

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 3, 2009

IN RE:

**PETITION OF LYNWOOD UTILITY
CORPORATION TO CHANGE AND
INCREASE RATES AND CHARGES**

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**DOCKET NO.
09-00034**

FINAL ORDER

This matter came before Chairman Sara Kyle, Director Eddie Roberson and Director Mary W. Freeman of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on September 21, 2009, for consideration of the *Petition* filed on March 5, 2009 by Lynwood Utility Corporation (“Lynwood” or “the Company”) in which the Company seeks Authority approval to increase rates. Upon consideration of the entire record, including all exhibits and the testimony of the witnesses, the panel unanimously concluded that the Company had a Revenue Deficiency of \$125,618, which should be recovered through increases to the volumetric rates for residential and commercial customers. These conclusions, as well as other decisions concerning the Revenues, Expenses, Taxes Other Than Income, Rate Base, Cost of Capital, Rate Design and Other Issues are fully discussed below.

I. TRAVEL OF THE CASE

On March 5, 2009, Lynwood filed with the Authority its *Petition* asserting that its “existing rates and charges do not provide sufficient revenue to cover all of its costs incurred in providing adequate sewer service to its customers, including its cost of capital.”¹ With its

¹ *Petition*, p. 1.

Petition, the Company filed a revised tariff designed to produce additional gross revenues of \$185,440, thereby increasing existing sewer rates by 33.82%.² Finally, the Company asserted that “the proposed rate changes are necessary and proper and designed to meet the present and future needs of its customers and future customers,” and further, that the “tariff as filed and the overall rate of return it has requested are fair and reasonable.”³

At a regularly scheduled Authority Conference held on March 30, 2009, the voting panel assigned to the docket voted unanimously to suspend the proposed revised tariff from its effective date of April 4, 2009, ninety days to July 3, 2009, convene a contested case proceeding, and appoint General Counsel or his designee as Hearing Officer for the purpose of hearing preliminary matters, including entering a protective order and ruling on petitions to intervene, setting a procedural schedule to completion and preparing the matter for a hearing before the panel.

On March 18, 2009, the Consumer Advocate filed its *Petition to Intervene*, which was unopposed by Lynwood and subsequently granted by the Hearing Officer during the first Status Conference with the parties held on April 28, 2009. An *Order Granting Petition to Intervene and Establishing Procedural Schedule* was issued by the Hearing Officer on May 28, 2009. Pursuant to the procedural schedule established by the Hearing Officer, the parties proceeded through discovery and the filing of pre-filed testimony.

On July 31, 2009, the Hearing Officer issued a *Notice of Hearing and Pre-Hearing Conference* setting a pre-hearing conference on August 17, 2009, and the Hearing on the merits on August 21, 2009. Also, on July 31, 2009, in anticipation of the hearing, the Consumer Advocate filed a *Motion to Take Administrative Notice*. On August 14, 2009, the Consumer Advocate filed a *Motion to File Supplemental Testimony* and the Supplemental Testimony of Dave Peters contemporaneously therewith.

² *Id.* at 4.

³ *Id.*

The Authority's Consumer Services Division ("CSD") filed complaints and consumer comments that had been received concerning the *Petition* on August 18, 2009. CSD filed a memorandum on August 20, 2009 detailing a site visit to the home of one of the Lynwood customers who had filed a complaint regarding odor.

II. THE HEARING AND POST HEARING FILINGS

The Hearing was held on August 21, 2009. Post-Hearing Briefs were filed on September 11, 2009. The panel heard testimony from Company witnesses: Tyler Ring and James B. Ford. Dave Peters testified for the Consumer Advocate. The Company was represented by Donald L. Scholes, Esq. and the Consumer Advocate was represented by Ryan McGehee, Esq. and T. Jay Warner, Esq. The panel also received comments from members of the public.

III. CRITERIA FOR ESTABLISHING JUST AND REASONABLE RATES

The Authority is obligated to balance the interests of the utilities subject to its jurisdiction with the interests of Tennessee consumers, i.e., it is obligated to fix just and reasonable rates.⁴ The Authority must also approve rates that provide regulated utilities the opportunity to earn a just and reasonable return on their investments.⁵

The Authority considers petitions for a rate increase, filed pursuant to Tenn. Code Ann. § 65-5-203, in light of the following criteria:

1. The investment or rate base upon which the utility should be permitted to earn a fair rate of return;
2. The proper level of revenues for the utility;
3. The proper level of expenses for the utility; and
4. The rate of return the utility should earn.

⁴ Tenn. Code Ann. § 65-5-201 (Supp. 2002).

⁵ See *Bluefield Water Works and Improvement Company v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 43 S.Ct. 675 (1923).

Applying these criteria, and upon consideration of the entire record, including all exhibits and the testimony of the witnesses, the panel made the following findings and conclusions.

IV. TEST PERIOD AND ATTRITION PERIOD

In a rate case, the Authority must decide the test period(s) which are appropriate. The test period establishes the operating results for which normalizing adjustments and known and reasonable changes are made to forecast operating results for the attrition period, based on current rates. In this case, the parties agreed that 2008 was to be the test year and 2009 was to be the attrition year.

V. CONTESTED ISSUES

The position of the parties and the determinations of the voting panel are set out below for each of the following contested issues: Section V(a) - Revenues, Section V(b) - Expenses, Section V(c) - Taxes Other Than Income, Section V(d) – Rate Base, Section V(e) - Cost of Capital, Section V(f) – Revenue Deficiency, and Section V(g) – Rate Design.

V(a). REVENUES

The panel found that neither party prepared a forecasted price-out of projected 2009 revenues. The panel found that by using actual 2008 monthly customer counts both parties understated the revenue because the number of customers generally increases each month. Using information provided in the *Petition*, testimony, data responses, and exhibits to compile a price out for 2009, the panel unanimously adopted forecasted revenues of \$592,062. The panel also unanimously voted to direct the Company to record future tap fees as revenue for regulatory purposes.

V(b). Expenses⁶

V(b)1. SLUDGE REMOVAL EXPENSE

The Company increased its 2008 test year Sludge Removal Expense of \$31,470 by 10% (\$3,147) based upon information from Waste Management, Inc., resulting in attrition period Sludge Removal of \$34,617.⁷ The Consumer Advocate forecasts Sludge Removal Expense at \$31,470 which is the Company's 2008 test year amount, citing that the test year contained nonrecurring expenses which are being addressed in Docket 08-00060.⁸ In rebuttal, the Company stated that the Consumer Advocate's forecasted Sludge Removal Expense is based upon the misunderstanding that a portion of the expense in the test year is being recovered via the sewer surcharge approved in Docket 08-00060.⁹ The Company stated that it removed all charges funded by the sewer surcharge from the test period expense.¹⁰

The panel found that the Company provided sufficient evidence that the test year expense is normalized and contains no expense that is being recovered in the current surcharge. Therefore, the panel voted unanimously to adopt the Company's forecast of \$34,617 as the proper attrition period Sludge Removal Expense.

V(b)2. PURCHASED POWER EXPENSE

The Company increased its 2008 test year Purchased Power Expense by \$10,466 to reflect the anticipated 20% rate increase from the Tennessee Valley Authority and Middle Tennessee Electric Membership Corporation resulting in attrition period Purchased Power Expense of \$62,794.¹¹ The Consumer Advocate forecasted Purchased Power Expense at the

⁶ The panel voted unanimously to accept the undisputed expense amounts projected by the parties for Purchased Wastewater, Chemicals, Materials and Supplies, Engineering Inspections, Testing, Repairs and Maintenance, Billing and Collection Fees, Bad Debt, Accounting and Bookkeeping, Tax Accounting, Accounting-Other, Legal, Management, Rent, Insurance, and Other Miscellaneous Expenses totaling \$332,127.

⁷ James B. Ford, Pre-filed Direct Testimony, p. 4 (March 5, 2009).

⁸ *Post-Hearing Brief of the Consumer Advocate*, p. 8 (September 11, 2009).

⁹ James B. Ford, Rebuttal Testimony, p. 3 (July 31, 2009).

¹⁰ *Id.*

¹¹ James B. Ford, Pre-filed Direct Testimony, p. 4 (March 5, 2009).

2008 test period amount of \$52,328, since TVA subsequently reduced rates to offset the 20% TVA rate increase.¹² In rebuttal, the Company states that the Consumer Advocate's projected Purchased Power Expense is not supported by the actual expense incurred to date in 2009.¹³

At the Hearing, the Company stated that a 15% increase in Purchased Power is warranted based solely on a Transaction Listing provided in the witness testimony.¹⁴ The Consumer Advocate argued that this listing offers insufficient proof of expense incurred, the increases referenced in the pre-filed testimony had not come to fruition, and TVA has issued several notices of rate decreases.¹⁵

The panel found that the Consumer Advocate effectively argued that the Company forecasted increase in Purchased Power Expense has not actually occurred. Further, the Consumer Advocate offered evidence demonstrating that TVA has indeed issued several notices of rate decreases. The panel found that the Company failed to carry the burden of proof to support its forecast. Therefore, the panel unanimously voted to accept the Consumer Advocate's forecast for Purchased Power Expense of \$52,328 to be the proper level of this expense for the attrition period.

V(b)3. OPERATIONS MANAGEMENT EXPENSE

The parties appear to agree on forecasted Operations Management Expense of \$28,800 based upon their direct testimony.¹⁶ However, in supplemental testimony the Consumer Advocate forecasts \$1,000 less than the Company.¹⁷ This is based upon a reduction of the portion of the salary paid to Mr. Ring and expensed by the Company from \$16,000 to \$15,000.¹⁸

¹² *Post-Hearing Brief of the Consumer Advocate*, p. 2 (September 11, 2009).

¹³ James B. Ford, Rebuttal Testimony, p. 1 (July 31, 2009).

¹⁴ Transcript of Proceedings, p. 144 (August 21, 2009).

¹⁵ *Id.* at 208.

¹⁶ Dave Peters, Direct Testimony, Schedule 2 (June 19, 2009).

¹⁷ Dave Peters, Supplemental Direct Testimony, p. 1 (August 14, 2009).

¹⁸ *Id.*

The panel found that the amount paid to Mr. Ring is reasonable and should not be based on the amount paid to other managers of much smaller companies. Therefore, the panel voted to adopt the Company's forecast for the Operations Management Expense of \$28,800.

V(b)4. REGULATORY EXPENSE

The Company forecasted Regulatory Expense of \$33,524 which included an annual amortization of the rate case expense resulting from this proceeding of \$12,000 (\$36,000 over three years).¹⁹ The Consumer Advocate forecasts Regulatory Expense of \$25,153 which is \$8,371 less than the Company projection. The difference is comprised of \$6,000 in current rate case expense amortization and \$2,371 described as a non-recurring expense.²⁰

The panel found that the Company's documentation showed that the regulatory costs are actual expenses and that the expenses incurred are reasonable. Therefore, the panel did not find sufficient evidence to reduce the Company forecasted Regulatory Expense by one-half. The panel further found that there was not sufficient evidence to explain why \$2,371 of the Company's forecasted regulatory expense should be considered non-recurring. Therefore, the panel voted unanimously to adopt the Company's forecast of \$33,524 Regulatory Expense to be the proper attrition period amount for this expense.

V(b)5. COLLECTION SYSTEMS EXPENSE

The Company projected \$121,569 for depreciation and amortization expense.²¹ This amount consists of the 2008 test year net depreciation and amortization, inclusive of expense related to the Collection Systems Plant. The Consumer Advocate's original forecast was \$107,727, exclusive of the Collection Systems Plant.²² In its supplemental testimony, however, the Consumer Advocate agreed with the Company that the Tennessee Department of

¹⁹ James B. Ford, Pre-filed Direct Testimony, p. 5, Schedule E-5 and E-5/1 (March 5, 2009).

²⁰ Dave Peters, Direct Testimony, p. 4 and Schedule 6 (June 19, 2009).

²¹ James B. Ford, Pre-filed Direct Testimony, Schedule R/E (March 5, 2009).

²² Dave Peters, Direct Testimony, p. 5 (June 19, 2009).

Environment and Conservation amortization should be included.²³ As a result, the Consumer Advocate's revised forecast was \$128,335 for the attrition period.²⁴ The Consumer Advocate further revised its projection to \$114,803 due to the correction of an error.²⁵

The panel found that the Collection Systems is a part of the wastewater utility plant and should be included in Rate Base. The panel found that the issue concerning exclusion of the Collection System Plant in the prior Lynwood rate case was not relevant because the parties reached a settlement in that case. Thereafter, the panel unanimously voted to include the Collection Systems in Plant in Service and to include the associated depreciation of \$121,569 in the attrition period expenses.

V(c). TAXES OTHER THAN INCOME

Based upon its revenue and expense forecast, the Company calculates taxes other than income for the attrition period of \$20,716.²⁶ Based upon its projections, the Consumer Advocate's forecast of taxes other than income for the attrition period is \$21,561, a difference of \$845 from the Company's forecast.²⁷

The panel found that the \$845 difference between the parties' projections to be immaterial. The panel found that the majority of the Company's positions upon which such taxes are based have been determined to be proper for the attrition period. Therefore, the panel voted unanimously to adopt the Company's forecast of \$20,716 for Taxes Other Than Income for the attrition period.

V(d). RATE BASE

Rate Base differences between the Company and Consumer Advocate originally amounted to \$543,644. Based upon the supplemental testimony of Mr. Peters this difference was

²³ Dave Peters, Supplemental Direct Testimony, pp. 1-2 (August 14, 2009).

²⁴ *Id.* at Schedule 2.

²⁵ Dave Peters, Corrected Supplemental Testimony, p. 1 and Schedule 1 (August 19, 2009).

²⁶ James B. Ford, Pre-filed Direct Testimony, Schedule R/E (March 5, 2009).

²⁷ Dave Peters, Direct Testimony, Schedule 2 (June 19, 2009).

reduced to \$466,148.²⁸ The Rate Base projection of Company and the Consumer Advocate was \$1,028,957 and \$562,809, respectively.²⁹ The Authority unanimously adopted the Company's Rate Base projection for the attrition period of \$1,028,957 based on its individual Rate Base component determination discussed below.³⁰

V(d)1. UTILITY PLANT IN SERVICE

The Company projects \$3,122,341 Plant in Service.³¹ The Consumer Advocate restated Plant in Service based upon the amount included in the Company's 2006 rate case and adjusted for the plant additions and deletions to result in Plant in Service of \$2,911,252 which is \$211,089 less than the Company.³² The Consumer Advocate also advocated that the Collection Systems Plant should not be included in Rate Base because it believed the cost associated with this Plant should be expensed rather than capitalized.³³ In its supplemental testimony, the Consumer Advocate argued that the salary of Tyler Ring should not be included in Plant in Service.³⁴ Therefore, the Consumer Advocate further reduced Utility Plant in Service resulting in a Plant in Service amount for the attrition period of \$2,911,252.³⁵ Additionally, the Consumer Advocate proposed increasing Plant in Service by \$45,000 if the Authority finds a plant addition, a covered sludge box, necessary to reduce odor.³⁶

In rebuttal, the Company disagreed with the Consumer Advocate's exclusion of Plant Collection Systems from Plant in Service.³⁷ Further, the Company stated the Consumer

²⁸ Dave Peters, Supplemental Direct Testimony, p. 1 (August 14, 2009).

²⁹ James B. Ford, Pre-filed Direct Testimony, Schedule B (March 5, 2009). Dave Peters, Supplemental Testimony, p. 2 and Schedule 3 (August 19, 2009).

³⁰ In adopting this figure, the panel also unanimously voted to include \$143,618 for Deferred Debits and Deposits which was agreed to by the parties.

³¹ James B. Ford, Pre-filed Direct Testimony, Schedule B (March 5, 2009).

³² Dave Peters, Supplemental Direct Testimony, p. 1 (August 14, 2009).

³³ *Id.* at 1-2.

³⁴ *Id.* at 1.

³⁵ *Id.*

³⁶ *Id.* at 2.

³⁷ James B. Ford, Rebuttal Testimony, pp. 6-7 (July 31, 2009).

Advocate's adjustment should be rejected for lack of substance and documentation compared to the Company's detailed documentation.³⁸

The panel found that the Company offered sufficient evidence, including a study of the cost associated with Collection Systems Plant along with supporting invoices, to include the Collection Systems Plant in Rate Base. Therefore, the panel voted unanimously to include the Collection Systems Plant in Rate Base and to adopt the Company's forecast of \$3,122,341 for Utility Plant in Service for the attrition period.

V(d)2. CASH WORKING CAPITAL

The Consumer Advocate forecasted \$12,729 less than the Company projection of \$52,574 for Cash Working Capital.³⁹ This is due to the Company basing its working capital on lag time between revenues billed and payments received while the Consumer Advocate used 1/12th of total expenses less non-cash items.⁴⁰

The panel found that the Company performed a lead/lag study and used third party utility companies to provide volumetric data and actual customer bills to form the basis of its forecast. The panel found that a lead/lag study was a proper method to determine Cash Working Capital. Therefore, the panel unanimously voted to accept the Company projection of \$52,574 as the proper attrition period Cash Working Capital.

V(d)3. ACCUMULATED DEPRECIATION

The Company forecasted \$1,602,052 in Accumulated Depreciation while the Consumer Advocate forecasted \$1,563,804.⁴¹ The \$38,248 difference represents the accumulated depreciation associated with the Collection Systems Plant which the Consumer Advocate excluded from Rate Base.

³⁸ *Id.* at 7.

³⁹ *Post-Hearing Brief of the Consumer Advocate*, pp. 15-16 (September 11, 2009).

⁴⁰ James B. Ford, *Rebuttal Testimony*, p. 7 (July 31, 2009).

⁴¹ *Id.* at 8.

Based on its previous findings related to the Collection Systems Plant (see Section V.d.1 above), the panel adopted the Company's Accumulated Depreciation forecast of \$1,602,052.

V(d)4. CONTRIBUTIONS IN AID OF CONSTRUCTION (“CIAC”)

The Company used its CIAC balance at December 31, 2008 (net of two reclassifications to Retained Earnings totaling \$280,578) of \$687,524 as its attrition period balance.⁴² The Company avers its balance is based on a detailed study and provided a summary of the study and all supporting documents.

The Consumer Advocate forecasted \$968,102 which is \$280,578 more than the Company. The Consumer Advocate's calculation is based on the ending CIAC account balance from the 2006 rate case of \$1,038,225 increased by all of the CIAC additions for 2007 and 2008 minus the 2007 and 2008 CIAC amortization.⁴³ Additionally, the Consumer Advocate asserted that the reclassification adjustments from CIAC to Retained Earnings by the Company are not justifiable and did not receive Authority approval.⁴⁴

The panel found that CIAC is comprised of plant paid for by others and then given to the utility and may include the collection of tap fees if such fees are not required to be booked as revenue. The panel found that the Company did not receive approval from the Authority for reclassification adjustments made by the Company from CIAC to Retained Earnings. The panel reprimanded the Company for this serious oversight. The panel found, however, that although this was a serious oversight, it did not in itself invalidate the Company's study which provided sufficient evidence to support the Company's forecast. Additionally, the panel found that the Consumer Advocate offered no compelling evidence to support rejection of the Company's study or its projected CIAC balance.

⁴² *Id.*

⁴³ Dave Peters, Direct Testimony, p. 8 (June 19, 2009).

⁴⁴ *Id.*

Thereafter, the Authority directed that all *future* tap fees are to be recorded as revenue and booked as revenue, not booked to CIAC. The panel noted that this directive only applies to the Company's regulatory books and in no way affects its accounting books or the rules and regulations it must follow in preparation of its non-regulatory books and records.

Finally, the Authority voted unanimously to adopt the Company's proposed CIAC balance of \$687,524 for the attrition period. The panel directed the Company to continue to amortize this CIAC balance until such balance is fully amortized and to book this amortization as a reduction in depreciation expense.

V(e). COST OF CAPITAL

The Company requested a rate of return of 8.0% while the Consumer Advocate calculated a weighted cost of capital of 7.50%.⁴⁵ The Company asserted that the Authority has previously set Lynwood's cost of capital at 8% to cover the cost of debt placement along with interest costs.⁴⁶ The Consumer Advocate indicated that 7.5% is the carrying cost of Lynwood's long-term debt.⁴⁷ The Consumer Advocate also asserted that Lynwood does not have positive equity as of December 31, 2008.⁴⁸

The panel voted unanimously to maintain the currently authorized cost of capital of 8% as recommended by the Company. The panel found the Company's slightly larger return to be fair and reasonable. Additionally, the panel found that the Consumer Advocate's cost of capital estimate did not account for all of the costs of financing the Company, such as cost related to the personal guarantees of the owners. Further, the panel found that the slightly higher rate of return has a greater chance of attracting an equity investor into Lynwood.

⁴⁵ James B. Ford, Pre-filed Direct Testimony, p. 6 and Schedule A (March 5, 2009). Dave Peters, Direct Testimony, p. 3 and Schedule 7 (June 19, 2009).

⁴⁶ James B. Ford, Rebuttal Testimony, p. 9 (July 31, 2009).

⁴⁷ Dave Peters, Direct Testimony, p. 3 (June 19, 2009).

⁴⁸ *Id.*

V(f). OVERALL REVENUE DEFICIENCY

The Company projected a Revenue Deficiency of \$185,440 while the Consumer Advocate projected \$60,293.⁴⁹ Based upon the foregoing decisions, the panel unanimously adopted a Revenue Deficiency for the attrition period of \$125,618.

V(g). RATE DESIGN

To recover the requested deficiency of \$185,440, the Company proposed to increase the residential minimum monthly charge from \$15 to \$20; the residential volumetric charge from \$6.53 per 1,000 gallons to \$8.78 per 1,000 gallons; the non-residential minimum monthly charge from \$20 to \$30; the non-residential volumetric charge from \$8.16 per 1,000 gallons to \$10.41 per 1,000 gallons; removing the maximum charge of \$891.00 for Walnut Grove Elementary School; increasing residential tap fees from \$3,500 to \$4,500; increasing the non-residential tap fee calculated based on peak monthly usage of \$7.86/per gallon per day to \$10.41/per gallon per day; increasing sewer connection fees from \$250.00 to \$350.00; and increasing the returned check charge from \$20.00 to \$30.00.⁵⁰ The Consumer Advocate proposed that any rate increase be recovered through a three-tiered volumetric rate but did not provide any specific calculations on the three-tiered rate design.⁵¹

The panel found that one of the policy goals of rate design should be to encourage conservation. The panel found that increases in volumetric charges should promote conservation because the sewer cost for the end-user is directly related to the volume of water consumed. Conversely, the panel found that because base monthly rates are not derived from volumetric usage, increases in the base rate do not serve to promote conservation. Therefore, the panel voted unanimously to recover the revenue deficiency by 1) increasing the residential volumetric

⁴⁹ James B. Ford, Pre-filed Direct Testimony, p. 3 (March 5, 2009). Dave Peters, Direct Testimony, Schedule 1 (June 19, 2009).

⁵⁰ James B. Ford, Pre-filed Direct Testimony, p. 6 (March 5, 2009). Tyler Ring, Pre-filed Direct Testimony, pp. 4-5 and Exhibit 1 (March 5, 2009).

⁵¹ Dave Peters, Direct Testimony, p. 8 (June 19, 2009).

rates from \$6.53/1000 gallons to \$7.97/1,000 gallons and; 2) increasing the commercial volumetric rate from \$8.16/1,000 gallons to \$9.96/1,000 gallons.⁵²

VI. OTHER ISSUES

VI(a). ODOR CONTROL

During Lynwood's last rate case,⁵³ members of the public addressed an odor problem with the wastewater facility. It was determined that Lynwood would defer the costs associated with the remedies and later file for consideration of the recovery of these costs. Additionally, Lynwood was to notify the Authority of future actions and submit quarterly call logs regarding odor complaints.⁵⁴ In October 2007, Lynwood notified the Authority of the corrective actions taken in its treatment and collection systems. Further, the Company stated that only one complaint had been received since the September 2007 deliberations.

On April 17, 2008, Lynwood filed to recover the costs associated with elimination of odor in Docket No. 08-00060. A settlement agreement between the Company and the Consumer Advocate resolving issues related to this recovery was approved by the Authority on March 30, 2009.⁵⁵

In this case, numerous complaints from consumers have been filed in the docket.⁵⁶ Additionally, the panel heard from concerned members of the public regarding this issue at the

⁵² Director Roberson's motion also included a provision to accept the Company's recommendation to remove the rate cap on Walnut Grove Elementary School so that it would be billed the same as Lynwood's only other commercial customer, a church. Presently, the school's rate for wastewater discharge is capped to not exceed \$891 per month, regardless of usage. Director Roberson stated that by removing the cap it would encourage the school to conserve. Director Roberson further stated in his motion that fair treatment of all customers is another policy goal to consider in rate design. Director Roberson stated that he could see no justification for the cap for the school and he did not know what justification could be used if the church asked for a similar cap in the future. Director Roberson further stated that in his own investigation he could find no other case where the Authority set a cap on rates similar to the schools. Neither Chairman Kyle nor Director Freeman joined in this portion of Director Roberson's motion. Thus, the portion of the motion regarding removing the cap for Walnut Grove Elementary School failed.

⁵³ See *In re: Petition of Lynwood Utility Corporation to Change and Increase Rates and Charges*, Docket No. 07-00007.

⁵⁴ *Id.*, *Order Approving Settlement Agreement*, p. 6 (December 11, 2007).

⁵⁵ See *In re: Petition of Lynwood Utility Corporation for Approval of a Cost Recovery Mechanism for Deferred Odor Elimination Costs*, Docket No. 08-00060, *Order Approving Settlement Agreement* (April 29, 2009).

⁵⁶ See Complaints filed in the docket by the CSD on August 18, 2009 and August 20, 2009.

Hearing. In response to these concerns, the panel directed the CSD to work with Lynwood to identify a consumer who would be willing to record a log listing specific times and dates of any unusual odor. The panel further directed CSD to analyze this log and prepare a quarterly report for the panel identifying any patterns in the frequency and times of occurrence. Based upon this information and analysis, the CSD should prepare and submit recommendations to address the ongoing concerns of residents and to assist Lynwood in resolving the odor issue.

VI(b). CONSUMER COMPLAINTS

Prior to the Authority's deliberations in this matter at the September 21, 2009 Authority Conference, the panel heard from CSD Chief, Lisa Cooper, regarding the division's work with the Company to insure that the customer bill was clear regarding the telephone contact information for customer complaints to the Company.⁵⁷ The panel voted unanimously to direct CSD to continue to work the Company to insure improvement in its communications with their customers regarding the reporting of any complaints. The panel further voted to direct the Company to file a report within thirty days of the panel's deliberations regarding how it has resolved the issue or plans to resolve this issue.

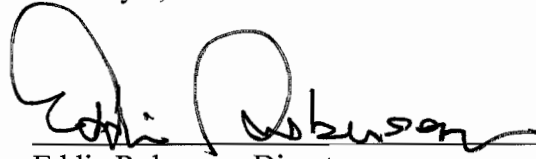
IT IS THEREFORE ORDERED THAT:

1. The rates filed by Lynwood Utility Corporation on March 5, 2009 are denied.
2. For purposes of the rates herein, the test period shall be the twelve months ended December 31, 2008.
3. The forward looking attrition period shall be the twelve months ending December 31, 2009.
4. For purposes of the rates herein, the rate base is \$1,028,957, and the net operating income is (\$31,619) at current rates.

⁵⁷ At the August 21, 2009 Hearing, the panel heard consumer complaints regarding the difficulties experienced in contacting the utility. During Mr. Ring's testimony, the panel asked CSD to work with the Company on this issue.

5. For purposes of the rates herein, the fair rate of return is 8.0%.
6. For purposes of the rates herein, the Revenue Conversion Factor is .907, resulting in a Revenue Deficiency of \$125,618, the amount needed for the Company to earn a fair return on its investment during the attrition year.
7. The Revenue Deficiency shall be addressed by new rates reflecting an increase to residential volumetric rates from \$6.53/1000 gallons to \$7.97/gallons and an increase to commercial volumetric rates from \$8.16/1000 gallons to \$9.96/1000 gallons.
8. Lynwood Utility Corporation is directed to file tariffs with the Authority that are consistent with this Order.⁵⁸
9. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.
10. Any party aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.


Sara Kyle, Chairman


Eddie Roberson, Director


Mary W. Freeman, Director

⁵⁸ Lynwood filed its tariff containing the rates approved herein on September 29, 2009. Those rates were allowed to go into effect on October 1, 2009.