

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

RECEIVED  
2/13/11 10:10 PM  
TRA DOCKET ROOM

**IN RE:**

**PETITION OF BERRY'S CHAPEL  
UTILITY, INC. TO APPROVE  
ALTERNATE FORM OF  
FINANCIAL SECURITY UNDER  
RULE 1220-4-13-07**

)  
)  
)  
)  
)  
)  
)

Filed electronically in  
TRA Docket Room  
10/13/2011

**DOCKET NO. 11-00174**

**PETITION**

Pursuant to TRA Rule 1220-4-13-.07, Berry's Chapel Utility, Inc., f/k/a Lynwood Utility Corporation ("Berry's Chapel" or the "Company") respectfully requests that the Tennessee Regulatory Authority (the "Authority"), approve and accept the alternate form of financial security as permitted by Rule 1220-4-13-.07(5) as set forth in this Petition.

The full name and address of the principal place of business of Berry's Chapel is:

Berry's Chapel Utility, Inc.  
321 Billingsly Court, Suite 4  
Franklin, TN 37065

All correspondence and communication with respect to this Petition should be sent to the following:

Henry Walker  
Bradley Arant Boult Cummings LLP  
1600 Division Street, Suite 700  
Nashville, TN 37203  
Phone: 615-252-2363  
Email: [hwalker@babco.com](mailto:hwalker@babco.com)

In support of its Petition, Berry's Chapel states the following:

1. On June 14, 1976, the Tennessee Public Service Commission granted Lynwood Utility Company the authority to provide wastewater services in Williamson County, Tennessee.

Lynwood Utility Corporation acquired the assets and operating authority of Lynwood Utility Company by an Order dated June 27, 1996 by the Tennessee Public Service Commission. At that time, the sole stockholder of Lynwood Utility Corporation was David Terry. On May 12, 1999, Mr. Terry transferred all of the outstanding stock of Lynwood to Southern Utility Corporation. In January of 2003, Tyler Ring and John Ring became the sole owners of Southern Utility Corporation which owns the stock of Lynwood Utility Corporation.

2. On September 1, 2010, Berry Chapel assumed the assets and liabilities of Lynwood. The ownership of the sewer and collection system became vested in Berry's Chapel, and Lynwood Utility Corporation ceased to exist. Berry's Chapel is organized as a nonprofit corporation under Tennessee law.<sup>1</sup>

3. On September 14, 2010, the Authority entered an Order Granting Alternative Financial Security in Docket No. 10-00130 in which Lynwood requested approval of a proposal for an alternate form of financial security. Similarly, the Authority approved alternative financial security arrangements for Lynwood in TRA Docket Nos. 06-00139, 07-00167, 08-00075 and 09-00078. In each case, the alternate form of financial security approved by the Authority consisted of (i) an irrevocable letter of credit in the amount of \$20,000 and (ii) the continuation of billing contracts between Lynwood and the two entities – the City of Franklin and H. B. and T. S. Utility District – that provide water service for customers who live in Lynwood's service area. Both of those entities agreed to bill Lynwood's customers both for water and sewer service and to turn the sewer revenue over to Lynwood, less an administrative fee to cover the costs of the extra bill. The billing contracts provided that if Lynwood ceased

---

<sup>1</sup> Effective June 6, 2011, the General Assembly enacted Chapter 430 of the Public Acts of 2011 which declared that a nonprofit corporation which owns and operates a wastewater system and which was created after January 1, 2009 is subject to regulation by the Tennessee Regulatory Authority.

operations, the revenue from the sewer bills would be turned over to Lynwood's successor or such other replacement operator as directed by the TRA. The TRA found that this billing arrangement would, along with the bond, provide sufficient revenue to insure the continued operation of the sewer system in the event Lynwood lost its license or declared bankruptcy.

4. In filing this Petition, Berry's Chapel seeks the approval of the Authority for essentially the same type of alternate financial security that was approved for Lynwood each year for the last five years.

5. The financial condition of Berry's Chapel has not improved since the Authority approved the alternate form of financial security for Lynwood in its Order dated September 14, 2010. Berry's Chapel is in no better position today to obtain the security required by 1220-4-13-.07 than it was when the Authority issued its order in Docket 10-00130.

6. Throughout its operating history, Berry's Chapel has operated primarily from the debt and equity investments provided by its owners. In contrast to the embedded capital structure of Berry's Chapel, many new wastewater utilities receiving certificates of public convenience and necessity (CCN) from the Authority have done so by depending fully upon the contribution of the utility plant from a third-party developer. This type of contributed capital utility has led to questions whether such utilities could be considered as reliable, ongoing concerns if any type of financial stress arose. To address this concern, the Authority adopted Rule 1220-4-13-.07 which requires wastewater utilities file proof of financial security as required by this rule.

7. These concerns do not necessarily apply to Berry's Chapel which was created and maintained primarily through debt and equity contributions from its owners.

8. One of the primary purposes of the financial security requirement as set forth in TRA Rule 1220-4-13-.07 is to make sure sufficient funds are available to continue the operation of a wastewater utility in the event a wastewater utility loses its certificate or is bankrupt. The Authority wants to be assured funds are available for a replacement operator or a court appointed receiver to operate the utility. In this case, a replacement operator or a receiver will have the ongoing revenues of Berry's Chapel to use to operate its system. As explained earlier, should a replacement operator or a receiver be appointed to operate the utility, the City of Franklin by contract must send the sewer revenue it collects directly to such replacement operator, receiver or other entity selected by the Authority. Earlier this year, the H. B. and T. S. Utility District declined to renew its billing contract with Berry's Chapel. Therefore, Berry's Chapel has taken over the billing of the customers formerly billed by the utility district. Should Berry's Chapel lose its certificate or go bankrupt, a replacement operator will be able to use the utility's new billing equipment to continue collecting that revenue.

9. The same \$20,000 letter of credit, which is described in Docket 10-00130 and the other dockets referenced in paragraph 3, remains in effect and is available for use in case of a financial emergency.

10. Finally, the system has recently been inspected by officials of the Tennessee Department of Environment and Conservation. According to employees of Berry's Chapel, the state inspectors stated that the sewer system is well maintained and in surprisingly good shape considering the system's age. The utility believes that the inspectors' observations will be included in their written report which will be filed in this docket as soon as it becomes available. The inspectors' observations concerning the condition of the plant should provide the Authority

with further assurance that the financial security described herein will be adequate to address any operational issues which may arise during the period July 1, 2011 through June 30, 2012.

WHEREFORE, Berry's Chapel prays that the Authority enter an Order approving an alternate form of financial security for the year July 1, 2011 through June 30, 2012, and find that the utility's billing arrangements with the City of Franklin, the utility's ability to bill its other customers directly, and the \$20,000 irrevocable letter of credit collectively provide sufficient financial security to meet the requirements of TRA Rule 1220-4-13-.07.

Dated October 13, 2011.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS<sup>2</sup> LLP

By: \_\_\_\_\_

Henry Walker (B.P.R. No. 000272)  
Bradley Arant Boult Cummings, LLP  
1600 Division Street, Suite 700  
Nashville, TN 37203  
Phone: 615-252-2363  
Email: [hwalker@babbc.com](mailto:hwalker@babbc.com)

cc: Vance Broemel  
Consumer Advocate and Protection Division