

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

June 25, 2013

IN RE:)	
)	
PETITION OF BERRY'S CHAPEL FOR)	DOCKET NO.
APPROVAL OF DEFERRED ACCOUNTING)	13-00052

ORDER APPROVING REQUEST FOR DEFERRED ACCOUNTING

This matter came before Chairman James M. Allison, Vice Chairman Herbert H. Hilliard and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on May 6, 2013 for consideration of the *Petition for Approval of Deferred Accounting* ("Petition") filed on April 1, 2013.

Relevant Background

On June 8, 2012, the Authority approved a transfer of the Certificate of Convenience and Necessity ("CCN") formerly held by Lynwood Utility Corporation ("Lynwood") to Berry's Chapel Utility, Inc. ("Berry's Chapel" or the "Company") and approved an annual rate increase of \$180,840 for Berry's Chapel.¹ The Authority also considered the Company's petition for separate recovery of costs relating to the May 2010 flood. The Authority approved \$90,345 in flood costs to be recovered via a monthly surcharge of \$8.93 per customer for twelve months.² The panel noted

¹ The transfer of the CCN was made effective September 1, 2010, which is the date when Lynwood merged into Berry's Chapel and Berry's Chapel took over the operation of Lynwood's sewer treatment and collection system.

² See *In re: Petition of Berry's Chapel Utility Inc. to Recover Costs to Repair Flood Damage and to Refund Customer Service Fees*, Docket No. 11-00180, *Final Order*, p. 2 (August 21, 2012).

that if additional expenses are incurred which are specifically related to the May 2010 flood, Berry's Chapel may petition the Authority for possible recovery.³

Berry's Chapel *Petition*

On April 1, 2013, Berry's Chapel filed its *Petition* seeking to defer additional costs incurred as a result of the May 2010 flood. The Company states that the flood-related expenses previously approved by the Authority did not include legal fees for subsequent legal work performed relating to the recovery of flood expenses.⁴ Berry's Chapel states that as of December 31, 2012, it had received bills for \$18,111 in legal expenses related to the May 2010 flood. If the Authority approves a deferral of the expenses, the Company states that it will seek recovery of these expenses at a later date.⁵

On May 3, 2013, the Consumer Advocate and Protection Division of the Office of the Attorney General ("CAPD") filed a *Petition to Intervene for Purposes of Stating a Position for the Record* ("CAPD's *Petition to Intervene*"). The CAPD requested that the Authority allow it to intervene "for purposes of stating a position for the record on behalf of the public interest because consumers may be adversely affected."⁶ The CAPD stated that it was not requesting that the Authority convene a contested case proceeding but only seeks an opportunity to submit a written response to Berry's Chapel's *Petition* and filed its *Position of the Consumer Advocate*.⁷

May 6, 2013 Authority Conference

At the Authority Conference held on May 6, 2013, the panel first considered the CAPD's *Petition to Intervene*. The panel found that the CAPD's *Petition to Intervene*, which was filed at

³ *Id.* at 17.

⁴ *Petition*, p. 1 (April 1, 2013).

⁵ *Petition*, p. 2 (April 1, 2013).

⁶ CAPD's *Petition to Intervene*, p. 1 (May 3, 2013).

⁷ *Id.* at 2.

the close of business on Friday, May 3, 2013, was not filed timely pursuant to Tenn. Code Ann.

§ 4-5-310(a)(1). Tenn. Code Ann. § 4-5-310(a)(1) provides:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

In addition, the panel declined to exercise its discretion under Tenn. Code Ann. § 4-5-310(b) to allow the intervention. Tenn. Code Ann. § 4-5-310(b) states:

(b) The agency may grant one (1) or more petitions for intervention at any time, upon determining that the intervention sought is in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.

The panel found that Berry's Chapel had not had an opportunity to respond to the *CAPD's Petition to Intervene* and granting, or even considering, the *CAPD's Petition to Intervene* would prejudice the Company. The panel noted that if Berry's Chapel seeks recovery of the legal fees, the CAPD will have an opportunity to request intervention and, if granted, to state its position at that time. Thereafter, the panel voted unanimously to deny the *CAPD's Petition to Intervene*.⁸

Next, the panel considered the *Petition* filed by Berry's Chapel. The panel found that the proposed treatment of the flood costs requested by Berry's Chapel is an accepted regulatory accounting treatment and is consistent with the Authority's rulings in previous dockets.⁹ Deferral of cost recovery associated with this extraordinary event is warranted because the costs were incurred as a result of an act of nature and beyond the Company's control. Further, deferral of the expense recovery is proper since the Company incurred these infrequent and unusual

⁸ As a result of the panel's denial of the *CAPD's Petition to Intervene*, the Authority did not consider the *Position of the Consumer Advocate* filed on May 3, 2013.

⁹ See *In re: Petition of Kingsport Power Company d/b/a AEP Appalachian Power for Approval to Defer Certain Costs Associated with Winter Storms Occurring in December 2009*, Docket No. 10-00144, *Order Granting Request for Deferred Accounting* (October 5, 2010); See also *In re: Docket to Evaluate Chattanooga Gas Company's Gas Purchases and Related Sharing Incentives*, Docket No. 07-00244, *Order*, p. 6 (September 23, 2009).

expenses but did not have a mechanism in which to recover these costs in current rates. While changes in costs and/or revenues are generally the foundation for filing a rate case, it is acceptable in certain circumstances to carve out one event, especially one outside of the Company's control. The deferral of this expense has no effect on the ratepayers at this time and does not guarantee future recovery, or recovery of the entire amount, if such recovery is sought by the Company. Based on these findings and the administrative record in this matter, the panel voted unanimously to approve the *Petition* filed by Berry's Chapel.


IT IS THEREFORE ORDERED THAT:

1. The *Petition to Intervene for Purposes of Stating a Position for the Record* filed by the Consumer Advocate and Protection Division of the Office of the Attorney General is denied.

2. The *Petition for Approval of Deferred Accounting* filed by Berry's Chapel Utility, Inc. is granted.

Chairman James M. Allison, Vice Chairman Herbert H. Hilliard and Director Kenneth C. Hill concur.

ATTEST:



Earl R. Taylor, Executive Director