

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**March 21, 2012**

**IN RE:**

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

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**DOCKET NO.  
11-00198**

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**ORDER ON JANUARY 26, 2012 STATUS CONFERENCE**

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This matter came before the Hearing Officer of the Tennessee Regulatory Authority ("TRA" or the "Authority") during a Status Conference held on January 26, 2012 at the request of the parties, Berry's Chapel Utility, Inc. ("Berry's Chapel" or the "Company") and the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), to consider issues related to the proceeding, including discovery, stipulation or agreements between the parties.

**RELEVANT PROCEDURAL BACKGROUND**

On January 18, 2012, the Hearing Officer issued an order granting the Consumer Advocate's request for intervention in the docket and setting a date for the parties to file a proposed procedural schedule and protective order.<sup>1</sup> On January 19, 2012, the Consumer Advocate filed certain discovery requests for the response of Berry's Chapel, a joint proposed protective order, and a joint proposed procedural schedule.<sup>2</sup>

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<sup>1</sup> *Order Granting Petition to Intervene of Consumer Advocate and Requiring the Parties to Submit a Proposed Procedural Schedule and Protective Order* (January 18, 2012).

<sup>2</sup> *Discovery Request of the Consumer Advocate and Protection Division to Berry's Chapel Utility, Inc.* (January 19, 2012), *Joint Proposed Protective Order* (January 19, 2012), and *Joint Proposed Procedural Schedule* (January 19, 2012).

On January 24, 2012, the Hearing Officer issued a *Protective Order*, a Notice of Status Conference, and an *Order Setting Procedural Schedule*, which included a Procedural Schedule, attached as Exhibit A. The *Protective Order* and Procedural Schedule, except for certain minor revisions, were materially unchanged from those proposed by the parties.<sup>3</sup> In accord with the Procedural Schedule, the Notice of Status Conference set a status conference with the parties for January 26, 2012.<sup>4</sup>

On January 20, 2012 and January 25, 2012, respectively, various customer complaints related to the charging of an unauthorized \$20.00 customer service fee and delinquency notices and collection efforts of Berry's Chapel in relation to this fee received by the TRA Consumer Services Division electronically online and by letter, were filed in the docket file.

#### **JANUARY 26, 2012 STATUS CONFERENCE**

The Status Conference was convened as noticed at approximately 2:00 p.m. in the Hearing Room on the Ground Floor of the Tennessee Regulatory Authority at 460 James Robertson Parkway, Nashville, Tennessee. The parties in attendance were as follows:

**For Berry's Chapel:**

**Henry Walker, Esq.**, Bradley Arant Boult Cummings, 1600 Division Street, Suite 700, Nashville, Tennessee 37203; and,

**For the Consumer Advocate:**

**Scott Jackson, Esq. and Albert L. Partee III, Esq.**, Office of the Attorney General, Consumer Advocate and Protection Division, P.O. Box 20207, Nashville, Tennessee, 37202.

During the Status Conference, the parties informed the Hearing Officer that, while there was no issue as to the propriety of the Consumer Advocate's discovery questions that had been propounded on January 19, 2012, Berry's Chapel stated that it would have difficulty providing responses to certain questions in the format that had been requested by the Consumer Advocate.

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<sup>3</sup> *Protective Order* (January 24, 2012) and *Order Setting Procedural Schedule* (January 24, 2012).

<sup>4</sup> Notice of Status Conference (January 24, 2012).

Thus, in order to conduct discovery as expediently and inexpensively as possible, Berry's Chapel extended an offer to both the Consumer Advocate and the TRA Staff to visit the Company's offices in Brentwood, Tennessee, and with the assistance of Company employees, access whatever information they need that is on the premises.

In addition, due to his unavailability for three weeks, counsel for Berry's Chapel authorized the Consumer Advocate's accounting staff and analysts, and attorneys if necessary, to communicate directly with Mr. Jim Ford of Berry's Chapel in his absence. Further, the parties agreed that the attorneys, along with technical staff, for the Consumer Advocate were authorized to tour the Company's physical plant, even should such tour be scheduled during the three-week absence of counsel for Berry's Chapel.

Finally, the Hearing Officer inquired as to the Company's anticipated response to certain consumer complaints concerning non-payment of a \$20 customer service fee and threatened disconnection for payment delinquency that had been filed in the docket file. Berry's Chapel stated that it intended to send consumers a follow-up letter explaining that the disconnect notice was not intended to be an attempt to collect the illegal service charge. Rather, that customers whose account reflects a past due balance should deduct from the balance any amounts attributed to the service charge and then pay any remaining balance. Berry's Chapel stated that a copy of the follow-up letter would be provided to the Authority.

Therefore, finding the agreements of the parties to be reasonable, the Hearing Officer accepted such agreements in resolution of the matters discussed during the Status Conference.

  
Kelly Cashman-Grams, Hearing Officer