

TENNESSEE REGULATORY AUTHORITY



2014 AUG 20 PM 4:05

T.R.A. 502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243

August 20, 2014

Henry Walker
Bradley Arant Boult Cummings, LLP
1600 Division Street, Suite 700
Nashville, 37203

Dear Mr. Walker:

In order for the Authority to analyze Docket No. 14-00048, *Petition for Approval of Name Change from Berry's Chapel Utility, Inc. to Harpeth Wastewater Cooperative*, it is requested that the responses be provided to the following.

1. Provide a copy of all Board and Company member meeting minutes, resolutions or bylaw amendments or similar documents adopted by the Board or Company members at any Board or Company member meeting held on or after March 13, 2014.
2. Describe in detail each step that has occurred, been implemented, has been or is in the process of being developed regarding the change in Berry's Chapel Utility, Inc.'s ("Berry's Chapel" or "Company") governance and ownership into that of a member-owned cooperative.
3. Regarding the Company's adoption of "the seven principles of a member-owned cooperative"¹ explain in detail:
 - a. How each of the principles applies to a nonprofit utility that is not a cooperative under Tennessee law;
 - b. Each member's ownership, profit/loss sharing, liability for debts or acts of the Company, and any other legal rights and/or obligations of each member relating to the nonprofit status and operation as a cooperative;
 - c. Each non-member's ownership, profit/loss sharing, liability for debts or acts of the Company, and any other legal rights and/or obligations of each member relating to the nonprofit status and operation as a cooperative; and
 - d. All differences, including any legal consequences, of actually operating as a cooperative or only operating in accordance with cooperative principles.
4. Regarding Company customers and members:
 - a. Provide the latest number of customers and how many of those customers that the Company purports to be members;
 - b. Describe in detail all efforts aimed at attaining members and explain in detail the process by which a customer attains such membership;

¹ See in re: Docket No. 14-00004, Mike Knotts, Rebuttal Testimony, p. 4 (June 24, 2014).

- c. Define a member, e.g., is membership limited to households, meters, individuals, etc.;
 - d. Provide a breakdown of the number of members by community, e.g., Cottonwood, River Landing, Legends Ridge, etc.;
 - e. Have any customers expressly denied the opportunity to become members? If so, provide the names of those persons.
 - f. Currently, how can non-members participate in the control of the company?
5. Mr. Knotts stated that the independent directors (i.e., board members) have a fiduciary duty owed to customers.²
- a. Describe in detail the fiduciary duty owed to the customers.
 - b. State whether any member of the Board has (1) waived the provisions in the utility's charter providing for no liability on the part of a director for breach of a fiduciary duty and for indemnification of directors to the fullest extent permitted under Tennessee law, or (2) waived similar provision within the utility's bylaws.
6. At the hearing held in Docket 14-00004 on August 11, 2014, Mr. Moore stated, "Every new customer now, the sign-up sheet to be a customer is also a membership application that just gets automatically approved."³ Regarding this statement:
- a. Provide a copy of all documentation presented to a new/prospective customer.
 - b. Does the material provided to a new/prospective customer state clearly that they are not required to become a member? If not, please explain fully.
 - c. If a new/prospective customer is automatically a member by agreeing to new service, reference any law allowing the utility to automatically assign membership to new/prospective customers.
7. At the hearing held in Docket No. 14-00004 on August 11, 2014, Mr. Moore stated, "But some fears that are unreasonable is some people think that if you become a member and you own part of the corporation, that you can get dinged; if there's a loss, that somebody is going take your money. We've quoted the statutes."⁴ Regarding this statement:
- a. Provide a copy of all statutes referred to by Mr. Moore.
 - b. Do members own part of the corporation? If not, please explain. If so, please fully explain all liabilities that members have regarding ownership.
 - c. If members do not own the corporation, please state who currently owns the utility. What are the liabilities of the individuals listed in your answer to this question?
 - d. If the utility has a shortfall at year end (or any other time) and does not have enough cash to pay its debt and expense obligations, who is responsible for paying those past debts and how would the utility propose to pay them? Please take into consideration the TRA's long-standing policy of only allowing rate recovery of operation and maintenance expenses on a going forward basis.

² See in re: Docket No. 14-00004, Mike Knotts, Rebuttal Testimony, p. 12 (June 24, 2014).

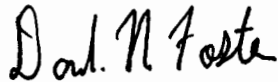
³ Transcript, p. 27, Docket 14-00004, August 11, 2014.

⁴ Transcript, p. 28, Docket 14-00004, August 11, 2014.

8. Given that Tennessee law has specific statutes regarding electric and telephone cooperatives, please reference any statute(s) that authorize wastewater utilities to operate as a cooperative or allows a non-profit wastewater utility to use the term "cooperative" in its name.
9. Provide a copy of the bill currently sent to Berry's Chapel's customers.
10. Provide copies of all correspondence given to consumers advising them of the opportunity to join as members. Has the Company provided clear correspondence informing customers that they are not required by law to join? If so, provide a copy of that correspondence. If not, please explain in detail why consumers have not been advised that they are under no obligation to join.

It is requested that responses to the above questions be provided no later than noon August 28, 2014 and that Docket No. 14-00048 be referenced on the response. Should you have any questions or need clarification of any requested item please contact me at (615) 770-6884.

Sincerely,

A handwritten signature in black ink that reads "David N. Foster". The signature is written in a cursive, slightly slanted style.

David Foster, Chief
Utilities Division