

BEFORE THE TENNESSEE REGULATORY AUTHORITY **RECEIVED**

NASHVILLE, TENNESSEE

2013 JUL 31 PM 12:33

T.R.A. DOCKET ROOM

PETITION TO RECOVER)
FLOOD RELATED COSTS RESULTING) DOCKET No. 13-00109
FROM IMPROPER FILING BY THE)
CONSUMER ADVOCATE)

**PETITION TO RECOVER FLOOD-RELATED COSTS RESULTING FROM
IMPROPER FILING BY THE CONSUMER ADVOCATE**

Berry's Chapel Utility, Inc. ("Berry's Chapel") petitions the Tennessee Regulatory Authority to allow the utility to recover from customers \$2,762.50 in flood-related costs. These costs arise from the Company's continuing efforts to recover expenses incurred as a result of the May, 2010 flood, described by the Authority as an "extraordinary event" and "an act of nature . . . beyond the Company's control." Order in Docket 13-00052, June 25, 2013, at 3. In approving the utility's request to defer these "infrequent and unusual expenses," the Authority explained 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." *Id.*, at 2. This is a petition for recovery of a portion of those expenses.

On May 31, 2013, Berry's Chapel and the Authority Staff¹ filed a "Settlement Agreement" in Docket 11-00065. The Staff and the Company agreed that the Company had spent \$19,781.25 in legal costs to recover losses from the 2010 flood, that the Company was entitled to recover those expenses from ratepayers, and that the most practical method of

¹ References in this Petition to the "Staff" refer to those members of the TRA Staff who have been assigned to investigate and, if necessary, prosecute this enforcement proceeding and have been administratively separated from the TRA's advisory staff as required by T.C.A. § 4-5-303(a) and 304.

recovery would be to allow the Company to apply the expenses against refunds owed to customers. See "Settlement Agreement" in Docket 11-00065, paragraph 30, at 6-7.

The Consumer Advocate opposes this Agreement because, among other things, the Advocate apparently does not believe that Berry's Chapel should be allowed to recover any flood-related legal expenses. Those expenses, therefore, continue to grow as the Company and the Staff respond to the Advocate's arguments and prepare for a hearing, now scheduled for September 9, 2013, as to whether the Settlement Agreement is in the public interest and whether it may be approved by the Authority without the concurrence of the Advocate.

In the course of this litigation, the Hearing Officer entered a procedural order setting forth a briefing schedule. In violation of that order, the Advocate filed a "Statement of Positions and Claims" on July 3, 2013. On July 8, 2013, Berry's Chapel and the Staff filed a "Motion to Strike" the Advocate's filing. In an Order issued July 18, 2013, the Hearing Officer allowed the Advocate to withdraw the filing or, if the Advocate failed to withdraw it, held that it should be struck. In so ruling, the Hearing Officer found the Advocate's filing illegal. She wrote that it "demonstrates disregard for the agreement reached between the parties themselves, the procedural practices and rules of the Authority, and the Procedural Order rendered by the Hearing Officer and entered in the docket." Order, at 7.

As a result of this improper filing by the Advocate, Berry's Chapel incurred legal expenses totaling \$5,525.00. Of that amount, the Company has allocated half to the recovery of flood expenses addressed in the Settlement Agreement and half to other matters addressed in the Agreement. Therefore, Berry's Chapel requests recovery of \$2,762.50 in flood-related legal costs that directly resulted from the Advocate's filing.

Attached as exhibits to this Petition are the detailed invoices for these expenses and proof of payment by Berry's Chapel.

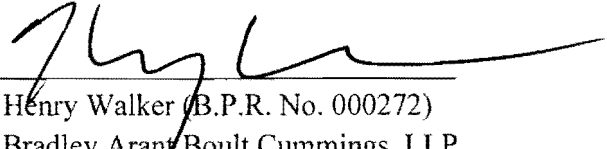
Berry's Chapel has discussed this Petition with the Authority Staff and represents that the Staff has no objection to this request. Indeed, there can be no dispute that the Advocate's illegal filing caused the Company to incur additional expenses in order to defend the Settlement Agreement and recover its flood-related legal costs.

For these reasons, Berry's Chapel asks that the Petition be granted. Because this request is closely related to the Settlement Agreement scheduled to be considered by the Authority on September 9, 2013, the Company and the Staff ask that this request be heard at the same time.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: _____



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CERTIFICATE OF SERVICE

I hereby certify that on the 30th 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:

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

Shiva Bogarth
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243



HENRY WALKER

3. PROCEEDING AGAINST
65. BERRY'S CHAPEL UTILITY

ALABAMA DISTRICT OF COLUMBIA MISSISSIPPI NORTH CAROLINA TENNESSEE

Berry's Chapel Utility f/k/a Lynwood Utility Corporation
Attention Tyler Ring
PO Box 1667
Franklin, Tennessee 37064-1667

July 29, 2013
Matter No. 202510-301004
Atty: HW
Invoice No. 866557

Federal Tax ID: 63-0243316

RE: Flood

For Legal Professional Services Posted Through 07/29/13	\$2,762.50
For Expenses Posted Through 07/29/13	<u>\$0.00</u>
TOTAL THIS INVOICE	<u>\$2,762.50</u>

RE: Flood

Description of Services

<u>Date</u>		<u>Tkpr</u>	<u>Hours</u>
07/03/13	Read the CAD's brief in opposition to the settlement; discussed brief with Shiva; research and initial drafting of motion to strike; made several rounds of edits.	HW	2.00
07/05/13	Made more rounds of edits to Motion to Strike CAD's brief; finished complete draft of Motion and sent to Shiva with comments; continued working on Motion over the weekend and made further, substantial edits.	HW	2.00
07/08/13	Call to Shiva about strategy and changes in Motion to Strike; library research on AG's opinion on settlements and meaning of "claim." Did two more rounds of edits and sent to Shiva for review; studied language of settlement again; call to Shiva about his edits and suggestions; made final edits and authorized Shiva to sign and file; sent filing to Tyler with comments and to Terry with comments.	HW	1.50
07/15/13	Studied CAD's response to motion to strike; call from Shiva to discuss response and strategy; email to Terry about CAD's response; response from Terry.	HW	0.50
07/19/13	Read Hearing Officer's opinion on motion to strike; talked to Shiva about next steps.	HW	0.25
07/22/13	Read CAD's notice of withdrawal of filing; call to Shiva; email to Tyler.	HW	0.25
Total Legal Professional Services Posted Through 07/29/13			\$2,762.50
Total This Invoice			<u>\$2,762.50</u>

 Baker & Botts
A FORTUNE 500 COMPANY