

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

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

STIPULATION AND SETTLEMENT AGREEMENT

Berry's Chapel Utility, Inc., d/b/a Harpeth Wastewater Cooperative (the "Utility"), and Robert E. Cooper, Jr., the Tennessee Attorney General and Reporter, through the Consumer Advocate and Protection Division ("Consumer Advocate") (individually a "Party" and, collectively, the "Parties") constituting all of the parties to the above-captioned rate proceeding and in comprehensive settlement of the matters at issue in this TRA Docket 14-00004, subject to Section 20 of this Stipulation and Settlement Agreement (relating to the requirement of approval of this Stipulation and Settlement Agreement by the Tennessee Regulatory Authority ("TRA" or the "Authority")), do hereby stipulate and agree as follows:

BACKGROUND

1. The Utility is a not for profit, mutual benefit corporation incorporated under the laws of the State of Tennessee and is engaged in the business of providing wastewater service to approximately 850 customers primarily in the Cottonwood, Legends Ridge, and River Landing subdivisions of Williamson County, Tennessee. The Utility's principal office and place of business is located at 106 Mission Court, Suite 203A, Franklin, Tennessee 37067.

2. The Utility is a public utility in Tennessee and is subject to regulation and supervision by the Authority pursuant to Chapter 4 of Title 65 of the Tennessee Code Annotated. The Utility's Board of Directors, which was elected on or about March 13, 2014, has stated that the Utility is operating as a "cooperative" and that the Utility is owned by its "members."

3. On January 16, 2014, the Utility filed its 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 ("2014 Petition"), with the Utility's filing of the Direct Testimony of Robert T. Buckner having been made on January 15, 2014. As noted above, the members of the Utility elected a new Board of Directors on or about March 13, 2014, and the new Board of Directors has stated that it has authority with respect to matters related to this Docket.

4. In the 2014 Petition, the Utility requested a revised tariff designed to produce \$99,000 in additional annual revenue (an increase of 13.35%), a mechanism

to true-up expenses for sludge removal, electricity, and chemicals and to pass through the anticipated costs of complying with state and federal environmental requirements, as well as a pass-through mechanism to recover costs of complying with the TRA's financial security requirement. The true-up and pass-through mechanisms would likely increase the monthly costs of wastewater service above the 13.35% revenue addition.

5. On January 23, 2014, the Consumer Advocate filed a Petition to Intervene in this proceeding. The Consumer Advocate's Petition to Intervene was granted on February 4, 2014.

6. Subsequent to the filing of the 2014 Petition, the Parties to this proceeding have engaged in substantial discovery, informal information exchanges, and extensive communication. Representatives from the Utility and the Consumer Advocate have spent a significant amount of time discussing the various aspects of the Utility's 2014 Petition. In those discussions, the representatives of the Utility acknowledged that the Utility faced a number of challenges related to prior operational and financial management issues, and represented that steps were being taken to evaluate and work through those challenges.

7. On May 30, 2014, the Consumer Advocate filed testimony in this proceeding challenging several aspects of the Utility's 2014 Petition. In this testimony, the witness for the Consumer Advocate recommended a number of changes to the relief sought by the Utility.

SETTLEMENT

8. Following the review by each Party of the testimony and discovery filed by the other Party, including the testimony of the Consumer Advocate's witness, representatives of the Utility and the Consumer Advocate discussed the possibility of a settlement in this proceeding.

9. Based on the discussions described above, and in order to resolve this case through settlement and avoid the need for further litigation and expenses for all Parties and without waiving any positions asserted in this Docket, the Utility and the Consumer Advocate have made agreements on certain requests for relief made in the 2014 Petition, which are set out in this Stipulation and Settlement Agreement, and have agreed that all requests for relief by the Utility in the 2014 Petition not specifically included and set out in this Stipulation and Settlement Agreement, including without limitation the Utility's requests for a revised tariff designed to produce \$99,000 in additional annual revenue (an increase of 13.35%), a mechanism to true-up expenses for sludge removal, electricity, and chemicals, and a mechanism to pass through the anticipated costs of complying with state and federal environmental requirements, shall be deemed withdrawn by the Utility. The Consumer Advocate and the Utility have further agreed that the agreements made to settle fully the issues in this TRA Docket 14-00004 are not intended in any way to settle or resolve any issue in any other TRA docket.

10. Rates. For the limited purpose of this settlement, the Utility and the Consumer Advocate agree that the rates set out in the Utility's current tariff on file

with the TRA ("Tariff"), resulting from TRA Docket 11-00198, form the basis to resolve this proceeding and shall not be amended or modified by the proceedings in this TRA Docket 14-00004.

11. Capital Improvements Tariff Rider. The Utility and the Consumer Advocate agree that, due to the Utility's unique history (including but not limited to its recent board of directors and organizational changes, significant debt, and limited borrowing ability), the Utility's Tariff shall be amended to include an additional charge of \$4.50 per month for each customer of the Utility for a period of only twenty-four months (the "Tariff Rider") for the sole purpose of establishing a capital improvements account; provided, however, that:

- (A) the Tariff Rider shall automatically and without further action by the TRA terminate immediately after the twenty-fourth month of collection of the Tariff Rider; and
- (B) notwithstanding the foregoing, upon the occurrence of (i) the filing by the Utility of a rate case or a petition with the TRA seeking other financial relief (other than a request for expenditure of funds from the account resulting from the Tariff Rider) or (ii) a termination order by the TRA for any other reason, the Tariff Rider shall automatically and without further action by the TRA terminate.

12. Separate Tariff Rider Account. The funds collected under the Tariff Rider shall be held in a separate FDIC insured state authorized interest-bearing bank account from which funds shall not be expended without the Utility seeking and

obtaining from the Authority (in a specified amount and for a specified purpose), prior to the expenditure of such funds, an order by the TRA specifically authorizing the expenditure of such funds in a specified amount and for a specified purpose; provided, however, that in exigent circumstances requiring the expenditure of funds, the Utility may expend funds from such account after obtaining the required approval in accordance with the exigent circumstances procedures described below. The Consumer Advocate will be given the opportunity to participate in any TRA docket or exigent circumstances proceeding involving a request for expenditure and reserves the right to take whatever position it deems appropriate regarding any such request for authorization to expend funds by the Utility. For the avoidance of doubt, a TRA order authorizing such expenditure of funds shall state the specific purpose and amount of such expenditure, and may impose additional restrictions upon such expenditure in the discretion of the TRA.

13. Exigent Circumstance Procedures. If, in the reasonable view of the Utility, exigent circumstances exist requiring the use of funds collected from the Tariff Rider, the Utility shall, prior to the expenditure of such funds, seek the approval of the Chief of the TRA's Utilities Division or his/her designee by submitting a letter request to the TRA (in a specified amount and for a specified purpose) with appropriate support and documentation for the request, including without limitation an explanation of how any amount requested was calculated, with the Consumer Advocate being provided simultaneous notice (with copies of the letter request and all support and documentation) of the exigent circumstances request.

14. The Utility and the Consumer Advocate further stipulate and agree:
- (A) Effective Date. The Tariff Rider proposed in this Stipulation and Settlement Agreement shall be effective at the start of the next ratepayer billing cycle after the date this Stipulation and Settlement Agreement is approved by the TRA.
 - (B) Disclosure. The Utility will clearly and conspicuously state on each bill sent to its customers the Tariff Rider for capital improvements as a separate line item and will similarly notify its customers of the termination date for the Tariff Rider.
 - (C) Rate Design. For the limited purpose of this settlement, the rate design described in connection with the addition of the Tariff Rider on a per customer basis as set forth herein is just and reasonable and appropriate for use in this proceeding.
 - (D) Reporting. The Utility shall file publicly with the TRA in this Docket on the 10th business day of the month after the end of each calendar quarter a report on the balance in the bank account resulting from the Tariff Rider, including copies of the bank statements for such account for the prior three month period, and the expenditure of any amount from such account, and such report shall be concurrently provided electronically to the Consumer Advocate. The Utility shall provide to the TRA and/or Consumer Advocate additional information related to expenditures from such account, including without limitation receipts and other documentation, upon request by the TRA and/or Consumer Advocate.
 - (E) Board of Directors Minutes and Annual Report Filing. The Utility shall file with the TRA in this Docket:
 - (i) copies of any Board of Directors meeting minutes and any final reports attached thereto as and when approved by the Board of Directors and
 - (ii) an annual report (with the first such annual report being due on or before June 30, 2015) as to the Utility's outstanding debt and such report shall describe any impact that such debt may have on the services being provided to the Utility's ratepayers,

with a copy of each item described in (i) and (ii) above being concurrently provided electronically to the Consumer Advocate.

(F) Financial Security. Upon approval of this Stipulation and Settlement Agreement, the Utility agrees not to seek funds from ratepayers under any TRA docket for the purpose of satisfying the TRA's financial security requirements.

(G) Compliance. The Consumer Advocate reserves the right to challenge at the TRA or otherwise, and the Utility agrees not to oppose such right of the Consumer Advocate, the compliance with any stipulation or agreement herein by the Utility.

15. Capital Needs. For the limited purposes of this settlement, the Parties hereby agree that the Tariff Rider agreed to herein will provide the Utility with a reasonable opportunity to establish a fund to provide for the capital needs of the Utility.

16. No Precedent Established. The Parties agree to support this Stipulation and Settlement Agreement before the Authority and in any hearing, proposed order, or brief conducted or filed in this proceeding; provided, however, that the settlement of any issue provided for herein shall not be cited as precedent by any of the Parties hereto in any unrelated or separate proceeding or docket before the Authority. The resolution of issues reflected herein is the result of give and take negotiations between the Parties and does not necessarily reflect the position of any single Party on any discrete issue. None of the Parties hereto shall be deemed to have acquiesced in any ratemaking or procedural principle, including without limitation, any cost of service determination or cost allocation or revenue-related methodology and neither

Party waives its right to take positions with respect to the matters settled herein in future proceedings before the Authority. This Stipulation and Agreement shall not have any precedential effect in any future proceeding or bind any of the settling Parties in this or any other jurisdiction except to the limited extent necessary to implement the provisions hereof.

17. Admission of Evidence. The Parties agree that all pre-filed testimony, discovery responses and exhibits of the Parties (including pre-filed supplemental testimony and exhibits supporting this Stipulation and Settlement Agreement) may be admitted into evidence without objection and the Parties hereby waive their right to cross-examine all witnesses with respect to such pre-filed testimony and exhibits; provided, however, that should questions be asked of such witnesses by any person at the hearing of this matter (including any questions by Directors or Authority staff), the Parties may cross-examine any witness with respect to such questions consistent with the agreements set forth in this Stipulation and Agreement.

18. Agreements for Settlement Only. The provisions of this Stipulation and Settlement Agreement are agreements reached in compromise and settlement and solely for the purpose of resolving this Docket without the need for further litigation.

19. Agreements Just and Reasonable; Recommendation. The stipulations and agreements in this Stipulation and Settlement Agreement, which are the product of negotiations and substantial communication and compromise between the Parties, are just and reasonable and in the public interest. The Parties jointly recommend

that the Authority issue an order adopting this Stipulation and Settlement Agreement in its entirety without modification.

20. TRA Approval Requirement. Notwithstanding any other term or condition of this Stipulation and Settlement Agreement, the Parties acknowledge and agree that this Stipulation and Settlement Agreement is subject to approval by the TRA and that:

- (A) if the TRA does not approve this Stipulation and Settlement Agreement as a whole and as final settlement of the issues in this TRA Docket 14-00004, this Stipulation and Settlement Agreement shall terminate, and
- (B) if the TRA approves but (i) modifies all or any portion of this Stipulation and Agreement or (ii) imposes additional conditions and requirements upon either Party in connection with accepting this Stipulation and Settlement Agreement, then each Party shall have the right within ten (10) business days of any such action described in (i) or (ii) above by the TRA to file a notice of termination of the Stipulation and Settlement Agreement and, upon the filing of such notice, this Stipulation and Settlement Agreement will terminate;

provided, however, that Sections 12 through 14, 16, and 20 through 23 of this Stipulation and Settlement Agreement shall survive any termination of this Stipulation and Settlement Agreement. For the avoidance of doubt, the Parties acknowledge and agree that if neither Party exercises its right to terminate based on

TRA actions as described in (A) or (B) above, this Stipulation and Settlement Agreement shall be deemed modified in accordance with the TRA's actions.

21. Termination of Agreement. Should this Stipulation and Settlement Agreement terminate:

- (A) The signatories to this Stipulation and Settlement Agreement reserve their rights to fully participate in all relevant proceedings notwithstanding their agreement to the terms of this Stipulation and Settlement Agreement.
- (B) The terms of this Stipulation and Settlement Agreement shall not be admitted into evidence, or referred to, or relied upon in any manner by any Party.

22. Rebuttal Testimony. In order to facilitate the execution of this Stipulation and Settlement Agreement and to achieve one of the purposes of this Stipulation and Settlement Agreement of avoiding the need for further litigation and expenses, the Consumer Advocate agrees it is not necessary for the Utility to file rebuttal testimony that might have otherwise been filed. However, in the event that this Stipulation and Settlement Agreement terminates, then the Parties agree that either Party should be permitted to move the TRA for the establishment of a procedural schedule which would permit the Parties to submit evidence and testimony that has not been submitted as a result of reaching this Agreement.

23. General Provisions

- (A) No provision of this Stipulation and Settlement Agreement shall be deemed an admission of any Party. No provision of this Stipulation and Settlement Agreement shall be deemed a waiver of any position asserted by a Party in this Docket or any other docket.
- (B) The provisions of this Stipulation and Settlement Agreement do not necessarily reflect the positions asserted by any Party, and no Party to this Stipulation and Settlement Agreement waives the right to assert any position in any future proceeding except as expressly stipulated herein.
- (C) No Waiver. Approval by the TRA of the provisions of this Stipulation and Settlement Agreement shall not be construed as a waiver of prior TRA rate case and policy decisions.
- (D) The acceptance of this Stipulation and Settlement Agreement by the Attorney General shall not be deemed approval by the Attorney General of any of Utility's practices. Further, neither the Utility nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the State of Tennessee, the Attorney General, or any other governmental unit of the State of Tennessee has approved, sanctioned or authorized any practice, act, or conduct of the Utility.
- (E) This Stipulation and Settlement Agreement may only be enforced by the Parties or the TRA.

- (F) By agreeing to this Stipulation and Settlement Agreement, the Utility reaffirms and attests to the truthfulness, accuracy, and completeness of all of the information provided by the Utility to the Attorney General prior to entry of this Settlement Agreement. The Attorney General's agreement to this Stipulation and Settlement Agreement is expressly premised upon the truthfulness, accuracy, and completeness of the information provided by the Utility to the Attorney General and Consumer Advocate throughout the course of this Docket, which information was relied upon by the Consumer Advocate in negotiating and agreeing to the terms and conditions of this Stipulation and Settlement Agreement.
- (G) If the Attorney General finds that the Utility failed to disclose material information, or made any other material misrepresentation or omission relevant to the resolution of this Docket, the Consumer Advocate and TRA retain the right to seek modification of this Stipulation and Settlement Agreement upon proper written notice to Utility.
- (H) Strict Performance. Any failure by any Party to this Settlement Agreement to insist upon the strict performance by any other Party of any of the provisions of this Stipulation and Settlement Agreement shall not be deemed a waiver of any of the provisions of this Stipulation and Settlement Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of

any and all of the provisions of this Settlement Agreement and the imposition of any applicable remedies and penalties.

- (I) Conflicts of Law. This Stipulation and Settlement Agreement shall be governed by and construed under the laws of the State of Tennessee, notwithstanding conflict of law provisions
- (J) Severability. The provisions of this Stipulation and Settlement Agreement are not severable.
- (K) Headings. The section and subsection headings contained in this Stipulation and Settlement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Stipulation and Settlement Agreement.
- (L) Complete Agreement. The Parties agree that this Stipulation and Settlement Agreement constitutes the complete understanding among the Parties concerning the resolution of issues and matters under this TRA Docket 14-00004 and any and all oral statements, representations or agreements concerning such issues and matters made prior to the execution of this Stipulation and Settlement Agreement shall be null and void and shall be deemed to have been merged into this Stipulation and Settlement Agreement.
- (M) Informed Signatories. Each signatory to this Stipulation and Settlement Agreement represents and warrants that it/he/she has informed, advised and otherwise consulted with the Party for whom it/he/she signs

regarding the contents and significance of this Stipulation and Settlement Agreement and has obtained authority to sign on behalf of such Party, and, based upon those communications, each signatory represents and warrants that it/he/she is authorized to execute this Stipulation and Settlement Agreement on behalf of its/his/her respective Party.

- (N) Counterparts. The Parties agree that this Stipulation and Settlement Agreement may be executed in multiple counterparts and by copies provided by facsimile or in .pdf format.

The foregoing is agreed and stipulated to this 28th day of July, 2014.

[signature page follows – remainder of page intentionally left blank]

BERRY'S CHAPEL UTILITY, INC.

HAVE SEEN AND AGREED.

By:

A handwritten signature in dark ink, appearing to read "Henry Walker", written over a horizontal line.

HENRY WALKER

Counsel for Berry's Chapel Utility, Inc.

[additional signature page follows – remainder of page intentionally left

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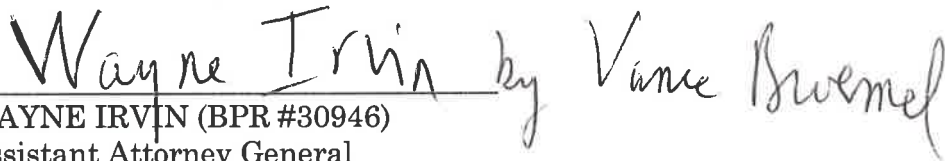
CONSUMER ADVOCATE AND PROTECTION DIVISION

HAVE SEEN AND AGREED.

By:



ROBERT E. COOPER, JR. (BPR #010934)
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State of Tennessee



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