

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

**IN RE:** )  
 )  
**PETITION OF BERRY'S CHAPEL** )  
**UTILITY, INC. TO RECOVER COSTS** )  
**TO REPAIR FLOOD DAMAGE AND TO** ) **DOCKET NO. 11-00180**  
**REFUND CUSTOMER SERVICE FEES** )

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**DISCOVERY REQUEST OF THE CONSUMER ADVOCATE AND PROTECTION  
DIVISION TO BERRY'S CHAPEL UTILITY, INC.**

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To: Berry's Chapel Utility Inc.  
c/o Henry Walker, Esq.  
Bradley Arant Boult Cummings LLP  
1600 Division Street, Suite 700  
PO Box 340025  
Nashville, Tennessee 37203

This Discovery Request is hereby served upon Berry's Chapel Utility, Inc., ("Berry's Chapel", "Lynwood," or "Company"), pursuant to Rules 26, 33, 34 and 36 of the Tennessee Rules of Civil Procedure and Tenn. Comp. R. & Reg. 1220-1-2-.11. We request that full and complete responses be provided pursuant to the Tennessee Rules of Civil Procedure. The responses are to be produced at the Office of the Tennessee Attorney General and Reporter, Consumer Advocate and Protection Division, 425 Fifth Avenue North, Nashville, Tennessee 37243, c/o C. Scott Jackson, on or before March 9, 2012 unless otherwise directed by the Hearing Officer in this Docket.

## **PRELIMINARY MATTERS AND DEFINITIONS**

Each discovery request calls for all knowledge, information and material available to Company, as a party, whether it be the Company's, in particular, or knowledge, information or material possessed or available to Company's attorney or other representative.

These discovery requests are to be considered continuing in nature, and are to be supplemented from time to time as information is received by Company which would make a prior response inaccurate, incomplete, or incorrect. In addition, the Attorney General requests that Company supplement responses hereto with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, and the identity of each person expected to be called as an expert at hearing, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony.

These discovery requests are to be interpreted broadly to fulfill the benefit of full discovery. The singular of any discovery request includes the plural and the plural includes the singular. To assist you in providing full and complete discovery, the Attorney General provides the following definitional guidelines.

The terms "and" and "or" shall be construed conjunctively or disjunctively as necessary to include any information that might otherwise be construed outside the scope of these requests.

The term "communication" means any transmission of information by oral, graphic, pictorial or otherwise perceptible means, including but not limited to personal conversations, telephone conversations, letters, memoranda, telegrams, electronic mail, newsletters, recorded or handwritten messages, or otherwise.

For purposes of these discovery requests, the term "you" shall mean and include: Lynwood Utility Corporation or Berry's Chapel Utility, Inc. and all employees, agents and representatives thereof.

The term "person" or "persons" as used herein refers to any natural person, corporation, firm, company, sole proprietorship, partnership, business, unincorporated association, or other entity of any sort whatsoever. Where a company or organization is the party being served, all responses must include the company's response. Moreover, the company's designated person for responding must assure that the company provides complete answers. *A complete answer must provide a response which includes all matters known or reasonably available to the company.*

The term "identity" and "identify" as used herein, with respect to any person, means to provide their name, date of birth, current residence address, current residence telephone number, current business address, current business telephone number, and the occupation or job title of that person; with respect to an entity, those terms mean to provide the name by which said entity is commonly known, the current address of its principal place of business, and the nature of business currently conducted by that entity; with respect to any document, those terms mean to provide the date of the document, the nature of the document, the title of the document, the reference number (if any) of the document, and the current location of the document, including the identity of the person or entity in possession of the document.

The term "document" as used herein, means any medium upon which intelligence or information can be recorded or retrieved, such as any written, printed, typed, drawn, filmed, taped, or recorded medium in any manner, however produced or reproduced, including but not limited to any writing, drawing, graph, chart, form, workpaper, spreadsheet, e-mail, note, photograph, tape recording, computer disk or record, or other data compilation in any form without limitation. Produce the original and each copy, regardless of origin or location, of any book, pamphlet, periodical, letter, note, report, memorandum (including memoranda, note or report of a meeting or conversation), spreadsheet, photograph, videotape, audio tape, computer disk, e-mail, or any other written, typed, reported, transcribed, punched, taped, filmed, or graphic

matter, however produced or reproduced, which is in your possession, custody or control or which was, but is no longer, in your possession, custody, or control. If any such document was, but no longer is, in your possession or control, state what disposition was made of it and when. If a document exists in different versions, including any dissimilar copies (such as a duplicate with handwritten notes on one copy), each version shall be treated as a different document and each must be identified and produced.

In producing documents in response to these discovery requests, produce the original of each document or, in the alternative, produce a copy of each document and identify the location of the original document. If the "original" document is itself a copy, that copy should be produced as the original.

If any objections are raised on the basis of privilege or immunity, include in your response a complete explanation concerning the privilege asserted.

If you contend that you are entitled to refuse to fully answer any of these discovery requests, state the exact legal basis for each such refusal.

If any of the interrogatories are not answered on the basis of privilege or immunity, include in your response to each such interrogatory a written statement evidencing:

- (a) the nature of the communication;
- (b) the date of the communication;
- (c) the identity of the persons present at such communication; and
- (d) a brief description of the communication sufficient to allow the Authority to rule on a motion to compel.

If, for any reason, you are unable to answer a discovery request fully, submit as much information as is available and explain why your answer is incomplete. If precise information cannot be supplied, submit 1) your best estimate, so identified, and your basis for the estimate and 2) such information available to you as comes closest to providing the information

requested. If you have reason to believe that other sources of more complete and accurate information exist, identify those sources.

If any information requested is not furnished as requested, state where and how the information may be obtained or extracted, the person or persons having knowledge of the procedure and the person instructing that the information be excluded.

### **STATUS CONFERENCE**

At the Status Conference held in this Docket on March 1, 2012, the subject of discovery needed to bring this Docket to a hearing was discussed. The Consumer Advocate indicated that it had asked discovery questions in TRA Docket 11-00198 (the Berry's Chapel rate case Docket) seeking information about the costs associated with flood damage related to the May 2010 floods. In order to place all relevant discovery requests in this Docket, the Hearing Officer asked and the Consumer Advocate agreed to also file the same discovery questions in this Docket, along with the responses submitted by Berry's Chapel. Those discovery questions (Numbers 1 and 35) and the responses received to date are submitted below.

### **DISCOVERY REQUESTS**

1. The Consumer Advocate incorporates the Data Request filed by the TRA Staff on January 10, 2012, in this Docket No. 11-00198 as if fully stated herein, and expressly reserves the right to seek supplemental responses and/or file a motion to compel if the Consumer Advocate determines that any responses to the Data Request are inadequate or incomplete.

### **EXPLANATION**

In this request the Consumer Advocate incorporated the data requests submitted in Docket 11-00198 by the TRA staff. This was done to avoid unnecessary duplication of effort on the part of Berry's Chapel. One of the data requests had to do with costs associated with the flood damage from the May 2010 floods. It is Data Request 14 and is re-submitted here.

14. Identify the account(s) charged for costs associated with the May 2010 flood, including the cost to hire National Fire Adjusters. Were any costs associated with flood cleanup included in the test year expenses for this rate case? If so, identify the amounts for each month during the test year.

**RESPONSE:** Deferred Cost – Flood Damage – Account 171.4 in the amount of \$190,237 offset by collected facility charges billed to customers of \$69,866 (net amount \$120,371). See Petition, made by BCUI, to recover flood costs and refund customer service fees (surcharge to collect flood damage cost).

**CONSUMER ADVOCATE'S POSITION ON RESPONSE TO DATE:** The Consumer Advocate contends that this response does answer the question of which account has been charged with costs associated with the May 2010 flood damage. However, it does not answer the question of whether any such costs (and if so which ones) were included in the test year. The Petition materials referred to do not adequately address that question.

35. Please provide documentation that supports the \$218,000 amount for the 2010 flood damage and show check copies and all other forms of documentation from FEMA [or others] that shows what they've paid in claims and why they haven't paid any more than the \$28,000 stated in your petition. Also include check copies of the claims paid that comprise the \$28,000 and copies of all checks or other form of payment [to or from Berry's Chapel] for any amount claimed for flood damage. To be clear, the Consumer Advocate wants to know what has actually been paid versus what is claimed to be owed or projected as an expense.

**RESPONSE:** See ITEM # 13 in the PETITION TO RECOVER COSTS TO REPAIR FLOOD DAMAGE AND TO REFUND CUSTOMER SERVICE FEES. Of the \$218,000 total, \$72,792.66 has been paid out and invoices to support this are in the PETITION. \$58,925 is recorded in Accounts Payable to Vendors, and \$58,282.34 is the projected amount of expense that will be incurred once funds are available to complete repairs.

**CONSUMER ADVOCATE'S POSITION ON RESPONSE TO DATE:** The response received to date is wholly inadequate. ITEM #13 in the PETITION TO RECOVER COSTS TO

REPAIR FLOOD DAMAGE AND TO REFUND CUSTOMER SERVICE FEES (copy attached) is a copy of portions of Berry's Chapel's property insurance policy and a check Hartford Insurance Company of the Midwest to Southern Utility Corporation in the amount of \$28,214.43. It does not provide any substantiation that any of the amounts claimed as costs associated with damage from the May 2010 flood were actually paid. As such, neither the Consumer Advocate of the Authority can determine if any of the amounts claimed by Berry's Chapel as flood related expenses were prudently incurred or if they were actually paid by Berry's Chapel. The Consumer Advocate is still waiting to receive copies of any checks or other payments confirming actual payment of any amounts associated with the May 2010 flood. The Consumer Advocate was recently provided copies of Berry's Chapel's bank statements for the past few years which contain images of the checks that cleared with each statement. There are literally hundreds of pages of bank statements and none of the check images have been identified as having anything to do with costs allegedly incurred as a result of damage from the May 2010 flood.

The Consumer Advocate would note that the bracketed words in question 35 were not in the original submission in Docket 11-00198 and have been added here for clarity.

RESPECTFULLY SUBMITTED,



C. SCOTT JACKSON (BPR# 011005)  
Senior Counsel  
ALBERT L. PARTEE, III (BPR# 010278)  
Senior Counsel  
Office of the Attorney General  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, Tennessee 37202-0207  
(615) 741-8726

Dated: March 2, 2012.

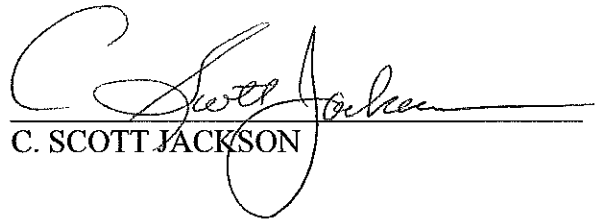
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

Tyler Ring  
President  
Lynwood Utility Corporation  
321 Billingsly Court, Suite 4  
Franklin, TN 37065

Henry Walker, Esq.  
Bradley Arant Boult Cummings LLP  
1600 Division Street, Suite 700  
PO Box 340025  
Nashville, Tennessee 37203

This the 2<sup>nd</sup> day of March, 2012.

  
C. SCOTT JACKSON