

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

IN RE:

**PETITION OF BERRY'S CHAPEL
UTILITY, INC. TO CHANGE AND
INCREASE RATES AND CHARGES**

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DOCKET NO. 11-00198

**RESPONSE OF THE CONSUMER ADVOCATE TO LYNWOOD/BERRYS CHAPEL'S
MOTION FOR EMERGENCY RATE RELIEF**

On behalf of affected ratepayers, the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), respectfully responds to the *Motion for Emergency Rate Relief* filed by Berry's Chapel Utility, Inc., f/k/a Lynwood Utility Corporation ("Berry's Chapel/Lynwood") with the Tennessee Regulatory Authority ("TRA" or "Authority"). The Consumer Advocate submits the relief requested by Berry's Chapel/Lynwood is premature and improper.

This docket was initiated as a rate case on November 15, 2011, a proceeding governed by Tenn. Code Ann. § 65-5-103. However, in the midst of this proceeding, prior to any discovery by interested parties or consideration of evidence by the Authority, Berry's Chapel/Lynwood has requested an "emergency" rate increase. The request is inappropriate and contrary to Authority practice and Tennessee law.

The Consumer Advocate submits there are several outstanding regulatory matters which have not been addressed and which affect the interest of consumers and the basic tenets of utility regulation. These are issues which must either be resolved or well on their way to resolution before consideration of any such relief. Those consumers that paid the unlawful \$20 monthly rate increase/surcharge, which the Authority concluded in Docket 11-00005 should not have

been charged, have not received their refunds for the amounts paid plus the statutory interest to which they are entitled. Additionally, Berry's Chapel has had the benefit of retaining the unlawfully collected surcharge for a significant period of time. The credit proposed by Berry's Chapel/Lynwood in Docket 11-00180 will not provide a dollar for dollar refund for the majority of consumers that paid the unlawful surcharge. The Utility's proposal would not be fair because some consumers paid the surcharge while others did not. Despite not all of Berry's Chapel/Lynwood's customers having paid the improper surcharge, the credit proposed by the Utility would be spread equally to all. While this may seem like a step in the right direction, it does not make whole those households that paid the unlawful surcharge and it does not address the length of time Berry's Chapel held the funds they improperly collected. Those consumers that paid the unlawful surcharge must receive a dollar for dollar refund or credit. Once the Utility has fully paid the refunds, the TRA may wish to consider whether Berry's Chapel/Lynwood should also be made to show cause why it shouldn't be fined and ordered to pay attorneys fees to the Attorney General and the TRA for time spent litigating the unlawful surcharge.

Moreover, the corporate status of Berry's Chapel/Lynwood remains unresolved. The merger of Berry's Chapel and Lynwood was never approved by the Authority, a violation of Tenn. Code Ann. §§ 65-4-112, 65-4-113. Thus, Berry's Chapel, the entity filing this rate case, has no certificate of convenience and necessity to provide wastewater treatment services. With the filing of the rate case and supporting materials, including an audit, the Utility consists of a sewage treatment plant with two different corporate identities and apparently two separate sets of books. Whether Berry's Chapel/Lynwood is a non-profit or for-profit company greatly affects the setting of rates. The emergency rate relief sought by Berry's Chapel/Lynwood is based on

the result of the 2009 rate case which set rates for the for-profit utility. If Berry's Chapel/Lynwood is now holding itself out as a non-profit, it is entirely inappropriate to use the 2009 rate case order as a basis for emergency relief. In fact, had Berry's Chapel not filed the instant rate case, it would have been entirely reasonable for the Authority to require Berry's Chapel to appear before the TRA and justify continuing the rates and other elements of the Order in its last rate case (TRA Docket 09-00034).

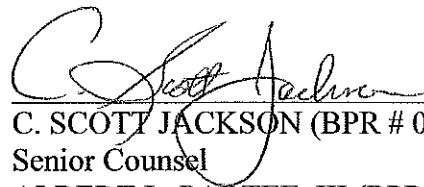
Berry's Chapel/Lynwood has also failed to comply with a settlement agreement approved by the Authority in Docket 08-00060 in an Order which authorized a volumetric surcharge for odor control costs for a specific amount over a specific period. The expense amount and time period for the recovery of "odor control" measures have long since been exceeded. Yet, Berry's Chapel/Lynwood continues to flagrantly ignore the terms of the Order and continues to charge a volumetric surcharge which is no longer authorized by the Authority. It is not in the public interest to allow a public utility to remain in breach of an Order of the Authority while granting it an increase in rates paid by consumers. Berry's Chapel/Lynwood is coming to this Authority seeking extraordinary relief without having its own house in order.

While Berry's Chapel/Lynwood's request for emergency relief focuses entirely on the state of the Utility's revenues, there is no evidence Berry's Chapel/Lynwood has sought to offset lower revenues by lowering administrative and legal expenses. Based on the Utility's rate case petition, expenses for management, administrative costs and legal fees have risen considerably since the last rate case in 2009. This is but one example of the many flaws in Berry's Chapel's "emergency" request.

Simply put, Berry's Chapel has shown that it is willing to ignore clear Orders of the Authority and that it will do what it pleases, not what the Authority allows. It has presented no

credible proof that it is in need of either an "emergency" rate increase or even the "regular" rate increase sought in its petition. Accordingly, the Motion for Emergency Rate Relief should be denied and the ongoing "regular" rate case should continue and a schedule for discovery and other related matters should be entered.

RESPECTFULLY SUBMITTED,


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Dated: January 6, 2012.

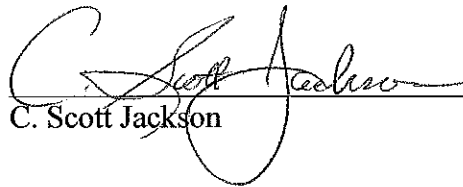
CERTIFICATE OF SERVICE

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

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This the 6TH day of January, 2012.


C. Scott Jackson