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BEFORE THE TENNESSEE REGULATORY AUTHORITY

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Nashville, Tennessee

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PETITION OF BERRY'S CHAPEL)
UTILITY, INC. TO INCREASE)
RATES AND CHARGES; TARIFF)
TO RECOVER THE COST OF)
FINANCIAL SECURITY;)
IMPLEMENTATION OF)
PASS THROUGHs FOR)
SLUDGE REMOVAL,)
ELECTRICITY, CHEMICALS)
AND PURCHASED WATER)

DOCKET NO. 14 0004

DIRECT TESTIMONY
OF
ROBERT T. BUCKNER

ON BEHALF OF BERRY'S CHAPEL UTILITY, INC.

January 15, 2014

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Q. Please state your name, business name and address for the record.

A. My name is Robert T. ("Terry") Buckner. I am operating as a sole proprietorship, Robert T. Buckner CPA, 2783 Saundersville Ferry Road, Mount Juliet, Tennessee 37122.

Q. On whose behalf are you testifying in this docket?

A. I am submitting testimony, tariff sheets, and work papers on behalf of Berry's Chapel Utility, Inc. ("the Company").

Q. How long have you been employed in conjunction with the public utility industry?

A. I have been employed in conjunction with the public utility industry for over thirty years. Before my retirement from the Office of the Attorney General for the State of Tennessee ("AG Office"), I was employed by the Comptroller's Office for the State of Tennessee for nearly two years as the Assistant Director responsible for public utility audits after approximately eight years of prior employment with the AG Office. Formerly, I was employed with the Tennessee Public Service Commission ("Commission") in the Utility Rates Division as a financial analyst for approximately six years. My responsibilities included testifying before the Commission as to the appropriate cost of service for public utilities operating in Tennessee. Prior to my employment with the Commission, I was employed by TDS Telecom for eight years and the First Utility District of Knox County for three years.

1 **Q. What is your educational background, and what degrees do you hold?**

2 A. I have a Bachelors degree in Business Administration from the
3 University of Tennessee, Knoxville - with a major in Accounting.
4

5 **Q. What is the purpose of your testimony?**

6 A. The purpose of my testimony is to address the following:
7 (1) History of the Company; (2) Attrition Period Operating Margin at current
8 rates; (3) Attrition Period Operating Margin at proposed rates; (4)
9 Application to implement pass through charges for future changes in certain
10 operating expenses; (5) Proposed rate design; and (6) proposed tariff to
11 recover the cost of financial security.
12

13 HISTORY OF THE COMPANY

14

15 **Q. Please provide a brief history of the Company since its inception.**

16 A. The Company was formerly known as Lynwood Utility Company
17 ("Lynwood"), a small wastewater utility, which served the Cottonwood
18 subdivision. Lynwood was owned by a developer named Zeitlin. Lynwood
19 was issued a certificate of convenience and necessity on June 14, 1976.¹ At
20 that time, ratepayers were charged rates based on the number of bedrooms
21 in each home. Since its inception, Lynwood had only one rate increase in
22 1986.² As a result, Lynwood's rate structure was "severely neglected"³

¹ TRA Docket #99-00507, Lynwood petition Page 1.

² TRA Docket #99-00507, Lynwood petition Page 3.

1 causing insufficient funding to operate the utility, fund capital
2 improvements, and provide a fair rate of return to its former investors.
3 Subsequently, Lynwood was sold to Mr. David Terry in 1996. Mr. Terry was
4 the developer of the Legends Ridge subdivision.⁴ Later, Lynwood defaulted
5 on its note to First Tennessee Bank for funds to provide improvements to its
6 sewer treatment plant for service to Legends Ridge. After the loan default,
7 the developer of River Landing subdivision, Lumbermens Investment
8 Corporation, interceded to finance Lynwood. On May 12 1999, Lynwood
9 was sold to Southern Utility Corporation.⁵ However, this sale did not have
10 TRA approval as noted in the TRA's Order dated June 14, 2001 in Docket
11 #99-00507. The TRA unanimously approved the transfer of authority in TRA
12 Docket #00-00690.

13 On May 1, 2002 John Ring and Tyler Ring purchased 50% of Lynwood
14 and on January 1, 2003 John Ring and Tyler Ring purchased the remaining
15 50%.⁶ Under the new ownership, Lynwood filed for a rate increase in TRA
16 Docket #07-00007. In that docket, Mr. Dan McCormac of the AG Office and
17 Lynwood's financial consultant, Mr. James Ford agreed on the cost of
18 Lynwood's net plant in service. Also, the Office and Lynwood reached a
19 settlement agreement which was approved by the TRA on December 11,
20 2007. Lynwood filed for a rate increase in TRA Docket #09-00034 resulting

³ TRA Docket #99-00507, Lynwood petition Page 3.

⁴ TRA Docket #99-00507, Lynwood petition Page 2.

⁵ TRA Docket #99-00507, Lynwood petition Page 3.

⁶ TRA Docket #07-0007, Direct Testimony Tyler Ring, Page 3.

1 in an Order dated November 3, 2009. In September 2010, Lynwood became
2 Berry's Chapel Utility, Inc. ("the Company") a non-profit corporation. After
3 the reorganization, the Company believed it was no longer a regulated
4 public utility and ratepayers were charged a monthly \$20 facilities charge for
5 five months. The TRA and the State Court of Appeals ruled that the
6 Company was a regulated public utility. As a result, the Company of its own
7 volition is refunding the monthly \$20 facility charge over an 18 month
8 period beginning in April of 2013 to those current ratepayers who have paid
9 the \$20 facility charge. The Company filed for a rate increase in TRA Docket
10 #11-00198. The TRA granted the Company a rate increase in its Order on
11 August 21, 2012. Since its inception, the Company has most likely never
12 earned a profit.

13 At this time, the Company serves primarily ratepayers in the
14 Cottonwood, Legends Ridge, and River Landing subdivisions in Williamson
15 County. These ratepayers are provided water service either by the City of
16 Franklin, Harpeth Burwood and Thompson Station Utility District ("HB&TS"),
17 and Mallory Valley Utility District. The Company currently serves a total of
18 852 customers.

19
20 **Q. What other changes occurred when Lynwood became a non-profit**
21 **corporation.**

22 **A.** The fixed assets and related accumulated depreciation are recorded
23 in the financial statements and books of the Company based on an appraisal
24 value or market value.

Q. Is the use of an appraisal or market value for the Company's fixed assets appropriate for setting rates?

A. No. TRA rule 1220.4-1-.11(1) (h) requires the use of the Uniform System of Accounts ("USOA"), which states fixed assets be recorded cost. However, this filing using original cost is consistent with the Company's filing in TRA Docket #11-00198.

ATTRITION PERIOD OPERATING MARGIN AT CURRENT RATES

Q. Please describe why the Company is proposing an operating margin for setting its rates in this docket.

A. The Company is proposing to set rates using an operating margin because the Company's capital structure is greater than the rate base at the end of the attrition year. This is commonly known as a "capital misfit." The reasons for the capital misfit are: (1) the Company has continued to depreciate its operating plant in service with no significant plant additions to its plant in service; and (2) The Company has not paid off any of its debt over the last two years.

An operating margin is simply revenues less operating expenses. The operating margin is also referred to as an operating ratio. The operating margin is a percentage of total operating revenues. The operating margin is used to pay for the interest expense on the Company's outstanding debt. The outstanding debt of the Company is in two parts: (1) \$1,064,152 to

Sabal Financial Group ("Sabal") with an interest rate of 7.5% and (2) a \$247,955 line of credit to Sabal Financial Group at an interest rate of 6.5%. The two amounts were originally held by Tennessee Commerce Bank, which was closed by the FDIC in January 2012. At this date, the Company and Sabal are negotiating new terms for the outstanding debt.

Q. Has the TRA previously used an Operating Margin or Ratio in setting rates?

A. Yes. The TRA approved a settlement by Tennessee Wastewater Systems, Inc and the AG Office in Docket #08-00202, which allowed an operating margin of 6.5%.

Q. What are the test period and attrition year for this docket?

A. The Company is using the test period of calendar 2013. The Company is proposing an attrition (forecast) year of July 1, 2014 through June 30, 2015. The Company uses a fiscal year ending June for external financial reporting.

Q. What are the operating revenues at current rates?

A. The Company's operating revenues are primarily based on two rates: (1) a \$30 monthly customer charge and (2) a volumetric charge of \$6.37 per 1,000 gallons. More than 50% of the Company's operating revenues are from the volumetric usage rate. The 2013 revenues have been normalized for a total amount of \$744,828.

1 **Q. What does it mean to normalize operating revenues?**

2 A. The normalization of the Company's operating revenues is to remove
3 any anomalies from what would normally be expected to occur within a test
4 year. In 2013, the Company recorded an abnormally high number of tap
5 fees. As a result, the Company reduced the number of tap fees and related
6 inspection fees to a level experienced in the previous two calendar years.

7
8 **Q. Is it normal for a regulated public utility's rate design to have a fixed
9 charge and a usage sensitive charge?**

10 A. Yes. The three major local distribution companies ("LDCs") providing
11 natural gas in Tennessee have rate designs with both components.

12
13 **Q. When did the \$30 monthly customer charge originate?**

14 A. The Company proposed a \$30 monthly customer charge and was
15 approved in TRA Order for Docket #11-00198 dated August 21, 2012. This
16 rate does not include any water usage. Additionally, the AG Office proposed
17 a monthly charge.⁷

18
19 **Q. Is there any correlation between the \$20 facility charge by the Company
20 and the TRA approved \$30 monthly customer charge?**

21 A. No. There is no linkage whatsoever between the \$20 facility charge
22 and the TRA approved \$30 monthly customer charge. Any assertion to the
23 contrary is simply untrue. The TRA's rate design in the #11-00198 Order

⁷ TRA Docket #11-00198, H. Novak Exhibit, Schedule 6.

recognizes that the Company's operating expenses are fixed. Consequently, the Company needs a more stable revenue stream to meet its monthly obligations.

Q. When did the \$6.37 volumetric charge per 1,000 gallons originate?

A. The \$6.37 volumetric charge originated in TRA Order for Docket #11-00198 dated August 21, 2012. The volumetric charge was reduced from \$7.97 per 1,000 gallons to the \$6.37 rate.

Q. What are the operating expense categories of the Company?

A. The Company's operating expense categories are: Purchased Water, Sludge Removal, Electricity, Chemicals, Office Supplies, Professional Fees, Customer Accounting, Billing & Collections, Operations, Rent, Regulatory Expense, Rate Case Expense, Insurance, Depreciation, and Miscellaneous.

Q. Are there any affiliated operating expenses recorded by the Company?

A. Yes. The Company has a contract with Utility Consultants of TN, Inc. in which Mr. Tyler Ring is employed to manage the Company. This contract was approved in TRA Docket #12-00046 through a letter by the TRA's investigative staff on January 23, 2013. There were no expenses recorded by the Company for any work done by Tennessee Contractors, Inc. ("TCI"). The final installment payment for the flood damage repaired by TCI in May 2010 was paid in August of 2013. Finally, the external auditors recorded \$6,667 in past rent was due to John Ring. As of this date, the amount has

not been paid.

Q. Does the Company have employees?

A. Yes. The Company has four employees, but their payroll is distributed or cleared into the expense categories of Customer Accounting, Billing & Collections, and Operations.

Q. Have the 2013 test period operating expenses been normalized?

A. Yes. The Company removed any expenses recorded in 2013, but were incurred in a prior period, removes any non-recurring expenses, and removes penalties and late payment charges.

ATTRITION PERIOD OPERATING MARGIN AT PROPOSED RATES

Q. What are the operating revenues at proposed rates?

A. The Company proposes three new fees: (1) an application fee of \$50.00; (2) a \$50.00 reconnection fee; a \$50.00 disconnection fee; and (4) a 10% late payment fee for all customers (See Appendix). The Company has forecasted approximately \$7,000 in additional annual revenues from these new fees. These fees are consistent with other local utilities in Williamson County. Also, the Company is adding to its tariff a sewer access fee for customers, who have paid tap fees, but not made a service connection. The annual charge would be \$120 for a residential customer and a \$300 annual charge for a commercial customer. At present, the Company does

1 not foresee any revenues during the attrition year from this tariff change.

2 The Company has reduced the number of forecasted tap fees to two
3 for the attrition year. Two tap fees per year are more in line with recent
4 history.

5 Also, the Company re-classed Refunds Due Customers amounts to
6 Residential Revenues. The Company recorded a charge at the end of June
7 2012 to offset the revenues collected from the facilities charge. However,
8 the refunds are being returned to the customers in 2013 and will continue
9 until the end of September 2014. The customer refunds decrease the
10 amount in deferred revenue, which was the offset account for the June
11 2012 charge.

12 Finally, the Company proposes a \$9.00 per month increase to its base
13 charge for residential customers. This proposed change would generate
14 approximately \$92,000 in additional revenues.

15 Total proposed operating revenues would amount to approximately
16 \$844,300 for the attrition year or a 13.35% increase.

17
18 **Q. What are the changes to the Company's operating expenses for the**
19 **attrition year from the normalized test year?**

20 **A.** In summary, the following material changes to operating expenses
21 for the attrition year are: (1) a net reduction of \$15,000 in billing and
22 collection expenses from the City of Franklin. The Company intends to
23 bring those customers in-house for billing and collecting. There will be
24 some payroll increase from part-time to full-time and additional software

1 expenses; (2) the elimination of financial consulting costs from Visions, Inc.
2 of \$21,710; (3) a \$15,000 annual reduction in regulatory accounting costs;
3 (4) a \$20,000 increase in repair and maintenance items for the sewer
4 treatment plant; (5) approximately \$40,000 less in depreciation expense;
5 and (6) an additional \$20,000 in legal fees to represent the Company in
6 various matters.

7
8 **Q. What are the changes to the Company's Taxes Other than Income Taxes**
9 **for the attrition year from the normalized test year?**

10 A. The Company reduced its 2013 accrued property taxes by \$2,537 to
11 reconcile with the most recent tax assessment. The Company reduced its
12 State of Tennessee Franchise Tax by \$10,294 to account for the tax based on
13 original cost. The Company increased its payroll taxes by \$2,200 for
14 employee raises and moving an employee from part-time to full-time
15 employment.

16
17 **Q. Please summarize the operating results for the attrition year.**

18 A. The Company's forecast indicates a positive margin of \$2,534, but,
19 with the cash flow from depreciation, should allow payments on its debt
20 when they resume. This should be sufficient to sustain the utility's short-
21 term operations.

**APPLICATION TO IMPLEMENT PASS THROUGH CHARGES FOR FUTURE
CHANGES IN CERTAIN OPERATING EXPENSES**

Q. Please explain the Company's application to pass through charges for future changes in certain operating expenses.

A. The Company proposes the TRA allow pass through charges as allowed by House Bill 191 and signed by Tennessee Governor Bill Haslam on April 19, 2013. This authorization is codified at T.C.A. §65-5-103(d). This statute allows the Authority to authorize "a mechanism to recover the operational expenses, capitol costs or both" related to "programs that are in the public interest." Such programs include "safety requirements imposed by the state or federal government," expenses to insure the reliability of the plant, the recovery of weather related costs, and "other programs that are in the public interest." The legislation also allows the utility to recover from ratepayers incremental changes in usage based expenses such as Sludge Removal, Electricity, and Chemicals, which were above or below the level authorized for recovery in this docket. The total amount of actual usage based expenses above or below would be added or deducted as a single line item on the customer's bill over the next twelve month period.

Q. Describe the kinds of exogenous expenses that Berry's Chapel may seek to recover under this statute.

A. Berry's Chapel has recently received notice of a potential lawsuit by the Harpeth River Watershed Association. See Appendix. This litigation will

likely result in increased expenses to comply with state and federal environmental requirements. Without the ability to recover those charges through a surcharge, as provided in the statute, Berry's Chapel would likely require emergency rate relief.

PROPOSED RATE DESIGN

Q. Please explain the proposed changes to the current rate design.

A. As previously mentioned, the Company proposes a \$9.00 monthly increase to the fixed charge; new 10% late charges to the HB &TS and MVUD customers; a one-time \$50 application fee for new service; a \$50 reconnection fee; and a sewer access fee. Obviously, this does not include the financial security tariff and the pass-through tariff discussed in other sections of my testimony.

PROPOSED TARIFF TO RECOVER THE COST OF FINANCIAL SECURITY

Q. Please explain the proposed tariff to recover the cost of financial security for the TRA.

A. The TRA rules, specifically 1220-4-13-.07, require that a wastewater utility furnish financial security of at least \$20,000. Moreover, the financial security must be a commercial bond or a letter of credit from a financial

1 institution. However, the Company is unable to secure the financial security
2 from a willing lender. Consequently, the Company is requesting that the
3 TRA grant that the financial security be funded by customer contributions
4 through a pass through mechanism. The Company has no other source for
5 funding the \$20,000 financial security. The Company has set aside \$9,000
6 for use as financial security and can continue to contribute a monthly
7 amount of no less than \$250 per month until the \$20,000 amount is
8 achieved. Conversely, if the TRA will grant the remaining \$11,000 be funded
9 through tariff, then the ratepayers would be charged \$1.08 per month for
10 12 months.

11
12 **Q. Does this conclude your testimony?**

13 **A. Yes.**
14

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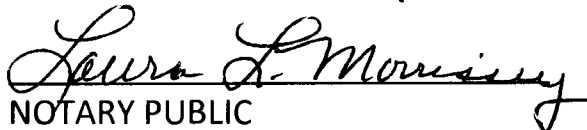
AFFIDAVIT

I, Robert T. Buckner, hereby certify that the attached Direct
Testimony represents my opinion in the above-referenced case and the opinion of
Berrys Chapel Utility, Inc.



ROBERT T. BUCKNER

Sworn to and subscribed before me
this 15th day of January, 2014


NOTARY PUBLIC

My commission expires: 8-27-14

