

LAW DEPARTMENT

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January 25, 2013

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JAN 31 2013

TN REGULATORY AUTHORITY
UTILITIES DIVISION

VIA REGULAR MAIL

James Allison, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

**Re: Berry's Chapel Utility, Inc.'s Amendments to Tariff
Docket No. 11-00198**

Dear Chairman Allison:

I am in receipt of Berry's Chapel Utility, Inc.'s ("BCU") Amendments to Tariff ("Amendments"), Docket No. 11-00198. Please accept this letter as written opposition to the proposed amendments.

On December 7, 2012, BCU filed its Amendment. Many of the proposed amendments directly affect the City of Franklin ("City"). However, BCU failed to copy the City on its filing. Although BCU states the effective date was to be January 6, 2013, the City respectfully requests the TRA to stay BCU's requests until the matter can be heard and decided by the TRA at an upcoming conference. BCU should not be allowed to file an Amendment with an effective date, giving them the "authority" to damage City property and to control water valves owned solely by the City.

The City strongly opposes BCU being granted authority to "terminate water service for the non-payment of sewer charges as well as a 10% late payment penalty, fees related to the termination of service and any reconnection fee." Further, the City strongly opposes BCU being granted authority to "purchase and install, at the Customer's expense, a water shut-off valve on the [c]ustomer's side of the water meter." BCU requests "exclusive right to use the shut-off valve as necessary to enforce collection of those charges and fees." BCU's requests are unprecedented within the City. BCU's Amendment, as it pertains to City-supplied water, installing a water shut-off valve, and shutting off water should be denied.

On April 12, 2011, BCU and the City entered into an agreement for the collection of sewer service charges ("Agreement") (a copy of which has been attached as Exhibit A). The Agreement provides that the City will render combined statements for its water service charges and BCU's sewer service charges in accordance with the City's normal billing cycle(s). (See paragraph 6.) Further, the Agreement provides:

In the event a BCU customer does not pay its sewer service charges when due, CITY agrees to enforce the collection of the sewer charges in the same manner as CITY enforces the collection of its water service charges. Such enforcement of collection shall include mailing of late notices, assessing late charges (or disallowing discounts) and, when appropriate, cutting of water service to that customer until such time as full payment is made by that customer. CITY shall be entitled to retain one hundred [percent] (100%) of all water cut off and reconnection charges assessed and collected from BCU's sewer customers as a result of non-payment or other breach of contract."



BCU's current Amendment is superfluous and unprecedented. The issues brought by BCU in its Amendment are addressed in the Agreement.

Water provided to BCU sewer customers is not provided by BCU. When a City water customer applies for water service, they sign an Application and Agreement for Service with the City ("Application"). They are told that they are subject to the City rules and regulations. BCU customers execute a separate section of the Application agreeing and authorizing the City to enforce the provisions of the Application and authorizing the City to collect late payment, cut off and reconnection charges and to terminate water and sewer for failure to abide by the terms of the Application. (A copy of the Application is attached as Exhibit B.)

The water meter and the water valves are public infrastructure, owned solely by the City. Franklin Municipal Code ("FMC") §18-120 states "...all meters, service connections, and other equipment furnished by or for the city shall be and remain the property of the city." FMC §18-123 states "[n]o person shall turn on or turn off any of the city's stop cocks, hydrants, spigots, fire plugs, or valves without permission or authority from the city." BCU has not been so authorized. FMC §18-111(1) provides that, "[n]o meter shall be tampered with..." Further, FMC §18-111(5) provides for fines should unauthorized tampering of a water meter occur. What BCU is asking in its Amendment is not authorized by the City. BCU should not be allowed by its own effective date or by TRA to tamper with City owned water meters or to install water shut-off valves. No proposed Amendment can supersede the City's ordinances simply by purporting to have that right. The water providers (in this case, the City) have the sole authority, absent agreement, to control water meters and water valves.

The City respectfully requests this matter be added to a conference agenda and respectfully requests to be heard at such conference.

Should you have any questions or concern, please feel free to contact me.

Yours truly,

Shauna R. Billingsley
Shauna Billingsley
City Attorney

Enclosure

Cc: Jean Stone, General Counsel for the Tennessee Regulatory Authority
Vance Broemel, Senior Counsel for Consumer Advocate and Protection Division
Henry Walker, Counsel for Berry's Chapel Utility, Inc.

**AGREEMENT BETWEEN
THE CITY OF FRANKLIN, TN AND BERRY'S CHAPEL UTILITY, INC.
FOR THE COLLECTION OF SEWER SERVICE CHARGES**

This Agreement is made this the 12th day of April, 2011, by and between Berry's Chapel Utility, Inc., hereinafter called "BCU" and the City of Franklin, Tennessee, hereinafter called "CITY", which in consideration of mutual promises and covenants made herein, agree as follows:

WHEREAS, CITY entered into a contract with Lynwood Utility Company, Inc. dated December 14, 1999 as amended June 19, 2007, to bill and collect Lynwood's sewer service charges from Lynwood's customers who also receive water service from the City, and

WHEREAS, Lynwood merged with Berry's Chapel Utility, Inc. with Berry's Chapel Utility, Inc being the surviving corporation; and

WHEREAS, CITY and BCU wish to continue the relationship previously established by CITY and Lynwood.

NOW THEREFORE, in light of the recitals, which are incorporated herein by reference, and the promises herein contained that CITY and BCU, in consideration of the premises and of the mutual covenants herein set forth, do mutually agree as follows:

1. BCU operates a Central Sewerage and wastewater collection system within an area in which CITY provides water service. BCU has requested and CITY has agreed to bill and collect sewer service charges for BCU from its customers who receive water service from CITY.
2. BCU will provide its sewer service rate schedule to CITY in writing, as amended from time to time, thirty (30) days in advance of its effective date to allow CITY time to modify its computer billing system.
3. CITY will supply to BCU any changes to CITY's billing policies or related fees that would affect BCU's sewer customers sixty (60) days in advance of the effective date to allow BCU time to modify its rules and regulations and fees and charges, if necessary.
4. Upon request, CITY will provide to BCU a listing of BCU's customers who receive water service from CITY, together with each customer's monthly water consumption, for purposes of establishing and monitoring BCU's sewer service rates.
5. BCU's sewer service rate schedule shall in all cases be multiplied by the quantity of water billed by CITY in the current billing cycle for water service, inclusive of any meter adjustments or other adjustments for current or prior billing cycles, consistent with CITY's normal policies and procedures for such adjustments, and exclusive of any sales taxes on such water service. Water provided by the City through a separately metered "irrigation" meter is excluded for purposes of applying the sewer service charge. CITY shall compute and bill to each of BCU's sewer customers for the resulting sewer service charge.
6. CITY will render combined statements for its water service charges and BCU's sewer service charges in accordance with CITY's normal billing cycle(s). CITY will cause to be printed on its billing statement the name, address and telephone number of the BCU office and BCU's sewer

customers will be instructed to contact BCU directly concerning complaints and maintenance of the sewer system.

7. In the event a BCU sewer customer does not pay its sewer service charges when due, CITY agrees to enforce the collection of the sewer charges in the same manner as CITY enforces the collection of its water service charges. Such enforcement of collection shall include mailing of late notices, assessing late charges (or disallowing discounts) and, when appropriate, cutting off water service to that customer until such time as full payment is made by that customer. CITY shall be entitled to retain one hundred (100%) of all water cut off and reconnection charges assessed and collected from BCU's sewer customers as a result of non-payment or other breach of contract.
8. On or before the twentieth (20th) day of each month, CITY will deliver to BCU the gross amount CITY has collected from BCU's sewer customers for BCU sewer services through the last day of the previous month, less a service fee equal to seven and one-half percent (7.5%) of the gross amount collected, which sum shall be retained as the sole and separate property of CITY for providing the services agreed upon in this Agreement.
9. CITY will provide to BCU with its monthly remittance one or more monthly reports which show for each BCU customer the customer's account number, the customer's name, the service address and the amounts billed and/or collected on behalf of BCU for sewer service charges. The totals per this report(s) shall equal the gross amount due BCU in accordance with this contract. It shall be the responsibility of BCU to reconcile the monthly report to its records and to notify CITY of any billing discrepancies discovered on a timely basis.
10. BCU shall pay to CITY the full cost for setup and programming of CITY's billing system necessary to implement this agreement.
11. CITY will refer to BCU any inquiries regarding new sewer service in BCU's area of service. BCU will determine if a new sewer customer will be accepted for connection to its sewer and wastewater collection system. If accepted, BCU will collect the appropriate sewer tap fees, connection fees and/or inspection fees and will provide the new sewer customer with a receipt and authorization form.
12. CITY and BCU may establish a combined application and contract form for water and sewer service. CITY may accept applications and contracts on behalf of BCU for any transfers of existing sewer service. CITY may accept applications and contracts for new sewer service only upon presentation of a valid receipt and authorization form for new sewer service. CITY shall maintain in its files copies of all such applications and contracts for new & transferring customers. Upon termination of this contract, or upon request from time to time by BCU, CITY will supply BCU with copies of such applications and contracts. CITY shall retain one hundred percent (100%) of its application & connection fees for new & transferring customers.
13. CITY shall have no duty to repair or maintain any portion of BCU's sewer system except by separate agreement between the parties.
14. The parties agree to cooperate fully in exchanging information and implementing procedures to fully implement the intent of this contract. BCU shall have access to the books of CITY concerning the administration of this contract from time to time as BCU sees fit upon reasonable notice to CITY of its intent to do so.

15. Before CITY incorporates BCU'S sewer service rates, rules and regulations in its billing as contemplated herein, BCU shall obtain the approval of the Tennessee Regulatory Authority ("TRA") of a revised tariff incorporating such rates, rules and regulations and shall notify CITY in writing upon receipt of such approval provided BCU is subject to regulation by the TRA.
16. If BCU is subject to regulation by the TRA, and in the event CITY receives an order and notice from the TRA that the Authority has suspended or revoked BCU's certificate of public convenience and necessity to operate sewer utility pursuant to Authority Rule 1220-4-13-.09, CITY shall withhold administrative fees and charges authorized by this Agreement, then pay all remaining sewer service charges collected for BCU after the receipt of the order and notice to the TRA, a court appointed receiver or other entity or person whom the TRA directs which entity or person shall be responsible for continuing the operation of BCU's sewer system.
17. BCU shall indemnify and hold harmless CITY from and against any and all claims related to the CITY'S obligation to pay sewer charges to the TRA, a court appointed receiver or other entity or person to whom the TRA directs which entity or person shall be responsible for continuing the operation of BCU'S sewer system.
18. This Agreement may be terminated by either party by the giving of ninety (90) days written notice to the other party.

WITNESS the execution hereof this day and date first above written.

BERRYS CHAPEL UTILITY, INC.

By: 

Tyler L. Ring
President

CITY OF FRANKLIN, TENNESSEE

By: 

Dr. Ken Moore
Mayor
109 3rd Avenue South
Franklin, TN 37064

ATTEST:

By: 

Eric Stuckey
City Administrator

Approved as to form:

By: 

Shauna R. Billingsley
City Attorney



City of Franklin Application and Agreement for Service

P.O. Box 487

Franklin, TN 37065

Phone (615) 794-4572

Fax (615) 550-1954

Date you want service to begin: _____

For office use

Account No: _____

3 Day notice required

Are you sales tax exempt: Yes _____ No _____ If yes, proper documentation must be provided.

Are you subject to reduced tax rate? Yes _____ No _____ If yes, proper documentation must be provided.

Name _____ Co-Applicant _____

Service Address _____

Subdivision _____ Lot # _____

Mailing Address _____

City _____ ST _____ Zip _____

S.S. # _____ S.S. # _____

D.L. # _____ STATE _____ EMAIL _____

Home phone _____ Daytime contact phone _____

Will you own or rent at this new location? Own _____ Rent _____ *(Copy of lease required Signed by Landlord & Tennant)*

If renting, name of landlord _____

Are you currently a City of Franklin Water Dept customer? _____ If yes, please give address you are transferring from: _____

_____ Account No _____

Do you want service terminated at the old address? _____ If yes, give date _____

Is there any medical reason that service cannot be interrupted? _____ Explain: _____

Written verification from a medical doctor is required before meter can be labeled as non cut-off

_____ I want to opt-in and automatically round up my monthly utility bill to the nearest whole dollar to support affordable housing.

\$50.00 Application fee paid by: CASH _____ CHECK _____ 1ST BILL _____

(Continued on other side)

Exhibit B



HISTORIC
FRANKLIN
TENNESSEE

City of Franklin Application and Agreement for Service

P.O. Box 487

Franklin, TN 37065

Phone (615) 794-4572

Fax (615) 550-1954

There is a \$15.00 per month, charge for solid waste disposal for residences located within the city limits of Franklin. The monthly rate for each additional container will be \$7.50. If you have questions, or need further assistance, please contact the Solid Waste Department at 615-794-1516.

Commercial solid waste disposal is optional and fees are based on usage and type of container. A separate application is necessary for this service. Please advise this office if you need this service.

A non-refundable fee of \$50.00 is payable when service is requested to offset bookkeeping and field work incurred by the City of Franklin as services are made available.

I hereby make application to the City of Franklin for water and/or sewer and/or garbage service and agree to pay for such according to prevailing rates.

I understand that all service is subject to the rules and regulations of the City of Franklin, which may be amended from time to time and that these rules and regulations are part of this agreement.

I represent that neither I, the applicant, nor spouse, nor any other resident in the household owes the City of Franklin a delinquent bill. Any misrepresentation herein shall be grounds for discontinuance of service.

I further agree to pay all indebtedness for services rendered and in the event of a past due account, I shall pay reasonable expenses of collection, legal, attorney fees and otherwise.

I hereby acknowledge receipt of information sheet regarding rules and regulations and billing information.

Customer Signature

Date

Co-Applicant Signature

Date

LYNWOOD UTILITY COMPANY APPLICATION FOR SEWER

(Route 71)

I hereby request the provision of sewer service from Lynwood Utility Company, Inc. I agree to pay all indebtedness for services rendered and in the event of a past due account, I shall pay reasonable expenses of collection, including court costs, legal and attorney fees and all other costs.

I further agree and authorize the City of Franklin or its agents to enforce all provisions of this contract. I specifically authorize the City of Franklin or its agents to collect late payment charges, cut off and reconnection charges and further authorize them to terminate my water and sewer service for failure to abide by the terms of this Agreement. I recognize them as the lawful agents for Lynwood Utility Company, Inc. in the enforcement of this Agreement.

Customer Signature

Date

Co-Applicant Signature

Date