

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

IN RE: PETITION OF BERRY'S CHAPEL )  
UTILITY, INC. TO CHANGE AND )  
INCREASE RATES AND CHARGES )

DOCKET NO. 11-00198

REBUTTAL TESTIMONY OF  
JAMES B. FORD, SECRETARY-TREASURER  
TO BERRY'S CHAPEL UTILITY, INC.

Dated: May 15, 2012

Q: Have you reviewed the CAPD testimony and exhibits of William H. Novak, Dr. Christopher C. Klein and Dave Peters related to Docket 11-00198?

A: Yes I have. First, I have some general comments about this Docket and BCUI operations and financial well-being. In the fall of 2010, when BCUI was not regulated by the TRA, our budget reflected a short fall in revenues of \$200,000. Thus, the Board of Directors voted to raise rates by use of a customer charge of \$20.00 a month.

In March of 2012, at the request of the Board of Directors, I prepared a status report as to BCUI past problems encountered, possible solutions to cash flow requirements, new problems encountered, possible solutions and BCUI's overall Statement of Responsibility. This report summarizes the many problems that must be resolved in order for BCUI to obtain financial well-being. See JBF-6.

On October 21, 2011 BCUI audit by Lattimore, Black, Morgan & Cain was completed. As part of this report the auditor made the following statement: "The company's significant operating losses and capital deficiency at June 30, 2011 raise substantial doubt about its ability to continue as a going concern". See JBF-7.

In June of 2010, BCUI received a notice from the Small Business Administration that stated: **"Our analysis of all information provided with your loan application concluded your income is insufficient to repay a disaster loan in addition to your existing debts, living expenses, taxes, insurance and other obligations."** See JBF-8. This is one of the issues that resulted in a need for a rate increase to customers.

BCUI is not the only wastewater company encountering increased costs. The City of Franklin, which operates around BCUI, raised its rates on January 1, 2012 to rates similar to those BCUI is requesting from the TRA. In addition, City of Franklin also requested \$200 million for a plant improvement program. As part of this rate increase, a customer charge of \$19.21 was put into place along with a volume increase of 56% up to 14,000 gallons. The City of Brentwood, just to the north of our system, is planning on investing \$30 million in its system upgrades. Metro Davidson/Nashville planned upgrade costs are \$1 billion to bring their system up to compliance. See JBF-9 for the above information.

BCUI plans for improvement require \$2,300,000. See Scott Davis exhibit SAD-2 and the TDEC last audit report in JBF-6.

Q: Do you have comments on Dr. Klein testimony?

A: Yes. Dr. Klein's testimony has a good summary of the required cost of capital requirement and BCUI agrees with his findings related to rate of return and the method to calculate the amount of return. On page 9, Dr. Klein indicates that BCUI has approved two loans carrying interest rates of 7.5%. BCUI agrees with this statement. However, both witnesses Mr. Novak and Mr. Peters used the interest cost from only one of these loans in their calculation. Their calculations should include the interest amount of \$18,701.00 from the 2<sup>nd</sup> loan.

Q: Do you have any comments on Mr. Novak's testimony?

A: Yes. I have known Mr. Novak since 1982. He had completed his education at MTSU and started work with the TRA (formerly TPSC). At the time, I was the VP, Controller & Chief Accounting Officer at United Cities Gas Company (now ATMOS energy) and we worked on several rate matters together and I respect his ratemaking design abilities.

Mr. Novak uses \$85,130 as BCUI debt cost which is only for one loan. As Dr. Klein's testimony states, there are two loans on the books. Mr. Novak's debt cost should be increased to \$103,831 to include both loans as stated by Dr. Klein.

BCUI believes that the notes to J. Ring and T. Ring of \$1.2 million each should not be included in the regulated rate making process.

BCUI has proposed a customer charge of \$19.00. Mr. Novak is proposing a customer charge of \$16.50. The City of Franklin just installed a customer charge of \$19.21 based on a detail study, conducted by a consultant, of their system. Since BCUI operates along side of the City of Franklin system, a rate of \$19.00 would be simpler and lower customer confusion on their bills.

Mr. Novak has proposed a three-tier step volume rate for BCUI at 6,000 gallons step. The City of Franklin's new rates uses the same rate for the first 14,000 gallons. Keeping the rate the same would make BCUI billing much easier to understand by our customers. In addition, BCUI is moving to a small internal billing system since HB&TS Utility District requested to stop billing BCUI customers in their service area. The simpler the billing system, the lower the customer cost and complaints.

Q: What are your comments related to Mr. Novak's statement that BCUI has mischarged its customers?

A: **Unauthorized Late Fee** – BCUI has had billing contracts with HB&TS Utility District and City of Franklin for over 10 years. These contracts have been included in every rate filing since they were entered into. The Authority has authorized the late fees by using the late charge in determining the revenue requirement in all prior cases.

**Unauthorized Billing of Facility Charge** – BCUI disagrees with this statement in that the Tennessee legislature only passed a law that placed BCUI under the TRA on June 6, 2011. Any action taken by BCUI before that date was not regulated by the TRA. The TRA ruling related to matters before June 6, 2011 is under appeal in the courts and should not be considered in this matter.

**Unauthorized Increase in Minimum Bill** – Our comments above related to Unauthorized Billing of Facility Charge also apply to Mr. Novak's comments on Unauthorized Increase in Minimum Bill.

**Over Collection of Odorization Surcharge in Docket 08-00060** – BCUI disagrees with Mr. Novak's statement and has made a separate filing with the TRA on this matter.

**Incorrect Billing by Company Billing Agent** -- BCUI and City of Franklin have agreed with the CAPD on this matter and will process a refund of \$11,843 pending TRA approval.

Q: Are there other items that you disagree with Mr. Novak's testimony?

A: Yes. On Schedule 1 of Mr. Novak's exhibit, the calculation of the conversion factor is incorrect. Mr. Novak uses the number of customers to determine the billing expense factor. This amount is based on revenues and should be based on the revenues from the billing agent to total revenue. The correct factor is 4.3% not 3.2% which increases the conversion factor to 1.065%.

It should be noted that Mr. Novak has reduced the billing expense percentage in the conversion factor, but Mr. Peters did not include the increase cost in BCUI's customer accounting expense. It cost an additional \$27,000 for BCUI to bring customer billing in-house. This includes employee expense to go from part-time to full-time on 1/1/2012 along with the cost of printing, postage and processing the internally prepared billing statements. Staff must also handle the posting of cash receipts, collections and handling of customer complaints.

Q: Do you have a comment on the CAPD testimony related to BCUI's accounting systems and records?

A: Yes. The CAPD and TRA staff issued document requests over 4 times the amount of documents requested in Docket 09-00034. The 2009 case filled two 3-inch binders. This case request included every journal entry and related detail transactions that the company made during 2011.

A request was made for a copy of every bank statement for 4 years (which was provided). BCUI did not receive one question on the contents of or details related to this request.

Requests were made for many things that were provided in the prior rate case. Requests were also made for every document in every expense account of the company. All of the above was requested to be put in an electronic format that BCUI does not use, have neither the software for nor the trained personal to process. As a result, BCUI was required to bring in temp personnel who spent 157 hours (\$4,710) putting this information into the format requested. It then had to be taken to FedEx/Kinko's to be copied and placed onto electronic disk at the cost of \$2,377.28.

The CAPD also requested large amounts of revenue and volume information from the company's billing agents (City of Franklin and HB&TS). The City of Franklin has already sent a bill for \$1,200. We have not yet received a bill from HB&TS Utility District but expect it to be similar to the amount requested by City of Franklin.

BCUI has no formal employees. The operations manager, office manager and the laborer, who works in the repairs and maintenance area, work for a payroll processing company. Their time is maintained on time sheets and charged to the company where the time was spent. This cost is summarized and recorded in BCUI records via journal entries to the expense accounts in which these personnel worked.

The General Manager (T. Ring) contract is for \$33,000 annually (\$2,750.00 per month) and is allocated to the expense accounts based on time estimates made from the prior year. The General Manager is responsible for all operations of the Utility. IRS Forms 1099 were provided to the CAPD for Mr. Ring's contract.

The Secretary-Treasurer (J. Ford) is paid on a fee basis based on time incurred working on the company's needs. An invoice for this cost is rendered to BCUI on a monthly basis. The Secretary-Treasurer is responsible for the overall administration and financial activities of the utility.

BCUI has two small computers; one is used only for billing the Cottonwood area customers and 7 miscellaneous customers. The City of Franklin bills the balance of the customers in the BCUI service area.

The Operations Manager (Scott Davis) and Office Manager (Laura Morrissey) are at current pay rates based upon their education and experience. Mr. Davis oversees the operational matters of the company (See Scott Davis testimony).

Ms. Morrissey is the Office Manager and Bookkeeper. She handles billing, cash receipts, deals with customers, pays bills and performs light bookkeeping. The Secretary-Treasurer handles accounting issues. If he is not in the office and a vendor needs to be paid, a check is written and charged to misc expense account. The Secretary-Treasurer will make a journal entry to transfer the expense to the correct account.

The CAPD staff met with both Mr. Davis and Ms. Morrissey during their 2 site visits (total of 6 hours at BCUI office). The CAPD were provided substantial information prepared by the two employees via data requests.

The CAPD states that BCUI rate increase would raise BCUI rates to the 2<sup>nd</sup> highest in the state per the 2010 Allen & Hoshall report. Actually, it would be the 3<sup>rd</sup> highest not the 2<sup>nd</sup>. It must also be remembered that while this information is good to have, the data contained in the report is over 2 years old and of the 178 companies listed, none are regulated by the TRA.

The CAPD refers to the LBM&C audit report as a "one-time only" engagement. This is not true and while the profit and loss statement is "unaudited", Rules of Accounting Standards for Compilation Reviews still exist on work performed by independent accounting firms.

The CAPD makes certain statements related to BCUI accounting records and systems. See JBF-10 for LBM&C report on internal controls and accounting procedures. The LBM&C report speaks for itself related to BCUI accounting procedures and internal controls. If BCUI maintained their records in the manner that CAPD wished, many additional employees would be required adding more expense to the small customer base. This would be contrary to CAPD statements made on Page 2, lines 20-26 of Mr. Peters' testimony.

As part of the meetings with CAPD, BCUI was requested to update their filing information for the 12 months ended 12/31/2011. This has been done and is reflected on JBF-5 and related schedules. This update reduces BCUI request from \$398,853 to \$381,670.

JBF-5 reduces the discussion to 6 major expense issues:

- 1) The Inflation Factor – In the prior filing, BCUI used 3.2% as the inflation factor, which was the November CPI. In meeting with the CAPD Mr. Peters indicated that his review of the inflation factor since the 2009 rate case was a 4.2% factor. BCUI changed to 4% and now the CAPD is using 2% overall. There are several areas of exposure which are much higher due to energy costs and EPA regulations. During 2011, the EPA issued 75 new major regulations and has an additional 250 regulations under consideration. BCUI made a study of increased cost in expense areas and these were provided to the CAPD in Data Request #39 (See JBF-11). No action was taken on these items. They are as follows:

- a. Sludge Removal 25%
- b. Purchased Power 20%
- c. Chemicals 16%

The accounts in JBF – 5 and related schedules were adjusted for these increases in cost.

- 2) Customer Accounting – Costs were increased by \$27,000 to reflect the cost of BCUI taking over the billing from HB&TS Utility District. Mr. Peters did not adjust the expense accounts while Mr. Novak adjusted the conversion factor in computing the revenue requirement.
- 3) Injuries and Damages – This is the deductible amount of BCUI's liability insurance policy. CAPD has removed this amount in total (\$10,000). At some point in time this expense must be covered in rates (See NARUC accounting manual) as stated below:
  - a. Property Insurance Reserve –
    - i. This account shall include amounts reserved by the utility for self-insurance against losses through accident, fire, flood, or other hazards to its own property or property leased from others. A schedule of risks covered by this reserve shall be maintained, giving a description of the property involved, the character of the risks covered and the rates used.
    - ii. Charges shall be made to this account for losses covered by self-insurance. Details of these charges shall be maintained according to the year the casualty occurred which gave rise to the loss.

b. Injuries and Damage Reserve –

- i. This account shall be credited with amounts to be charged to account 658 -- Insurance -- Workman's Compensation, or other appropriate accounts, to meet the probable liability, not covered by insurance, for deaths or injuries to employees and others, and for damages to property neither owned nor held under lease by the utility.
- ii. When liability for any injury or damage is admitted by the utility either voluntarily or because of the decision of a court or other lawful authority, such as a workmen's compensation board, the admitted liability shall be charged to this account and credited to the appropriate liability account. Details of these charges shall be maintained according tot the year the casualty occurred which gave rise to the loss.

Note: Recoveries or reimbursements for losses charged to this account shall be credited hereto; the cost of repairs to property of others if provided for herein, shall be charged to this account.

BCUI recommends that this cost be amortized over a 4-year period at \$2,500.00 per year.

- 4) An adjustment of TN Franchise Tax to bring it to the correct amount of \$12,000.
- 5) Rate case expense was adjusted down by \$5,100 to normalize the expense for the 2009 case expense amortized out in 2011.
- 6) Depreciation Expense decreased by \$62,942 to adjust to the Depreciation on Assets in the utility rate base.

Q: Would you now comment on Mr. Peters Adjustment to Expenses?

A: Yes.

The following items are incorrectly deleted by the CAPD from BCUI expenses:

**1) Sludge Expense**

- a. Spectrum Equipment Partners, Ltd \$5,502.00  
This was for use of temporary waste collector until new unit was purchased. The new unit was capitalized for the current period, but no depreciation will be taken until next year, so expense is valid.

b. Journal Entry JV 06-16-11	\$3,702.00
Amount is to set up Accounts Payable to Spectrum Equipment Partners, Ltd. per the detail payable listing (reviewed as part of LBM&Caudit).	
c. Journal Entry JV 12-16-11	<u>\$3,570.78</u>
Amount is to set up Accounts Payable to Spectrum Equipment Partners, Ltd and others on the detail payable listing attached to JV.	
Total that the CAPD should not have deducted:	<u>\$12,714.78</u>
<b>2) Materials and Supplies</b>	
a. Spectrum Equipment Partners, Ltd	\$1,648.00
Amount for filter screens used to collect sludge waste to be hauled off (one per load) and is an ongoing expense.	
b. Spectrum Equipment Partners, Ltd	<u>\$11,000.00</u>
This is payment for unit capitalization. See JV 12-12-11 in R&M to reduce expense. If credit is used in R&M account it cannot be deducted in this account.	
Total that the CAPD should not have deducted:	<u>\$12,648.00</u>
<b>3) Testing</b>	
a. T. Ring total contract is for \$33,000. It is allocated each month as discussed earlier in my testimony. This is part of his contract amount, not additional payments and should not be deducted.	<u>\$3,000.00</u>
<b>4) Repairs &amp; Maintenance</b>	
a. The JV's are to record labor to Repairs & Maintenance for Scott Davis, Operations Manager, and Ever Armas, Maintenance Labor, paid by the payroll processing company. A detail sheet is attached to JV's provided to CAPD and are based on detail times sheets of personnel.	\$26,412.96
b. JV to capitalize sludge equipment as discussed in #2 above.	<u>(\$11,000.00)</u>
Amount that should not be deducted by CAPD:	<u>\$15,412.96</u>
<b>5) Operations</b>	
a. Labor for Scott Davis and Rory Rowan per labor spreadsheets per testimony above	\$12,792.24
b. ERA engineering work in account payable detail	<u>\$1,528.33</u>
Total that should not be deducted by CAPD:	<u>\$14,320.57</u>



<b>6) Accounting and Bookkeeping</b>	
a. Audit Fee from LBM&C	\$6,000.00
b. Fee from McMurray & Assoc. for 2010 tax return prepared in 2011	<u>\$2,163.00</u>
Amount that should not be deducted by CAPD:	<u><b>\$8,163.00</b></u>
<b>7) Accounting – other</b>	
a. Labor JV for L. Morrissey Office Manager as discussed above – detail is attached to journal entries.	\$26,630.08
b. Visions, Inc. invoices are billed once each month and recorded in the correct accounts. No additional cost should be recorded.	<u>(\$4,550.00)</u>
Total which CAPD should not deduct:	<u><b>\$22,080.08</b></u>
<b>8) Rent</b>	
Lease for office space is \$20,000 per year and has been the same since the office was rented in 2005 and is based on 990 square ft of total square ft of 4,000-office complex. 40% of the lease cost is capitalized. CAPD determination of space used based on two very short visits is nothing other than a guess.	
Amount to be added back from CAPD deduction.	<u><b>\$2,000.00</b></u>
<b>9) Insurance</b>	
Bank debt of 2 loans totaling \$1,450,000 approved by	\$10,049.00
TRA required personal guarantee by J. Ring and	<u>\$784.00</u>
T. Ring along with life insurance on the guarantors that is payable to BCUI. Insurance Policies were provided to the CAPD showing that BCUI was the policy owner.	
Amount that should not be deducted by the CAPD:	<u><b>\$10,833.00</b></u>
<b>10) Miscellaneous expenses</b>	
a. Injuries and damage expense actual expense	\$525.00
b. Provide Insurance Deductible Reserve	\$2,500.00
BCUI has a liability insurance deductible of \$10,000. A reserve for this amount should be provided in order to protect the Company from a large event. BCUI proposes to build up this reserve over 4 years. The CAPD does not want to recognize this cost. If BCUI has a large event all of the cost would go into rates in one year. NARCU provides accounting manual treatment for this type of matter. See JFB-12.	
c. Paul Labowitz is BCUI's grant researcher and will be an ongoing effort.	\$540.00

d. Dye, Van Mol & Lawrence (DVL) aids BCUI 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.

\$2,945.00

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

## 12) Debt Carrying Cost

Mr. Peters statements on debt carrying cost on page 18&19 are not consistent with Dr. Klein's testimony on pages 9&10 states that the rate of return covers only the interest on the debt amount determined by the TRA as prudently incurred. The amount of debt outstanding that was approved by the TRA at December 31, 2011 is \$1,370,000 this amount times 7.5% is \$102,750 or \$17,620 more than Mr. Peters discusses. This methodology is required in the TDEC Operating Permit. Federal Tax Form 1099 from the Bank was provided the CAPD reflecting the \$102,750.00.

## 13) Summary add back of CAPD adjustments

1. Sludge Expense	\$12,714.78
2. Material & Supplies	\$12,648.00
3. Testing	\$3,000.00
4. Repairs & Main	\$15,412.96
5. Operations	\$14,320.57
6. Accounting & Book	\$8,163.00
7. Accounting Other	\$22,080.08
8. Rent	\$2,000.00
9. Insurance	\$10,833.00
10. Misc Expenses	\$10,441.00
11. Regulatory Expense	<u>\$14,000.00</u>

**Total CAPD deductions that should not be considered:** **\$125,613.39**

Q: Do you have any overall general comments?

A: Yes. For the past 3 years (2009-2011) BCUI has incurred total losses of \$763,206 plus flood damage expenses of almost \$200,000. See BCUI annual reports to TRA.

BCUI bank loans are maxed out and Accounts Payable to vendors have grown by \$200,000. BCUI cannot pay its taxes, permit fees or many of the ongoing operating expenses. No financial institution will consider any more loans without proper rate relief. See JBF – 6. The amount recommend by the CAPD is not adequate and will not provide proper rate relief. BCUI's rate request of \$381,670 should be authorized.

In a very short period of time (90 days) BCUI's cash problems will be so bad that the directors will be required to ask Governor Halsam which state agency the Directors should turn over the operation of the BCUI to.

## FLOOD DAMAGE

Q: Have you reviewed the CAPD testimony related to the Flood Damage Expense and Schedule 23 of Exhibit A?

A: Yes I have and I have four comments:

- 1) The flood occurred on Saturday and Sunday (May 1 & 2, 2010) and the BCUI plant shut down (See T. Ring Report to TRA dated 5/13/2010). An all out effort was made to bring the plant back on line by over 15 people working long hours along with several sub-contractors resulting in the plant being placed back on line May 3, 2010. As a result of this, meals and transportation cost were provided to all that were working in the amount of \$680.70 for meals and \$838.49 for fuel. Call out expenses are normally provided for afterhours work performed by personnel. Legal services from Branstetter, Strauch & Jennings (\$1,300) and Ortale, Kelly, Herbert & Crawford were obtained related to notice requirements to TRA and TDEC and actions to be taken to debt holders and local county and federal officials related to damages and status of plant operations and amounted to about 5 hours legal work (\$1,437.50) which would not have been incurred if not for the flood disaster.
- 2) Capitalized Overhead Cost – Almost all utilities capitalize overhead cost on projects. This is set forth in the Uniform System of Accounting for Class B Water Utilities of the National Association of Regulatory Utility Commissioners (NARUC) as follows:
  - a. Utility Plant – Components of Construction Cost – The cost of construction of property chargeable to the utility plant accounts shall include, where applicable, the cost labor, materials and supplies, transportation, work done by others for the utility, injuries and damages incurred in construction work, privileges and permits, special machine service, allowance for funds used during construction and such portion of general engineering, administrative salaries and expenses, insurance, taxes and other analogous items as may be properly included in construction cost.
  - b. Utility Plant – Overhead Construction Costs –
    - i. All overhead construction costs, such as engineering, supervision, general office salaries and expenses, construction engineering and supervision by other than the accounting utility, legal expenses, insurance, injuries and damages, relief and pensions, taxes and allowance for funds used during construction, shall be charged to particular jobs or units on the basis of the amounts of such overheads reasonably applicable thereto, so that each job or unit shall bear its equitable proportion of such costs and that the entire costs of the unit, both direct and overhead, shall be deducted from the plant accounts at the time the property is retired.

- ii. As far as practicable, the determination of payroll charges includible in construction overheads shall be based on time card distributions thereof. Where this procedure is impractical, special studies shall be made periodically of the time of supervisory employees devoted to construction activities so that only such overhead costs as have a definite relation to construction shall be capitalized. The addition to direct construction costs of arbitrary percentages or amounts to cover assumed overhead costs is not permitted.

BCUI normally capitalized overhead cost at \$1.00 of overhead for each \$1.00 of hard cost. In the case of Flood Damage, outsiders oversaw most of this project and so less overhead of BCUI was required and a capitalization rate of \$0.20 per hard \$1.00 was set. Therefore the overhead cost of \$24,303.27 should not be deducted nor should the \$9,753.28 projected for the needed future repairs that have not been completed due to lack of funds. The issue of overhead capitalization was raised by CAPD in the 2009 Rate Case Docket 09-00034 and again commented on by Mr. Peters on page 15 of his testimony. The authority did not adopt his position, which differed from the NARUC Accounting manual. The TRA approved BCUI accounting method. Any review by the CAPD of this procedure would be a waste of ratepayer and taxpayer funds. Mr. Peters also cited the Authority's Treatment of Flood Damage incurred by Piedmont Natural Gas Company, Inc. during the same flood in Docket 11-00144. Piedmont used their normal accounting practice of capitalizing overhead in their determination of flood damage cost. The Authority approved Piedmont's request in this Docket.

- 3) Interest on flood damage expense of \$14,112.48 should be included for recovery. In fact, the amount should be increased to \$18,816.64 since this case has had 6 more months before being heard by the TRA. I again site the NARUC Accounting manual as follows:
  - a. Allowance for Funds Used During Construction – This account shall be include concurrent credits for allowance for funds used during construction based upon the net cost of funds used for construction purposes and a reasonable rate upon other funds when so used. Appropriate regulatory approval shall be obtained for “a reasonable rate”.
- 4) Future Repairs – These repairs would have been made in a more timely fashion had funds been available to do so. However, this is not a property addition. This is Phase 2 of Flood Damage repair expense of \$48,766.42 and should not be deducted from the amount to be recovered. In addition, the amount of estimated cost is not from Tennessee Contractors as stated by CAPD, but from Southern Sales, an outside vendor to Scott Davis, Operations Manager of BCUI. Therefore, an outside bid has been obtained. A detailed review of the Bid (provided in the filing) by CAPD would have determined this. In addition to the above, \$3,645.00 of legal expenses have been incurred with this docket 11-00180 by BABC (H. Walker) in handling this matter that should be added to the total cost to recover. The amount of \$198,586.00 should be set up as a surcharge over volumes to ensure that is all recovered via volume use.

Q: Does this conclude your testimony?

A: Yes it does.

**BERRYS' CHAPEL UTILITY, INC.****REVENUES & EXPENSES****12 MONTHS ENDED DECEMBER 31, 2011****JBF - 5**

<u>SCHEDULE</u>	<u>2011</u>	<u>ADJUST</u>	<u>ADJUSTED TOTAL</u>
JBF - 5/1	<u>\$576,502</u>		<u>\$576,502</u>
JBF - 5/2	\$343,652	\$36,149	\$379,801
JBF - 5/3	\$81,245	\$28,669	\$109,914
JBF - 5/4	\$86,680	\$11,269	\$97,949
JBF - 5/5	\$41,040	(\$4,330)	\$36,710
JBF - 5/6	\$57,037	(\$5,100)	\$51,937
JBF - 5/7	\$208,058	(\$62,942)	\$145,116
JBF - 5/8	<u>\$160,439</u>	<u>(\$160,439)</u>	<u>\$0</u>
<b>TOTAL COST OF SERVICE</b>	<b>\$978,151</b>	<b>(\$156,724)</b>	<b>\$821,427</b>
<b>NET LOSS</b>	<b>(\$401,649)</b>	<b>(\$156,724)</b>	<b>(\$244,925)</b>

**BERRY'S CHAPEL UTILITY, INC.****REVENUE REQUIREMENT****2011****JBF - 5/A**

TEST PERIOD RATE BASE	<u>\$1,135,068</u>
PROJECTED REVENUE	\$576,502
PROJECTED COST OF SERVICE	<u>\$821,427</u>
REVENUE SHORT FALL	<u>(\$244,925)</u>
REQUIRED OPERATING INCOME @ 8.9%	\$101,250
OPERATING INCOME DEFICIENCY	<u>(\$346,175)</u>
EXPANSION FACTOR (.907)	<u>0.907 (1</u>
REQUIRED REVENUE INCREASE	<u>(\$381,670)</u>
BASE CHARGE - RESIDENTIAL      30 x 839 x 12 =	\$302,040
BASE CHARGE - NON-RESIDENTIAL      40 x 2 x 12 =	\$960
VOLUME INCREASE (72,570 GALLONS x \$1.08 )	<u>\$78,670</u>
	<u>\$381,670</u>

(1 BILLING EXPENSE 7.5%, BAD DEBT 1.8% . TOTAL OF 9.3% - 100% =90.7%



**BERRY'S CHAPEL UTILITY, INC.**

**NOTES TO REVENUE & EXPENSES**

**12 MONTHS ENDED DECEMBER 31, 2011**

**JBFB - 5/B**

**REFERENCE**

JBFB - 5/2, JBFB - 5/3 1) INFLATION FACTOR AVERAGE 2008 - 2011

JBFB - 5/2 2) ADJUST TO KNOWN AMOUNT

JBFB - 5/3, JBFB - 5/4 3) TO NORMALIZE TO ANNUAL AMOUNT

JBFB - 5/2, JBFB - 5/4 4) PROJECTED INCREASE IN COST

JBFB - 5/3 5) FULL-TIME EMPLOYEE WAS ADDED ON 1/1/2012

**BERRYS' CHAPEL UTILITY, INC.**

**REVENUES**

**JBF - 5/1**

**12 MONTHS ENDED DECEMBER 31, 2011**

	<u>2011</u>
RESIDENTIAL REVENUE	\$609,379
NON-RESIDENTIAL REVENUE	\$13,804
PENALTY CHARGES	\$6,160
OTHER FEES	\$245
SURCHARGE COLLECTION - ODOR CONTROL	(\$36,426)
12/31 - FACILITY CHARGE - RESIDENTIAL	(\$16,900)
12/31 - FACILITY CHARGE - NON-RESIDENTIAL	\$240
<b>TOTAL REVENUE</b>	<u><u><b>\$576,502</b></u></u>

**BERRYS' CHAPEL UTILITY, INC.****JBF - 5/2****OPERATING EXPENSES****12 MONTHS ENDED DECEMBER 31, 2011**

<b>OPERATING EXPENSES</b>	<b>2011</b>	<b>FACTOR</b>	<b>ADJUST</b>	<b>ADJUSTED TOTAL</b>
PURCHASED WATER	\$7,316	4%	\$293	\$7,609 (1)
SLUDGE REMOVAL	\$51,980	25%	\$12,995	\$64,975 (4)
PURCHASED POWER	\$60,553	20%	\$12,111	\$72,664 (4)
CHEMICALS	\$43,228	16%	\$6,164	\$49,392 (4)
MATERIALS AND SUPPLIES	\$44,661	4%	\$1,786	\$46,447 (1)
ENGR. INSPECTIONS	\$3,948	-	-	\$3,948
TESTING	\$13,652	-	\$800	\$14,452 (2)
REPAIRS AND MAINTENANCE	\$58,515	-	\$2,000	\$60,515 (2)
OPERATIONS MANAGEMENT	\$59,799	-	-	\$59,799
<b>TOTAL OPERATING EXPENSES</b>	<b>\$343,652</b>		<b>\$36,149</b>	<b>\$379,801</b>

SEE NOTES TO REVENUES AND EXPENSES FOR CODED ITEMS

**BERRY'S CHAPEL UTILITY, INC.****JBF - 5/3****CUSTOMER ACCOUNTING EXPENSE****12 MONTHS ENDED DECEMBER 31, 2011**

	2011	FACTOR	ADJUST	ADJUSTED TOTAL
BILLING AND COLLECTION FEES	\$35,559		-	\$35,559
CUSTOMER ACCOUNTING	\$27,883		\$27,000	\$54,883 (5)
BAD DEBT EXPENSE	\$6,868		\$1,232	\$8,100 (3)
OFFICE SUPPLIES	\$10,935	4%	\$437	\$11,372 (1)
<b>TOTAL CUSTOMER ACCOUNTING EXPENSE</b>	<b>\$81,245</b>		<b>\$28,669</b>	<b>\$109,914</b>

**SEE NOTES TO REVENUES AND EXPENSES FOR CODED ITEMS**

**BERRYS' CHAPEL UTILITY, INC.**

**JBF - 5/4**

**GENERAL AND ADMINISTRATIVE EXPENSES**

**12 MONTHS ENDED DECEMBER 31, 2011**

	2011	FACTOR	ADJUST	ADJUSTED TOTAL
ACCOUNTING AND BOOKKEEPING	\$23,125			\$23,125
TAX ACCOUNTING + AUDIT	\$6,503			\$6,503
LEGAL	\$20,344			\$20,344
RENT	(\$1,667)		\$13,667	\$12,000
INSURANCE	\$28,728	6%	\$1,724	\$30,452 (4
INJURIES AND DAMAGE	\$10,525		(\$7,500)	\$3,025 (3
OTHER MISC, NET	(\$878)		\$3,378	\$2,500 (3
<b>TOTAL GENERAL AND ADMINISTRATIVE EXPENSE</b>	<b>\$86,680</b>		<b>\$11,269</b>	<b>\$97,949</b>

**SEE NOTES TO REVENUES AND EXPENSES FOR CODED ITEMS**

**BERRYS' CHAPEL UTILITY, INC.****JBF - 5/5****TAXES OTHER THAN INCOME****12 MONTHS ENDED DECEMBER 31, 2011**

	<u>2011</u>	<u>ADJUST</u>	<u>ADJUSTED TOTAL</u>
PROPERTY TAXES	\$24,000	\$410	\$24,410 (2)
TN FRANCHISE TAXES	\$16,900	(\$4,900)	\$12,000 (2)
OTHER TAXES	\$140	\$160	\$300
<b>TOTAL TAXES OTHER THAN INCOME</b>	<b><u>\$41,040</u></b>	<b><u>(\$4,330)</u></b>	<b><u>\$36,710</u></b>

**SEE NOTES TO REVENUES AND EXPENSES FOR CODED ITEMS**

**BERRYS' CHAPEL UTILITY, INC.**

**REGULATORY EXPENSES**

**12 MONTHS ENDED DECEMBER 31, 2011**

**JBF - 5/6**

<b>2011</b>	<b>ADJUST</b>	<b>ADJUSTED TOTAL</b>
<b>REGULATORY EXPENSES</b>		
\$19,937	-	\$19,937
<b>RATE CASE EXPENSES</b>		
\$37,100	(\$5,100)	\$32,000
<b>\$57,037</b>	<b>(\$5,100)</b>	<b>\$51,937</b>

**BERRYS' CHAPEL UTILITY, INC.**

**RATE CASE EXPENSES**

**12 MONTHS ENDED DECEMBER 31, 2011**

**JBF - 5/6-1**

**2011**

ACCOUNTING

**\$19,000**

LEGAL

**\$41,000**

EXPENSES, FEES, COPIES, ETC.

**\$4,000**

**TOTAL REGULATORY EXPENSE**

**\$64,000**

**AMORTIZED OVER 2 YEARS**

**\$32,000**



**BERRYS' CHAPEL UTILITY, INC.**

**REGULATORY EXPENSES**

**12 MONTHS ENDED DECEMBER 31, 2011**

**JBF - 5/7**

	<u>2011</u>	<u>ADJUST</u>	<u>ADJUSTED TOTAL</u>
DEPRECIATION AND AMORTIZATION EXPENSE, NET	\$208,058	(\$14,243)	\$193,815
REGULATORY EXPENSES	\$0	(\$48,699)	(\$48,699)
	<u>\$208,058</u>	<u>(\$62,942)</u>	<u>\$145,116</u>

**PURCHASED POWER**

**SEE NOTES TO REVENUES AND EXPENSES FOR CODED ITEMS**

**BERRYS' CHAPEL UTILITY, INC.**

**JBF - 5/8**

**INTEREST EXPENSE**

**12 MONTHS ENDED DECEMBER 31, 2011**

	<b>2011</b>	<b>ADJUST</b>	<b>ADJUSTED TOTAL</b>
SHORT TERM DEBT	\$19,329	(\$19,329)	\$0
LONG TERM DEBT - TLB	\$99,110	(\$99,110)	\$0
LONG TERM DEBT - JDR	\$20,000	(\$20,000)	\$0
LONG TERM DEBT - TLR	\$20,000	(\$20,000)	\$0
OTHER INTEREST EXPENSE	\$2,000	(\$2,000)	\$0
<b>TOTAL INTEREST EXPENSE</b>	<b>\$160,439</b>	<b>(\$160,439)</b>	<b>\$0</b>

## BCUI Status Report at December 31, 2011

**Overview**

BCUI was formed as a non-profit corporation to give its utility customers the ability to qualify for government (federal and state) low interest loans and possible clean wastewater grants.

When it was determined, after a review by LBMC, that we would not be tax-exempt, we moved the corporation to cooperative status. When 85% of the customers signed up for membership, BCUI could apply to the IRS for tax-exempt status.

The value of the plant was determined using a formal engineering appraisal prepared by a professional engineer. This creating the customer equity account after allowing for the debt assumed of approximately \$1.6M. This amount represents the amount over and above what the owners of Lynwood Utility Corporation had invested. This strengthened the BCUI balance sheet and hopefully will resulting arranging for a long-term government-backed loan that will allow BCUI to comply with the TDEC requirements and recover from the damage caused by the 2010 flood.

The ability to set rates to cover the BCUI cash flow requirements was reviewed and in early 2010 it appeared that a \$200,000 shortfall existed and a facility charge was approved by the Board of Directors to be effected December, 2010. This amounted to an annual increased to each customer of \$240 to comply with the clean water requirement set out by TDEC.

**Problems Encountered**

The problems that Lynwood Utility Corporation had encountered in past years had created customer distrust in a small group of customers primarily in the Cottonwood area. This resulted in complaints to the TRA and the AG-CAPD who then objected to BCUI not being regulated. A legislator who used to live in Cottonwood presented a bill to enact a law to place BCUI under the TRA. This law became effective on June 6, 2011.

In April 2010, the TRA stated that they thought we were still regulated by them and requested we discontinue the facility charge. BCUI quit billing the facility charge in May 2011. The charge had been in effect for 5 months and totaled \$84,000. Approximately \$10,000 was withheld by unhappy customers and still is located in the company's accounts receivable. BCUI does not have the cash to refund this \$84,000 to customers in cash but has offered to offset this amount against a surcharge to recover flood damage cost. This would allow the refund to be made as the surcharge provided the cash flow.

**Possible Solutions to Cash Flow Requirements**

1. Rate Increase – BCUI has filed for a general rate increase of \$398,000 to be effective in May of 2012 with the TRA.
2. Find a bank that a USDA or state low interest loan can be obtained. Two banks have declined due to high risk of BCUI operations without prior approval of the TRA to increase rate to provide the required cash flow to cover the cost of service and service the debit interest and debt payments.

3. Clean Wastewater Grants – The USDA has informed us the BCUI service area does not qualify for a grant, as the average medium income of the customer base is too high. BCUI has contacted the State of Tennessee Wastewater Grant Program and is in the process of requesting a grant. This could take up to a one year to obtain.

#### **New Problems Encountered**

1. In January 2012, the FDIC took over BCUI's bank (Tennessee Commerce Bank) and has control of both its' short-term and long-term debt. BCUI is current in payments on these loans. The short-term loan must be renewed in 2012 since BCUI does not have the cash to pay off the loan. Non-payment of this loan would put BCUI in default and would then make the long-term debt in default requiring payment. Other banks will not refinance the existing loans until BCUI gets a rate increase in place to cover cash flow requirements as defined by the new banking regulations set forth with the Dodd-Franks Banking Act.
2. TDEC just issued its current audit report on the wastewater treatment plant. While the report states that BCUI has made many improvements, it also points out many items that must be addressed to comply with TDEC requirements. These items are covered in the Scott Davis report to the Board that has been filed with the TRA in the current rate case.

#### **Possible Solutions**

1. Rate increase from the TRA in an amount that would allow BCUI to generate cash flow to cover the cost of service and fund the debt and external payments as set forth in Exhibit A titled: BCUI Cash Flow Requirement.
2. Sell BCUI to City of Franklin for the debt outstanding of \$4,000,000 and Accounts Payable of \$250,000. This has been discussed with four different mayors at the City, all have indicated that the city has its own wastewater treatment problems and does not want to take on any more.
3. Request that Williamson County create a utility district for BCUI. Then the TRA and AG-CAPD would not be the regulator of rates and new rates could be put in to place that would provide the required cash flow to operate. The county officials have declined to undertake this action.
4. Turn BCUI over to the TRA to manage and operate which would require that they set the required rates under TDEC Regulation. BCUI is customer owned and between TRA and customer elected Board, the required rates could be placed into effect to meet cash flow requirements.
5. As a last resort, Receivership could be deployed. This is a Chapter 11 bankruptcy filing to place the operations of BCUI under a judge.

#### **Overall Statement of Responsibility**

It is BCUI's mission to provide quality wastewater treatment services to the Berry's Chapel community while environmentally protecting the Harpeth River Watershed. Therefore, the Board must take the necessary actions to protect the customers and the Harpeth River basin and comply with the TDEC regulations on the operations of a wastewater treatment plant.

## BCUI Cash Flow Requirement

EXHIBIT JBR6

Page 3/13

	ACTUAL 2011	FORECAST 2012	FORECAST 2013	FORECAST 2014	FORECAST 2015
Revenue	\$593,409	\$593,409	\$593,409	\$593,409	\$593,409
Rate Increase Needed	<u>\$398,853</u>	<u>\$421,475</u>	<u>\$444,776</u>	<u>\$468,776</u>	<u>\$493,496</u>
Revenue Required	<u>\$992,262</u>	<u>\$1,014,884</u>	<u>\$1,038,185</u>	<u>\$1,062,185</u>	<u>\$1,086,905</u>
Operating Expenses	\$388,526	\$400,182	\$412,187	\$424,553	\$437,289
Customer Accounting	\$86,953	\$89,562	\$92,248	\$95,016	\$97,866
General & Admin	\$133,099	\$137,092	\$141,205	\$145,441	\$149,804
Taxes	\$41,000	\$42,230	\$43,497	\$44,802	\$46,146
Base Regulatory Exps	\$7,000	\$7,210	\$7,426	\$7,649	\$7,879
Interest	<u>\$97,500</u>	<u>\$100,425</u>	<u>\$103,438</u>	<u>\$106,541</u>	<u>\$109,737</u>
Base Cost	<b>\$754,078</b>	<b>\$776,700</b>	<b>\$800,001</b>	<b>\$824,001</b>	<b>\$848,721</b>
Debt Service	<u>\$160,000</u>	<u>\$160,000</u>	<u>\$160,000</u>	<u>\$160,000</u>	<u>\$160,000</u>
Total Expense	<b>\$914,078</b>	<b>\$936,700</b>	<b>\$960,001</b>	<b>\$984,001</b>	<b>\$1,008,721</b>
Cash Flow	<b>\$78,184</b>	<b>\$78,184</b>	<b>\$78,184</b>	<b>\$78,184</b>	<b>\$78,184</b>

**James Ford**

**EXHIBIT JBF-6**  
*Page 4/13*

**From:** Rhodes, Lane [Lane.Rhodes@53.com]

**Sent:** Friday, February 17, 2012 12:05 PM

**To:** jburtonford@comcast.net

**Subject:** Berry's Chapel Request

Dear Mr. Ford,

I apologize for my delay in getting you this information. I was out of the office sick yesterday. Thank you for the opportunity to look at the loan request for Berry's Chapel Water Utility Company. At this time we are unable to approve the request. The two primary reasons for this are outlined below:

1. USDA B & I program issues: Currently the USDA program in TN is short on Federal Funds. This makes loan requests over \$1MM ineligible at this time. The complexity of the USDA program also causes us some concerns due to the many factors that come into play when presenting a loan like this to the USDA credit committee.
2. The cash flow from Berry's Chapel to support the loan request is based on projections that rely on a rate increase. Without this rate increase the debt service coverage is not strong enough to support the loan request. The rate increase would need to be approved before we could consider a loan for the company.

Due to these two factors and based on historical financial data for the company our internal risk rating for this request was too high to move forward. Once the rate increase is approved we can revisit the request and hopefully the USDA will get additional funds to support the B&I program for 2012. Please feel free to call me with any questions you might have about this decision. We appreciate you considering Fifth Third Bank and hope to work with you in the future.

## **Lane N. Rhodes**

Vice President

Head of SBA Lending for the Tennessee Market

**Fifth Third Bank**

424 Church Street 6th Floor

MD UTFC6B

Nashville, TN 37219

Office 615-687-8054

Fax 615-687-3026

Cell 615-969-2848

2/17/2012

Date: 2/27/12  
From: James B. Ford  
To: Board of Directors Members  
Subject: Refinancing of BCUI Debt

On Thursday February 23, 2012 Berry's Chapel Utility, Inc. directors, John Ring, Tyler Ring, James B. Ford, along with Scott Davis, BCUI Operations Manager, had a meeting with Brad Byrd and Katie Bennett of Pinnacle Bank.

The purpose of this meeting was to obtain a refinancing of Tennessee Commerce Bank Loans to BCUI totaling \$1,300,000. The bank officers reviewed BCUI's current financial statements (12/31/11), the audit report at 6/30/2011 from LBMC and the request for rate increases on file with the TRA.

It was the conclusion of the bankers present that BCUI's cash flow would not cover the cost of service and service the debt and interest requirement. It was also the conclusion that even with the full affect of the requested rate increase, that the company could be a high risk going forward due to age and changing regulatory environment.

Because of the above comments, the bank officers determined that they could not recommend that Pinnacle Bank undertake to refinance the present Tennessee Commerce Bank loans.

This is the 2<sup>nd</sup> bank that has declined to refinance the Tennessee Commerce Bank debt. The other bank was 5<sup>th</sup>/3<sup>rd</sup> Bank which a copy of their e-mail is attached.

The FDIC has taken over the Tennessee Commerce Bank and may not renew the short term loan of \$250,000 which BCUI cannot pay. This would lead to a default on the long term note and would push BCUI into receivership.

**MINUTES OF MEETING OF THE BOARD OF DIRECTORS OF  
BERRY'S CHAPEL UTILITY, INC.**

**MARCH 22, 2012**

A meeting of the Board of Directors of Berry's Chapel Utility, Inc. was held at 7:30am on Thursday, March 22, 2012, at its office located at 321 Billingsly Court, Suite 4, Franklin, Tennessee. The Directors present for the meeting were Tyler L. Ring, John Ring and James B. Ford.

Tyler Ring called the meeting of the Board of Directors to order.

A motion was made by Jim Ford and seconded by Tyler Ring to approve the minutes of February 22, 2012 Board of Director's meeting. After discussion the motion passed 3-0.

No financial report is yet ready for January due to work effort required to answer the large amount of questions from the CAPD office related to the rate case.

The Companies tax returns were filed on 3/13/12 for the F/Y 2011. BCUI owes the State of Tennessee taxes of \$11,000 which BCUI has been unable to pay.

The Company owes Williamson County Taxes of \$24,400.00 at 2/29/12. A payment of \$2,500 has been made.

The Company has not received any information related to its grant request with the State of Tennessee.

Mr. Ford presented the Board with a status report as of 12/31/11 regarding the problems the Company was facing as it goes forward into 2012. Its summary states that if revenue improvements are not received sooner, the Company will have to be turned over to the TRA for management of the revenue vs. expense problems. A copy of report is attached.

A motion was made by John Ring and seconded by Tyler Ring to adjourn the Board meeting. After discussion the motion passed 3-0 and the meeting was adjourned.

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James B. Ford, Secretary

---

Date





BERRYS CHAPEL UTILITY, INC  
PO BOX 314  
FRANKLIN, TN 37065

Subject: Tennessee Commerce Bank  
Franklin, TN – In Receivership  
Closing Date: January 27, 2012

LOAN NUMBER(S): 2011002, 2011002

Dear Customer:

On January 27, 2012, Tennessee Commerce Bank, Franklin, Tennessee, (the "Institution") was closed by the State of Tennessee Department of Financial Institutions and the Federal Deposit Insurance Corporation was appointed as receiver of the Institution (the "Receiver"). Under the laws of the United States, the Receiver is charged with the duty of winding up the affairs of the former Institution.

The records of the Institution indicate you have a loan obligation to the former Institution. Your loan is now held by the Receiver. The Receiver expects that you will continue to abide by the terms and conditions of your loan agreement or promissory note. When making your payments, please make your check or money order payable to "FDIC as Receiver for Tennessee Commerce Bank" and, until further notice, send all future correspondence and payments to the same address you have been using for that purpose.

The Receiver intends to market and sell the assets of the Institution, **including your loan**. At such time as your loan is sold or transferred, you will be advised in writing by the Receiver, including appropriate changes to the payment instructions set forth above.

Please be advised that if your loan is secured by real estate, the Receiver may be ordering an appraisal of the real estate collateral to update your loan file in the next couple of weeks. If you are contacted by an appraiser, we ask that you please cooperate with the appraiser in granting access to the property being appraised. There is no cost to you for the appraisal.

Thank you for your cooperation. If you have any questions concerning this matter, please call 615-599-2274 to schedule an appointment with a representative of the Receiver.

Federal Deposit Insurance Corporation,  
as Receiver for Tennessee Commerce Bank, Franklin, Tennessee

Name: Tom N. Wineland  
Title: Post Closing Asset Manager



February 10, 2012

**EXHIBIT** JBF-6  
Page 8/13

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

RECEIPT NO. 7011 2970 6003 1988 6134

**LYNWOOD UTILITY CORPORATION**  
321 BILLINGSLEY CT STE 4  
FRANKLIN, TN 37067

**SUBJECT:** Receivership #: 10423 Tennessee Commerce Bank  
Franklin, TN – In Receivership  
Closing Date: 1/27/2012  
Loan Number (s) 12307

**NOTICE OF SUSPENSION OF FUNDING**

Dear Customer,

On January 27, 2012, Tennessee Commerce Bank, Franklin TN, (the "Bank"), was closed by the Tennessee Department of Financial Institutions and the Federal Deposit Insurance Corporation (the "FDIC") was appointed as receiver of the Bank (the "Receiver"). Under the laws of the United States, the Receiver is charged with the duty of winding up the affairs of the former Bank in a manner that maximizes the net present value return to the receivership from the sale or disposition of such assets and preserves and conserves the assets of the Bank. In order to achieve this goal, the Receiver is given the right under 12 U.S.C. Section 1821(e) to repudiate undertakings entered into by the Bank where it finds such undertakings to be burdensome and where such repudiation will promote the orderly administration of the failed Bank's affairs.

The records of the Bank indicate you have a loan obligation to the former bank that has a partially unfunded balance. Your loan is now held by the Receiver. Be advised that the Receiver expects you to fully abide by the terms and conditions of your loan agreement or promissory note and you are legally obligated to do so. However, you are strongly advised to immediately seek an alternative funding source.

The Receiver is in the process of reviewing all agreements entered into by the failed institution and specifically reserves the right to repudiate your loan commitment and any

**EXHIBIT****JBFB-6**  
**Page 9/13****Federal Deposit Insurance Corporation****As Receiver for Tennessee Commerce Bank**

P.O. Box 682989 Franklin, TN 37068 - 2989

Telephone (615) 468-2417

related obligations this Bank may have had within a reasonable period of time upon a determination by the Receiver that the loan is burdensome and that the repudiation would promote the orderly administration of the affairs of the former Bank. Please be advised that the unfunded portion of your loan has been suspended for future draws pending review by the Receiver, but you have 45 days to provide additional information to the Receiver regarding this loan before any final determination to repudiate is made.

FDIC loan administration personnel are available to discuss your options. If you wish to provide additional information, in order to expedite the review of the status of your loan, please immediately submit a complete financial package for our consideration. Below is an outline of the minimum information that would be required for a review:

- Daytime and evening phone number for a representative to contact you
- Detailed description of the planned use and application of funds requested from the unfunded portion
- Proposed repayment schedule.
- Completed and notarized current financial statement for all borrowers and guarantors
- Previous 2 years federal tax returns for all borrowers and guarantors

Please be advised that the Receiver intends to market and sell all of the assets of the former Bank, including your loan, beginning approximately 90 days from the date of the closing of the Bank. During this period, all payments should be made payable to "FDIC as Receiver for Tennessee Commerce Bank, Franklin, TN" and you should send all future correspondence and payments regarding this loan to the address you are currently using for payments and correspondence for this loan. If, in the future, your loan should be sold or transferred, resulting in any changes to these payment instructions, you will be advised in writing by the Receiver.

Thank you for your cooperation. If you have any questions, please call and ask for a FDIC loan administration representative at 615-468-2417.

Federal Deposit Insurance Corporation  
as Receiver of  
Tennessee Commerce Bank

By: Tom N. Wineland  
Title: Post Closing Asset Manager



Federal Deposit Insurance Corporation  
As Receiver for Tennessee Commerce Bank  
381 Mallory Station Road, Suite 105  
Franklin, TN 37067-8264

February 9, 2012

EXHIBIT JBF-6  
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CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
RECEIPT NO. 7011 1570 0001 3508 4841

*Berry's Chapel Utility, Inc.*  
*321 Billingsley Court Suite 4 Franklin, Tennessee 37067*

Subject: FLN # 10423 - Tennessee Commerce Bank  
Franklin, Tennessee- In Receivership  
Closing Date: January 27, 2012  
Standby Letter of Credit No. 2011002

Dear Sir or Madam:

The above-captioned institution (the "Institution") was closed on the Closing Date referenced above and the Federal Deposit Insurance Corporation was appointed as receiver of the Institution (the "Receiver"). Under the laws of the United States, the Receiver is charged with the duty of winding up the affairs of the Institution. In order to achieve this goal, the Receiver is given the right under 12 U.S.C. Section 1821(e) to repudiate contracts entered into by the Institution where it finds such undertakings to be burdensome and where such repudiation will promote the orderly administration of the Institution's affairs.

The Institution's records indicate that you may be an account party of a letter of credit as referenced above. The Receiver is in the process of reviewing all agreements entered into by the failed institution and specifically reserves the right to repudiate any obligations this Institution may have had within a reasonable period of time upon a determination by the Receiver that the obligation is burdensome and that the repudiation would promote the orderly administration of the affairs of the Receivership.

The Receiver strongly suggests that you immediately take any action necessary to protect your interests. You may wish to arrange for the issuance of a new standby letter of credit from another financial institution. Please contact the Receiver if there is information or documentation you will require in order to facilitate action you intend to take along these lines.



EXHIBIT JB F-6  
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Federal Deposit Insurance Corporation  
As Receiver for Tennessee Commerce Bank  
381 Mallory Station Road, Suite 105  
Franklin, TN 37067-8264

The Receiver recognizes that the failure of the Institution may cause disruptions in your business and personal affairs. To assist you, FDIC personnel are available to discuss the impact of the failure of the Institution.

If you wish to provide additional information that you think is relevant to the review of the status of your standby letter of credit and any associated loan, please submit within 10 days from the date of this letter. Any request based on your financial position should be supported by a complete financial package submitted for our consideration. Below is an outline of the minimum information required:

- Daytime and evening phone number for a representative to contact you.
- Detailed planned usage for the letter of credit and any related loan.
- Proposed repayment schedule.
- Completed and notarized current financial statement for all borrowers and guarantors.  
Last 2 years federal tax returns for all borrowers and guarantors.

If you have any further questions, you may direct your inquiry to the Receiver at the address provided.

Federal Deposit Insurance Corporation  
as Receiver of  
**Tennessee Commerce Bank**

*Tom N. Wineland*

By: Tom N. Wineland  
Title: Post Closing Asset Manager



EXHIBIT JB/-6  
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**TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
NASHVILLE ENVIRONMENTAL FIELD OFFICE**

711 R. S. GASS BOULEVARD  
NASHVILLE, TENNESSEE 37243  
PHONE (615) 687-7000 STATEWIDE 1-888-891-8332 FAX (615) 687-7078

January 20, 2012

Mr. Tyler Ring, President  
Berry's Chapel Utility, Inc.  
321 Billingsley Ct, Suite 4  
Franklin, TN 37067

Subject: Performance Audit Inspection  
NPDES Permit #TN0029718  
Berry's Chapel Utility STP  
Franklin, Williamson County, Tennessee

Dear Mr. Ring:

On September 21 and 22 2011, I met with you and other facility representatives to conduct a Performance Audit Inspection at the Berry's Chapel Utility STP (formerly known as Lynnwood Utility Corp.). The purpose of this inspection was to assess compliance with the National Pollutant Discharge Elimination System (NPDES) permit with emphasis on laboratory operations, sampling and flow monitoring practices.

The former operator, Mr. Bobby Winfrey, retired. His position is now held by Mr. Rory Rowan, grade IV certified wastewater operator. Mr. Mario Vasquez, laboratory technician, now performs most of the sample analyses.

My observations and recommendations are attached for your consideration.

Because of deficiencies documented during this inspection, Berry's Chapel STP has been found to be in violation of its NPDES permit and the *Tennessee Water Quality Control Act of 1977*.

Specifically, these deficiencies include the following:

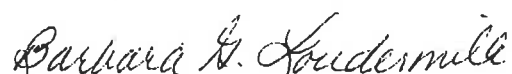
1. Failure to provide accurate influent flow measurement
2. Failure to collect representative influent samples
3. Failure to properly report insoluble TKN and insoluble phosphorus
4. Failure to follow procedures for EPA approved laboratory methods of analyses for carbonaceous biochemical oxygen demand (CBOD), dissolved oxygen, ammonia as nitrogen, and total chlorine residual,
5. Failure to follow proper sample collection procedures for E. coli.

Further explanation of these deficiencies is provided in the attached report.

I received a letter from Mr. Scott Davis, dated 10/7/11, addressing item # 3 cited above. We continued communicating by email through November dealing with different aspects of the inspection, and he assured me that my concerns would be addressed. Please provide a written response within thirty- (30) days of receipt of this letter stating what steps have been taken to address these remaining deficiencies.

I would like to thank you, Mr. Rowan, Mr. Davis and Mr. Vasquez for your time and assistance during the inspection. Although this letter points out deficiencies, overall I observed many improvements in your self-monitoring program since my last inspection. If you have any questions concerning this correspondence, please contact me at 615-687-7121 or by email, [barbara.loudermilk@tn.gov](mailto:barbara.loudermilk@tn.gov).

Sincerely,



Barbara G. Loudermilk

Nashville Environmental Field Office  
Division of Water Pollution Control

Enclosure

Cc: Mr. Scott Davis, Berry's Chapel Utility STP  
Mr. Rory Rowan, Berry's Chapel Utility STP  
Shannon Pratt, Fleming Training Center

INDEPENDENT AUDITORS' REPORT

The Board of Directors  
Berry's Chapel Utility, Inc.:

We have audited the accompanying balance sheet of Berry's Chapel Utility, Inc. (the "Utility") as of June 30, 2011. This financial statement is the responsibility of the Utility's management. Our responsibility is to express an opinion on this financial statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the balance sheet is free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Utility's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

Because we were not engaged to audit the statements of operations and changes in outstanding fund balance and cash flows, we did not extend our auditing procedures to enable us to express an opinion on results of operations and changes in customer fund balance and cash flows for the period from September 1, 2010 (effective date of merger) through June 30, 2011. Accordingly, we express no opinion on them.

In our opinion, the balance sheet referred to in the first paragraph presents fairly, in all material respects, the financial position of Berry's Chapel Utility, Inc. as of June 30, 2011, in conformity with accounting principles generally accepted in the United States of America.

The accompanying balance sheet has been prepared assuming that the Utility will continue as a going concern. As discussed in Note 13 to the financial statements, the Company's significant operating losses and capital deficiency at June 30, 2011 raise substantial doubt about its ability to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

*Lattimore Black Morgan & Cain, P.C.*

Brentwood, Tennessee  
October 21, 2011



**BERRY'S CHAPEL UTILITY, INC.**

**Notes to the Financial Statements**

**June 30, 2011**

**EXHIBIT** JB-F-7  
Page 2/2

The Utility has incurred operating losses since its merger with Lynnwood. As a result, management has taken certain measures to increase revenues in order to meet the current obligations of the Utility. Since June 2011, when the Utility became a regulated entity, the Utility has reviewed its operations and worked with the TRA to reset current sewage rates at a level that will allow the Utility to meet its obligations. Because of the operating losses of the Utility and the working capital deficiency as of June 30, 2011, the Utility's continuance as a going concern is dependent upon its ability to increase revenues to reach profitable levels of operation. It is not possible to predict whether the Utility will attain profitable levels of operation.

These financial statements have been prepared on a going concern basis which contemplates the realization of assets and the payment of liabilities in the ordinary course of business. Should the Company be unable to continue as a going concern, it may be unable to realize the carrying value of its assets or to meet its liabilities.

**(13) Current economic conditions and management's plans for future operations**

The current protracted economic decline continues to present utilities with difficult circumstances and challenges, which in some cases have resulted in large declines in collections from customers, constraints on liquidity and difficulty obtaining financing.

Current economic and financial market conditions could adversely affect the Utility's results of operations in future periods and its ability to adjust rates to recover future losses. The current instability in the economy, including the rising unemployment rate, may make it difficult for certain Utility customers to pay for utility services, which could have an adverse impact on the Utility's future operating results.



U.S. SMALL BUSINESS ADMINISTRATION  
Processing And Disbursement Center  
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Fort Worth, TX 76155-2243

800-659-2955  
Hearing Impaired  
800-877-8339

June 3, 2010

EXHIBIT JBF-8  
page 1/1

Southern Utility Corporation  
John Ring, President  
321 Billingsly Court  
Franklin, TN 37067

RE: Disaster Loan Application No.: 0004313393

Dear Mr. Ring:

We have thoroughly reviewed your recent application for a disaster loan from the U. S. Small Business Administration (SBA). Although we made every effort to approve your loan request, we are unable to offer you a disaster loan for the following reason(s):

**Lack of repayment ability**

Our analysis of all the information provided with your loan application concluded your income is insufficient to repay a disaster loan in addition to your existing debts, living expenses, taxes, insurance, and other obligations.

If you disagree with our decision, you have the right to request reconsideration. Your request must:

1. Be in writing and be received by this office **within 6 months** from the date of this letter.
2. Contain significant new information that you believe will overcome the decline reason(s).
3. Provide a completed, signed and dated IRS Form 8821 (enclosed).
4. Contain current financial statements (dated **within 90 days**).

If you have any questions about this action, please contact our office at the above address or the toll free number.

Sincerely,

Alfonso Olivas  
Supervisory Loan Officer

Enc.

SBA Form 2157R(3-01)

The Federal Equal Credit Opportunity Act, 15 U.S.C. § 1691, prohibits creditors from discrimination against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Consumer Response Center, Federal Trade Commission, Washington, D.C. 20580.



## **Water, Wastewater, and Reclaimed Rates have Changed...Read Below to Find Out Why.**

### **Why are the rates being adjusted?**

The City of Franklin is required by State law to develop and maintain a rate structure that covers the costs of providing water and wastewater services to our customers. Independent consultants have been performing ongoing Cost of Service analyses to ensure rates are set at appropriate levels. Planned adjustments based on these studies are being implemented to cover the cost of providing safe drinking water and wastewater collection and treatment services in accordance with Federal and State laws.

### **Who is affected by the new rates?**

The new rate structure is effective for water, sewer, and reclaimed water services provided by the City of Franklin on and after January 1, 2012 and applies to both residential and commercial customers. All wastewater customers served by the City of Franklin are affected by the new wastewater rates regardless of the water utility district that services them. Berry's Chapel Utility District customers that are billed by the City of Franklin are not affected. Please call the Customer Service Center at 794-4572 if you have any questions.

### **What factors have affected the rate increase?**

The increases in the City's water, wastewater, and reclaimed water rates are a result of increased state regulatory requirements; the need to maintain system reliability; to maintain a high level of water quality in the system; and to meet the high level of service expected by our customers.

### **How is the city improving standards?**

To achieve the necessary standards and levels of service, the City of Franklin Water Management Department has been hard at work with many projects including, but not limited to the following:

- The Regional Integrated Water Resources Planning project provides for comprehensive planning of the City's operations and capital investments through evaluation of water, wastewater, reclaimed water and stormwater in an integrated approach. The project should be completed within the next few months.
- Improvements to the City's raw water reservoir were completed in 2011 to provide for greater reliability of water supply.
- Removal of inflow and infiltration from the wastewater collection system to reduce the loads to the wastewater treatment plant thereby reducing costs and increasing the effective capacity of the collection system and treatment plant.
- Ongoing upgrades to the City's water distribution system and wastewater collection system to ensure reliability and to enhance customer service.
- Continued assessment of water distribution lines to identify leaks and reduce water loss.

For more information go to [www.franklintn.gov](http://www.franklintn.gov) click on the Government tab at the top and go to the Water Management Department.



HISTORIC  
FRANKLIN  
TENNESSEE

EXHIBIT JBR-9  
Page 2/7

**SCHEDULE OF WATER USER RATES – EFFECTIVE JANUARY 1, 2012**

Rates are per 1,000 gallons of water

	RESIDENTIAL			
	CURRENT		January 1, 2012	
	Inside City of Franklin	Outside City of Franklin	Inside City of Franklin	Outside City of Franklin
Customer Charge (Includes 1,000 gallons)	\$8.82	\$10.82	\$10.42	\$12.42
Next 9,000 gallons	\$3.72	\$5.80	\$3.72	\$5.80
Next 15,000 gallons	\$4.65	\$6.38	\$4.65	\$6.38
All additional Usage	\$5.58	\$6.96	\$5.58	\$6.96

	COMMERCIAL			
	CURRENT		January 1, 2012	
	Inside City of Franklin	Outside City of Franklin	Inside City of Franklin	Outside City of Franklin
Customer Charge (includes 1,000 gallons)	\$11.61	\$12.41	\$13.21	\$14.01
Next 9,000 gallons	\$3.72	\$5.80	\$3.72	\$5.80
Next 15,000 gallons	\$4.65	\$6.38	\$4.65	\$6.38
All additional Usage	\$5.58	\$6.96	\$5.58	\$6.96

Water includes potable domestic and irrigation water provided by the City of Franklin.

**SCHEDULE OF WASTEWATER (Sewer) and RECLAIMED WATER USER RATES –EFFECTIVE JANUARY 1, 2012**

Rates are per 1,000 gallons of water

	WASTEWATER – RESIDENTIAL			
	CURRENT		January 1, 2012	
	Inside City of Franklin	Outside City of Franklin	Inside City of Franklin	Outside City of Franklin
Customer Charge (includes 1,000 gallons)	\$12.30	\$15.21	\$14.55	\$19.21
Next 14,000 gallons	\$3.61	\$5.62	\$3.61	\$5.62
Over 15,000 gallons	\$2.82	\$4.47	\$2.82	\$4.47

	WASTEWATER – COMMERCIAL			
	CURRENT		January 1, 2012	
	Inside City of Franklin	Outside City of Franklin	Inside City of Franklin	Outside City of Franklin
Customer Charge (includes 1,000 gallons)	\$21.00	\$23.00	\$29.00	\$31.00
Next 14,000 gallons	\$4.42	\$6.91	\$4.42	\$6.91
Over 15,000 gallons	\$3.43	\$5.02	\$3.43	\$5.02

	RECLAIMED WATER – RESIDENTIAL AND COMMERCIAL	
	CURRENT	
	January 1, 2012	
Customer Charge (includes 1,000 gallons)	\$0.87	
Over 1,000 gallons	\$0.87	

Wastewater (sewer) charges apply to and are based on gallons of water provided by the water provider/district.

Wastewater (sewer) charges apply for City of Franklin sewer service in the water districts of City of Franklin, MVUD, Milcrofton, HB&TS or Brentwood.

Wastewater (sewer) charges do not apply to water delivered through an Irrigation meter provided, maintained and read by the water district. Wastewater (sewer) charges do not apply to reclaimed water.

moving forward

TOYOTA



See plan for complete coverage details. See participating Toyota dealer for details. 10. Subject to approved credit through Toyota Financial Services. See dealer for terms and conditions. 11. Toyota Financial Services \$400 Bonus/Subvention cash only available on new 2012 Tundra. May be combined with Toyota Financial Services special reduced APR and Lease offers, but cannot be combined with Toyota customer cash. \$2,500 on new 2012 Tundra CrewMax. \$2,250 on new 2012 Tundra Regular Cab. Must take retail delivery from new dealer stock between 2/1/12 & 3/6/12. NO SECURITY DEPOSIT subject to approved credit through Toyota Financial Services. The 1 PLUS customers ONLY. Excludes state and local taxes, tags, registration and title, and insurance. License and applicable fees are extra. Lessee may be charged for excessive wear based on Toyota Financial Services standards for normal use and for mileage in excess of 28,000 miles at the rate of \$0.15 per mile. A \$350 Disposition Fee is due at lease termination. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10: Must take retail delivery from remaining new 2011 and new 2012 dealer stock between 2/1/12 and 3/6/12. APR. Customer Cash & Lease offers may not be combined. See participating dealer for complete details. Individual dealer prices may vary. Offers may vary by region. VEHICLE IMAGES USED FOR ILLUSTRATION PURPOSES ONLY. Expiration for this ad is 3/6/12.

# Water plan has huge costs

Bills could soar if Franklin spends \$206M on system

By Kevin Walters  
The Tennesseean

grants could help cover some of those costs, Franklin would look to further increase its water and sewer rates to pay for the projects in the next 30 years.

The city's sewer bills, which have climbed to about \$36 for typical customer use, would jump to about \$60 by 2014. Water bills, which are typically about \$32 for most of the city's residential homeowners, would climb to a little more than \$40 by 2014.

The proposal's key recommendations were released Tuesday night to Mayor Ken Moore and city aldermen and come after years of study. Included are detailed financial and computer riv-

er modeling by consultants at CDM Smith.

Franklin spent about \$2 million to have the engineers create the Integrated Water Resources Plan, a project that began in 2009, to create a plan for how the city should improve water and wastewater systems to keep pace with growth. In the past, city staffers and elected officials wrangled about whether to expand the city's water plant and build a new sewer plant in Goose Creek.

"It's a long-term water resources plan for the city and allows the city to sustainably meet regulatory requirements and growth requirements," said Zack

Daniel, client services manager at CDM Smith.

Franklin has about 17,000 water customers, which includes residential and commercial users, and about 22,000 sewer customers.

## Goose Creek area to see big growth

The biggest area of growth in Franklin is in the Goose Creek area. While only 147 homes exist — built at the Highlands at Ladd Park — developers have been cleared to build as many as 3,056 homes and are talking about wanting to build more.

In March 2008, the city finalized spending \$2.5 million to buy 188 acres near the Goose Creek Bypass for a future Goose Creek sewer plant to handle sewage needs in the city.

"We're trying to get ready for the next wave," Moore said. "If the predictions are true, we're going to continue to be an area of rapid growth and expansion. We've got to get ready so it's done right."

At times in the past, Franklin has struggled to keep up with its demands, including rationing water because of its formerly bro-

» WATER, 3W

loved it, so we got together and started brainstorming," said Carolyn Miller, founder and chairwoman of the 2008 at the Charley Foundation benefit at the Factory at Franklin-Stevens.

help fill the hole for

EXHIBIT JBF-9  
Page 3/7

# Wastewater problems mount

## »WATER FROM 1W

ken water reservoir. The sewer plant, near Franklin High School off Hillsboro Road, has reached 80 percent of its treatment capacity and consultants have found a "significant vulnerability" with the longstanding means of disposing of Franklin's treated waste or

sludge.

Franklin has two trucks and two full-time drivers who transport treated sludge 95 miles away to a private landfill in Camden, Tenn. Gasoline costs alone for this are about \$7,000 a month. That plan has been in place since the 1990s.

Franklin aldermen plan future work sessions to dis-

cuss the project.

Contact Kevin Walters at 615-771-5472, [kewalters@tennessean.com](mailto:kewalters@tennessean.com) or on Twitter @Frkwriter.

## DATELINE

### Student art show to open at Frist

The 2012 Williamson County Schools Art Show at the Frist Center for the Visual Arts in Nashville will kick off 10 a.m.-5:30 p.m. Saturday. The show features artwork created by students from throughout the county.

More than 300 young artists from kindergarten-12th grades are included in this exhibition that will run through March 18.

To receive free admission to the show, head to the district's website at [www.wcs.edu](http://www.wcs.edu), click on In Focus and print the flier.

### The Manor to honor veterans

The Manor at Steeplechase independent retirement community, 314 Cool Springs Blvd., is hosting a veterans appreciation event at 10 a.m. Saturday for veterans and seniors.

The event is in honor of the 81st anniversary since the "Star-Spangled Banner" officially became the national anthem. To RSVP, call The Manor at Steeplechase at 615-778-9011.

### Waves event includes dinner, auctions

Waves Celebrate the Arts benefit featuring dinner and...

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## CITY OF BRENTWOOD INFORMATION

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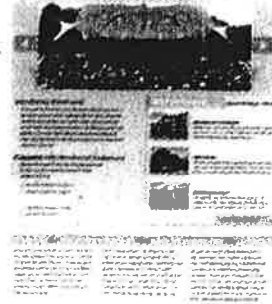
### ON THE WEB

- **www.brentwood-tn.org** for City & Planning Commission agendas and video of recent meetings via web-cast and other city information;
- **www.explorebrentwood.com** – “Shop in Brentwood”, businesses and community information
- **Facebook, Twitter** and/or **Nixle** – keep up with important information from the city; to join us, go to [www.brentwood-tn.org](http://www.brentwood-tn.org) for more information



### CABLE CHANNEL 19

- **City & Planning Commission Meetings – Rebroadcast**  
~ 1st, 2nd & 4th weeks each month  
~ Tuesday & Thursday 9 a.m. & 7 p.m.
- **Continuous City Information** – Meetings, dates, times, places, phone numbers, etc.
- **Monday • Wednesday • Friday**  
~ Historic Interviews, 7 p.m.  
~ Historic Brentwood Video, 8 p.m.



### COMMUNITY GUIDE 2011-2013

'Everything you ever wanted to know about Brentwood!' available at Brentwood City Hall, Library and on the City's website, [www.brentwood-tn.org/communityguide](http://www.brentwood-tn.org/communityguide).

## WATER & SEWER IMPROVEMENTS

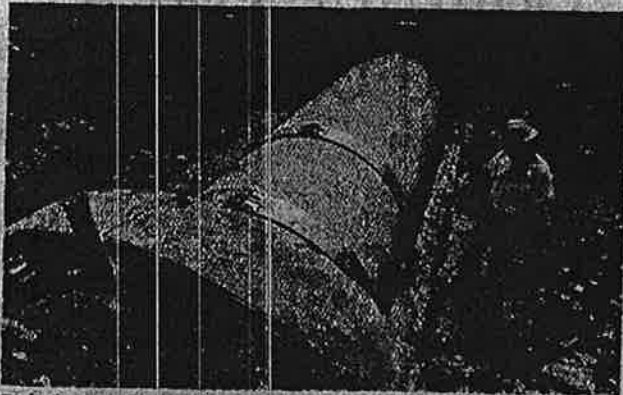
**Sewer System Rehabilitation Project** The goal of the Department's Sewer Rehabilitation Program (SRP) is to investigate, identify and correct failing sewer infrastructure in order to increase system capacity, reduce system overflows into the environment, and extend the life of this important asset. The City is investing \$30 million in this comprehensive program through the year 2015 which includes inspecting underground pipelines via a video camera and subsequently repairing damaged pipelines with trenchless technologies or “slip lining.” To date over 25 miles of pipeline (or about 10% of all sewer pipes in Brentwood) have been identified as having problems and have been relined and repaired. Some pipeline inspections and repairs will continue in the coming months; however, the program has shifted its focus to manhole and service line inspection and repairs. Ongoing work is being completed in or near the following areas: Panorama Drive, Brentwood South, Stonehenge, River Oaks and BelleRive. For more information, please visit the Water/Sewer web page at [www.brentwood-tn.org/water](http://www.brentwood-tn.org/water).

**Water System Capacity Improvement** This proactive project provides for future water system improvements that will increase system capacity to better meet peak summer day demands associated with irrigation of landscaping and lawns. Peak water demand in the summer can be four times the normal water requirement of customers for domestic use such as bathing, washing clothes, toilets, etc. Upcoming projects in calendar year 2012 will include water line and booster station improvements and replacements. Projects slated to begin soon include upgrades to the water booster stations located along Murray Lane and Johnson Chapel Road, and water line upsizing projects along Johnson Chapel Road, Belle Rive Drive and Granny White Pike.

**Water Meter Reading Program Upgrades** The purpose of this multi-year project is to upgrade the current “touch-read” water meter reading technology adopted 20+ years ago to a more sophisticated “tower-based” reading technology. A tower-based reading system includes installing water meter reading equipment at several fixed tower sites across the City which can capture meter reads for billing purposes without the need to read individual meters in the field. This project includes replacement of aging water meters with “smart” meters and transmitters at each customer site over the next five years. When fully implemented, the new meter system will allow customers to monitor their water consumption on a real time basis and receive immediate notification of unusual “spikes” in water consumption above normal usage. This will allow them to check for possible leaks in service lines or inside in the home quicker.

6B • SUNDAY, SEPTEMBER 4, 2011

FROM PAGE ONE



Rob Grant of Garney Construction surveys a day sewer pipe, one of many installed between the 1950s and 1970s that are to be replaced. DIPTI VAIDYA / THE TENNESSEAN

## Sewer project will be one of Metro's biggest

# Sewer repairs will be costly

Ratepayers will foot bill  
for \$1 billion-plus project

By Nate Rau  
The Tennessean

Metro has quietly launched in recent weeks a project so expansive it will touch every corner of Davidson County and so expensive it will equal the price tag of at least two new downtown convention centers.

In the pantheon of public projects, fixing leaky sewer pipes may not register as the most exciting, but city officials say the undertaking will cost between \$1 billion and \$1.5 billion over the next 11 years.

The final price tag will depend on what Environmental Protection Agency regulators say in response to Metro's plan to comply with a 2006 federal consent decree. The EPA agreement was put in place to get the city to fix its crumbling sewer infrastructure, which sometimes causes raw sewage to spew into Nashville's streams after a major rainfall. The deadline for Metro to submit its plan is Sept. 11.

Once the EPA signs off on the plan, Metro Water Services ratepayers will be on the hook for the bill. It's not a matter of if the city will raise its water and sewer rates, but when. Just

» SEWERS, 6B



last rate increase, Metro will begin companion studies in October to determine its exact revenue needs.

"It's one of the biggest things, if not the biggest thing, the city will ever do," said Metro Finance Director Rich Riebeling, one of Mayor Karl Dean's top aides.

The first multimillion-dollar contract, which is to assist Metro in managing the project, has already been awarded and details are being negotiated. The winning bid selected by Dean came from the international engineering firm Camp, Dresser and McKee and partner AECOM. A second major contract, for construction management, has been put out to bid.

Metro Water Director Scott Potter said Nashville set off on the path to its billion-dollar project in the 1880s. That's when city leaders decided to install a combined sewer system, in which sewage and rainwater use the same pipes.

Some of Nashville's infrastructure is more than 100 years old, but Potter said the most pressing problems are caused by clay pipes installed between the 1950s and 1970s.

"In the simplest analysis, we're going to be replacing sewer pipes that leak dramatically when it rains," Potter said.

### Plan approval likely

Metro Water engineers have been working for the past five years to develop the plan the city will ultimately submit to the EPA and the Tennessee Department of Environment and Conservation in the next week. It is highly likely the plan will receive approval from regulators because Metro has been in consultation with the EPA and TDEC, Potter said.

Once that step is complete and the plan is approved in federal court, the work can begin. That's when the question of price will come up.

The department will launch an infrastructure cost study in October, which will be followed by a rate study, Potter said. The studies should be completed early next year.

Riebeling said the water department has been its

### PROJECTS

**2011:** Metro sewer project, \$1.5 billion

**2009:** Convention center, \$585 million

**1997:** LP Field, \$290 million

**1995:** Bridgestone Arena, \$144 million

**1999:** Downtown library, \$50 million

financial health improve since Dean took office in 2007. Dean and the Metro Council approved a rate increase in 2009, boosting water and sewer bills by about 7 percent over each of the past three years.

But with the consent decree work set to begin, another increase will be necessary to pay for the massive project. Riebeling cautioned that the work would be spread over 11 years and require multiple bond issues to foot the bill.

"You're not going to pay for this all at one time," Riebeling said. "I don't envision us going out there and issuing a billion and a half dollars to fund this. I would say we would do this in two, or three or four pieces over the next decade."

Metro Councilwoman Emily Evans, who has loudly advocated for investing in the city's water and sewer infrastructure, said a steeper increase could have been initiated in 2009, as recommended by a city consultant.

Documents from a 2010 water and sewer bond issue pointed to the upcoming \$1 billion-plus project adding to the city's debt load.

"Provided Metro Water Services continues to meet and exceed benchmarks for operational efficiency, I would hope that both the council and the mayor's office will support adequate funding of MWS' capital program to avoid further penalties from state and federal regulators," she said.

Patrick Palmer, who manages the water pollution and compliance division for TDEC, said Metro deserves credit for developing a thorough plan to comply with the consent decree.

"In the end, it will improve water quality in Nashville," Palmer said.

Contact Nate Rau at 615-259-

EXHIBIT JBF-9

Page 717



To the Board of Directors  
Berry's Chapel Utility, Inc.:

We have audited the balance sheet of Berry's Chapel Utility, Inc. (the "Utility") as of June 30, 2011, and have issued our report thereon dated October 21, 2011. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our engagement letter to you dated March 7, 2011. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Findings

*Qualitative Aspects of Accounting Practices*

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Utility are described in Note 2 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the 2011 fiscal year. We noted no transactions entered into by the Utility during the year for which there is a lack of authoritative guidance or consensus. There are no significant transactions that have been recognized in the financial statements in a different period than when the transaction occurred.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements are:

- fair values allocated to assets acquired and liabilities assumed in the merger of the Utility and Lynnwood Utility Corporation on September 1, 2010
- the reasonableness of depreciable lives for utility plant
- anticipated collection of accounts receivable
- recognition of regulatory assets
- evaluation of the Utility's ability to continue as a going concern and assessment of disclosures of management's plans

We evaluated the key factors and assumptions used to develop the estimate in determining that it is reasonable in relation to the financial statements taken as a whole.

The disclosures in the financial statements are neutral, consistent, and clear.

*Difficulties Encountered in Performing the Audit*

We encountered no significant difficulties in dealing with management in performing and completing our audit.

*Corrected and Uncorrected Misstatements*

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. Additionally, none of the misstatements detected as a result of audit procedures and corrected by management were material, either individually or in the aggregate, to the financial statements taken as a whole.

*Disagreements with Management*

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

*Management Representations*

We have requested certain representations from management that are included in the management representation letter dated October 21, 2011.

*Management Consultations with Other Independent Accountants*

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the Utility's financial statements or a determination of the type of auditors' opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

*Other Audit Findings or Issues*

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the Utility's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Independence

We are not aware of any relationships between our firm and the Utility that, in our professional judgment, may reasonably be thought to bear on our independence which have occurred during the period from September 1, 2010 (date of merger) through the date of this letter.

\*\*\*\*\*

Other Matters

During the course of our audit, we became aware of a matter that is an opportunity for strengthening internal controls and operating efficiency. A summary of our comment and recommendation follows.

Segregation of Duties

Because of limited number of available personnel, it is not always possible to adequately segregate certain incompatible duties, so that no one employee has access to both physical assets and the related accounting records, or to all phases of a transaction. Consequently, the possibility exists that unintentional or intentional errors or irregularities could exist and not be promptly detected.

While our audit did not reveal any significant errors or irregularities resulting from this lack of segregation of employee duties and responsibilities, the Board of Directors should monitor the day-to-day operations of the Utility and review the monthly financial statements, including budgeted amounts for revenues and expenses.

\*\*\*\*\*

This information is intended solely for the use of the Board of Directors and management of the Utility and is not intended to be and should not be used by anyone other than these specified parties.

*Cattimore Black Morgan & Cain, P.C.*

Brentwood, Tennessee  
October 21, 2011

## BALANCE SHEET ACCOUNTS

other hazards to its own property or property leased from others. A schedule of risks covered by this reserve shall be maintained, giving a description of the property involved, the character of the risks covered and the rates used.

B. Charges shall be made to this account for losses covered by self-insurance. Details of these charges shall be maintained according to the year the casualty occurred which gave rise to the loss.

262. Injuries and Damages Reserve

A. This account shall be credited with amounts to be charged to account 658 - Insurance - Workman's Compensation, or other appropriate accounts, to meet the probable liability, not covered by insurance, for deaths or injuries to employees and others, and for damages to property neither owned nor held under lease by the utility.

B. When liability for any injury or damage is admitted by the utility either voluntarily or because of the decision of a court or other lawful authority, such as a workmen's compensation board, the admitted liability shall be charged to this account and credited to the appropriate liability account. Details of these charges shall be maintained according to the year the casualty occurred which gave rise to the loss.

Note:--Recoveries or reimbursements for losses charged to this account shall be credited hereto; the cost of repairs to property of others if provided for herein, shall be charged to this account.

263. Pensions and Benefits Reserve

A. This account shall include provisions made by the utility and amounts contributed by employees, for pensions, accident and death benefits, savings, relief, hospital and other provident purposes, where the funds represented by the reserve are included in the assets of the utility either in general or in segregated fund accounts.

B. Amounts paid by the utility for the purposes for which this reserve is established shall be charged hereto.

C. A separate account shall be kept for each kind of reserve included herein.

Note:--If employee pension or benefit plan funds are included among the assets of the utility but are held by outside trustees, payments into such funds, or accruals therefore, shall not be included in this account unless required payments are made on a periodic basis to the outside trustees of the various funds.

# EXHIBIT JBF-11

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CATEGORY	SUPPLIER	PRODUCT	UNIT COST 2010			UNIT COST 2011			% INCREASE	% of TTL BUDGET
			4/19/2010	4/19/2010	4/19/2010	4/11/2011	4/11/2011	4/11/2011		
CHEMICALS	BRENNTAG	SULFUR DIOXIDE		\$0.53	\$/LB			\$/LB	34.2%	0.65%
CHEMICALS	BRENNTAG	CHLORINE		\$0.86	\$/LB			\$/LB	7.8%	1.08%
CHEMICALS	MESSCO	FERRIC SULFATE & PX	2010	\$11,553.69	LS	2011		LS	23.2%	2.17%
CHEMICALS	WILLIAMSON CTY CO-OP	HYDRATED LIME	5/18/2010	\$9.00	BAG	5/13/2011		BAG	10.0%	0.23%
CHEMICALS	RESEARCH SOLVENTS	METHANOL C	3/18/2010	\$2.00	GAL	5/13/2011		GAL	7.8%	2.88%
CHEMICALS	ADVANTAGE SPECIALTY	POLYMER	2/12/2010	\$2.53	\$/LB	5/15/2011		\$/LB	12.2%	0.80%
UTILITIES	MTEM	ELECTRICITY	4/5/2010	\$0.07	\$/Kwh	5/6/2011		\$/Kwh	15.9%	9.31%
UTILITIES	CITY OF FRANKLIN & HBTS	WATER - PUMP STATION	3/29/2010	\$11.81	\$/Pump Stn	4/19/2011		\$/Pump Stn	12.9%	0.70%
SLUDGE REMOVAL	WASTE MANAGEMENT	SLUDGE HAUL OFF	3/4/2010	\$308.79	\$/LOAD	3/9/2011		\$/LOAD	23%	9.26%
TESTING	TEST AMERICA	NITROGEN & PHOSPHORUS	2010	\$2,040.00	LS	2011		LS	50%	0.60%
FUEL	TRI-STAR	GAS	4/12/2010	\$2.86	\$/gal	5/12/2011		\$/gal	26%	