating as if it were unregulated was in violation of the law.
11. BCUI has spent \$40,074.92 for odor control expenses that have not been collected from customers in any prior case. These expenditures benefited the customers of BCUI.
12. BCUI expended \$19,781.25 for May 2010 flood expenses that have not been collected from customers in any prior case. These expenditures benefited the customers of BCUI. The Authority approved deferral treatment of these expenditures in Docket No. 13-00052.
13. Based upon the information in paragraphs 11 and 12, BCUI has expended a total of \$59,856.17 that benefited the customers and BCUI should be allowed to recover this amount from its customers. The parties agree that BCUI should be credited for this amount against any repayments to customers.

14. BCUI collected \$73,680 from individually identifiable customers as a \$20 per month facilities charge. BCUI collected this charge for five months. Following the Court of Appeals' decision, BCUI began repaying the customers via a bill credit beginning in April 2013. All customers will be repaid the entire amount they are owed in 18 monthly installments. The parties agree that BCUI does not have adequate resources to repay this amount over a shorter period.
15. BCUI customers receive water service from three separate water companies. These companies are the City of Franklin, H.B. & T.S., and Mallory Valley. City of Franklin and H.B. & T.S. impose a late fee on customer's whose bills are not paid in a timely fashion. When BCUI collected these late fees the collected amounts were then passed through to the respective water system. However, Mallory Valley does not have a late fee and BCUI retained the late fees for the Mallory Valley customers. This totaled \$534.68 and the customers are individually identifiable. BCUI has agreed to refund these late fees to the customers who paid them.
16. In TRA Docket No. 08-00060, Lynwood entered a Settlement Agreement with the Consumer Advocate that was approved by the Authority on March 30, 2009. That Order allowed Lynwood to recover \$30,973.02 in costs related to reducing an odor problem at the company's facility. The \$30,973.02 was to be collected as a surcharge over a twelve month period and was not to be extended without Authority approval. Because BCUI believed it was not subject to the TRA's regulation, BCUI continued to collect this surcharge after the twelve month period expired without Authority approval. This resulted in an over collection of \$49,885.68. Given the time period over which the surcharge was collected and the incomplete customer data available, it is not practical to refund to individual customers the difference between the surcharge amount collected and the amount spent. Nevertheless, the parties agree that these additional collections belong to the customers and should be used to benefit the customers collectively.
17. From December 2010 until December 2011, BCUI raised its minimum bill without approval from the TRA. This resulted in an over collection of \$10,177.31. Given the available data, it is not practical to refund these amounts to individual customers, but the parties agree that this money should be used to benefit the customers collectively.

18. Due to a billing error by the City of Franklin, some BCUI customers who received water service from the City of Franklin overpaid \$11,843. Given the lapse of time since that occurred, it is not practical to identify the amount due to customers on an individual basis. Although BCUI was not aware of these overcharges and did not cause them, BCUI benefitted from the overcharges. The parties agree that this money should be used to benefit the customers collectively.
19. Although the over collections identified in paragraphs 15, 16, and 17 cannot practically be refunded to individual customers, the parties agree that BCUI must nevertheless compensate the customers collectively in the amount of \$71,905.99.
20. The difference between the amount spent by BCUI for customer benefit which has not been awarded to BCUI (identified in paragraph 13) and the amount over collected by BCUI (identified in paragraph 19) is \$12,049.82. The parties agree this money should be used solely to benefit BCUI's customers.

II. Proposed Settlement Terms

21. BCUI will repay the \$73,680 (identified in paragraph 14) owed to individually identified customers in equal monthly bill credits over a period of 18 months which it voluntarily began in April 2013.
22. BCUI will repay the \$534.68 (identified in paragraph 15) owed to individually identified customers within one month of the ratification of this Settlement Agreement.
23. In order to resolve Docket No. 11-00174 and to create an escrow fund to benefit the utility's customers, BCUI will pay the \$12,049.82 (identified in paragraph 20) and will also contribute an additional \$7,950.18 for a total of \$20,000, which will be placed into an escrow account for the customers' benefit. The escrow fund is intended to comply with the requirements of Tenn. Comp. R. & Regs. 1220-4-13-.07(7). This account shall be subject to the following conditions:
 - a. This will be a segregated account and only funds contributed for the purpose of fulfilling paragraph 23 of this Settlement Agreement will be deposited therein;
 - b. No funds may be expended from this account without the written approval of the Authority;
 - c. Any interest paid by the bank on this account will be reserved in the account and shall not be used to the benefit of BCUI;

- d. These funds may only be utilized by BCUI for emergency purposes and may not be utilized for routine maintenance or routine capital expenses;
 - e. These funds are available for use by the TRA in the event that the TRA assumes control of BCUI or a receiver is appointed at the request of the TRA;
 - f. BCUI will ensure that TRA has access to the account, records for the account, and may not interfere with TRA's access to the funds in the event that the TRA determines after a hearing that the TRA must assume control of BCUI or appoint a receiver;
 - g. BCUI will provide the TRA a list of all customers including the physical address where utilities are provided as well as the mailing address where bills are sent and the identity of the water system providing water service to the customer. BCUI agrees to update this information with any changes quarterly. This information will be filed as confidential and an electronic version of the information is acceptable;
 - h. BCUI will provide the TRA with all the contact information in its possession for each water utility that services its customers;
 - i. BCUI will deposit not less than \$250 per month in the account and will ensure that the entire \$20,000 is paid into the account within 30 months from the ratification of this Settlement Agreement; and
 - j. BCUI will ensure that the account requires the signature of a member of the Board of Directors of BCUI in order for BCUI to access funds from the account.
24. Ratification of this Settlement Agreement resolves the request for deferred costs currently filed in Docket No. 13-00052, and BCUI waives any request for recovery of expenses currently filed in that docket. Nothing in this agreement precludes BCUI from seeking recovery of additional flood-related expenses, including legal expenses, at a later date.
25. Any loan or financial encumbrance that BCUI has incurred which has not previously been approved by the TRA must be presented to the TRA for approval pursuant to Tenn. Code Ann. §65-4-109 prior to any attempt to utilize BCUI funds to pay said loan or financial encumbrance. The parties agree that the Authority should take no position on any such notes until such time as they are presented for approval and inclusion in rates. Party Staff acknowledges that BCUI believed itself to be an unregulated entity when any such notes were made.

26. In the event that the TRA does not approve this Settlement Agreement in its entirety as final settlement of all issues in Dockets 11-00065 and 11-00174, then this Settlement Agreement shall terminate and the parties shall not be bound by any position set forth in this Settlement Agreement. In the event the TRA should modify all or any portion of the Settlement Agreement, or impose additional conditions or requirements upon the parties, each party shall have the right within ten days of the TRA's decision modifying the Settlement Agreement to withdraw from the agreement by filing a written withdrawal from the Settlement Agreement. The parties will set this matter promptly for hearing before the Authority.
27. If the parties withdraw from the Settlement Agreement pursuant to paragraph 26 then it shall be considered void and have no binding effect. The parties reserve the right to fully participate in all proceedings without being bound by the positions taken in this Settlement Agreement.

III. Policy Considerations

28. This settlement is intended to resolve unique issues that are presented in these dockets and as such are not intended to be utilized by the TRA for use as precedent in future cases between these or any other parties.
29. BCUI is obligated by Tenn. Comp. R. & Regs. 1220-4-13-.07 to maintain a financial security to be utilized by the TRA for the benefit of BCUI's customers in the event that the Authority must assume operation of BCUI. BCUI does not have the financial resources to obtain a loan, bond, or letter of credit to satisfy this requirement. Even if BCUI could obtain a loan, bond, or letter of credit, the cost of that transaction would be recoverable from BCUI's customers. The parties believe that the only feasible way in which BCUI can comply with the TRA's rule is by creating an escrow account of \$20,000. In this Settlement Agreement, BCUI is agreeing to forego additional payments from its customers and is instead paying an additional \$7,950.18 to reach the \$20,000 minimum required in the Authority's rule.
30. Counsel for BCUI and the Party Staff have jointly reviewed all the legal bills described in paragraph 11 to ensure that only those bills related to the recovery of flood expenses are included in this settlement. Although the parties agree that BCUI is entitled to recover \$19,781.25 in flood related legal expenses, the utility's agreement to contribute an

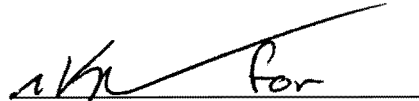
additional \$7,950.18 to the escrow fund, as described in paragraph 29, means that BCUI will only actually recover approximately 60% of the flood related legal expenses described in paragraph 12.

WHEREFORE, Party Staff and BCUI respectfully request that the Authority approve this Settlement Agreement.

Respectfully submitted,



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