

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

PETITION OF BERRY'S CHAPEL)	
UTILITY, INC. TO INCREASE)	
RATES AND CHARGES; TARIFF)	
TO RECOVER THE COST OF)	DOCKET NO. 14-00004
FINANCIAL SECURITY;)	
IMPLEMENTATION OF)	
PASS THROUGHs FOR)	
SLUDGE REMOVAL,)	
ELECTRICITY, CHEMICALS)	
AND PURCHASED WATER)	

RESPONSE TO CONSUMER ADVOCATE'S MOTION

Berry's Chapel, Inc., d/b/a Harpeth Wastewater Cooperative ("Petitioner") submits the following response to the Consumer Advocate's motion filed July 1, 2014.

Summary

Petitioner has filed rebuttal testimony cutting its rate request in half. The Consumer Advocate moves to strike that rebuttal, saying in effect that the utility should be forced to continue litigating its original request. The Advocate goes on to argue that unless the utility's proposal for a smaller increase is struck from the record, the Advocate is unprepared to go forward with the hearing and asks that the entire rate petition be dismissed. The motion is frivolous. The Advocate should welcome—not oppose—the utility's reduced request and, in any event, will have ample opportunity at the hearing to argue whether the utility is entitled to additional revenue and how that money should be used.

Background

Petitioner is a very small wastewater utility serving approximately 850 customers in Williamson County. Through discovery in this and other related dockets, both the Authority and

the Consumer Advocate are familiar with Petitioner's financial situation. In January, the company requested a rate increase of approximately \$88,000 in additional annual revenue, plus a \$1.00 per month surcharge, to be collected for twelve months, to meet the Authority's financial security requirement.

Petitioner is a non-profit corporation, owned and operated by its customer-members. On March 13, 2014, the members elected a new board of directors to control the company. After reviewing the company's financial situation, the new board confirmed that the company needed rate relief and should continue the rate case. Pending further review of the utility's operations and debt costs, however, the board decided to reduce the amount of the requested rate increase from \$88,000 to approximately \$48,000, in addition to the \$1.00 surcharge.¹

In response, the Advocate has filed a motion asking that all rebuttal testimony concerning the reduced request be struck from the case, in effect requiring the company to continue asking for \$88,000 instead of \$48,000 in additional annual revenue. In the alternative, the Advocate argues that the company's rate case should be dismissed altogether. In other words, the Advocate is saying that the utility should ask for the entire original amount or get nothing at all.

Argument

The Advocate does not cite any statute or rule to support this head-scratching request. Counsel for Petitioner believes that the Authority (and its predecessor, the Public Service Commission) never dismissed, or threatened to dismiss, a rate petition unless the company's original filing did not meet the agency's minimum filing requirements and or if the utility failed

¹ The board proposed that most of the increased revenue (\$4.00 per customer or about \$41,000 a year) be placed in a segregated account and used only for capital expenses, subject to TRA review. The board also decided that the \$4.00 increase should expire after two years. The remaining \$7,000 in requested additional revenue results from proposed charges for new applications, disconnection and reconnection, and a late payment fee. The utility's current tariff does not allow the company to charge for any of those services or to collect a late payment penalty.

to respond timely to discovery requests. No such claim is made here. The company has been completely transparent in sharing financial information with the Consumer Advocate and the Authority. The Consumer Advocate cannot—and does not—argue that it lacks any information needed to determine whether the company needs a rate increase.

In the absence of any statutory support for its motion, the Advocate relies on a TRA decision (TRA Docket 13-00130) involving a company seeking "alternative ratemaking" treatment pursuant to T.C.A. § 65-5-103(d). In that case, a utility filed a request for alternative ratemaking treatment but later amended the request following discussions with the Consumer Advocate. Based on the strict wording of Section 103(d), the Authority held that it lacked the power to approve the amended request. Instead, the Authority told the parties that the language of Section 103(d) required the company to start over by filing a new petition. The Chairman noted apologetically, "We don't have the discretion in this type of proceeding that we do in a rate case." Quoted in Consumer Advocate's Motion, at p. 12; emphasis added.

This is a rate case, however, not a petition for alternative ratemaking. As the state Court of Appeals has recently and repeatedly reminded the Consumer Advocate, the TRA has "plenary authority" over utilities and broad discretion in carrying out the "legislative" function of ratemaking. See Laurel Hills v. Tennessee Regulatory Authority, 2014 WL 1494126 (April 14, 2014); Consumer Advocate v. Tennessee Regulatory Authority, 2012 WL 1964593 (May 30, 2012); Tenn. American Water Co. v. Tennessee Regulatory Authority, 2011 WL 334678 (Jan. 28, 2011). In light of these holdings, there is no serious question that the Authority has the discretion to adopt in whole or in part the proposed rate charges described in the company's rebuttal testimony.

The Consumer Advocate also claims that its "due process" rights are being violated because the Advocate was surprised by the "bombshell" (Motion, at 5) rebuttal of Mr. Mike Knotts, president and chairman of the board, describing the circumstances leading to the election of a new board of directors and explaining the board's proposal to reduce the requested rate increase. As Mr. Knotts points out, the evidence of the utility's need for additional revenue has not changed. The board has simply decided to reduce the company's original request. It is not clear why this reduction in the company's request deprives the Consumer Advocate of "due process." The Advocate's expert witness has filed testimony arguing that the utility should not be granted any additional revenue. Therefore, the Advocate will presumably continue to oppose the company's reduced rate request. The Advocate is also free, of course, to question how any additional revenue will be spent and whether part of it should be earmarked for capital expenses, as the company suggests, or used for other purposes. In any event, there will be ample opportunity at the hearing for the Consumer Advocate to explore these issues.

Moreover, the Advocate's feigned shock at this "bombshell" news is disingenuous. Two attorneys representing the Consumer Advocate were standing in the room during the special meeting of the utility's members on March 13, 2014, when the new board of directors was elected. In May, the entire staff of the Consumer Advocate met personally with the new board to discuss the company's change in leadership and direction. Finally, the Consumer Advocate can hardly be surprised by the terms of Mr. Knotts' proposal. The parties have been discussing it informally for two months. Nevertheless, if the Consumer Advocate still has questions about the company's amended request, the company will not object if the Advocate wants to depose Mr.

Knotts (and/or Mr. Buckner) for the limited purpose of asking questions about the events described in Mr. Knotts' testimony and the company's revised rate request.²


Conclusion

The new board of directors has proposed to reduce by half its rate request and suggested that most of the additional money be reserved for capital expenses. Nothing else has changed. There is no legal basis for striking this proposal from the record, much less for dismissing the rate case altogether.

The Motion should be denied.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By: 

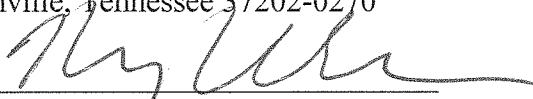
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² Mr. Knotts is available during the week of July 14, 2014. Mr. Buckner is available that week also.

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of July, 2014, 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:

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