

CERTIFICATE OF SERVICE

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

Henry Walker
Bradley Arant Boult Cummings, LLP
1600 Division Street, Suite 700
Nashville, TN 37203

This the 13th day of June, 2014.

Vance L Broemel by Wayne T. ...
VANCE L. BROEMEL with permission

EXHIBIT

A

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION OF BERRY'S CHAPEL)	DOCKET NO. 14-00004
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)	

**CONSUMER ADVOCATE'S RESPONSE TO OBJECTION OF
BERRY'S CHAPEL TO CONSUMER ADVOCATE'S MOTION TO FILE
SUPPLEMENTAL TESTIMONY AND EXHIBIT**

Berry's Chapel (the "Utility") objects to the Consumer Advocate's motion to amend the Direct Testimony of William H. Novak on two grounds (1) the Consumer Advocate's amendment is not timely filed and the Consumer Advocate's motion does not offer a reason to explain or justify the untimely filing; and (2) the filing is prejudicial. As will be shown, these objections are not sufficient to bar the granting of the Consumer Advocate's motion.

With respect to the filing of the amendment and attached exhibit, the Consumer Advocate advises that at the time Mr. Novak's direct testimony was filed Mr. Novak was working on the exhibit, but there were open questions about some of the amounts and calculations in the exhibit. Further, there was an uncertainty as to which figures were the Utility's actual requested costs since its spreadsheets are not

posted in the Docket. Consequently, on the date Mr. Novak's testimony was due, the exhibit was not ready to be filed. Rather than delay the filing of Mr. Novak's testimony, the Consumer Advocate filed Mr. Novak's testimony on May 30, 2014 with the expectation to file as promptly as possible the fully reviewed exhibit along with the one page that was to be substituted for another page in Mr. Novak's testimony containing the corresponding references to the exhibit. As soon as the exhibit had been fully reviewed on June 9, 2014, the Consumer Advocate filed the exhibit and relevant page with the corresponding references in Mr. Novak's testimony and requested by motion that Mr. Novak's testimony be amended.

With respect to the Utility's objection that the Consumer Advocate's motion is prejudicial, the Consumer Advocate respectfully points out that the Utility's rebuttal testimony is not due until June 19, 2014, providing ample time for the Utility to review and reply, and dispute the accuracy of any facts, in that testimony.

Further, the comparison of existing authorized costs with requested costs in a rate increase occurs regularly and has never been considered prejudicial. For example, this comparison was done in the testimony filed by Mr. Dave Peters in Docket No. 11-000198. As the Authority has pointed out previously, the definition of "prejudice" according to Black's Law Dictionary is:

[d]amage or detriment to one's legal rights or claims. *Legal prejudice* – A condition that, if shown by a party, will usu[ally] defeat the opposing party's action; esp., a condition that, if shown by the defendant, will defeat a plaintiff's motion to dismiss a case without prejudice [dismissal]. *Undue prejudice* - The harm resulting from a fact-trier's being exposed to evidence that is persuasive but inadmissible (such as evidence of prior criminal conduct) or that so arouses the emotions that calm and logical reasoning is abandoned.

See 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, fn. 24 (July 18, 2013).

Surely, presenting facts that are provided by the Utility, *i.e.* the costs requested for recovery in rates, in a comparison with the costs already authorized for recovery is not legally or unduly prejudicial. The Consumer Advocate's testimony regularly provides such a comparison between the requested costs and existing authorized costs, and it has never been found to be prejudicial. In this case, the expert referred to a substantial increase in costs, but this reference was vague and he wanted to provide clarification. There was an uncertainty as to which figures were the Utility's actual requested costs since its spreadsheets are not posted in the Docket. Unless the Utility wants to dispute the accuracy of the facts, the Consumer Advocate would expect this data to be admissible at the hearing. But it is the Consumer Advocate's view that it would be much better for both parties as well as the Authority to have the information in advance of the hearing.

Also, the Consumer Advocate regularly includes the comparison of costs requested with authorized costs because it can only help the fact-finder make its decision. As noted above, the Utility has the opportunity to dispute the accuracy of the exhibit in its rebuttal testimony.

Accordingly, the Consumer Advocate respectfully requests that its Motion to Amend Testimony of William H. Novak be granted.

RESPECTFULLY SUBMITTED,

Vance L. Broemel by Wayne I. Ivin with
VANCE L. BROEMEL (BPR #11421) permission

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