

February 19, 2014

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

ORDER GRANTING THE CONSUMER ADVOCATE’S MOTION TO ISSUE ADDITIONAL DISCOVERY REQUESTS

This matter is before the Hearing Officer of the Tennessee Regulatory Authority (“Authority” or “TRA”) upon a *Motion for Leave to Issue More Than Forty Discovery Requests* and supporting Memorandum (“*Motion*”) filed by the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) on February 7, 2014. Thereafter, on February 12, 2014, the Consumer Advocate filed its first discovery requests propounded upon Berry’s Chapel Utility, Inc. (“Berry’s Chapel”), which included a total of 55 numbered discovery requests.

In accordance with TRA Rule 1220-1-2-.11(5), the Consumer Advocate files its *Motion* for permission to serve more than forty (40) discovery requests upon Berry's Chapel in this case. In support of its request, the Consumer Advocate states that Berry's Chapel does not oppose its *Motion*. In addition, the Consumer Advocate asserts that the TRA typically allows additional discovery, beyond forty questions, in rate case proceedings and that this docket is complex in that, in addition to an increase in base rates, Berry's Chapel seeks to implement various pass-

through mechanisms. The Consumer Advocate notes that the TRA Rules provide for discovery in accordance with the Tennessee Rules of Civil Procedure (“TRCP”) and that the TRCP, and certain case law interpreting those rules, provide for a general policy favoring broad discovery in Tennessee. Finally, the Consumer Advocate states that the TRCP specifies certain situations in which discovery may be limited, and that discovery may not be limited if the requests do not fall into one of these categories.

FINDINGS & CONCLUSIONS

Under TRA Rule 1220-1-2-.11(1), when informal discovery is not practicable, any party to a contested case proceeding may petition for a discovery schedule and, thereafter, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure. Further, TRA Rule 1220-01-02-.11(5)(a) prohibits any party from propounding more than forty discovery requests on any other party without first obtaining permission of the Authority:

No party shall serve on any other party more than forty (40) discovery requests including sub-parts without first having obtained leave of the Authority or a Hearing Officer. Any motion seeking permission to serve more than forty (40) discovery requests shall set forth the additional requests. The motion shall be accompanied by a memorandum establishing good cause for the service of additional interrogatories or requests for production. If a party is served with more than forty (40) discovery requests without an order authorizing the same, such party need only respond to the first forty (40) requests.

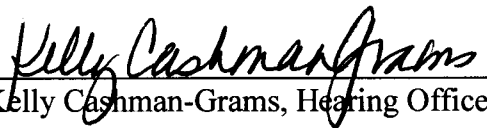
Under the Rule, any motion for additional discovery must establish good cause and set forth or include the additional requests sought to be served.

While the Consumer Advocate did not include the additional discovery requests with its *Motion*, as required under the TRA Rule, the requests were later filed in the docket. The Hearing Officer considers the late-filing of the requests a cure to the initial noncompliance with the specifications of the Rule. Further, to the extent that the Consumer Advocate states or suggests that under the general policy favoring broad discovery in Tennessee and barring the specific

situations described in TRCP 26.02, the authority and discretion of the TRA or Hearing Officer is prohibited or otherwise restricted from limiting discovery in the proceedings before it, such contention is specifically excluded from and does not form any basis for the Hearing Officer's decision or finding of good cause for allowing additional discovery in this matter.

IT IS THEREFORE ORDERED THAT:

As to the additional discovery requests propounded by the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General as part of its first discovery requests to Berry's Chapel Utility, Inc., the *Motion for Leave to Issue More Than Forty Discovery Requests* is granted.



Kelly Cashman-Grams, Hearing Officer