

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

IN RE: PETITION OF BERRY'S CHAPEL)
UTILITY, INC. TO CHANGE AND) Docket No. 11-00198
INCREASE RATES AND CHARGES)

MOTION FOR EMERGENCY RATE RELIEF

Pursuant to T.C.A. § 65-5-103(2), Berry's Chapel Utility, Inc. ("Berry's Chapel"), formerly known as Lynwood Utility Corporation, files this motion for emergency rate relief.

On November 15, 2011, Berry's Chapel filed the above-captioned rate case seeking an increase in the utility's annual revenue requirement of \$398,853. That request remains pending. Berry's Chapel, however, needs immediate rate relief to pay its bills. For example, the utility owes \$22,000 in property taxes to Williamson County (due February 29, 2012), \$15,000 in taxes to the State of Tennessee, \$25,000 in legal fees, and \$3,000 in accounting fees to the firm's outside auditor. The utility's accounts receivable as of October 31, 2011 are \$142,000. Without rate relief, the utility cannot pay these bills and, at the same time, maintain service to its customers. Without rate relief, the utility's "operations will be materially impaired." See Affidavit of James Burton Ford, attached.

The utility is not merely earning less than a fair return. It is losing money. The quarterly financial report filed with the Authority on November 15, 2011 shows that, based on TRA Form 3.19, the utility's net-operating income was (\$9,471) in the last quarter and (\$376,428) in the last twelve months. A copy of TRA Form 3.19 filed on November 15, 2011 is attached.

The utility's outside auditor, Lattimore Black Morgan & Cain, reported on October 21, 2011, that without increased revenues, the utility may not survive as a going

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concern. The financial report concludes (at p.11), "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 on its ability to increase revenues to reach profitable levels of operation." A copy of the auditor's report is included in the utility's recent rate case filing.

The reasons for the utility's financial condition are readily apparent. In 2009, the Authority awarded the company a rate increase of \$125,618 (Docket No. 09-00034) which should have produced total revenue during the next year of \$691,386. Because of reduced usage (caused both by the downturn in the housing market and the increased use of well water for irrigation), the utility's revenues have never reached that point.¹ During the test period used in the company's current rate case, the utility's total revenues were \$593,509, approximately \$100,000 less than the Authority projected in the 2009 rate decision.

In other words, even if the utility's expenses and rate base had remained unchanged since 2009, the utility today is receiving 14% less in revenue than the Authority found to be necessary for the utility to earn a "just and reasonable" return two years ago. The utility is not merely failing to earn a fair return; it is actually running at a loss. It needs -- and is legally entitled to receive -- immediate rate relief simply in order to reach the level of revenues which the Authority found reasonable two years ago.

Finally, the utility has exhausted its \$250,000 line-of-credit with Tennessee Commerce Bank. The bank is unlikely to extend further credit and other lenders are unlikely to do so in light of the auditor's report.

For the purpose of this motion and to minimize unnecessary disputes over the utility's expenses and rate base, Berry's Chapel proposes that the Authority increase the utility's

¹ The projected volumes used to set rates in the 2009 case were 82,537,000 gallons. The actual volumes in the last three years averaged 71,694,000 gallons per year. The volumes used in the current rate case are 72,570,000 gallons.

rates only by the amount necessary to reach the annual revenue requirement approved by the Authority in the 2009 rate case. In other words, the utility asks only that its tariffs be amended to produce annual revenue of \$691,386. That will require a rate increase of \$108,023.²

There should be no dispute about the need for this increase. It is based on the level of expenses, the size of the rate base, and the cost of capital³ that the Authority approved in the last rate case. The company's expenses have increased significantly during that period, as reflected in the company's recent rate filing and quarterly financial reports.

The utility has been losing money for the past year. It cannot pay its current bills. Without rate relief, it may not survive as a going concern, according to the utility's outside auditor. For these reasons, Berry's Chapel asks that the Authority grant this motion for emergency rate relief to insure the utility's continuance as a going concern.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: 

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Attorneys for Berry's Chapel Utility, Inc.

² This increase is calculated based on an expansion factor of .907. This expansion factor is based on billing costs and uncollectibles and is the same factor used by the Authority in the 2009 rate case.

³ In the last case, the cost of capital approved by the Authority was 8% (Order at 12) which covers the "cost of debt placement along with interest costs." Id. It did not provide for any return on equity to the company's owners.

CERTIFICATE OF SERVICE

A copy of the foregoing has been sent this 29 day of December, 2011 via email to Ryan McGehee and Vance Broemel at the consumer Advocate and protection Division in the Office of the Attorney General.

Henry Walker

A handwritten signature in black ink, appearing to read 'H. Walker', is written over a horizontal line.

AFFIDAVIT OF JAMES BURTON FORD


My name is James Burton Ford. I am a certified public accountant with over forty years experience in public utility accounting. I have filed testimony in support of a petition for a rate increase for Berry's Chapel Utility, Inc. in TRA Docket 11-00198 and I have assisted in the preparation of the "Motion for Emergency Rate Relief," and am personally responsible for the accuracy of the figures cited in the Motion.

The "Motion for Emergency Rate Relief" relies upon data contained in the TRA Form 3.19 filed for Berry's Chapel on November 15, 2011. I prepared that filing and can personally confirm the accuracy of the figures in that filing. The Motion also refers to the utility's accounts receivable as of October 31, 2011, including amounts owed to Williamson County, the State of Tennessee, and to the utility's outside legal and accounting firms. I prepared the list of accounts receivable and can attest to the accuracy of those numbers. I also estimated the amounts owed to Williamson County and the State of Tennessee based on prior tax returns and the methodology used by the State to calculate the utility's property taxes.

The Motion is also based on figures from the 2009 rate case of Lynwood Utility Corporation. I participated in that case and am personally familiar with those figures. I can also attest to the utility's volumes in 2008, 2009, 2010, and 2011, as shown on the attached Exhibit A. I have calculated that rates must be increased by \$108,023 to produce annual revenue of \$691,386, the amount of revenue found reasonable in the 2009 rate case. As explained in the Motion, the calculation is based on an expansion factor of .907, the same factor used in the 2009 case. That calculation is shown on the attached Exhibit B.

In my opinion, the utility's operations will be materially impaired unless the Authority grants the Motion for Emergency Rate Relief.

FURTHER AFFIANT SAYETH NOT.


James Burton Ford

STATE OF TENNESSEE
COUNTY OF DAVIDSON

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)

Personally appeared before me, James Burton Ford, the undersigned, a Notary Public in and for said County and State, the within named James Burton Ford, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand and seal at office in Nashville, Tennessee on this the 29th day of December, 2011.



My Commission Expires JULY 7, 2014


Notary Public
My Commission Expires: July 7, 2014

EXHIBIT A

Berry's Chapel Volumes ('000)

2008	82,537*
2009	68,370
2010	73,120
2011	<u>73,592**</u>
2009-2011 Average:	71,694

* Volumes used in 2009 rate case

** 12 months ending September 30, 2011

EXHIBIT B

Calculation of Emergency Rate Increase

Annual revenue requirement in Docket 09-00034	\$691,386
Total test period revenues in Docket 11-00198	<u>593,509</u>
Shortfall	97,977
Expansion Factor	<u>.907</u>
Total Additional Increase	\$108,023

Company Name: Berry's Chapel Utility, Inc.
 Quarter Ending: 9/30/11

**QUARTERLY REPORT OF REVENUES, EXPENSES AND
 INVESTMENTS FOR WASTEWATER COMPANIES**

	Totals for Current Quarter		Year to Date Totals	
Operating Revenues	This Year	Last Year	This Year	Last Year
1-Residential Sales	193,955	63,107	576,211	\$ 63,107
2-Commercial Sales	4,126	796	11,551	\$ 796
3-Other Revenues - Inspection Fee			245	
3a-Other Revenues - Penalty Charges	1,763	1,064	6,966	\$ 1,064
3b-Other Revenues - Facilities Charge				
4-Total Operating Revenues (Line 1-3)	\$ 199,844	\$ 64,967	\$ 594,973	\$ 64,967
Operation & Maintenance Expenses				
5-Salaries & Wages-Employees (701)				
6-Salaries & Wages-Officers (703)				
7-Employee Pensions & Benefits (404)				
8-Purchased Wastewater Treatment (710)	1,842	404	6,784	404
9-Sludge Removal Expense (711)	6,372		44,220	
10-Purchased Power (715)	15,041	4,425	59,920	4,425
10-Fuel for Power Production (716)				
11-Chemicals (718)	10,684	4,069	39,453	4,069
12-Materials & Supplies (720)	6,507	1,327	20,465	1,327
13-Contracual Services-Billing (730)	20,886	4,834	57,505	4,834
13a-Contracual Services-Professional (731)	19,720	10,411	94,534	10,411
13b-Contracual Services-Testing (735)	1,160	2,306	18,211	2,306
13c-Contracual Services-Other (736)	40,531	11,690	135,926	11,690
14-Rent Expenses (740)	5,000		15,000	
15-Transportation Expense (750)		198		198
16-Insurance Expense (755)	6,355		41,088	
17-Regulatory Commission Expense (765)	6,770		47,517	
18-Bad Debt Expense (770)			(4,289)	
19-Miscellaneous Expense (775)	(1,955)	(1,405)	1,726	(1,405)
20-Total Operation & Maintenance Expenses (Lines 5-19)	\$ 138,913	\$ 38,259	\$ 578,060	\$ 38,259
21-Depreciation Expense	52,014	27,250	198,146	27,250
22-Amort. Contribution in Aid of Construction				
23-Interest Expense	37,585	8,729	161,045	8,729
23-Taxes Other Than Income (408)	10,300	200	34,150	200
24-Income Taxes (409)				
25-Total Taxes (Lines 23-24)	\$ 10,300	\$ 200	\$ 34,150	\$ 200
26-Net Operating Income (Line 4 minus Lines 5-23)	\$ (38,968)	\$ (9,471)	\$ (376,428)	\$ (9,471)

(1) Berry's Chapel began operations on 9/1/2010.

**QUARTERLY REPORT OF REVENUES, EXPENSES AND
INVESTMENTS FOR WASTEWATER COMPANIES**

Company Name: Berry's Chapel Utility, Inc.
Quarter Ending: 9/30/2011

Selected Balance Sheet Items:	For Last 12 Months		Avg. For 12 Mos. to Date	
	This Year	Last Year	This Year	Last Year
26-Utility Plant in Service	5,643,792	5,581,500	5,612,646	5,581,500
27-Construction Work in Progress	36,016		18,008	
28-Utility Plant Acquisition Adjustments				
29-Plant Held for Future Use				
30-Accumulated Depreciation	225,396		112,698	
31-Materials & Supplies				
32-Unamortized Investment Credit				
33-Deferred Income Tax				
34-Contributions in Aid of Construction				
35-Customer Advances for Construction				
36-Preferred Stock				
37-Common Stock				
38-Paid in Capital-Stock				
39-Retained Earnings/Member Equity	1,609,587	1,524,446	1,567,016	1,524,446
40-Long-Term Debt	3,487,240	3,574,912	3,531,101	3,574,921
41-Short-Term Debt	249,250	203,257	226,254	203,257

(1) Berry's Chapel began operations on 9/1/2010.

SUPPLEMENTAL FINANCIAL DATA TO TRA FORM (PSC-3.19)
FOR THE QUARTER ENDED SEPTEMBER 30, 2011

Line #		For the 3 Months Ended 9/30/2011	Average for 12 MTD
	Additions:		
1	Plant-In-Service	5,643,792	5,612,646
2	Plant Under Construction	36,016	18,008
3	Property Held For future Use		
4	Materials and Supplies		
	Other Additions (Itemize):		
5	Deposits	3,000	3,000
6	Deferred Debits	185,320	227,160
7	Working Capital	143,000	143,000
8	Total Additions	\$ 6,011,128	\$ 6,003,814
	Deductions:		
9	Accumulated Depreciation	225,396	112,698
10	Accumulated Deferred Income Taxes		
11	Unamortized Investment Credit - Pre-1971		
12	Customer Deposits		
	Other Deductions (Itemize):		
13	Contribution in Aid of Construction		
14			
15			
16	Total Deductions	\$ 225,396	\$ 112,698
17	Rate Base (Line 8 less Line 16)	\$ 5,785,732	\$ 5,891,116
18	Net Operating Income (NOI) LOSS	<u>\$ 50,631</u>	<u>\$ (17,237)</u>
	Adjustments to NOI (Itemize)		
19	Depreciation Expense	\$ 52,014	\$ 198,146
20	Amortization Expense		
21			
22			
23			
24	Adjusted Net Operating Income (Loss)	<u>\$ (1,383)</u>	<u>\$ (215,383)</u>
25	Rate of Return (Line 24 divided by Line 17)	-0.02%	-3.66%

All amounts should be calculated in a manner consistent with the last Rate Order issued by the Authority for this company.

CONTINUING SURVEILLANCE CONSIDERATIONS: Estimate the effect on net operating income of very significant known changes occurring within the period covered by this report which are not fully reflected in the revenue and expense amounts shown in the report 7410

TRA (PSC) Form - 3.19

Company Name: Berry's Chapel Utility, Inc.
 Quarter Ending: 9/30/2011

Type of Customer		Number Billed at End of Period				
Line #	Meter Size	Residential	Commercial	Industrial	Other	Total
22	4"	838	2			840

Totals	838	2			840
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1. This report is required for all companies that had operating revenues in excess of \$100,000 during the preceeding year but less than \$1,500,000 per TRA Rule 1220-4-1-.10. Type amounts onto spreadsheet and file report sixty days after the reported ending date.

2. Show amounts rounded to the nearest dollar.

3. List other customers listed in the meter section under the "Remarks" section below.

4. Put any additional comments in the "Remarks" section below.

REMARKS

Berry's Chapel began operations on 9/1/2010.

I certify that to the best of my knowledge and belief this is a true and correct report.

Date: _____ Signature: _____

Name Typed: Tyler Ring

Title: President

Phone: (615) 599-0784