

# TENNESSEE REGULATORY AUTHORITY

Kenneth C. Hill  
Director



460 James Robertson Parkway  
Nashville, TN 37243-0505

The Honorable Ron Ramsey  
Lieutenant Governor  
1 Legislative Plaza  
Nashville, TN 37243-0219

Re: Letter from Mr. John C. Baker Regarding Berry's Chapel Utility

Dear Governor Ramsey,

Thank you for the opportunity to respond to the letter of November 26, 2012 from Mr. John C. Baker. The Tennessee Regulatory Authority has pending dockets concerning Berry's Chapel Utility, so my response cannot include comments on those matters which I will be called upon to ultimately decide.

Berry's Chapel is a small wastewater utility that serves subdivisions in Williamson County. Berry's Chapel was formerly known as Lynwood Utility Company. Lynwood was issued a certificate of public convenience and necessity in 1976, was sold to Southern Utility Corporation in 2001, and transferred to the owners/shareholders of Southern Utility, John and Tyler Ring, in 2004.

Around September 2010, Lynwood merged into Berry's Chapel Utility, which was formed by the Rings as a non-profit corporation. Berry's Chapel then notified the TRA that, in its view, it was no longer subject to our regulation or jurisdiction. Because it considered itself a "non-utility," Berry's Chapel raised its rates without TRA approval. Subsequently, the Consumer Advocate and Protection Division of the Office of the Attorney General filed a petition before the TRA in Docket No. 11-00005 requesting a declaratory ruling that Berry's Chapel was still subject to TRA regulation. While that matter was pending, the General Assembly enacted Chapter 430 of the Public Acts of 2011, which made it clear that Berry's Chapel was subject to TRA regulation. Upon passage of the clarifying statute, Berry's Chapel notified the TRA that it had stopped charging and collecting the higher rates. The TRA declared that Berry's Chapel had been subject to our jurisdiction even before the statute was enacted, and opened a "show cause" in Docket 11-00065 to address the issue of refund of the monies collected when the higher rates were impermissibly charged and other regulatory violations. Berry's Chapel appealed the TRA's decision that it was subject to our jurisdiction before the statute was enacted and, consequently, the show cause and the refunds were held in abeyance pending the Court's decision. The TRA has vigorously defended our decision through the filing of briefs, and oral

kenneth.c.hill@tn.gov  
Office (615) 741-4648 Fax (615) 532-7481  
[www.tn.gov/tra](http://www.tn.gov/tra)

arguments were held before the Court of Appeals on December 13, 2012. The Court issued an opinion on December 21, 2012, affirming the TRA's decision in all respects.

In the meantime, because Public Chapter 430 clarified our current jurisdiction over Berry's Chapel, the TRA has taken steps to bring Berry's Chapel back into regulatory compliance. The TRA granted the transfer of the certificate of public convenience and necessity from Lynwood to Berry's Chapel in Docket No. 12-00046. However, to address some of the financial and management concerns surrounding the Company, the TRA placed several conditions on the transfer. Most significantly, the TRA required Berry's Chapel to enter into a management contract to provide financial, facility management and accounting services, in order to ensure the long-term stability of utility services. Berry's Chapel is also subject to a series of billing audits by TRA staff. Our staff has recently completed its field work on one such audit. Berry's Chapel must also give proper notice to its customers prior to filing a request for a rate change, and notify the Authority prior to its annual meetings.

Berry's Chapel also sought recovery of additional costs from the 2009 floods which damaged Lynwood/Berry's Chapel's facilities in Docket No. 11-00180, and sought a rate increase in Docket No. 11-00198, referenced by Mr. Baker. These two matters were heard and decided together by the Authority earlier this year.

With this background and these events in mind, I will address each of Mr. Baker's points below.

#### **Unauthorized Fees Collected**

As previously noted, the TRA declared that Berry's Chapel was subject to our jurisdiction during the time period when Berry's Chapel declared that it was no longer subject to our regulation. During that period, Berry's Chapel alleged it was a "non-utility" and raised its rates without TRA approval. Subsequently, the TRA opened a "show cause" proceeding in Docket 11-00065 to address the refund of the monies collected and other regulatory violations. Berry's Chapel appealed the TRA's decision that Berry's Chapel was subject to our jurisdiction and, consequently, the show cause proceeding and the refunds were held in abeyance pending the Court's decision. The TRA has vigorously defended our decision before the Court of Appeals and the Court issued an opinion on December 21, 2013 affirming the TRA's decision in all respects. TRA staff have been in contact with Berry's Chapel and were told that the Company will not pursue additional appeals. Staff will meet with representatives of Berry's Chapel in early January to discuss the on-going show cause proceeding and a process for refunding the unauthorized rate increase.

#### **Rate Increase of June 8, 2012**

The Hearing in Docket Nos. 11-00180 (flood damage cost recovery) and 11-00198 (request for a rate increase) was conducted on June 7, 2012 in accordance with the Uniform Administrative Procedures Act. The Consumer Advocate was a party to the case and represented the interests of the consumers. The Hearing was open to the public, and members of the public were invited to comment. Mr. Mike Webb, a Cottonwood subdivision resident and representative of 270 homeowners appeared and spoke at the Hearing.

Mr. Tyler Ring of Berry's Chapel pre-filed written testimony in the docket and testified in person at the Hearing. By agreement of Berry's Chapel and the Consumer Advocate, the written testimony of the other witness for Berry's Chapel, Mr. Scott Davis, was entered into the record and he did not take the stand. The Consumer Advocate's expert witnesses, Mr. William Novak, Dr. Chris Klein and Mr. Dave Peters also pre-filed written testimony in the docket. They were available to testify in person at the public hearing, but by agreement of parties, their written testimony was entered into the record and they did not personally testify at the Hearing.

It should be noted that the rate increase was approved on June 8, 2012 by a three-director panel consisting of Mary Freeman, Sara Kyle and myself. Director Freeman fully participated at the Hearing and deliberated and voted on the petitions; however, she left the TRA before the issuance of the final written order.

In establishing revenue requirements for utilities, the Authority takes into consideration all revenues, expenses and investment related items of a utility. The Authority receives expert testimony from company witnesses and generally from the witnesses of the Consumer Advocate. The Authority has its own expert Staff that analyzes the evidence and assists the Directors in making their decisions. There is a balance between ensuring a company is financially healthy enough to provide reliable and quality service, yet have affordable consumer rates. It is often more difficult with smaller outdated systems because costs to maintain and refurbish are high, yet there are often fewer customers to spread the costs over. Moreover, as set forth above, the Authority has put measures in place for Berry's Chapel that should lead to better operating results and better service to consumers.

The Company originally petitioned the Authority for a rate increase of nearly \$400,000 annually. After gathering of evidence and completion of its analysis, the Consumer Advocate Division filed testimony asserting that rates should be increased by approximately \$169,000 annually. Subsequent to an evidentiary hearing, the Authority approved an overall rate increase of approximately \$180,000 annually, which includes a 7.5% return for the Company.

As Mr. Baker mentions, there are only about 850 total customers, so when infrastructure or other problems arise, there are no economies of scale as there are with municipal sewer systems and utility districts. Therefore, it is not surprising that a comparison of rates with Franklin and Brentwood shows that Berry's Chapel has significantly higher rates.

### **Rate Design**

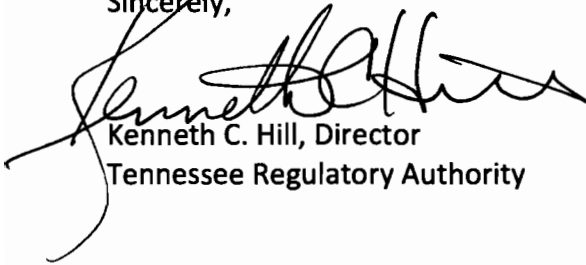
The Consumer Advocate proposed a more complex system of rates geared more toward recovering costs based upon water usage. Unfortunately, this system of rates does not recover costs in the manner in which they occur because most costs are fixed (e.g., plant, insurance, electricity, etc.) and do not fluctuate based on water usage. Accordingly, the Authority approved a rate structure that recovers costs more equitably since fixed costs do not vary on water usage. Since this structure generates a larger portion of revenues from fixed rates, the utility should also benefit from a more stable flow of revenues.

## **Appellate Process**

Mr. Baker wrote to me and I explained in my response that he should contact the Consumer Advocate, who was a party to the case on behalf of the consumers, for information concerning appellate rights. Both letters were filed in the docket file and are publicly available. I have no additional information about any communications between the Consumer Advocate and Mr. Baker.

Please feel free to contact me if you have any additional questions or concerns. Thank you for all you do to assist the citizens of Tennessee.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth C. Hill", with a long, sweeping horizontal stroke extending to the right.

Kenneth C. Hill, Director  
Tennessee Regulatory Authority