

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

IN RE:

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

**CONSUMER ADVOCATE'S RESPONSE
TO BERRY'S CHAPEL UTILITY, INC.'S
MOTION FOR CLARIFICATION**

Berry's Chapel Utility, Inc. ("Berry's Chapel" or "Utility" or "Company") filed a Motion for Clarification on March 2, 2015 ("Motion"), requesting the Tennessee Regulatory Authority ("Authority" or "TRA") to clarify two aspects of the Stipulation and Settlement Agreement ("Agreement") between Berry's Chapel and the Consumer Advocate and Protection Division ("Consumer Advocate"), as filed on July 29, 2014, and as orally approved by the Authority on August 11, 2014. The Motion seeks to clarify two issues: (1) "whether the Agreement addresses the issue of the unpaid notes¹ and precludes [Berry's Chapel] from seeking additional revenue to pay the notes" and (2) if the Authority determines that the Agreement does not resolve the issue of unpaid notes, "whether [Berry's Chapel] may file a request for financial relief without risking termination of the Tariff Rider."² The Consumer Advocate respectfully responds that the Agreement does clearly resolve these issues, so there is no need for the

¹ As used in this Response, "notes" refers to the secured loans made to Berry's Chapel in 2007 in the amounts of \$1 million and \$250,000 that were approved in TRA Docket 07-00263, and which are the subject of a current suit in Williamson County Chancery Court (as reflected in the copy of the suit filed in this docket with the Motion).

² Motion at page 3.

clarification as requested. With that said and in view of the Utility having been sued to collect on the notes, the Consumer Advocate would not oppose clarification by the Authority as to the remaining net book value of the Utility's assets and, further, that such net book value effectively limits the amount that may properly be recovered in rates from customers for payments on the notes.

With respect to the first issue raised by Berry's Chapel in its Motion -- whether the Agreement addresses the issue of the unpaid notes and precludes the Utility from seeking additional revenue to pay the notes -- the parties to the Agreement ("Parties") clearly considered and resolved this issue in the course of the proceeding leading up to the Agreement, and memorialized that resolution in the Agreement. The Agreement states 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 TRA Docket 14-00004."³ The pleadings, filings, and testimony in this TRA Docket 14-00004 address the full breadth of issues underlying the Utility's request, including the unpaid notes. Specifically, the Utility requested a revised tariff to produce \$99,000 in additional revenue; a mechanism to true-up expenses for sludge removal, electricity, and chemicals; a pass-through mechanism for the costs of complying with state and federal environmental standards; and a pass-through mechanism for the costs of complying with the TRA's financial security requirement.⁴ On the issue of unpaid notes, witnesses for both Parties testified about the relationship between rates and the Utility's unpaid debt.⁵ Berry's Chapel, in its Motion, sets out the different perspectives of the Parties with respect to the reasons

³ Agreement at ¶ 10.

⁴ Id. at ¶ 4.

⁵ Direct Testimony of William H. Novak, filed May 30, 2014, and attached hereto as Exhibit A ("Novak Direct Testimony"), at pp. 5-6; Direct Testimony of Robert T. Buckner, filed on January 15, 2014, at pp. 5-6.

for the notes remaining unpaid.⁶ This demonstrates that the issues applicable to the notes were considered in the mix of issues and matters under TRA Docket 14-00004.

Reflecting the negotiated resolution of these differing perspectives and related issues on the notes, the Agreement explicitly states that it “constitutes the complete understanding among the Parties concerning the resolution of issues and matters under this TRA Docket 14-00004.”⁷ Since increased rates with respect to the notes were considered and resolved by the Parties and memorialized in the Agreement, the Agreement precludes Berry’s Chapel from seeking additional revenue to pay for the notes.

With respect to the second issue raised by Berry’s Chapel – whether the Utility may file a request for financial relief without terminating the Tariff Rider -- the Agreement states explicitly that Berry’s Chapel may not seek other financial relief without terminating the Tariff Rider:

[U]pon 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) . . . , the Tariff Rider shall automatically and without further action by the TRA terminate.⁸

The phrase “seeking other financial relief” undoubtedly includes making a request for an increase in rates that would generate additional revenue to service debt incurred by the Utility. Since such a request would constitute a request for other financial relief, it follows that the Utility may not seek additional revenue to service the unpaid notes, unless it is willing to accept the automatic termination of the Tariff Rider.⁹ It should be noted that termination of the Tariff Rider does not depend on the rationale or specific need underlying the Utility’s request for other

⁶ Motion at pages 2-3.

⁷ Agreement at ¶ 23(L). Furthermore, the Agreement specifically lists the utility’s debt obligations as a factor in determining the Tariff Rider. The Agreement states that “[D]ue 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”)” Agreement at ¶ 11 (emphasis added).

⁸ Id. at ¶ 11(B) (emphasis added).

⁹ The Agreement does make an appropriate exception for requests “for expenditure of funds from the account resulting from the Tariff Rider,” the sole relief granted under the Agreement, but is otherwise absolute. See id.

financial relief.¹⁰ Under the plain language of the Agreement, the triggering event is the act of seeking other financial relief.¹¹ Thus, Berry's Chapel may not seek additional revenue to service the unpaid notes without automatically terminating the Tariff Rider.

With the foregoing in mind and recognizing the potential implications of the lawsuit filed by the prior owners of Berry's Chapel to collect on the notes, the Consumer Advocate would not oppose a limited clarification of the Agreement that would result in a recognition that the net book value of the Utility's assets¹² restricts the amount that could be recovered in rates from customers to make payments on the notes. The Consumer Advocate's view is articulated by Mr. Novak in his testimony filed May 30, 2014, and may be described as follows:

The Company's proposal [in TRA Docket 14-00004] to use its depreciation expense recovery to pay down its debt cost ignores that the Company has not made any debt cost payments in over two years. Therefore, even though the TRA included over \$145,000 of depreciation expense and a fair return of over \$85,000 in the Company's last rate case, none of this cash flow has been used to pay down the Company's debt. Instead, the Company has misallocated these funds to other purposes and as a result mismanaged the Company. The Company should not benefit from this misallocation.¹³ . . . [This] means that the Berry's Chapel customers have already funded almost all of the Utility's debt cost without any corresponding reduction of debt on the books of the Company. As a result, the Company soon will have no source of funds to pay its debts unless the TRA intends to require the customers to pay for this same debt again.¹⁴ . . . [Consequently,] the Consumer Advocate believes that it is inappropriate to require the Company's customers to pay for this same debt cost a second time through higher rates.¹⁵

In the Consumer Advocate's view, a clarification to limit the amount that could be recovered in rates from customers to make further payments on the notes to the current net book value of the Utility's assets would be consistent with the statement in the Agreement that "the

¹⁰ See id.

¹¹ Id.

¹² In the Motion, the Utility states the "total (net book) value of the utility's plant as of December 31, 2014, is approximately \$241,000. Motion at page 2, fn 3.

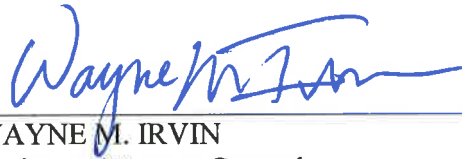
¹³ Novak Direct Testimony at page 5, line 15, through page 6, line 8.

¹⁴ Novak Direct Testimony at page 6, line 10, through page 6, line 16.

¹⁵ Novak Direct Testimony at page 7, line 12, through page 7, line 21.

rates set out in [the Utility's] current tariff on file with the TRA . . . , resulting from TRA Docket 11-00198, form the basis to resolve this TRA Docket 14-00004" and, further, would not constitute a request for financial relief by Berry's Chapel because such clarification would merely reflect the reality of the unavailability of increased rates to fund payments on the notes. Consequently, the Consumer Advocate would not oppose such limited clarification.

RESPECTFULLY SUBMITTED,



WAYNE M. IRVIN
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
(615) 741-8733

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 25th day of March, 2015.



Wayne M. Irvin

EXHIBIT

A

**BEFORE
THE TENNESSEE REGULATORY AUTHORITY**



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. 14-00004

**DIRECT TESTIMONY
of
WILLIAM H. NOVAK**

**ON BEHALF OF
THE CONSUMER ADVOCATE AND PROTECTION DIVISION
OF THE
TENNESSEE ATTORNEY GENERAL'S OFFICE**

May 30, 2014

IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE:

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. 14-00004

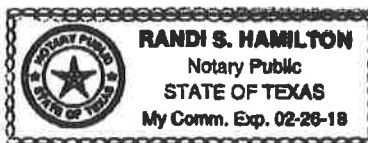
AFFIDAVIT

I, William H. Novak, CPA, on behalf of the Consumer Advocate Division of the Attorney General's Office, hereby certify that the attached Direct Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Division.


WILLIAM H. NOVAK

Sworn to and subscribed before me
this 30 day of May, 2014.


NOTARY PUBLIC



My commission expires: 02-26-2018

TABLE OF CONTENTS

	<u>Page</u>
I. ATTRITION PERIOD RESULTS OF OPERATIONS UNDER CURRENT RATES.....	3
II. RECOGNITION OF PRIOR PERIOD BILLING ERRORS	10
III. PASS-THROUGH CHARGES	11
IV. COST RECOVERY FOR FINANCIAL SECURITY	12

ATTACHMENTS

Attachment WHN-1	William H. Novak Vitae
Attachment WHN-2	Company's Summary of Revenue Requirements
Attachment WHN-3	Analysis of Net Plant in Service at December 31, 2013
Attachment WHN-4	Cash-Needs Revenue Requirement

1 ***Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND***
2 ***OCCUPATION FOR THE RECORD.***

3 A1. My name is William H. Novak. My business address is 19 Morning Arbor Place,
4 The Woodlands, TX, 77381. I am the President of WHN Consulting, a utility
5 consulting and expert witness services company.¹
6

7 ***Q2. PLEASE PROVIDE A SUMMARY OF YOUR BACKGROUND AND***
8 ***PROFESSIONAL EXPERIENCE.***

9 A2. A detailed description of my educational and professional background is provided
10 in Attachment WHN-1 to my testimony. Briefly, I have both a Bachelors degree
11 in Business Administration with a major in Accounting, and a Masters degree in
12 Business Administration from Middle Tennessee State University. I am a
13 Certified Management Accountant, and am also licensed to practice as a Certified
14 Public Accountant.
15

16 My work experience has centered on regulated utilities for over 30 years. Before
17 establishing WHN Consulting, I was Chief of the Energy & Water Division of the
18 Tennessee Regulatory Authority ("TRA" or "the Authority") where I had either
19 presented testimony or advised the Authority on a host of regulatory issues for
20 over 19 years. In addition, I was previously the Director of Rates & Regulatory
21 Analysis for two years with Atlanta Gas Light Company, a natural gas
22 distribution utility with operations in Georgia and Tennessee. I also served for
23 two years as the Vice President of Regulatory Compliance for Sequent Energy

¹ State of Tennessee, Registered Accounting Firm ID 3682.

1 Management, a natural gas trading and optimization entity in Texas, where I was
2 responsible for ensuring the firm's compliance with state and federal regulatory
3 requirements.

4
5 **Q3. ON WHOSE BEHALF ARE YOU TESTIFYING?**

6 A3. I am testifying on behalf of the Consumer Advocate & Protection Division ("the
7 Consumer Advocate") of the Tennessee Attorney General's Office.

8
9 **Q4. HAVE YOU PRESENTED TESTIMONY IN ANY PREVIOUS CASES**
10 **INVOLVING EITHER BERRY'S CHAPEL UTILITY OR LYNWOOD**
11 **UTILITY?**

12 A4. Yes. I presented testimony on behalf of the Consumer Advocate in the last rate
13 case for Berry's Chapel Utility ("BCU" or "the Company") in TRA Docket 11-
14 00198. I also presented testimony on behalf of the Consumer Advocate in the
15 TRA's show cause investigation of BCU (Docket 11-00065).

16
17 **Q5. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
18 **PROCEEDING?**

19 A5. My testimony will support and address the Consumer Advocate's positions and
20 concerns with respect to the Company's Petition. Specifically, I will address the
21 following:

22 i. The Consumer Advocate's proposed attrition period results of operations;

- 1 ii. The Consumer Advocate's position on the recognition of prior period
2 billing errors that have been incorrectly charged to the Company's
3 customers;
4 iii. The Consumer Advocate's position on the Company's request to
5 implement pass through charges for future changes in certain operating
6 expenses; and
7 iv. The Consumer Advocate's position on the Company's request to recover
8 the cost of financial security.

9
10 ***Q6. WHAT DOCUMENTS HAVE YOU REVIEWED IN PREPARATION OF***
11 ***YOUR TESTIMONY?***

12 A6. I have reviewed the Company's Rate Case Application as filed on January 15,
13 2014, along with the supporting testimony and exhibits presented with its filing.
14 In addition, I have reviewed the Company's workpapers supporting its attrition
15 period revenue requirements. I have also reviewed the Company's responses to
16 the data requests submitted by the Consumer Advocate in this case. Finally, I
17 reviewed the TRA's Order in the Company most recent rate case (Docket 11-
18 00198).

19
20 **I. ATTRITION PERIOD RESULTS OF OPERATIONS UNDER**
21 **CURRENT RATES**

22
23 ***Q7. PLEASE SUMMARIZE THE COMPANY'S RATE CASE FILING.***

1 A7. As shown on Attachment WHN-2 to my testimony, the Company has prepared
2 what it calls an “operating margin” approach for setting rates in this docket. The
3 Company claims that this approach is appropriate because “...the capital structure
4 is greater than the rate base at the end of the attrition year.” As shown on
5 Attachment WHN-2, the Company first begins with the results of operation for
6 the twelve months ended December 31, 2013 (“the Test Period”) showing a net
7 operating loss of \$-437,854. The Company then makes a series of positive
8 normalizing adjustments totaling \$322,725 that reduces the Test Period loss to
9 \$-108,129. Finally, the Company makes another series of positive attrition
10 adjustments totaling \$110,663 that provides an attrition period net operating
11 income of \$2,534.² As shown on Attachment WHN-2, based on these
12 calculations, the Company proposes to increase current rates by approximately
13 \$99,495.

14
15 ***Q8. DO YOU HAVE ANY CONCERNS WITH THE COMPANY’S PROCESS***
16 ***FOR CALCULATING ITS RATE INCREASE?***

17 A8. Yes. The Company characterizes its rate case methodology as an “operating
18 margin” approach³ even though no operating margin is included within the
19 Company’s calculations. A more precise characterization would be that the
20 Company has proposed a “cash-needs” approach for developing its revenue
21 requirement. The objective of a cash-needs approach is to “...provide revenues

² The Company would later adjust the forecasted net operating income to \$6,658 through the correction of errors to their case that were discovered in response to the Consumer Advocate’s data request.

³ Direct Testimony of Company Witness Buckner, Page 5, Lines 13-15.

1 sufficient to recover total cash requirements for a given time period.”⁴ However,
2 under the cash-needs approach, depreciation expense is excluded from the
3 revenue requirement calculation, as the Company has already conceded.⁵
4 Consequently, the inclusion of depreciation expense within the Company’s case is
5 incorrect and needs to be removed in order to properly calculate the revenue
6 requirements.

7
8 **Q9. SINCE THE CASH-NEEDS APPROACH TO DETERMINE REVENUE**
9 **REQUIREMENTS EXCLUDES DEPRECIATION EXPENSE, HOW**
10 **WOULD YOU CHARACTERIZE THE COMPANY’S PROPOSAL TO**
11 **PAY DOWN ITS DEBT COST?**

12 A9. I would more properly characterize the Company’s use of depreciation as a
13 funding vehicle for debt payment as a separate tariff rider.

14
15 **Q10. ARE THERE CONCERNS WITH THE USE OF A TARIFF RIDER TO**
16 **PAY DOWN THE COMPANY’S DEBT COST?**

17 A10. Yes. The Company’s proposal to use its depreciation expense recovery to pay
18 down its debt cost ignores that the Company has not made any debt cost
19 payments in over two years.⁶ Therefore, even though the TRA included over

⁴ See Attachment WHN-4 from The Principles of Water Rates, Fees and Charges published the American Water Works Association, 2012.

⁵ See Company response to Consumer Advocate Data Request, Item #2.

⁶ Direct testimony of Company witness Buckner, Page 5, Lines 18-19.

1 \$145,000⁷ of depreciation expense and a fair return of over \$85,000 in the
2 Company's last rate case, none of this cash flow has been used to pay down the
3 Company's debt. Instead, the Company has misallocated these funds to other
4 purposes and as a result mismanaged the Company. The Company should not
5 benefit from this misallocation. Since the Company has not made any payments
6 on its debt, the Consumer Advocate recommends that the Company's request for
7 a tariff rider be denied or alternatively, depreciation expense be set at zero (\$0) at
8 least until the Company is able to restructure and begin repaying its debt.

9
10 ***Q11. WHAT DOES THIS MISMANAGEMENT MEAN FOR THE***
11 ***CUSTOMERS OF BCU?***

12 A11. It means that the Berry's Chapel customers have already funded almost all of the
13 Utility's debt cost without any corresponding reduction of debt on the books of
14 the Company.⁸ As a result, the Company soon will have no source of funds to
15 pay its debts unless the TRA intends to require the customers to pay for this same
16 debt again.

17
18 ***Q12. DOES THE COMPANY RECOGNIZE THIS PENDING PREDICAMENT?***

19 A12. Yes. In its response to the Consumer Advocate's Data Request, Item #2
20 regarding depreciation expense, the Company in part stated the following:

⁷ Final Order in Docket 11-00198, dated August 21, 2012. Depreciation expense of \$145,116 shown on Page 8. Fair return of \$85,000 computed by multiplying adopted rate base of \$1,135,068 shown on Page 17 by the fair rate of return of 7.5% shown on Page 14.

⁸ The Company currently has outstanding debt of \$1,064,152 and \$247,955. See Direct Testimony of Company Witness Buckner, Pages 5 – 6.

1 Yes, typically depreciation expense is not included when using an
2 operating ratio approach. However, Berry's Chapel is not a typical public
3 utility. The Company needs capital recovery on an aged infrastructure and
4 needs an operating margin to cover the anticipated annual interest cost of
5 its outstanding debt. **Therefore, the Company proposes: (1) to**
6 **eliminate the depreciation expense amount;** (2) to change the rate
7 increase to the base charge to \$1.45 per month for an 8% operating
8 margin; and (3) to establish a monthly escrow charge of \$7.55 for plant
9 additions. The escrow charge would accumulate and only be expended
10 through TRA approval. (Emphasis added.)
11

12 ***Q13. DOES THE CONSUMER ADVOCATE AGREE WITH THE COMPANY'S***
13 ***PROPOSED ALTERNATIVE FOR ELIMINATING DEPRECIATION***
14 ***EXPENSE AS OUTLINED IN THEIR RESPONSE TO THE CONSUMER***
15 ***ADVOCATE'S DATA REQUEST ITEM #2?***

16 A13. No, we do not. BCU has consistently proven over and over again that they cannot
17 be trusted with ratepayer funds. As a result, the Consumer Advocate has no
18 confidence that the Company would pay down any of its debt regardless of what
19 rate the TRA ultimately approves. The Consumer Advocate believes that it is
20 inappropriate to require the Company's customers to pay for this same debt cost a
21 second time through higher rates.
22

23 ***Q14. DOES THE CONSUMER ADVOCATE HAVE ANY OTHER***
24 ***DISAGREEMENTS WITH THE COMPANY'S DEPRECIATION***
25 ***EXPENSE CALCULATION?***

26 A14. Yes. The annual depreciation expense proposed by the Company is, in any event,
27 too large an amount when the current book value of the Company's net plant is
28 taken into account.

1

2 ***Q15. PLEASE EXPLAIN HOW YOU DETERMINED THAT THE COMPANY'S***
3 ***ANNUAL DEPRECIATION EXPENSE WAS TOO LARGE.***

4 A15. Attachment WHN-3 provides an analysis of the Company's plant in service at
5 December 31, 2013. This analysis shows that the Company's current net plant in
6 service is approximately \$840,000. However when this amount is then adjusted
7 for Contributions in Aid of Construction, the value of net unrecovered plant in
8 service is only approximately \$420,000. Therefore, approving the Company's
9 proposed annual depreciation expense of \$131,848 would mean that the utility
10 plant would be fully depreciated in just over three years. The Consumer
11 Advocate therefore believes that the Company's current depreciation rates are
12 excessive and need to be reduced.

13

14 ***Q16. HOW DOES THE CONSUMER ADVOCATE PROPOSE THAT THE TRA***
15 ***TREAT DEPRECIATION EXPENSE GENERALLY AND IN THE***
16 ***CONTEXT OF A PROPOSED RIDER?***

17 A16. At this time, the Consumer Advocate proposes that the Company's depreciation
18 charges be suspended and not included in the Utility's base rates. The elimination
19 of the Company's proposed depreciation expense of \$131,848 completely wipes
20 out the Company's proposed rate increase of \$99,495. The Consumer Advocate
21 therefore recommends that the current base rates remain unchanged.
22 In the context of a potential tariff rider, the Consumer Advocate further
23 recommends that the TRA conduct a separate investigation into the outstanding

1 debt of BCU and make a determination of the correct amount for recovery of the
2 cost of debt from the Utility's customers and further establish an appropriate
3 means for assuring debt repayment.
4

5 ***Q17. DOES THE CONSUMER ADVOCATE HAVE ANY CONCERNS WITH***
6 ***THE CALCULATION OF THE COMPANY'S OTHER OPERATING***
7 ***EXPENSES?***

8 A17. Yes. Many of the Company's other expenses have grown significantly since the
9 last rate case and the Consumer Advocate is concerned with how some of these
10 other expenses are calculated. However, as noted above, the elimination of
11 depreciation expense completely wipes out the Company's proposed rate increase.
12 Therefore, there is little reason to expand on the Consumer Advocate's concerns
13 regarding the Company's calculation of these other expenses at this time.
14

15 ***Q18. DOES THE CONSUMER ADVOCATE HAVE ANY COMMENTS OR***
16 ***CONCERNS FOR THE NEW BOARD OF DIRECTORS?***

17 A18. Yes. It is my understanding that the new Board of Directors is conducting a
18 review of the financial condition of the utility. In conducting this review, the
19 Board of Directors should pay particular attention to costs which have increased
20 since the last rate case. In addition, the new Board of Directors should review the
21 management contract currently in place. The Consumer Advocate opposed the
22 adoption of the management contract, and I recommend the Board of Directors
23 also consider not continuing the contract.

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II. RECOGNITION OF PRIOR PERIOD BILLING ERRORS

***Q19. MR. NOVAK, DID YOU ENTER TESTIMONY REGARDING BILLING
ERRORS TO THE COMPANY'S CUSTOMERS IN THE LAST RATE
CASE?***

A19. Yes. In Docket 11-00198, I identified \$160,521 in overcharges from billing errors that the Company needed to refund to its customers.⁹ However, these billing errors were only identified up through the point of the Company's last rate case and have not been updated since that time. Because some of these overcharges were continuing at that time, the final amount is unknown. In addition, my calculation of \$160,521 in overcharges did not include any provision for interest or penalties.

***Q20. HAS THE COMPANY ADMITTED THESE CHARGES WERE
ILLEGAL?***

A20. Yes. In TRA Docket 11-00065, both the Company and the TRA Party Staff admitted that these charges were illegal.

***Q21. HAS THE COMPANY RECOGNIZED THESE BILLING ERRORS ON
ITS BOOKS AND RECORDS?***

⁹ Novak, Direct Testimony in Docket 11-00198, Page 11.

TRA Docket 14-00004 Berry's Chapel Utility	10	Novak, Direct
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1 A21. No. According to the Company's response to the Consumer Advocate's Data
2 Request Item #20, the liability for the refunds that are still due to customers have
3 not been recognized on the Company's books. The Consumer Advocate therefore
4 recommends that the TRA order the Company to recognize a liability on its books
5 for the net balance of refunds that are still due to its customers and include an
6 interest provision on those refunds.
7

8 **III. PASS-THROUGH CHARGES**
9

10 ***Q22. MR. NOVAK, DID THE COMPANY INCLUDE A PROVISION TO***
11 ***IMPLEMENT NEW RATES FOR INCREMENTAL OPERATING***
12 ***EXPENSES ALONG WITH THEIR RATE CASE PETITION?***

13 A22. Yes. The Company has requested recovery of certain incremental operating
14 expenses in accordance with T.C.A. § 65-5-103(d).¹⁰
15

16 ***Q23. IS THE RECOVERY OF INCREMENTAL OPERATING EXPENSES***
17 ***UNDER T.C.A. § 65-5-103(D) APPROPRIATE WITHIN THE FILING***
18 ***REQUIREMENTS FOR A RATE CASE?***

19 A23. No. The requirements for the implementation of alternative regulation procedures
20 in accordance with T.C.A. § 65-5-103(d) are different from those of a rate case.
21 For example, the statutory review periods of both processes are different. I
22 therefore recommend that the Company's proposal to implement an alternative

¹⁰ Direct Testimony of Terry Buckner, Page 12.

1 regulation procedure in accordance with T.C.A. § 65-5-103(d) be denied, and the
2 Company be ordered to make a separate filing for this requested treatment.

3
4 **IV. COST RECOVERY FOR FINANCIAL SECURITY**

5
6 ***Q24. MR. NOVAK, HAS THE COMPANY REQUESTED A SURCHARGE***
7 ***THAT IT INTENDS TO FUND THE COST OF MEETING THE TRA'S***
8 ***FINANCIAL SECURITY REQUIREMENT?***

9 A24. Yes. The Company states that it is unable to meet the TRA's minimum funding
10 requirement for financial security and has asked for approval of a pass-through
11 mechanism for this purpose.¹¹

12
13 ***Q25. DOES THE CONSUMER ADVOCATE AGREE WITH THE COMPANY'S***
14 ***PROPOSAL FOR A PASS-THROUGH MECHANISM TO FUND THE***
15 ***TRA'S MINIMUM FUNDING REQUIREMENT FOR FINANCIAL***
16 ***SECURITY?***

17 A25. No, we do not. The TRA's rules require the principal amount (as opposed to the
18 carrying costs) of financial security to be funded from the utility, not the
19 customers.¹² I therefore recommend that the TRA deny the Company's proposal
20 for a pass-through mechanism of any type to fund the TRA's financial security
21 requirement.

¹¹ Direct Testimony of Terry Buckner, Page 13.

¹² TRA Rule 1220-4-13-.07(1) regarding financial security for wastewater utilities specifically states that "all public wastewater utilities either holding or seeking to hold a CCN and owning wastewater systems shall furnish to the Authority, **prior to providing service to a customer**, acceptable financial security using a format prescribed by the Authority" (emphasis added).

1

2 ***Q26. DOES THIS COMPLETE YOUR TESTIMONY?***

3 A26. Yes it does. However I reserve the right to incorporate any new information that
4 may subsequently become available.

ATTACHMENT WHN-1

William H. Novak Vitae

William H. Novak

19 Morning Arbor Place
The Woodlands, TX 77381

Phone: 713-298-1760

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Areas of Specialization

Over twenty-five years of experience in regulatory affairs and forecasting of financial information in the rate setting process for electric, gas, water and wastewater utilities. Presented testimony and analysis for state commissions on regulatory issues in four states and has presented testimony before the FERC on electric issues.

Relevant Experience

WHN Consulting – September 2004 to Present

In 2004, established WHN Consulting to provide utility consulting and expert testimony for energy and water utilities. Complete needs consultant to provide the regulatory and financial expertise that enabled a number of small gas and water utilities to obtain their Certificate of Public Convenience and Necessity (CCN) that included forecasting the utility investment and income. Also provided the complete analysis and testimony for utility rate cases including revenues, operating expenses, taxes, rate base, rate of return and rate design for utilities in Tennessee. Assisted American Water Works Company in preparing rate cases in Ohio and Iowa. Provided commercial and industrial tariff analysis and testimony for an industrial intervenor group in a large gas utility rate case. Industry spokesman for water utilities dealing with utility commission rulemaking. Consultant for the North Carolina and Illinois Public Utility Commissions in carrying out their oversight functions of Duke Energy and Peoples Gas Light and Coke Company through focused management audits. Also provide continual utility accounting services and preparation of utility commission annual reports for water and gas utilities.

Sequent Energy Management – February 2001 to July 2003

Vice-President of Regulatory Compliance for approximately two years with Sequent Energy Management, a gas trading and optimization affiliate of AGL Resources. In that capacity, directed the duties of the regulatory compliance department, and reviewed and analyzed all regulatory filings and controls to ensure compliance with federal and state regulatory guidelines. Engaged and oversaw the work of a number of regulatory consultants and attorneys in various states where Sequent has operations. Identified asset management opportunities and regulatory issues for Sequent in various states. Presented regulatory proposals and testimony to eliminate wholesale gas rate fluctuations through hedging of all wholesale gas purchases for utilities. Also prepared testimony to allow gas marketers to compete with utilities for the transportation of wholesale gas to industrial users.

Atlanta Gas Light Company – April 1999 to February 2001

Director of Rates and Regulatory Analysis for approximately two years with AGL Resources, a public utility holding company serving approximately 1.9 million customers in Georgia, Tennessee, and Virginia. In that capacity, was instrumental in leading Atlanta Gas Light Company through the most complete and comprehensive gas deregulation process in the country that involved terminating the utility's traditional gas recovery mechanism and instead allowing all 1.5 million AGL Resources customers in Georgia to choose their own gas marketer. Also responsible for all gas deregulation filings, as well as preparing and defending gas cost recovery and rate filings. Initiated a weather normalization adjustment in Virginia to track adjustments to company's revenues based on departures from normal weather. Analyzed the regulatory impacts of potential acquisition targets.

Tennessee Regulatory Authority – Aug. 1982 to Apr 1999; Jul 2003 to Sep 2004

Employed by the Tennessee Regulatory Authority (formerly the Tennessee Public Service Commission) for approximately 19 years, culminating as Chief of the Energy and Water Division. Responsible for directing the division's compliance and rate setting process for all gas, electric, and water utilities. Either presented analysis and testimony or advised the Commissioners/Directors on policy setting issues, including utility rate cases, electric and gas deregulation, gas cost recovery, weather normalization recovery, and various accounting related issues. Responsible for leading and supervising the purchased gas adjustment (PGA) and gas cost recovery calculation for all gas utilities. Responsible for overseeing the work of all energy and water consultants hired by the TRA for management audits of gas, electric and water utilities. Implemented a weather normalization process for water utilities that was adopted by the Commission and adopted by American Water Works Company in regulatory proceedings outside of Tennessee.

Education

B.A, Accounting, Middle Tennessee State University, 1981

MBA, Middle Tennessee State University, 1997

Professional

Certified Public Accountant (CPA), Tennessee Certificate # 7388

Certified Management Accountant (CMA), Certificate # 7880

Former Vice-Chairman of National Association of Regulatory Utility Commission's Subcommittee on Natural Gas

ATTACHMENT WHN-2

Revenue Requirement

Summary

Berry's Chapel Utility Inc.
Summary of Revenue Requirement
For the Attrition Year July 2014-June 2015
TRA Docket

Attachment WHN-2
Rev. Req. Summary

	Test Year 2013	Normalizing Adjustments	Normalized 2013	Attrition Year Adjustments	Attrition Year Amounts
Revenues					
Residential Revenue	\$ 370,917.63	\$ 13,521.00	\$ 384,438.63	\$ 35,260.02	\$ 419,698.65
Facility Charge Revenue	(147,831.67)	147,831.67	-	-	-
Base Charge Revenue	457,826.79	(151,676.79)	306,150.00	92,016.00	398,166.00
Penalty Charge Revenue	2,325.09	-	2,325.09	3,179.26	5,504.35
Application Fee Revenue	-	-	-	3,700.00	3,700.00
Reconnection Fee Revenue	-	-	-	100.00	100.00
Disconnect Fee Revenue	-	-	-	-	-
Non-Residential Revenue	7,669.04	-	7,669.04	-	7,669.04
Non-Residential Base Charge Revenue	720.00	-	720.00	-	720.00
Tap Fees	34,750.00	(34,750.00)	7,000.00	-	7,000.00
Other Miscellaneous Fees	4,765.15	(3,500.00)	1,265.15	500.00	1,765.15
Refunds Due Customers	29,463.02	5,797.00	35,260.02	\$ (35,260.02)	-
Total Revenues	\$ 760,605.05	\$ (22,777.12)	\$ 744,827.93	\$ 99,495.26	\$ 844,323.19
Operating Expenses					
Payroll Expense	-	-	-	-	-
Purchased Water	7,616.50	-	7,616.50	-	7,616.50
Sludge Removal	47,776.05	(2,499.43)	45,276.62	-	45,276.62
Electricity	58,878.57	-	58,878.57	-	58,878.57
Chemicals	50,653.15	(8,089.12)	42,564.03	-	42,564.03
Office Supplies	20,601.82	(862.54)	19,739.28	7,086.00	26,825.28
Professional Fees	128,001.42	(37,157.02)	90,844.40	23,728.84	114,573.24
Customer Accounting	86,441.48	(1,120.00)	85,321.48	7,885.32	93,206.80
Billing & Collections	27,374.52	-	27,374.52	(22,125.57)	5,248.95
Operations	164,340.40	(3,010.46)	161,329.94	24,326.68	185,656.62
Administrative	14,350.30	(5,000.30)	9,350.00	850.00	10,200.00
Regulatory Expense	190,434.44	(170,648.44)	19,786.00	(8,550.00)	11,236.00
Rate Case Expense	30,092.01	1,911.99	32,004.00	2,656.33	34,660.33
Insurance	33,416.66	(2,512.25)	30,904.41	-	30,904.41
Injuries & Damages	(900.00)	900.00	-	-	-
Depreciation Expense	216,946.60	(48,699.00)	168,247.60	(36,399.60)	131,847.75
Miscellaneous Expense	5,743.39	(211.22)	5,532.17	-	5,532.17
Total Operating Expenses	1,081,767.31	(276,997.79)	804,769.52	(541.99)	804,227.28
Taxes Other than Income Taxes					
Property Taxes	27,000.00	-	27,000.00	(2,537)	24,462.90
Franchise Taxes	12,000.00	-	12,000.00	(10,293.82)	1,706.18
Other Taxes	2,916.62	(2,916.62)	-	-	-
Payroll Taxes	2,334.28	6,853.34	9,187.62	2,205.40	11,393.02
Change in Accounting Estimate	72,440.85	(72,440.85)	-	-	-
Net Operating Income	\$ (437,854.01)	\$ 322,724.80	\$ (108,129.21)	\$ 110,662.77	\$ 2,533.81

ATTACHMENT WHN-3

Net Plant in Service

**Consumer Advocate & Protection Division
Berry's Chapel Utility
Analysis of Net Plant in Service at December 31, 2013**

14-00004
Attachment WHN-3

	Plant in Service	Accumulated Depreciation	Net Plant in Service
Collection System	\$236,203	\$94,923	\$141,280
Structures & Improvements	155,580	155,580	0
Pump Equipment	243,714	225,989	17,725
Treatment & Disposal Equipment	2,604,012	1,984,493	619,519
Transportation Equipment	14,667	14,667	0
Office & Lab Equipment	165,068	104,383	60,685
Land	10,000	0	10,000
Unreconciled	-8,881	0	-8,881
Total	\$3,420,363	\$2,580,035	\$840,328
Less Contributions in Aid of Construction (Net)			418,904
Net Unrecovered Owner Financed Plant in Service			\$421,424

SOURCE: Company Workpaper E-DEP1.

ATTACHMENT WHN-4

Cash Needs Revenue Requirement

12 PRINCIPLES OF WATER RATES, FEES, AND CHARGES

is that it may be difficult to project costs, and it lacks the certainty of a historical test year. The advantage of a projected test year is that the rates to be developed for the test year will likely match up to the utility's budget or anticipated costs. Finally, a pro forma is a combination of the historical and projected test year. A pro forma test period begins with historical data and costs and then adjusts only for those "known and measurable" costs or changes. An example of a known and measurable change would be a labor agreement that specifies a certain percent adjustment to labor rates. Simple inflation is not considered a known and measurable change in costs. The disadvantage of the pro forma test year is that it may not fully capture changes in costs, but the advantage is that it has adjusted for only those costs that can clearly be documented as needing adjustment in the test year.

Generally, government-owned utilities are free to set their own policies regarding test-year periods. However, investor-owned utilities and those government-owned utilities that are under the jurisdiction of utility commissions are subject to particular legislative and regulatory practices that must be followed. These practices vary from jurisdiction to jurisdiction.

Methods of Accumulating Costs

Once the test year or time period for establishing the revenue requirements has been determined, the next decision is the method that will be used to accumulate costs within the revenue requirement analysis. The two generally accepted methods of accumulating costs for the revenue requirements are the *cash-needs approach* and the *utility-basis approach*. Each of these methods and the component costs contained within each method is discussed in more detail in the following sections.

Cash-Needs Approach

The objective of the cash-needs approach for developing revenue requirements is to provide revenues sufficient to recover total cash requirements for a given time period. Generally, the cash-needs approach is used by government-owned utilities (except in those jurisdictions where regulation requires the use of the utility approach). As used in this manual, the term *cash needs*, as it applies to measuring revenue requirements of a utility, should not be confused with the accounting terminology of the *cash-basis* accounting method of revenue and expense recognition. From a rate-making perspective, *cash needs* refers to the total revenues required by the utility to meet its annual cash expenditures, whereas the accounting term *cash basis* refers to revenues being recognized as earned when cash is received and expenses charged when cash is disbursed. The cash-needs approach to measuring revenue requirements of a utility may be evaluated on the cash, accrual, or modified accrual basis of accounting.

Generally, revenue requirement studies using the cash-needs approach are more straightforward to calculate than revenue requirement studies using the utility-basis approach. Many utilities budget in a format that may be very similar to the cash-needs approach.

Revenue requirement components. Basic revenue requirement components of the cash-needs approach include O&M expenses, taxes or transfer payments, debt-service payments, contributions to specified reserves, and the cost of capital expenditures that are not debt-financed or contributed (i.e., capital improvements funded directly from rate revenues). Depreciation expense is not included within the cash-needs revenue requirement.

Operation and maintenance expenses. Depending on the test year selected, the O&M expense component can be projected based on actual expenditures and adjusted to reflect anticipated changes in expenditures during the projected test-year period.