

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 23, 2012

IN RE:

**PETITION OF BERRY'S CHAPEL UTILITY,
INC. TO RECOVER COSTS TO REPAIR
FLOOD DAMAGE AND TO REFUND
CUSTOMER SERVICE FEES**

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**DOCKET NO.
11-00180**

IN RE:

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

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**DOCKET NO.
11-00198**

ORDER ON MARCH 1, 2012 STATUS CONFERENCE

This matter came before the Hearing Officer of the Tennessee Regulatory Authority ("TRA" or the "Authority") during a Status Conference with 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"), held on March 1, 2012. The Status Conference, for which public notice had been issued on February 23, 2012, was held for the purposes of discussing the progression of the above-styled dockets and to establish a procedural schedule in Docket No. 11-00180.

On March 1, 2012, the Status Conference was convened 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 Dave Peters, Office of the Attorney General, Consumer Advocate and Protection Division, P.O. Box 20207, Nashville, Tennessee, 37202.

Progression of Docket No. 11-00198

During the Status Conference, the parties informed the Hearing Officer that the Procedural Schedule, issued in Docket No. 11-00198 on January 24, 2012, was generally moving forward to their satisfaction. The Consumer Advocate stated that although it was still on track to file its pre-filed direct testimony on March 15, 2012, it had not yet received all of the Company's responses to its discovery. The parties indicated that they were continuing to work together and did not anticipate a problem in resolving the discovery issues. Further, the Consumer Advocate indicated that the second round of discovery may not be as comprehensive as initially anticipated. The Hearing Officer advised the parties that, depending on the questions that were propounded during the second round of discovery, there may be an opportunity to condense the Procedural Schedule at that time. The Hearing Officer advised the parties that the Procedural Schedule would be reconsidered upon commencement of the second round of discovery.

Procedural Schedule in Docket No. 11-00180

In addition, the Hearing Officer raised for discussion the options of either consolidating Docket Nos. 11-00180 and 11-00198, or moving Docket No. 11-00180 forward in tandem with the procedural schedule previously established in Docket No. 11-00198. The Consumer Advocate agreed with the prospect of moving the Company's petition for flood costs and customer refund in Docket No. 11-00180 forward consistent with the procedural schedule in Berry's Chapel's rate case Docket No. 11-00198. The Consumer Advocate noted that there was only about 1 ½ months remaining until the rate case would be heard by the Authority. Further, while it had not filed discovery requests in Docket No. 11-00180, the Consumer Advocate stated that it had asked discovery questions concerning the flood costs in the rate case docket.

Therefore, the Consumer Advocate stated that it would be prepared to file testimony, which included a discussion of flood costs, in accordance with the procedural schedule in Docket No. 11-00198 on March 15, 2012, and could also file testimony in Docket No. 11-00180 on that date, if needed.

Berry's Chapel disagreed with consolidating or moving Docket No. 11-00180 forward with its rate case in Docket No. 11-00198. Berry's Chapel contended that the parties should be able to stipulate as to the expenses involved in its petition for recovery of flood costs. Hence, a hearing should not be necessary in Docket No. 11-00180. The Company further stated that it did not wish to combine what it considers to be the discrete issues of flood costs and the refund of the customer service fee, with its rate case proceedings. Instead, it would prefer that those issues be resolved as soon as possible before the hearing in its rate case. The Company asserted that a resolution of the issues in Docket No. 11-00180 before the commencement the hearing in its rate case, would streamline the rate case hearing Docket No. 11-00198. Regardless of its disagreement with moving the dockets in tandem, the Company supported setting the date for pre-filed testimony by the Consumer Advocate in Docket No. 11-00180 on March 15, 2012.

Thereafter, the Hearing Officer and parties discussed in greater depth the issues involved in Docket No. 11-00180, the extent of agreement between the parties on these issues, and their relation to or impact on the rate case proceedings in Docket No. 11-00198. The Consumer Advocate stated that it disagrees with the Company's proposed method of recovering its flood costs through a surcharge then providing a refund credit for the illegal service charges billed to customers. It asserted that the recovery of the flood costs and the refund to which the customers are entitled are wholly separate and unrelated issues and should not be considered bound together. The Consumer Advocate also stated that it disfavors a surcharge in this instance because it asserts that Berry's Chapel charged a previously approved odor control surcharge

beyond the approved time period. Therefore, the Consumer Advocate asserted that flood costs should be included in rates, rather than recovered through a surcharge.

The Company contended that its proposal of tying a refund of the customer service fee, in the form of a credit, to its cost recovery in Docket No. 11-00180 arose largely as a result of the current financial distress of the Company. Berry's Chapel asserted that it does not have the cash flow to refund customers by direct payment. As a result of its financial hardship, the Company asserted that the method for recovering its costs and refunding customers proposed in its petition is the only way in which it can reimburse customers. Further, the Company disagreed that the flood costs should be included in rates.

Thereafter, the Hearing Officer set a partial procedural schedule with the following filing deadlines, to which the parties agreed:

March 2, 2012 - Requests for Discovery with Responses Already Received

Ongoing – Supplementation of Discovery Responses to be filed in Docket Nos. 11-00180 and 11-00198

March 15, 2012 - Direct Pre-filed Intervenor Testimony

Follow-up Letter to Berry's Chapel Customers

Thereafter, the Hearing Officer requested that the Company provide an update as to the status of the customer follow-up letter, which the Company had stated during the Status Conference held on January 26, 2012, it intended to send to consumers and file with the Authority. In response, the Company stated that a letter had been sent to customers and that, although it had not done so yet, it would file a copy in Docket No. 11-00198. The Company further stated that the Consumer Advocate had also sent a letter to the customers of Berry's Chapel that had received a collection letter. The Consumer Advocate agreed to file a copy of its letter to Berry's Chapel consumers in the docket file.

Additional Request

In addition, the Company requested that the Hearing Officer designate TRA Staff as a party in the dockets. The Company stated that certain TRA Staff members had already been designated as a party in the Authority's Show Cause proceeding against Berry's Chapel in Docket No. 11-00065, and as a result, those staff members were not permitted to participate in an advisory capacity in several other Berry's Chapel dockets, including both 11-00180 and 11-00198. The Company asserted that those TRA Staff members were already separated and ineligible to participate as advisors and the parties believe it would be helpful to them in their discussions of the issues in these dockets. Therefore, the Company asked that those already-designated TRA Staff members be made a party in Docket No. 11-00198. The Consumer Advocate stated that while it hesitated to require TRA Staff to participate as party, it agreed with the Company that such participation might be helpful. The Hearing Officer advised the parties that their request would be taken under advisement.

IT IS THEREFORE ORDERED THAT:


1. The following filing deadlines shall be in effect:

March 2, 2012 - Requests for Discovery with Responses Already Received

Ongoing – Supplementation of Discovery Responses to be filed in Docket Nos. 11-00180 and 11-00198

March 15, 2012 - Direct Pre-filed Intervenor Testimony

2. Berry's Chapel Utility, Inc. and the Consumer Advocate and Protection Division of the Office of the Attorney General shall each file in Docket No. 11-00198 a copy of the customer letter it sent to consumers in follow-up to consumer complaints filed in the docket file.



Kelly Cashman-Grams, Hearing Officer