

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

| | | |
|--------------------------------------|---|-----------------------------|
| IN RE: |) | |
| |) | |
| COMPLAINT AND PETITION OF THE |) | |
| CONSUMER ADVOCATE TO SUSPEND |) | DOCKET NO. 13-00027 |
| TARIFF NO. 2012-0374 PENDING |) | TARIFF NO. 2012-0374 |
| MODIFICATION AND THE |) | |
| PROVISION OF REFUNDS DUE TO |) | |
| CONSUMERS |) | |

ANSWER TO COMPLAINT AND MOTION TO DISMISS

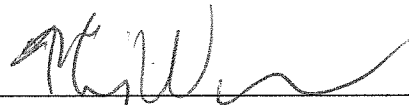
Berry's Chapel Utility, Inc. ("BCUI") has previously filed a response to the arguments raised in the above-captioned complaint filed by the Consumer Advocate and Protection Division ("CAPD") objecting to recent amendments to BCUI's tariffs. A copy of that response is attached. BCUI resubmits this filing as an Answer to the Complaint.

In addition to the points raised in the attached response, BCUI also notes that the Authority's rules require that a wastewater utility either (1) contract with the customer's water provider to interrupt water service if necessary to enforce collection of a wastewater charge or (2) install and use a cutoff valve in the customer's water line to enforce collection of a sewer charge. TRA Rules 1220-4-13-.14(2). BCUI's amended tariffs, which were reviewed by the TRA staff prior to being filed, are now in effect. The water cutoff procedures described in the amended tariffs are consistent with the TRA's rules and with the TRA-approved tariffs of other regulated wastewater companies.

For the reasons set forth in the attached response and described above, the Complaint has no merit and should be dismissed.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP


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CERTIFICATE OF SERVICE

I hereby certify that on the 26 day of February, 2013, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S.

Mail, postage prepaid, addressed as follows:

Ryan McGehee
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202-0207



HENRY WALKER

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

| | | |
|---------------------------------|---|-----------------------------|
| IN RE: |) | |
| |) | Tariff No. 2012-0374 |
| TARIFF FILING OF BERRY'S |) | |
| CHAPEL UTILITY, INC. |) | |

RESPONSE OF BERRY'S CHAPEL TO CONSUMER ADVOCATE

Berry's Chapel Utility, Inc. ("Berry's Chapel") submits this response to the "Motion of the Consumer Advocate to Suspend Proposed Tariff."¹ Berry's Chapel filed this tariff on December 7, 2012. It became effective on January 6, 2013. The new tariff simplifies and clarifies the old tariff of Lynnwood Utility Corporation. Consistent with the tariffs of other wastewater utilities, the new tariff also authorizes Berry's Chapel to terminate water service to enforce the collection of sewer charges.

Approximately half of the customers of Berry's Chapel (those who receive water service from the City of Franklin) are already subject to the loss of water service if they fail to pay their sewer bill. Under the proposed tariff, Berry's Chapel will be able to terminate water service to its other customers following proper notice as provided in the utility's tariffs. In order to terminate water service, Berry's Chapel may install a water shut off valve on the customer's side of the

¹ The Consumer Advocate filed the Motion in Docket 11-00198, which was the company's rate case filing. The tariff, however, was not filed in that docket. This tariff was filed with the TRA's docket clerk instead of being filed directly with the TRA's Utilities Division. Although the tariff did not have any docket number on it and was not intended to be filed in any docket, the TRA docket clerk assigned it the docket number of the rate case and typed the rate case docket number on the front of the filing. This led the Consumer Advocate to conclude understandably but erroneously, that the tariff had been filed as part of the rate case.

At this time, this is no more than a tariff filing, not a contested case proceeding. The utility asks that the TRA correct its records to reflect this. Berry's Chapel suggests that the Motion of the Consumer Advocate should more properly be treated as a complaint and a request to open a contested case.

water meter. The customer will be charged for the cost of the valve. Based on the experience of other wastewater utilities, Berry's Chapel anticipates that this remedy will rarely, if ever, be needed to enforce collection. In the absence of such a remedy, however, there is no safe, cost-effective way to collect sewer bills.²

Attached are copies of similar tariff provisions of four other wastewater utilities. One, Aqua Green, requires the customer to pay \$100 for the shut-off valve. Another, Tennessee Wastewater, implies that the customer is responsible for the cost of the shut-off valve (customer "authorizes TWSI to purchase and install a cut off valve") but does not specify a price. A third, DSH, does not say explicitly whether the customer pays for the valve but says the customer must pay "all reasonably incurred costs of collection." Of course, as with any customer charge, the cost of installing a shut-off valve must be "just and reasonable" and non-discriminatory as required by state law.

The proposed tariff, which was reviewed by the TRA staff prior to filing, is therefore consistent with the tariffs of other wastewater providers. The shut-off process is a rarely used, but necessary, means of collecting sewer charges. The cost of the valve should be charged to the customer responsible, not to the other customers on the system.

The Consumer Advocate is concerned that Berry's Chapel may not have accurate information about which customers are owed refunds as a result of a recent decision of the Tennessee Court of Appeals and, therefore, that Berry's Chapel may inadvertently use the shut-off process to collect more than a customer owes. Since its earlier discussions with the Consumer Advocate, the utility has, in fact, now determined exactly which customers are owed

² As the TRA determined when it first approved this approach several years ago, shutting off sewer service without shutting off water service creates a potential health hazard. Therefore, following discussions between the TRA and wastewater carriers, it was decided that sewer companies should be allowed to shut off a customer's water instead of shutting off the sewer service.


refunds and the amount of that refund. The utility is working with the TRA Staff and the Consumer Advocate to determine how those refunds will be made and to insure that no customer will be subject to termination unless the customer's unpaid balance is larger than the amount of any refunds.

The Consumer Advocate also raises other concerns which are not germane to this tariff and, in some cases, are based on outdated information.³ Those issues are also being addressed with the Staff and the Consumer Advocate but have no legal bearing on whether this proposed tariff is necessary and reasonable.

The Consumer Advocate's "Motion" (or Complaint) should be denied.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

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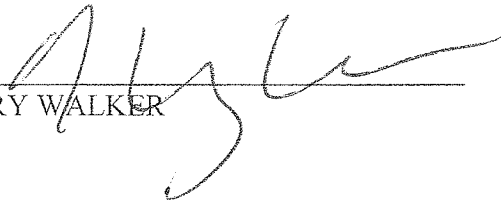
³ For example, the utility has not collected the odorization surcharge since July, 2012. That issue is the subject of Docket 08-00060.

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of July, 2013, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S.

Mail, postage prepaid, addressed as follows:

Ryan McGehee
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202-0207


HENRY WALKER

Wastewater Utility Service

RULES AND REGULATIONS (CONTINUED)

Utility Facilities on Private Property:

The Company shall own and maintain all STEG and STEP Tanks, control systems, and service lines required to provide sewer service on the Customer's premises. The Customer shall execute an agreement granting an easement to the Company for maintenance of the sewer system. The building, plumbing, and Stub-out Line shall be maintained by the Customer.

Service Disconnection:

Service under any application may be discontinued due to the following:

1. Non-payment of bill;
2. Misrepresentation;
3. Adding to the property or fixtures without notice to the Company;
4. Tampering with any service pipe, tank, control system, filter, or any other facilities of the Company;
5. Violation of any Company rules and regulations; and
6. Disconnecting or reconnecting service by a party other than a duly authorized agent of the Company without the Company's express consent.

In the occurrence of any of the foregoing, the Company reserves the right to install a shut-off valve between utility water service and the Customer until remedial measures are taken to the Company's satisfaction.

Non-payment Penalties:

A non-payment penalty of 5% of the monthly charges will be owed if the bill is paid after the due date shown on the bill. If payment is not received within 15 days after being due, written notice will be sent to the Customer by U.S. Certified Mail. If payment is not received within 30 days after being due, sewer service will be discontinued from the Customer's property pursuant to the terms of the Sewer Subscription Agreement executed by the Customer and the Company with no additional notice. No service shall be reconnected if discontinued for non-payment until all charges have been paid, including, without limitation, disconnection fees and reconnection fees. The disconnection fee is \$10.00 and the reconnection fee is \$15.00.

Returned Checks or Instruments:

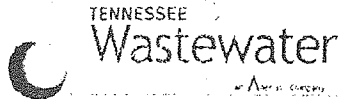
The Company will charge the Customer a \$20.00 fee for all checks or instruments returned by the bank.

WASTEWATER UTILITY SERVICE

Utility Facilities on Private Property

The Company shall maintain all septic pump and septic gravity tanks, control systems and service lines required to provide sewer services on the Customer's premises. The Customer must execute an agreement that acknowledges the Company to have a perpetual easement in, over, under and upon the specified land of Customer as shown on the property plat, with the right to operate and repair all components of the sewer system on the Customer's property, including but not limited to the septic tank and septic pump tank systems. The Customer must grant the Company permission to enter upon Customer's property for any reason connected with the provision or removal of sewer service or collection therefore. The Customer must agree to allow the Company to install an approved cut off valve between the house and water supply and grant the Company exclusive rights to use such valve to cut off water in order to safely stop wastewater flow. The Customer understands there will be a charge of \$100.00 for installation of this valve. The Customer's Building Plumbing and Building Outfall Line shall be maintained by the Customer.

ATTACHMENT #1



SEWER SUBSCRIPTION CONTRACT

DATE: _____

PRINTED NAME _____

ADDRESS OF PROPERTY _____

LOT # _____

MAILING ADDRESS _____

TELEPHONE NUMBER _____

EMAIL ADDRESS _____

I hereby make application to Tennessee Wastewater Systems, Inc. ("TWS") for sewer service at the address of property stated above. In consideration of the undertaking on the part of TWS to furnish sewer service, I understand, covenant and agree as follows:

1. I understand that the components of a sewer system have been installed on the property referred to above, which is owned or occupied by me, and which is to be connected with a wastewater disposal system owned and/or maintained by TWS. I warrant that any connection to and/or subsequent use to this system by the components on my property shall be in accordance with the Rules, Regulations and Plans of TWS. Regarding my usage of the system components on my property, which are owned by me, I covenant to follow the guidelines set forth in the USER MANUAL (Do's and Don'ts for an Effluent Collection System). Should I violate these Rules and/or abuse or damage my components, I understand that I must bear the expense to repair or replace the same in accordance with the Plans of TWS.
2. I acknowledge TWS, its successors and assigns have a perpetual easement in, over, under and upon the above specified land as shown on the property plat, with the right to operate and repair all components of the sewer system on my property, including but not limited to the interceptor tank and the Interceptor Pump or Interceptor Gravity Tank systems. I further grant TWS permission to enter upon my property for any reason connected with the provision or removal of sewer service or collection therefore.
3. For all other plumbing and structures on the property, including the outfall line to the interceptor tank, I agree that I am responsible for all operation and repair thereof.
4. I hereby authorize TWS to purchase and install a cutoff valve on my side of my water meter and grant TWS exclusive right to use such valve in accordance with its Rules and Regulations. However, the use of this valve does not in any way relieve me of my obligation to pay for water service to the service provider.
5. I understand and agree to pay a security deposit of \$60.00, to promptly pay for service at the then current schedule of rates and fees and agree to abide by and be subject to TWS's billing and cutoff procedures. Should I not pay in accordance with TWS's Rules, I agree to pay all costs of collection, including attorney fees.
6. I accept the current Rules and Regulations and the Rates and Fees Schedule and agree to abide by any amendments to such Schedules.
7. I agree that this Agreement shall remain in effect for as long as I own, reside upon or rent the above-described property. When such circumstances no longer exist, I agree to provide notice to TWS at least thirty (30) days in advance of my vacating the property.

SUBSCRIBER'S SIGNATURE

SECTION 2 RULES AND REGULATIONS

Governing the sewage collection and treatment systems of DSH & Associates (DSH)

Statement of Purpose

The general purpose of these rules and regulations is:

1. To establish procedures for furnishing sewage collection and treatment services on a uniform basis to customers within the Company's service area.
2. To provide standards and procedures for:
3. Acceptable sewage characteristics
4. Protection of the integrity of the water tight system
5. Engineering design standards
6. Construction standards and inspection requirements
7. Quality of materials

Authorization of Rules and Regulations

DSH & Associates, LLC is a corporation organized and engaged in business as a public utility in the State of Tennessee. The Company is regulated Under a Certificate of Convenience and Necessity issued the Tennessee Public Service Commission (PSC) July 1, 2011, under Docket No. 11-00020 and subsequent certificates issued by the PSC and the TRA.

Effect of Rules and Regulations

All provisions of these rules and regulations shall be incorporated in each contract with each sewage system customer of the Company

Utility Facilities on Private Property

The Company shall maintain all septic pump and septic gravity tanks, control systems and service lines required to provide sewer services on the Customer's premises. The Customer must execute an agreement that acknowledges the Company to have a perpetual easement in, over, under and upon the specified land of Customer as shown on the property plat, with the right to operate and repair all components of the sewer system on the Customer's property, including but not limited to the septic tank and septic pump tank systems. The Customer must grant the Company permission to enter upon Customer's property for any reason connected with the provision or removal of sewer service or collection therefore. The Customer must agree to allow the Company to install an approved cut off valve between the house and water supply and grant the Company exclusive rights to use such valve to cut off water in order to safely stop wastewater flow. The Customer's Building and Plumbing outfall line shall be maintained by the Customer.

Discontinuance of Service

Service under any application may by dis-continued for the following reason:

1. Non-payment of bill as hereinafter set forth below
2. For misrepresentation of application
3. For adding to the property without notice of the Company
4. For tampering any service pipe, tank, control system, filter or any other facilities of the Company in any way whatsoever.
5. For violation of any rules of the Company.
6. For disconnecting or reconnecting service by any party, other than a duly authorized agent of the Company without the consent of the Company.

Non-Payment Penalties

The Customer agrees to promptly pay for service at the then current schedule or rates and fees and agrees to abide by and be subject to the Company's billing and cutoff procedures. Should the Customer not pay in accordance with the Company's rules, the Customer agrees to pay all reasonably incurred cost of collection of delinquent fees including attorney fees.

The non-payment penalty will be \$25 per billing cycle. If payment is not received within fifteen days after the due date, a 2nd