

## NASHVILLE, TENNESSEE

**IN RE:**

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Berry's Chapel, a public utility regulated by the TRA pursuant to Title 65 of the Tennessee Code, provides wastewater service to approximately 850 customers in Williamson County, Tennessee. On January 16, 2014, Berry's Chapel filed a *Petition*, under Tenn. Code Ann. § 65-5-101 *et seq.*, seeking approval to increase its annual revenue by approximately \$99,000 or 13.35% and to implement a pass-through mechanism to recover the costs of obtaining financial security, in

accordance with TRA Rule 1220-04-13-.07.<sup>1</sup> In addition, under Tenn. Code Ann. § 65-5-103(d), Berry's Chapel requested approval of 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.<sup>2</sup> During the regularly scheduled Authority Conference held on February 3, 2014, the voting panel of Directors assigned in this docket voted unanimously to convene a contested case proceeding and appoint General Counsel or her designee to act as Hearing Officer to handle any preliminary matters arising in the proceedings. On January 23, 2014, the Consumer Advocate and Protection Division of the Office of the Attorney General ("CAPD" or "Consumer Advocate") filed a *Petition to Intervene* in the docket, which was granted by the Hearing Officer in an Order issued February 4, 2014.

### **POSITIONS OF THE PARTIES**

#### ***Consumer Advocate***

Consumer Advocate witness William H. Novak testifies that Berry's Chapel should not be allowed to recover depreciation expense because the Company had failed to use the cash flow generated from recovery of depreciation expense to pay down its debt. According to Mr. Novak, eliminating the annual depreciation expense of \$131,848 would more than offset the requested revenue increase sought by the Company (\$99,495) and, therefore, negate the overall need to increase rates.<sup>3</sup> Mr. Novak also states that the proposed mechanism for recovering incremental operating expenses should be denied, and Berry's Chapel should be ordered to make a separate filing for said mechanism.<sup>4</sup> Finally, Mr. Novak testifies that the surcharge to fund the financial

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<sup>1</sup> *Petition*, pp. 1-2 (January 16, 2014).

<sup>2</sup> *Petition*, p. 2 (January 16, 2014). The Authority is authorized to implement alternative regulatory methods to allow public utility rate reviews and cost recovery in lieu of a general rate case proceeding, and is required to make a final determination on any such alternative regulatory method no later than one hundred twenty (120) days from the initial filing by the public utility. Tenn. Code Ann. § 65-5-103(d)(1)(A) (2013).

<sup>3</sup> William H. Novak, Pre-Filed Direct Testimony, pp. 4-8 (May 30, 2014).

<sup>4</sup> *Id.* at 12.

security should be denied because the utility should fund the financial security and not the ratepayers.<sup>5</sup>

### ***Berry's Chapel***

Berry's Chapel's rebuttal witness Mike Knotts testifies that the Company is now operating under the principles of a member-owned cooperative and has begun a strategic review of the Company's financial and operational condition.<sup>6</sup> Mr. Knotts states the Company Board is undergoing cost containment issues and operational evaluation that will have a positive impact on the Company's efficiency. Moreover, with these efforts in place Mr. Knotts testifies the Company's current cash flow is sufficient to operate the Company on a short-term basis until such time that the Board has a better understanding of the Company's cost containment efforts and debt obligations.<sup>7</sup>

Accordingly, Mr. Knotts testifies that Berry's Chapel is requesting a \$4.00 surcharge for twenty-four (24) months to be escrowed for the purpose of capital improvements, and a \$1.00 surcharge for twelve (12) months to be set aside for funding the Company's required financial security.<sup>8</sup> In addition, Mr. Knotts testifies the Company is seeking approval of additional fees related to late payment, disconnection, reconnection and handling new applications.<sup>9</sup> According to Berry's Chapel witness Robert "Terry" Buckner, these new fees would generate approximately \$7,000 in additional annual revenues.<sup>10</sup>

### **STIPULATION AND SETTLEMENT AGREEMENT**

In the *Stipulation and Settlement Agreement* ("Settlement" or "Settlement Agreement") filed by Berry's Chapel and the Consumer Advocate (together, "the parties"), the parties state they

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<sup>5</sup> *Id.*

<sup>6</sup> Mike Knotts, Pre-filed Rebuttal Testimony, pp. 4-5 (June 24, 2014).

<sup>7</sup> *Id.* at 8.

<sup>8</sup> *Id.* at 9.

<sup>9</sup> *Id.* at 10.

<sup>10</sup> Robert T. Buckner, Pre-filed Direct Testimony, p. 9 (January 15, 2014).

settled all of the matters contained in this docket.<sup>11</sup> In the *Settlement Agreement*, the parties agreed to implement a Capital Improvement Tariff Rider of \$4.50 per month per customer, for a period of only twenty-four (24) months for the purpose of establishing a capital improvements account.<sup>12</sup> According to the *Settlement*, this Rider shall terminate after twenty-four (24) months, and amounts collected via the Tariff Rider will be held in a separate bank account and are intended to provide Berry's Chapel with sufficient funds necessary to address its significant debt and limited borrowing capabilities.<sup>13</sup> Withdrawal of these funds is contingent on Berry's Chapel seeking and obtaining TRA approval of a specified amount for a specified purpose.<sup>14</sup> The *Settlement* provides that in exigent circumstances Berry's Chapel may request approval from the Chief of the TRA's Utilities Division or his/her designee of a specified amount for a specified purpose.<sup>15</sup> A request due to exigent circumstances must be accompanied with support and documentation for the request, including how the requested amount was calculated and notice must be simultaneously filed with the Consumer Advocate.<sup>16</sup>

The *Settlement* requires Berry's Chapel to disclose on each customer's bill the Tariff Rider as a separate line item and specify the termination date of this Rider.<sup>17</sup> Additionally, Berry's Chapel is to file quarterly with the TRA and Consumer Advocate a report detailing the balance in the Tariff Rider account including deposits and withdrawals.<sup>18</sup> This report shall include copies of the bank statements for each of the previous three (3) months.<sup>19</sup> Upon request by either the TRA or

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<sup>11</sup> During the Hearing on the *Settlement Agreement*, TRA Staff solicited a number of clarifications from the parties regarding certain language of the *Settlement Agreement*. See Transcript of Proceedings, pp. 12-23 (August 11, 2015).

<sup>12</sup> *Settlement*, p. 5 (July 29, 2014).

<sup>13</sup> *Id.* at 5-6.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 7.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

the Consumer Advocate, Berry's Chapel is to provide any requested supporting information related to the deposits or withdrawals.<sup>20</sup>

Under the terms of the *Settlement*, Berry's Chapel is required to provide the TRA with all meeting minutes and any final report of the Board of Directors.<sup>21</sup> Further, Berry's Chapel agrees to file an annual report with the TRA on or before June 30, 2015, which will include any outstanding debt of Berry's Chapel and any impending effect it may have on the continued provision of services by Berry's Chapel.<sup>22</sup>

#### **AUGUST 11, 2014 AUTHORITY CONFERENCE**

A Hearing in this matter was held during the regularly scheduled Authority Conference on August 11, 2014 to consider the *Settlement Agreement*. Participating in the hearing were the following parties and their respective counsel:

**Berry's Chapel** – Henry W. Walker, Esq., Bradley Arant Boult Cummings LLP, 1600 Division Street, Suite 700, Nashville, TN 37203.

**Consumer Advocate** – Wayne Irvin, Esq. & Vance Broemel, Esq., Office of the Attorney General, 425 Fifth Avenue North, Fourth Floor, John Sevier Building, P.O. Box 20207, Nashville, TN 37202.

In addition, during the Hearing, members of the public were given an opportunity to present comments to the panel, but no one came forward to comment. Following the Hearing on the *Settlement Agreement*, the panel deliberated this matter.

Based on the record in this matter and in light of information provided and clarifications made by the parties at the Hearing, a majority of the panel voted to approve the *Settlement Agreement*.<sup>23</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Director Hill conditioned his vote for the *Settlement Agreement* on Berry's Chapel obtaining a fiduciary bond for those individuals allowed to withdraw escrow funds from the bank.

**MOTION FOR CLARIFICATION AND AMENDMENT**

On March 2, 2015, Berry's Chapel filed a *Motion for Clarification*, requesting that the TRA clarify its understanding of the *Settlement Agreement* approved by the panel at the August 11, 2014 Authority Conference. The Company states that the approved *Settlement Agreement* allows for the utility to collect a \$4.50 charge for a twenty-four (24) month period to establish a capital improvements account, but also provides that if the utility files a rate case or a petition seeking other rate relief, the Tariff Rider shall automatically terminate without further action by the TRA.<sup>24</sup>

Berry's Chapel states it was sued in Williamson County Chancery Court for approximately \$1.8 million plus attorney fees, court costs and applicable late charges and collection fees.<sup>25</sup> According to Berry's Chapel, the suit seeks collection of principal and interest on two (2) loans made to Berry's Chapel in 2007 (one for \$1 million and the other for \$250,000), and that both loans were approved by the Authority.<sup>26</sup> Berry's Chapel states that the utility's prior owners, Mr. John Ring and his son, Tyler Ring, "made virtually no payments on the outstanding notes."<sup>27</sup> Berry's Chapel goes on to state that the Rings lost control of the Company in March 2014, but the Rings subsequently purchased the debt (notes) and have now brought suit against Berry's Chapel for collection of the notes.<sup>28</sup> Both loans are secured by the utility's assets.<sup>29</sup>

Berry's Chapel states that its Board of Directors has determined the utility would be unable to pay the amounts in the lawsuit.<sup>30</sup> The Company now seeks clarification from the TRA on two points. First, Berry's Chapel asks for clarification as to whether the *Settlement* addresses the issue of the unpaid notes, thus precluding the utility from seeking additional rates to pay the notes.<sup>31</sup>

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<sup>24</sup> *Motion for Clarification*, pp. 1-2 (March 2, 2015).

<sup>25</sup> *Id.* at 2.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 3.

Second, if the TRA determines that the *Settlement Agreement* does not resolve issues related to the unpaid notes, Berry's Chapel seeks clarification as to whether it may file for rate relief without risking termination of the existing Tariff Rider.<sup>32</sup>

On July 10, 2015, Berry's Chapel filed an *Amended Motion for Clarification* ("Amended Motion" and together with *Motion for Clarification*, "*Amended Motion for Clarification*"), stating that in light of comments presented by the Consumer Advocate and in the absence of rate relief or settlement with creditors, it would be helpful for the Authority to "confirm the relationship among rate base, rates, and the fair market of a regulated utility."<sup>33</sup> Berry's Chapel also requests the Authority to explain that since rates are based upon the net book value of a utility's assets, the net book value and fair market value of a utility's assets are presumably the same.<sup>34</sup>

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

On March 25, 2015, the Consumer Advocate filed the *Consumer Advocate's Response to Berry's Chapel Utility Inc.'s Motion for Clarification* ("CAPD Response"). The Consumer Advocate states that the *Settlement Agreement* clearly resolves the issues outlined in the *Motion for Clarification*, so there is no need for clarification as requested.<sup>35</sup> The Consumer Advocate states, however, that since the utility has been sued for collection of the notes, it would not oppose clarification by the TRA regarding the book value of the utility's assets and let that value effectively limit the amount that may be recovered in rates from customers for payments on the notes.<sup>36</sup>

More specifically, the Consumer Advocate asserts that the pleadings, filings and testimony in this docket clearly demonstrate that the issue of the unpaid notes was considered in this docket so

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<sup>32</sup> *Id.*

<sup>33</sup> *Amended Motion*, p. 1 (July 10, 2015).

<sup>34</sup> *Id.* at 2.

<sup>35</sup> *CAPD Response*, pp. 1-2 (March 25, 2015).

<sup>36</sup> *Id.* at 2.

no clarification on that point is needed.<sup>37</sup> Regarding Berry's Chapel's second issue as to whether a filing for rate relief would terminate the Tariff Rider, the Consumer Advocate asserts that the *Agreement* makes it clear that Berry's Chapel may not seek relief without termination of the Tariff Rider.<sup>38</sup>

#### **AUGUST 17, 2015 AUTHORITY CONFERENCE**

The panel considered the *Amended Motion for Clarification* at the regularly scheduled Authority Conference held on August 17, 2015. Based on the record, the panel voted unanimously that pursuant to the explicit terms of the *Settlement Agreement* approved in this docket, any rate relief sought by the Company, including future recovery of the unpaid notes, would terminate the \$4.50 Capital Improvement Tariff Rider. Further, the panel found that even though a rate petition would terminate the \$4.50 Tariff Rider, Berry's Chapel can file for rate relief at any time it deems necessary, and the TRA will make its determination as to the reasonable level of earnings that should be awarded in rates in light of the record.

Regarding the issue of the Company's request that the Authority "confirm the relationship among rate base, rates, and the fair market of a regulated utility" and explain that the net book value and fair market value of a utility's assets are presumably the same, the panel voted unanimously that the Authority decline from offering any statement regarding the overall market valuation of Berry's Chapel. The panel found that since the approved *Settlement* in this docket resulted in rates remaining unchanged, the Authority last established rates for Berry's Chapel in its order dated August 12, 2012 in Docket No. 11-00098, wherein the Authority determined a rate base of \$1,135,068, annual operating expenses of \$681,668 and a fair rate of return of 7.5% for establishing rates. These determinations resulted in approved annual operating revenues of \$777,098 for Berry's

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 2-3.



Chapel and represent the latest determinations by the Authority regarding the value of the utility's general ratemaking components.

**IT IS THEREFORE ORDERED THAT:**

1. The *Stipulation and Settlement Agreement* filed by Berry's Chapel Utility, Inc. and the Consumer Advocate and Protection Division of the Office of the Attorney General on July 29, 2014, including the clarifications made at the August 11, 2014 Hearing, is approved.

2. The *Amended Motion for Clarification* is granted, in part, and denied, in part. Pursuant to the terms of the *Stipulation and Settlement Agreement* approved in this docket, any rate relief sought by Berry's Chapel Utility, Inc., including future recovery of unpaid notes, would terminate the \$4.50 Capital Improvement Tariff Rider that was approved in the *Stipulation and Settlement Agreement*. The Authority declines to offer any statement regarding the overall market valuation of Berry's Chapel Utility, Inc.

**Vice Chairman David F. Jones concurs; Director James M. Allison concurred with the motion; and Director Kenneth C. Hill concurs, in part, and dissents, in part.**

**ATTEST:**

  
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**Earl R. Taylor/Executive Director**