

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

IN RE:

**PETITION OF BERRY'S CHAPEL
UTILITY, INC. FOR A
DECLARATORY ORDER**

DOCKET NO. 14-00075

PETITION TO INTERVENE

Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118, respectfully petitions the Tennessee Regulatory Authority ("TRA" or "Authority") to grant the Consumer Advocate's intervention into this proceeding on behalf of the public interest, because consumers may be affected by the Petition For Declaratory Order ("Petition") filed in this TRA Docket by Berry's Chapel Utility, Inc. ("Berry's Chapel" or "Utility"). For cause, the Consumer Advocate would show as follows:

1. The Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118 to represent the interests of Tennessee consumers of public utility services by initiating and intervening as a party in proceedings before the Authority in accordance with the Uniform Administrative Procedures Act and Authority rules.

2. Berry's Chapel is a public utility regulated by the Authority¹ and provides wastewater service to approximately 850 customers primarily in the Cottonwood, Legends Ridge, and River Landing subdivisions of Williamson County, Tennessee. The Utility's principal office and place of business is located at 106 Mission Court, Suite 203A, Franklin, Tennessee 37067.

3. On August 5, 2014, Berry's Chapel filed the Petition asking the Authority to issue a declaratory order finding that (i) Tenn. Code Ann. § 65-4-109 is applicable to certain promissory notes issued on September 1, 2010, by Berry's Chapel to Tyler L. Ring and John D. Ring (with copies of such notes and the related security agreements and deeds of trust being attached to the Petition, and collectively being referred to herein as the "Ring Notes"), (ii) in the absence of TRA approval, the issuance of the Ring Notes violated Tenn. Code Ann. § 65-4-109, and (iii) since the Ring Notes were issued in violation of Tennessee state law, the Ring Notes are not enforceable against Berry's Chapel.²

4. As support for its Petition, Berry's Chapel states that Tenn. Code Ann. § 65-4-109 provides, in part, that "[n]o public utility shall issue any . . . bonds, debentures or other evidences of indebtedness payable in more than one (1) year from the date thereof until it shall have first obtained authority from the [Tennessee Regulatory] Authority for such proposed issue[,]"³ and that Berry's Chapel has never sought or obtained authority from the TRA to issue the Ring

¹ See Berry's Chapel Utility, Inc. v. Tennessee Regulatory Authority, 2012 WL 6697288 (Tenn. Ct. App. 2012).

² Petition, page 2.

³ Petition, page 2, paragraph 5.

Notes.⁴ Berry's Chapel notes that when the Ring Notes were issued, Berry's Chapel believed that the Utility was not subject the TRA's jurisdiction and that interest payments were made on the Ring Notes.⁵

5. On August 8, 2014, Tyler Ring and John Ring (collectively, the "Rings"), through counsel, filed at the TRA a Petition to Intervene and Commence Contested Case ("Ring Petition"), seeking an order from the TRA permitting the Rings to intervene and requesting the commencement of a contested case.⁶ In support for the Ring Petition, the Rings assert that if the TRA were to grant the relief sought by Berry's Chapel, the Rings' "legal rights and interests will be determined in this proceeding without an opportunity for hearing."⁷ The Rings further assert that "a full contested case hearing before the Authority is necessary to permit the discovery of and presentation of evidence, arguments of counsel, and to adequately protect the interests of all interested parties to this proceeding."⁸

6. On August 14, 2014, Berry's Chapel filed a corrected Berry's Chapel Utility, Inc.'s Response to Petition to Intervene⁹ ("Berry's Chapel Response") in which Berry's Chapel states that it "does not dispute that the Rings have a legal interest in the outcome of the proceeding and, therefore, the right to intervene pursuant to T.C.A. § 4-5-310."¹⁰ Berry's Chapel, though, disagrees with the Rings' assertion that a full contested case hearing, including the discovery of and

⁴ Petition, page 2, paragraph 6.

⁵ Petition, page 2, footnote 1.

⁶ Ring Petition, page 2.

⁷ Ring Petition, page 1, paragraph 3.

⁸ Ring Petition, page 1, paragraph 8.

⁹ Berry's Chapel previously filed a response to the Rings' petition on August 12, 2014. Berry's Chapel Response corrects that response.

¹⁰ Berry's Chapel Response, page 1.

presentation of evidence is needed to adequately protect the Rings' interests.¹¹ Berry's Chapel counters that the relevant facts are not in dispute and that the "only questions at issue are legal ones: the applicability of T.C.A. § 65-4-109 and the validity of the promissory notes issued without the statutorily required approval of the Authority."¹²

7. In this matter, the Consumer Advocate seeks to represent the interests of consumers served by Berry's Chapel. The interests of consumers, including without limitation the potential changes to rates, surcharges, and tariff riders paid by the Utility's consumers and the potential impact of the Ring Notes on the financial and operational stability and viability of the Utility, may be affected by determinations and orders made by the Authority with respect to the Ring Notes.

8. Only by participating in this proceeding can the Consumer Advocate work adequately to protect the interests of consumers.

WHEREFORE, Petitioner respectfully asks the Authority to grant this Petition to Intervene.

[signature page follows]

¹¹ Berry's Chapel Response, page 1.

¹² Berry's Chapel Response, page 1.

RESPECTFULLY SUBMITTED,



ROBERT E. COOPER, JR. (BPR #010934)
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Dated: August 26, 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:

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This the 26th day of August, 2014.



Wayne Irvin