

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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

PETITION TO INTERVENE

Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118, respectfully petitions the Tennessee Regulatory Authority ("TRA" or "Authority") to grant the Consumer Advocate's intervention into this proceeding on behalf of the public interest because consumers may be adversely affected. For cause, Petitioner would show as follows:

1. The Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118 to represent the interests of Tennessee consumers of public utilities services by initiating and intervening as a party in proceedings before the Authority in accordance with the Uniform Administrative Procedures Act and Authority rules.

2. Berry's Chapel Utility, Inc., f/k/a Lynwood Utility Corporation ("BCUI") is a public utility regulated by the Authority and provides wastewater service to consumers located in Williamson County, Tennessee. Approximately 800 residential customers and two non-residential customers receive waste water service from BCUI/Lynwood.

3. The Consumer Advocate has consistently maintained, and the TRA has confirmed that BCUI is, and has always been, a regulated utility. Despite this fact, BCUI's bills to

customers exceeded the charges authorized under its tariff for two years. The disposition of those illegally charged and collected funds and whether they will be returned to the consumers who paid them are among the items within the scope of the Show Cause Docket, Docket No. 11-00065.

4. The Consumer Advocate intervened in the Show Cause Docket, Docket No. 11-00065 to represent the interests of all consumers.

5. The Consumer Advocate filed its pleading, the Consumer Advocate's Statement of Positions and Claims, 15 days after it was granted intervention in Docket No. 11-00065.

6. BCUI opened this Docket No. 13-00109 to recover legal fees for filing a Motion to Strike in the Show Cause Docket, Docket No. 11-00065, which requested the Hearing Officer to strike the Consumer Advocate's Statement of Positions and Claims. BCUI did not provide notice in its Motion to Strike in the Show Cause Docket, Docket No. 11-00065 that it was seeking or would seek legal fees for its filing.

7. The Consumer Advocate offered to withdraw its Statement in its Response to avoid unnecessary litigation and delay, unaware that BCUI would seek legal fees for filing its Motion to Strike. The Consumer Advocate withdrew its Statement on July 22, 2013. If the Consumer Advocate had notice BCUI would request legal fees related to the Motion to Strike, the Consumer Advocate would have argued in a different manner rather than offering the "compromise" of withdrawing the pleading to avoid unnecessary litigation.¹

¹ The Hearing Officer characterized the Consumer Advocate's offer to withdraw its Statement as a "compromise." *Order Allowing Withdrawal of the Consumer Advocate's Statement of Positions and Claims, or Upon a Failure to So Withdraw, Granting the Motion to Strike*, Docket No. 11-00065, pg. 5 (July 18, 2013).

8. Tennessee law clearly states that a hearing officer “shall give all parties full opportunity to file pleadings, motions, objections and offers of settlement.” Tenn. Code Ann. § 4-5-308(a).

9. BCUI/Lynwood is requesting to have this proceeding heard on September 9, 2013, but the Consumer Advocate opposes this request for several reasons:

- a. First, this is a separate docket that has not yet been deemed a “contested case.”
- b. Second, the Consumer Advocate has not been authorized to intervene.
- c. Third, the agency is required to approve or deny petitions for intervention a minimum of twenty-four (24) hours prior to any hearing, as indicated in Tenn. Code Ann. § 4-5-310 (d).
- d. Fourth, a hearing in September does not provide an opportunity for the Consumer Advocate to file pleadings, discovery, or briefs in this Docket.

10. The issues raised in this Docket are different than those raised in Docket No. 11-00065, including but not limited to:

- a. Whether the request for attorneys fees for filing the Motion to Strike was waived since it was not requested in the Motion to Strike, but rather it was made only after the Consumer Advocate withdrew.
- b. Whether the original Consumer Advocate’s Statement of Positions and Claims filed in Docket No. 11-00065 was in fact a pleading that “shall be” allowed to be filed under Tenn. Code Ann. § 4-5-308(a); and
- c. Whether a party can be awarded legal fees to defend itself in a show cause docket, since the Motion to Strike was filed in the Show Cause Docket, Docket No. 11-00065.

11. Because this Docket presents new issues and requires its own discovery and legal analysis, hearing the matter on September 9, 2013 does not allow for the opportunity for a meaningful hearing and public participation.

12. Only by participating in this proceeding can the Consumer Advocate work to insure that all unauthorized charges collected from consumers are returned and to otherwise represent the interests of all consumers.

WHEREFORE, Petitioner respectfully asks the Authority to grant the Petition to Intervene and deny BCUI's request to hear this Docket in September 9, 2013, a date which (1) does not give the Authority the opportunity to approve the Petition to Intervene 24 hours in advance of the hearing in accordance with the Tenn. Code Ann. § 4-5-310(d); and (2) does not allow the Consumer Advocate the opportunity to perform discovery and legal analysis on the issues presented in this Docket.

RESPECTFULLY SUBMITTED,



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Dated: August 26, 2013

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail on August 26th, 2013, upon:

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