

**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)	

**MEMORANDUM IN SUPPORT OF THE CONSUMER ADVOCATE'S MOTION FOR
LEAVE TO ISSUE MORE THAN FORTY DISCOVERY REQUESTS**

The Consumer Advocate and Protection Division ("Consumer Advocate"), pursuant to TRA Rule 1220-1-2-.11(5)(a) and the direction of the Hearing Officer, hereby submits this memorandum in support of its *Motion for Leave to Issue More Than Forty Discovery Requests* to Berry's Chapel Utility, Inc. ("Berry's Chapel", "BCUI" or "Company"). Berry's Chapel does not oppose this Motion.

For good cause, the Consumer Advocate would show as follows:

Berry's Chapel filed its Petition on January 16, 2014. The Petition contains a request for an increase in rates and various "pass-throughs" under the recently enacted "alternative" regulatory methods, Tenn. Code Ann. § 65-5-103(d), including "pass-throughs" for potential environmental costs. Thus, this case is not only a rate case but also contains an "alternative ratemaking" proceeding.

Discovery in rate cases generally requires more than forty questions. In TRA Docket No. 12-00049, a rate case involving Tennessee American Water Company, the Consumer Advocate's

first discovery requests contained ninety-nine (99) requests. In TRA Docket No. 12-00064, a rate case involving Atmos Energy Corporation, the Consumer Advocate's first discovery requests contained forty-one (41) requests that were issued after the Consumer Advocate's review of the Company's minimum filing requirements.

Section 1220-1-2-.11 of the Rules of the Tennessee Regulatory Authority ("R. TRA"), entitled *Discovery*, states in part, that "any party to a contested case may petition for discovery...discovery shall be *sought and effectuated* in accordance with the Tennessee Rules of Civil Procedure". Furthermore, Tennessee Code Annotated § 4-5-311(a) states that "the administrative judge or hearing officer, at the request of any party, shall issue subpoenas, effect discovery, and issue protective orders, in accordance with the Tennessee Rules of Civil Procedure." Rule 26.02 of the Tennessee Rules of Civil Procedure, governing discovery, provides that:

parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and electronically stored information.

Tenn. R. Civ. Pro. 26.02, *Discovery Scope and Limits* (Emphasis added). Perhaps the most important policy of discovery is that discovery should enable the parties and the court to seek the truth so that disputes will be decided by facts rather than legal maneuvering. *White v. Vanderbilt University*, 21 S.W. 3d 215, 223 (Tenn. Ct. App. 1999). Discovery should allow both the court and the parties to have an intelligent grasp of the issues to be litigated and knowledge of the facts underlying them. *Vythoulkas v. Vanderbilt University Hospital*, 693 S.W. 2d 350, 356 (Tenn. Ct. App. 1985). Further, discovery is not confined to the issues raised in the pleadings, for discovery

itself may be used to clarify and define the issues in controversy. *Id.* at 359. Accordingly, a party seeking discovery is entitled to obtain information about any matter, not privileged, which is relevant to the subject matter involved, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. *State ex. Rel. Flowers v. Tennessee Trucking Assoc. Self Insurance Group Trust*, 209 S.W. 3d 602, 615 (Tenn. Ct. App. 2006).

The Tennessee Rules of Civil Procedure go on to specify the situations in which discovery may be limited by the presiding judge or hearing officer:

the frequency or extent of use of the discovery methods set forth in subdivision 26.01 and this subdivision **shall be limited by the court if it determines that:** (i) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or, (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

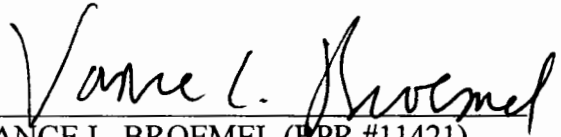
Tenn. R. Civ. Pro. 26.02. (Emphasis added). Applying the fundamental principal of “*expressio unius est exclusio alterius*,” which translates as “the expression of one thing implies the exclusion of ... things not expressly mentioned,” a court may not limit discovery if the requests do not fall into one of these three categories. *Wells v. Tennessee Board of Regents*, 231 S.W.3d 912, 917 (Tenn. 2007).

In this matter, the Consumer Advocate respectfully submits the discovery sought is reasonable and necessary under Tennessee law and the needs of the case.

CONCLUSION

For all of the foregoing reasons, the Consumer Advocate asks that the Authority grant its *Motion for Leave to Issue More Than Forty Discovery Requests.*

RESPECTFULLY SUBMITTED


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Dated: February 7, 2014.

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 7th day of February 2014.

Vance L. Broemel
VANCE L. BROEMEL