

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

IN RE:)
)
CONSUMER ADVOCATE'S PETITION) **DOCKET NO. 11-00005**
FOR A DECLARATORY ORDER THAT)
BERRY'S CHAPEL UTILITY, INC., IS A)
PUBLIC UTILITY UNDER TENNESSEE)
LAW AND SHOULD BE REGULATED)
BY THE TRA)

**PETITION FOR A DECLARATORY ORDER THAT BERRY'S CHAPEL UTILITY,
INC., IS A PUBLIC UTILITY UNDER TENNESSEE LAW AND SHOULD BE
REGULATED BY THE TRA**

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") to convene a contested case, name Berry's Chapel Utility, Inc., as a party, and, pursuant to Tenn. Code Ann. § 4-5-223(a) and TRA Rule 1220-1-2-.05, issue a declaratory order that Berry's Chapel Utility, Inc. ("Berry's Chapel"), is a public utility under Tennessee law and, therefore, subject to regulation by the Tennessee Regulatory Authority ("TRA") pursuant to Tenn. Code Ann. § 65-4-101(6) and § 65-4-104.

INTRODUCTION

Berry's Chapel is a utility formed by the merger of Lynwood Utility Corporation into Berry's Chapel. Prior to the merger, Lynwood Utility Corporation ("Lynwood Utility" or "Lynwood") was a Tennessee corporation providing wastewater services to the Cottonwood residential community near Franklin, Tennessee. Lynwood Utility had a Certificate of

Convenience and Necessity granted by the TRA and was subject to regulation by the TRA as a public utility authorized to earn a just and reasonable rate of return, including a profit. According to a letter filed by counsel for Lynwood Utility, effective September 1, 2010, Lynwood Utility was merged into Berry's Chapel, a company with a charter stating that it is incorporated under the Tennessee Nonprofit Corporation Act as a "mutual benefit corporation." Furthermore, according to the same letter from counsel for Lynwood Utility, Berry's Chapel is a "nonutility because it is a nonprofit corporation."

As will be shown, however, the new company formed by the merger, Berry's Chapel, has presented to the TRA no indicia of a nonprofit corporation other than a form submitted to the Tennessee Secretary of State. The Consumer Advocate, therefore, maintains that the TRA should disregard the mere form of nonprofit corporate status alleged by Berry's Chapel and find that the substance of the corporation is that of a for-profit utility and that Berry's Chapel is therefore subject to the regulation of the TRA.

In addition, the statute under which Berry's Chapel claims to be exempted from regulation by the TRA is inapplicable to a corporation such as Berry's Chapel. Berry's Chapel claims that it is a nonutility under Tenn. Code Ann. § 65-4-101(6)(E) because it is a "nonprofit corporation." Tenn. Code Ann. § 65-4-101(6)(E) provides as follows:

... (6) "Public utility" as defined in this section shall not be construed to include the following nonutilities:

(E) Any cooperative organization, association or corporation not organized or doing business for profit.

Berry's Chapel, however, is not a "cooperative" corporation not organized or doing business for profit" as required by this statute. A plain reading of Tenn. Code Ann. § 65-4-101(6)(E) shows that the only kind of "nonprofit" that can be excluded from the definition of a

"public utility" is one that is "cooperative" in nature because the word "cooperative" must be read in front of each of the terms "organization," "association," and "corporation" for the statute to make sense and to effectively protect Tennessee consumers from utilities operating in a monopolistic environment. Otherwise, under Berry's Chapel's reading of the statute, any utility simply calling itself an "association," for example, would be free from TRA regulation. A cooperative is an organization composed of and responsible to the members it serves. The Charter of Berry's Chapel, however, shows that there are no members. There are only three persons listed on the incorporation papers of Berry's Chapel and two of them, the Rings, are the main creditors or, in effect, the owners of the company: John Ring; Tyler L. Ring; and James B. Ford. The persons who would ordinarily be "members" of the cooperative corporation are Berry's Chapel's captive customers who have virtually no input into or control over Berry's Chapel and cannot opt for another service provider since their wastewater system has long operated in a state-sanctioned monopoly environment. Accordingly, Berry's Chapel does not meet the definition of a cooperative corporation.

Thus, the emphasis on the term "cooperative" in interpreting the statute under which Berry's Chapel is seeking to avoid regulation by the TRA is absolutely critical. Because if a utility is a true cooperative composed of the members it serves there is a built-in mechanism to ensure that the persons served by the utility are not completely at its mercy. If, however, Berry's Chapel's position is accepted there is nothing to stop those persons who control and benefit by the utility from charging its captive customers as much as those persons want.

This case, therefore, goes to the very heart of public utility regulation. Governmental regulation of utilities is supposed to serve as a proxy for regulation by the market place because in a monopoly situation such as exists in the case of Berry's Chapel there is no true market.

Berry's Chapel's customers cannot simply contract for other sewer service; they are literally tied to their service provider. So if Berry's Chapel's interpretation of the law is accepted, their customers do not have the protection of the market, the government, or a self-governing cooperative. Surely the Legislature did not intend such a result. Therefore, the Consumer Advocate requests the TRA to interpret the law as the Legislature intended and protect the customers of Berry's Chapel.

For cause, Petitioner 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. Tenn. Code Ann. § 4-5-223(a) provides that "[a]ny affected person may petition an agency for a declaratory order as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the agency."

I. BERRY'S CHAPEL HAS SHOWN NO PROOF THAT IT IS A NONPROFIT CORPORATION OTHER THAN THE MERE LANGUAGE OF ITS CHARTER

3. Tenn. Code Ann. § 65-4-104 provides that the TRA shall regulate all public utilities. The term "public utility" is defined in Tenn. Code Ann. § 65-4-101(6).

4. Berry's Chapel provides wastewater utility service to the residential development known as Cottonwood near Franklin, Tennessee. According to the charter of Berry's Chapel it is incorporated under the Tennessee Nonprofit Corporation Act, Tenn. Code Ann. § 48-61-104. Berry's Chapel maintains that it is a nonprofit corporation and, because nonprofit corporations are excluded from the definition of public utilities pursuant to Tenn. Code Ann. § 65-4-

101(6)(E), that it is not subject to TRA regulation. *See* the letter from Donald L. Scholes to Mary W. Freeman, Chairman of the TRA, September 17, 2010, attached as **Exhibit A** ("*Letter from Donald L. Scholes*").

5. In light of the assertion by Berry's Chapel that it is a nonprofit corporation, the Consumer Advocate is petitioning the TRA to issue a declaratory order that the public utility known as Berry's Chapel is in fact a public utility under Tennessee law and, therefore, subject to the regulation of the TRA, notwithstanding its incorporation under the Tennessee Nonprofit Corporation Act.

6. Lynwood Utility was a public utility regulated by the Authority. Lynwood Utility sold wastewater services to consumers in the State of Tennessee. Lynwood Utility's principal place of business in Tennessee was 321 Billingsly Court, Suite 4, Franklin, Tennessee. Effective September 1, 2010, the ownership of the sewer treatment and collection system of the Lynwood Utility became vested in Berry's Chapel. *See* the letter from Donald L. Scholes to Mary W. Freeman, Chairman of the TRA, September 17, 2010, attached as **Exhibit A** ("*Letter from Donald L. Scholes*"). The owners of Lynwood were John Ring and Tyler Ring. *See* the *TRA Order Approving Transfer of Authority*, Docket No. 04-00360, July 15, 2005, at page 3.

7. Berry's Chapel is a Tennessee corporation incorporated under the Tennessee Nonprofit Corporation Act as a "mutual benefit corporation." *See* the Charter of Berry's Chapel Utility, Inc., attached as **Exhibit B**. The purpose of Berry's Chapel is to own and operate a sanitary sewer collection and treatment system and to engage in any other lawful business. **Exhibit B** at ¶10. Furthermore, the ownership of the sewer treatment and collection system of Lynwood is now vested in Berry's Chapel. *See* the Letter from Donald L. Scholes, **Exhibit A**.

8. According to the Charter of Berry's Chapel Utility, Inc., attached as **Exhibit B**, the name and address of the incorporator of Berry's Chapel is:

Tyler L. Ring
321 Billingsly Court, Suite 4
Franklin, Tennessee 37065

This is the same address as that for the principal place of business of Lynwood. Again according to the Charter of Berry's Chapel Utility, Inc., the corporation's initial directors and their addresses are:

Tyler L. Ring
321 Billingsly Court, Suite 4
Franklin, Tennessee 37065

John Ring
321 Billingsly Court, Suite 4
Franklin, Tennessee 37065

James B. Ford
9679 Aurora Court
Franklin, Tennessee 37065

9. John Ring and Tyler Ring are also referred to in the *Agreement and Plan of Merger of Berry's Chapel*, attached as **Exhibit C**. This document was filed with the Tennessee Secretary of State on August 20, 2010. To the best of Petitioner's knowledge this document has not been filed with the TRA. Paragraph 4 (Covenants) provides that "Berry's Chapel shall issue a promissory note to John Ring in the approximate amount of \$1,200,000 and a promissory note to Tyler L. Ring in the approximate amount of \$1,200,000, John Ring and Tyler Ring being the shareholders of Southern Utility Corporation, the sole shareholder of Lynwood, with such promissory notes to be secured by a second mortgage on the real property and a first lien on the personal property of Berry's Chapel." Paragraph 4(c) of the Agreement and Plan of Merger also states that "the Lynwood sewer treatment and collection system shall be transferred to the books

and records of Berry's Chapel at the fair market value on the effective date with an approximate value of \$5,580,000." In the last rate case before the TRA, Docket No. 09-00034, Lynwood set its total assets at \$2,020,694.15, with an approximate \$1.2 million in debt to a bank. See **Exhibit D** (TRA Docket No. 09-00034, *Response to First Discovery Request of the Consumer Advocate and Protection Division to Lynwood Utility Corporation*, Response No. 36: Schedule 36, Lynwood Utility Corporation, Balance Sheet Detail as of December 31, 2008, cover page and last five pages).

10. After the merger of Lynwood into Berry's Chapel, Berry's Chapel sought to change the name on permits issued to Lynwood by the Tennessee Department of Environment and Conservation ("TDEC") to the new name of Berry's Chapel Utility, Inc. A new permit has been issued in the name of Berry's Chapel but the new permit contains certain financial security obligations and requirements for plant upgrades and reserve capacity that Berry's Chapel does not agree with and it has appealed these provisions of the new permit. The *Petition for Review and Hearing and Request for Permit Amendment Regarding NPDES Permit TN0029718* is attached as **Exhibit E**. The appeal sets forth the grounds with some specificity. Paragraphs 1 and 2 on page 2 address the upgrade and reserve issues; paragraph 3 on page 3 sets forth the grounds for appealing the financial security provisions.

11. The letter from Donald L. Scholes announcing the merger of Lynwood into Berry's Chapel, attached as **Exhibit A**, states that Berry's Chapel is a "nonprofit corporation" and a "nonutility." The letter, however, provides no proof of Berry's Chapel's "nonprofit" status other than a Charter of Berry's Chapel Utility, Inc.

12. While tax exempt status with the State of Tennessee is not necessarily dispositive of nonprofit status, when Berry's Chapel notified the TRA of the merger of Lynwood into

Berry's Chapel in the letter of September 17, 2010, attached as **Exhibit A**, Berry's Chapel did not file with the TRA any record of tax exempt status granted or determined by any agency or department of the State of Tennessee, including the Department of Revenue and the State Tax Assessor's Office.

13. While the absence of filing proof of how or whether a company intends to forgo or otherwise distribute profits is not necessarily dispositive of nonprofit status, when Berry's Chapel notified the TRA of the merger of Lynwood into Berry's Chapel in the letter of September 17, 2010, attached as **Exhibit A**, Berry's Chapel, an alleged nonprofit corporation, did not file with the TRA any proof of how or whether it intends to forgo or otherwise distribute the profits it would have made as a company regulated by the TRA and authorized to earn a just and reasonable rate of return, i.e., a profit.

14. While 501(c)(3) of the federal Internal Revenue Code status is not necessarily dispositive of nonprofit status, when Berry's Chapel notified the TRA of the merger of Lynwood into Berry's Chapel in the letter of September 17, 2010, attached as **Exhibit A**, Berry's Chapel did not file with the TRA any record of 501(c)(3) status under the Internal Revenue Code, which provides for tax exempt status for nonprofits.

15. Although the letter from Donald L. Scholes dated September 17, 2010, attached as **Exhibit A**, calls for the TRA to cancel the Certificate of Convenience and Necessity of Lynwood, Berry's Chapel did not file with the TRA any statement recognizing that it no longer has an exclusive franchise for the territory formerly served by Lynwood, which territory is now presumably open to entry by any duly licensed and approved company. Furthermore, the Tennessee Deeds of Trust executed by Berry's Chapel for the use and benefit of John Ring and Tyler Ring continue to refer to a "25 foot **public utility** drainage and access easement located

between Lots Nos. 120 and 121” in the property description attached as Exhibit A (emphasis added) to the Deeds of Trust, without any reference to the current claim by Berry’s Chapel to the TRA that it is no longer a “public utility.” The Tennessee Deeds of Trust are attached as **Exhibits F and G**.

16. Under Tennessee law, a corporation’s separate identity may be ignored when that separate identity is shown to be a sham or where necessary to accomplish justice. *Oceanics Schools, Inc. v. Barbour*, 112 S.W. 3d 135, 140 (Tenn.Ct.App.2003). In the present case, it is necessary to disregard the alleged nonprofit status of Berry’s Chapel in order to accomplish the just end of providing the residents of Cottonwood who are served by Berry’s Chapel with the protections of properly regulated utility service intended under Tennessee law.

17. Furthermore, the Tennessee Supreme Court has held that “a regulatory body, such as the Public Service Commission, is not bound in all instances to observe corporate charters and the form of corporate structure or stock ownership in regulating a public utility, and in fixing fair and reasonable rates for its operations.” *BellSouth Advertising & Publishing Corporation v. Tennessee Regulatory Commission*, 79 S.W.3d 506, 516 (Tenn.2002), citing *Tennessee Public Service Commission v. Nashville Gas Co.*, 551 S.W.2d 315, 319-20 (Tenn.1977). *BellSouth Advertising* involved a petition for a declaratory order by AT&T in which AT&T requested the TRA to convene a contested case and make BellSouth Telecommunications, Inc. (“BellSouth”), and BellSouth Advertising & Publishing Corporation (“BAPCO”) parties. BellSouth was a public utility regulated by the TRA and BAPCO was an unregulated affiliate. *BellSouth Advertising & Publishing* at 509-10. In holding that the TRA did in fact have jurisdiction over BAPCO, an unregulated affiliate, the Tennessee Supreme Court again cited *Nashville Gas*, stating that holding otherwise would allow the regulated utility, “through the device of holding

companies, spinoffs, or other corporate arrangements, to place the cream of a utility market in the hands of a parent or an affiliate, and to strip the marketing area of a regulated subsidiary of its most profitable customers.” Similarly, the TRA should not allow those persons who control Berry’s Chapel to take the “cream” from the Cottonwood customers and “strip” the TRA of its regulatory jurisdiction.

II. BERRY’S CHAPEL IS NOT A “COOPERATIVE” CORPORATION AS REQUIRED BY THE STATUTE EXCLUDING CERTAIN ENTITIES FROM THE DEFINITION OF PUBLIC UTILITIES

18. The statute under which Berry’s Chapel claims to be exempted from regulation by the TRA is inapplicable to a corporation such as Berry’s Chapel. In its letter of September 17, 2010, attached as **Exhibit A**, Berry’s Chapel claims that it is a nonutility under Tenn. Code Ann. § 65-4-101(6)(E) because it is a “nonprofit corporation.” Tenn. Code Ann. § 65-4-101(6)(E) provides as follows:

.... (6) “Public utility” as defined in this section shall not be construed to include the following nonutilities:

(E) Any cooperative organization, association or corporation not organized or doing business for profit.

A copy of Tenn. Code Ann. § 65-4-101 is attached as **Exhibit H** for convenience of reference.

19. Berry’s Chapel, however, is not a “cooperative” corporation as required by this statute. A plain reading of Tenn. Code Ann. § 65-4-101(6)(E) shows that the only kind of nonprofit that is to be excluded from the definition of a “public utility” is one that is “cooperative” in nature. Thus, the word “cooperative” must be read in front of each of the terms “organization,” “association,” and “corporation” for the statute to make sense and to effectively protect Tennessee consumers from utilities operating in a monopolistic environment. Berry’s Chapel, on the other hand, wants to isolate the words “corporation not organized or doing

business for profit” from the rest of the sentence and not give any meaning to the term “cooperative.” In effect, this would create a stand-alone exclusion from the definition of public utility. As will be shown, however, such a reading is contrary to the well-accepted rules of statutory construction.

20. Any reading of subsection (E) other than the one advanced by the Consumer Advocate which reads the word “cooperative” before each of the terms “organization,” “association,” and “corporation” would lead to absurd results. For example, if the terms “association” and “corporation” are read as being unmodified by the term “cooperative,” any utility currently regulated by the TRA could simply change its name to include the word “association” and then, as if by magic, it would become an unregulated utility because “associations,” so the argument would go, are to be excluded from the definition of public utility. After all, just look at the word “association” in the statute, so the logic of Berry’s Chapel would dictate, and the conclusion is obvious that an “association” should be unregulated:

... (6) “Public utility” as defined in this section shall not be construed to include the following nonutilities:

(E) Any cooperative organization, association or corporation not organized or doing business for profit.

Tenn. Code Ann. § 65-4-101(6)(E). The law, however, abhors such absurd results when construing statutes. *See Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010). Furthermore, as will be discussed below, even if the term “association” were read as being linked to the words “not organized or doing business for profit,” that would not eliminate the problem of absurd results. In particular, subsection (E) would conflict with a later provision in the statute, namely, section (7) which provides that the term “[p]ublic utility” does not mean nonprofit homeowners associations or organizations” In short, if an “association” were

construed as being a non-utility under subsection (E), there would be no need for the later section (7) which exempts associations of homeowners.

21. Moreover, unless the word "cooperative" is read as modifying each of the terms, "organization," "association" and "corporation," the word "cooperative" would have only a confused purpose at best in the statute. In fact, if the term "cooperative" is read as applying only to the term "cooperative organization," subsection (E) would have to be read as excluding from the definition of public utility an entity that was not necessarily a nonprofit because there is nothing inherently nonprofit about a "cooperative organization." In fact, the statute governing electric cooperatives recognizes that unless an electric cooperative is formed under the act governing such cooperatives, there is a virtual presumption that it is not a nonprofit. Tenn. Code Ann. § 65-25-223 provides as follows:

Cooperatives and foreign corporations transacting business in this state pursuant to this part shall be deemed to be not-for-profit cooperatives and nonutilities, and, except as provided in § 65-25-222, exempt in all respects from the jurisdiction and control of the Tennessee regulatory authority.

However, as will be seen below, one of the stated purposes of the original legislation that created the exclusion in subsection (E) was to exempt "certain non-profit organizations" from the definition of public utility. Accordingly, it is the Consumer Advocate's reading of the word "cooperative" in subsection (E) that gives true meaning to that word; and when the Legislature used the word "cooperative," it is to be presumed "that the Legislature used each word in the statute purposely and that the use of these words conveyed some intent and had a meaning and a purpose." *Anderson Fish & Oyster Company, Inc. v. Olds*, 277 S.W.2d 344, 345 (Tenn.1955),

22. As stated above, if subsection (E) is read so as to exclude from the definition of public utility a mere “association,” whether for-profit or not, there would be a conflict with section (7) of Tenn. Code Ann. § 65-4-101 which provides as follows:

(7) “Public utility” does not mean nonprofit homeowners associations or organizations whose membership is limited to owners of lots in residential subdivisions, which associations or organizations own, construct, operate or maintain water, street light or park maintenance service systems for the exclusive use of that subdivision; provided, however, that the subdivisions are unable to obtain such services from the local utility district. None of the property, property rights or facilities owned or used by the associations or organization for the rendering of such services shall be under the jurisdiction, supervision or control of the Tennessee regulatory authority.

That is, if a mere “association,” as opposed to a “cooperative association,” were to be excluded from the definition of public utility as must be the case if the term “cooperative” is not read as modifying “association,” any homeowner’s association, certainly a non-profit one, would already be a non-utility and not subject to the jurisdiction of the TRA. Clearly, however, the Legislature did not believe that associations of homeowners were already excluded when they added section (7). Otherwise, section (7) would be superfluous and it is presumed “that the General Assembly did not intend to enact a useless statute.” *See Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010). Furthermore, a statute should be construed “in a way that avoids conflict and facilitates the harmonious operation of the law.” *See Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010).

23. The reading of subsection (E) advanced by the Consumer Advocate is also consistent with another statute involving nonprofit entities, Tenn. Code Ann. § 48-58-601(c), which provides as follows:

(c) All directors, trustees or members of the governing bodies of nonprofit cooperatives, corporations, clubs, associations and

organizations described in subsection (d), whether compensated or not, shall be immune from suit arising from the conduct of the affairs of such cooperatives, corporations, clubs, associations or organizations. Such immunity from suit shall be removed when such conduct amounts to willful, wanton or gross negligence. Notwithstanding other provisions of this subsection to the contrary, all directors, trustees or members of the governing bodies of nonprofit cemetery corporations, associations and organizations referred to in subdivision (d)(6) shall be immune from personal liability only if such cemetery corporations, associations or organizations carry liability insurance coverage in an amount to be determined by the department of commerce and insurance; provided, that such requirement shall not apply in any county having a population of not less than six thousand (6,000) nor more than six thousand one hundred twenty-five (6,125) according to the 1980 federal census or any subsequent federal census. Nothing in chapters 51-68 of this title shall be construed to grant immunity to the nonprofit cooperative, corporation, association or organization. (Emphasis added)

In Tenn. Code Ann. § 48-58-601(c) the word “nonprofit” in the phrase “governing bodies of nonprofit cooperatives, corporations, clubs, associations and organizations” clearly modifies each of the terms in the phrase. Otherwise the phrase could be read to mean that all corporations or clubs, not just nonprofit ones, would have the immunity described in the statute, an obviously absurd result. Similarly, in subsection (E) of Tenn. Code Ann. § 65-4-101(6)(E), the word “cooperative” must be read as modifying each of the terms in the phrase “[a]ny cooperative organization, association or corporation not organized or doing business for profit” in order to avoid the absurd results previously discussed.

24. The section of the Tennessee Code which excludes certain nonprofits from regulation as “public utilities” was passed in 1935, 1935 Public Acts, Chapter 42. As in the current Tennessee Code Annotated, Public Chapter 42 contains an exclusion from the definition of “public utility” for “(e) any cooperative organization, association or corporation not organized

or doing business for profit.” A copy of 1935 Public Acts, Chapter 42 is attached as **Exhibit I**.

The Preamble to Chapter 42 provides as follows:

AN ACT to define and limit the authority, powers and jurisdiction of the Railroad and Public Utilities Commission so as to exempt therefrom certain Federal and State Corporations, Agencies, Instrumentalities, and other public bodies and **certain non-profit organizations** herein defined as non-utilities; to authorize utilities to sell, lease or otherwise dispose of their property to non-utilities; and as a part hereof to amend sections 5380 to 5508, inclusive, of the official code of Tennessee, passed at the regular session of the General Assembly of the State of Tennessee in 1931, known as the Code of Tennessee of 1932, said section of the code defining the “Public Utility.” (Emphasis added)

25. Significantly, the Preamble provides that “certain non-profit organizations” are to be excluded from the definition of “public utilities.” Thus, it is clear from the Preamble that as regards subsection (E), any entity wishing to be excluded from the definition of public utility must be a nonprofit. However, unless the word “cooperative” is read as applying to each of the terms “organization,” “association,” and “corporation” the result would be that a mere cooperative organization (regardless of whether it was nonprofit or not) and a mere association (regardless of whether it was nonprofit or not) would be considered nonutilities contrary to the intent of the statute. Such, however, cannot be the case given the clear intent of the Legislature that only “nonprofits” would be excluded from regulation under subsection (E).

26. References to cases in Tennessee establish that there are numerous “cooperative corporations” in Tennessee, so the reading of subsection (e) putting the term “cooperative” before the term “organization,” “association,” and “corporation” is consistent with actual corporate practice. *See, e.g., Franklin Power & Light Company v. Middle Tennessee Electric Membership Corporation*, 434 S.W.2d 829, 830 (Tenn.1968) (“The complainant is a cooperative, non-profit electric membership corporation chartered in 1936”); and *City of South*

Fulton v. Hickman-Fulton Counties Rural Electric Cooperative Corporation, 976 S.W.2d 86 (Tenn.1998)(a printout from Secretary of State noting nonprofit status is attached as **Exhibit J**).

27. Black's Law Dictionary, Seventh Edition (1999), defines "cooperative corporation" as "[a]n entity that has a corporate existence, but is primarily organized for the purpose of providing services and profits to its members and not for corporate profit." That is, it is an organization composed of and responsible to the members it serves. As stated above, however, the Charter of Berry's Chapel, **Exhibit B**, states that it has no members. There are only three persons listed in the Charter of Berry's Chapel and two of them, the Rings, are the main creditors or, in effect, the owners of the company: John Ring; Tyler L. Ring; and James B. Ford. The persons who would ordinarily be "members" of the cooperative corporation are Berry's Chapel's captive customers who have virtually no input into or control over Berry's Chapel and cannot opt for another service provider since their wastewater system has long operated in a state-sanctioned monopoly environment. Accordingly, Berry's Chapel does not meet the definition of a cooperative corporation.

28. The emphasis on the term "cooperative" in interpreting the statute under which Berry's Chapel is seeking to avoid regulation by the TRA is absolutely critical. Because if a utility is a true cooperative composed of the members it serves there is a built-in mechanism to ensure that the persons served by the utility are not completely at its mercy. If, however, Berry's Chapel's position is accepted there is nothing to stop those persons who control and benefit by the utility from charging its captive customers as much as those persons want.

29. The main purpose of Tenn. Code Ann. § 65-4-101(6)(E) is to exempt "cooperatives" such as electric cooperatives from regulation by the TRA, a fact long recognized by the TRA. The fact that Tenn. Code Ann. § 65-4-101(6)(E) exempts

“cooperatives” from regulation by the TRA is shown in Tenn. Code Ann. § 65-25-234, which governs electric cooperatives, and which provides as follows:

(a) Every cooperative has the power and is authorized, acting through its board of directors, to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant or equipment for the provision of telephone, telegraph, telecommunications services, or any other like system, plant, or equipment within and/or without the service area of such cooperative in compliance with title 65, chapters 4 and 5, and all other applicable state and federal laws, rules and regulations. Notwithstanding § 65-4-101(6)(E) or any other provision of this code or of any private act to the contrary, to the extent that any cooperative provides any of the services authorized by this section, such cooperative shall be subject to regulation by the Tennessee regulatory authority in the same manner and to the same extent as other certificated providers of telecommunications services, including, without limitation, rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in § 65-4-101, but only to the extent necessary to effect such regulation and only with respect to such cooperative's provision of telephone, telegraph and communication services. (Emphasis added.)

Thus, as long as “cooperatives” (and, significantly, there is no reference to mere “nonprofits” in this Code section) operate in the utility sphere in which they originated, they will be exempt from TRA regulation pursuant to Tenn. Code Ann. § 65-25-234.

30. The Consumer Advocate is aware that in 2008 attorneys for the TRA wrote letters allowing a homeowners association which operated a wastewater system to avoid regulation by the TRA on the ground that it was a nonprofit corporation. A copy of these letters is attached as **Collective Exhibits K (K-1, K-2, K-3)**. This matter, which involved the Fairfield Glade Homeowners Association, was not a contested case, nor did it involve public deliberations by the TRA directors. Furthermore, the Consumer Advocate was unaware at the time of this position taken by attorneys for the TRA. It should also be noted that the Fairfield Glade matter is distinguishable from the present case in that there were actual members of the association as

opposed to Berry's Chapel which has no members, and the association was a 501(C)(4) nonprofit. See **Exhibit K-1**. Therefore, based on the analysis previously set forth in this Petition, the Consumer Advocate believes the position reflected in the letters is mistaken and requests that the TRA Directors give that position no precedential weight.

31. In conclusion, Berry's Chapel has not demonstrated that it is the kind of nonprofit that is to be excluded from the definition of "public utility." Accordingly, Berry's Chapel is still a public utility and, therefore, subject to the regulation of the TRA.

WHEREFORE, the Petitioner Consumer Advocate respectfully asks the Authority to convene a contested case proceeding, name Berry's Chapel Utility, Inc., as a party, and issue a declaratory order that Berry's Chapel Utility, Inc., is in fact a public utility under Tennessee law subject to regulation by the Tennessee Regulatory Authority, and to grant such other relief as may be proper, including, but not limited to, a refund of any increase in rates such as that set forth in the Rate Change Notice, which called for a \$20 per month increase effective November 1, 2010, attached as **Exhibit L**.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "RE Cooper", with a stylized flourish at the end.

ROBERT E. COOPER, JR. (BPR #10934)
Attorney General and Reporter
State of Tennessee

Vance L. Broemel

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Dated: January 10, 2011.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Complaint and Petition was served via U.S. Mail or electronic mail upon:

Tyler Ring
President
Lynwood Utility Corporation/Berry's Chapel Utility, Inc.
321 Billingsly Court, Suite 4
Franklin, TN 37065

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Department of Environment and Conservation
401 Church Street
L&C Annex 6th Floor
Nashville, Tennessee 37243

This the 10th day of January, 2011.



VANCE L. BROEMEL

Exhibit A

Received
MARY W. FREEMAN

SEP 17 2010

BRANSTETTER, STRANCH & JENNINGS, PLLC

ATTORNEYS AT LAW
227 SECOND AVENUE NORTH

FOURTH FLOOR
NASHVILLE, TENNESSEE 37201-1631
TELEPHONE (615) 254-8801
FACSIMILE (615) 250-3937

CECIL D. BRANSTETTER, SR.
C. DEWEY BRANSTETTER, JR.
RANDALL C. FERGUSON
R. JAN JENNINGS *
JOE P. LENISKI, JR.
DONALD L. SCHOLES
JAMES G. STRANCH, III
J. GERARD STRANCH, IV
JANE B. STRANCH

TN Regulatory Authority

ASSOCIATES:
B. DENARD MICKENS
STEVEN J. SIMERLEIN *
STACEY K. SKILLMAN **
MIKE STEWART
J. D. STUART
MICHAEL J. WALL

OF COUNSEL:
ROBERT J. RICHARDSON, JR. ***

*ALSO ADMITTED IN CA
**ALSO ADMITTED IN KY
***ONLY ADMITTED IN OH

September 17, 2010

*ALSO ADMITTED IN CA

Mary W. Freeman, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Via Hand Delivery

Re: Lynwood Utility Corporation - Berry's Chapel Utility, Inc.

Dear Chairman Freeman:

Effective September 1, 2010, the ownership of the sewer treatment and collection system of the Lynwood Utility Corporation became vested in Berry's Chapel Utility, Inc., a Tennessee nonprofit corporation. On September 1, 2010, Lynwood Utility Corporation merged into Berry's Chapel Utility, Inc. with Berry's Chapel Utility, Inc. assuming all of the assets and liabilities of Lynwood Utility Corporation. Lynwood Utility Corporation ceased to exist on the effective date of the merger. I have enclosed copies of the charter of Berry's Chapel Utility, Inc. and the Articles of Merger of Lynwood Utility Corporation into Berry's Chapel Utility, Inc. as filed with the Tennessee Secretary of State.

Pursuant to T.C.A. § 65-4-101(6)(E), Berry's Chapel Utility, Inc. is a nonutility because it is a nonprofit corporation. Under the T.C.A. § 65-4-112(b), the merger of Lynwood Utility Corporation into Berry's Chapel Utility, Inc. did not require any approval by the Authority since Berry's Chapel Utility, Inc. is a nonutility.

Please cancel the certificate of public convenience and necessity issued to Lynwood Utility Corporation. Thank you for your assistance in this matter.

RECEIVED

Sincerely yours,

SEP 20 2010

TN REGULATORY AUTHORITY
Enclosures UTILITIES DIVISION
c: General Ryan McGehee
Tyler Ring
Jim Ford

Donald L. Scholes
DONALD L. SCHOLES by (P)

**CHARTER
OF
BERRY'S CHAPEL UTILITY, INC.**

FILED
REGISTERED
STATE OF TENNESSEE

2010 JUL 16 PM 4:08

TRE HARGETT
SECRETARY OF STATE

0745-2519

The undersigned, acting as the incorporator of a corporation under the Tennessee Nonprofit Corporation Act, adopts the following Charter for such corporation:

1. The name of the corporation is Berry's Chapel Utility, Inc.
2. This corporation is a mutual benefit corporation.
3. The initial registered agent for the corporation is Tyler L. Ring whose street address is 321 Billingsly Court, Suite 4, Franklin, Tennessee 37065.
4. The name and address of the incorporator is:

Tyler L. Ring
321 Billingsly Court, Suite 4
Franklin, TN 37065

5. The street address of the principal office of the corporation is 321 Billingsly Court, Suite 4, Franklin, Tennessee 37065.
6. This corporation is not for profit.
7. This corporation is not a religious corporation.
8. This corporation will not have members.
9. This corporation's initial directors and their addresses are:

John Ring
321 Billingsly Court, Suite 4
Franklin, TN 37065

Tyler L. Ring
321 Billingsly Court, Suite 4
Franklin, TN 37065

James B. Ford
9679 Aurora Court
Brentwood, TN 37027

8745-2528

10. The purpose of the corporation shall be to own and operate a sanitary sewer collection and treatment system and to engage in any other lawful business.
11. Upon dissolution, after all creditors of the corporation have been paid, its assets shall be distributed to any person, partnership, limited partnership, limited liability company or corporation engaged in the sanitary sewer business or to the State of Tennessee or any county, municipality or political subdivision of the State of Tennessee.
12. To the extent allowed by the laws of the State of Tennessee, no present or future director of the corporation (or his or her estate, heirs and personal representatives) shall be liable to the corporation for monetary damages for breach of fiduciary duty as a director of the corporation. Any liability of a director (or his or her estate, heirs and personal representatives) shall be further eliminated or limited to the fullest extent allowed by the laws of the State of Tennessee, as may hereafter be adopted or amended.
13. With respect to claims or liabilities arising out of service as a director or officer of the corporation, the corporation shall indemnify and advance expenses to each present and future director and officer (and his or her estate, heirs and personal representatives) to the fullest extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted or amended.

Dated the 14th day of July, 2010.


Tyler L. Ring, Incorporator

BK/PG:5103/363-365

10024679

CHARTER	
07/27/2010	11:22 AM
BATCH	184116
MTG TAX	0.00
TRN TAX	0.00
REC FEE	5.00
DP FEE	2.00
ARC FEE	0.00
TOTAL	7.00

STATE OF TENNESSEE, WILLIAMSON COUNTY

SADIE WADE
REGISTER OF DEEDS

RECEIVED
STATE OF TENNESSEE
TRE HARGETT
SECRETARY OF STATE
2010 JUL 16 PM 4:08



STATE OF TENNESSEE
Tre Hargett, Secretary of State
Division of Business Services
312 Rosa L. Parks Avenue
6th Floor, William R. Snodgrass Tower
Nashville, TN 37243

Berry's Chapel Utility, Inc.
321 Billingsly Court
Suite 4
Franklin, TN 37065 USA

July 16, 2010

Filing Acknowledgment

Please review the filing information below and notify our office immediately of any discrepancies.

Control # :	635712	Formation Locale:	Williamson County
Filing Type:	Corporation Non-Profit - Domestic	Date Formed:	07/16/2010
Filing Date:	07/16/2010 4:08 PM	Fiscal Year Close	12
Status:	Active	Annual Rpt Due:	04/01/2011
Duration Term:	Perpetual	Image # :	6745-2519
Public/Mutual Benefit:	Mutual		

Document Receipt

Receipt # : 221470
Payment-Check/MO - BRANSTETTER STRANCH & JENNINGS, PLLC, NASHVILLE, TN

Filing Fee:	\$100.00
	\$100.00

Registered Agent Address

Tyler L. Ring
321 Billingsly Court
Suite 4
Franklin, TN 37065 USA

Congratulations on the successful filing of your Charter for Berry's Chapel Utility, Inc. in the State of Tennessee which is effective on the date shown above. You must also file this document in the office of the Register of Deeds in the county where the entity has its principal office if such principal office is in Tennessee.

You must file an Annual Report with this office on or before the Annual Report Due Date noted above and maintain a Registered Office and Registered Agent. Failure to do so will subject the business to Administrative Dissolution/Revocation.

Tre Hargett

Tre Hargett, Secretary of State
Business Services Division

Processed By: Cheryl Donnell

FILED
STATE OF TENNESSEE

**ARTICLES OF MERGER OF LYNWOOD UTILITY CORPORATION
INTO BERRY'S CHAPEL UTILITY, INC.**

2010 AUG 20 PM 3:13

SECRETARY OF STATE

Pursuant to the provisions of Section 48-21-107 of the Tennessee Business Corporation Act and Section 48-61-104 of the Tennessee Nonprofit Corporation Act, the undersigned domestic corporations hereby submit these Articles of Merger and state as follows:

1. The Plan of Merger is attached hereto and was approved by each of the herein named corporations in the manner prescribed by Section 48-21-104 of the Tennessee Business Corporation Act and Section 48-61-103 of the Tennessee Nonprofit Corporation Act.
2. As to Lynwood Utility Corporation, approval of the Plan by its shareholders is required by Section 48-21-101, *et seq.*, of the Tennessee Business Corporation Act, and the Plan was duly approved by the affirmative vote of all of the votes entitled to be cast, there being no voting by voting group.
3. As to Berry's Chapel Utility, Inc., which is the surviving corporation of the merger, the Plan was duly approved by a unanimous vote of its board of directors. Berry's Chapel Utility, Inc. has no members; therefore, no vote by the corporation's members was required.
4. These Articles of Merger shall not be effective upon filing by the Secretary of State, but the delayed effective date and time they are to become effective, and the merger is to take effect, is September 1, 2010, at 12:00 a.m.

Dated this 18th day of August, 2010.

LYNWOOD UTILITY CORPORATION

By: _____

Tyler L. Ring, President

BERRY'S CHAPEL UTILITY, INC.

By: _____

Tyler L. Ring, President

5759.0426

Exhibit B

**CHARTER
OF
BERRY'S CHAPEL UTILITY, INC.**

FILED
RECEIVED
STATE OF TENNESSEE

2010 JUL 16 PM 4:08

TRE HARGETT
SECRETARY OF STATE

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Franklin, TN 37065

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8. This corporation will not have members.
9. This corporation's initial directors and their addresses are:

John Ring
321 Billingsly Court, Suite 4
Franklin, TN 37065

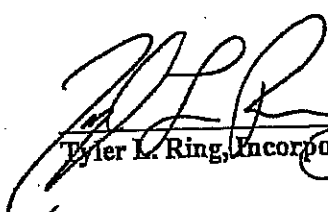
Tyler L. Ring
321 Billingsly Court, Suite 4
Franklin, TN 37065

James B. Ford
9679 Aurora Court
Brentwood, TN 37027

B745-2513

10. The purpose of the corporation shall be to own and operate a sanitary sewer collection and treatment system and to engage in any other lawful business.
11. Upon dissolution, after all creditors of the corporation have been paid, its assets shall be distributed to any person, partnership, limited partnership, limited liability company or corporation engaged in the sanitary sewer business or to the State of Tennessee or any county, municipality or political subdivision of the State of Tennessee.
12. To the extent allowed by the laws of the State of Tennessee, no present or future director of the corporation (or his or her estate, heirs and personal representatives) shall be liable to the corporation for monetary damages for breach of fiduciary duty as a director of the corporation. Any liability of a director (or his or her estate, heirs and personal representatives) shall be further eliminated or limited to the fullest extent allowed by the laws of the State of Tennessee, as may hereafter be adopted or amended.
13. With respect to claims or liabilities arising out of service as a director or officer of the corporation, the corporation shall indemnify and advance expenses to each present and future director and officer (and his or her estate, heirs and personal representatives) to the fullest extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted or amended.

Dated the 14th day of July, 2010.


Tyler L. Ring, Incorporator

BK/PG:5103/363-365

10024679

CHARTER	07/27/2010 11:22 AM
BATCH	184115
MTG TAX	0.00
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ARC FEE	0.00
TOTAL	7.00

STATE OF TENNESSEE, WILLIAMSON COUNTY

SADIE WADE
REGISTER OF DEEDS

RECEIVED
STATE OF TENNESSEE
2010 JUL 16 PM 4:08
TRE HARGETT
SECRETARY OF STATE

8745.2528



STATE OF TENNESSEE
Tre Hargett, Secretary of State
Division of Business Services
312 Rosa L. Parks Avenue
6th Floor, William R. Snodgrass Tower
Nashville, TN 37243

Berry's Chapel Utility, Inc.
321 Billingsly Court
Suite 4
Franklin, TN 37065 USA

July 16, 2010

Filing Acknowledgment

Please review the filing information below and notify our office immediately of any discrepancies.

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Filing Date:	07/16/2010 4:08 PM	Fiscal Year Close	12
Status:	Active	Annual Rpt Due:	04/01/2011
Duration Term:	Perpetual	Image # :	6745-2519
Public/Mutual Benefit:	Mutual		

Document Receipt

Receipt #: 221470
Payment: Check/MO - BRANSTETTER STRANCH & JENNINGS, PLLC, NASHVILLE, TN
Filing Fee: \$100.00
\$100.00

Registered Agent Address
Tyler L. Ring
321 Billingsly Court
Suite 4
Franklin, TN 37065 USA

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You must file an Annual Report with this office on or before the Annual Report Due Date noted above and maintain a Registered Office and Registered Agent. Failure to do so will subject the business to Administrative Dissolution/Revocation.

Tre Hargett, Secretary of State
Business Services Division

Processed By: Cheryl Donnell

FILED
STATE OF TENNESSEE

**ARTICLES OF MERGER OF LYWOOD UTILITY CORPORATION
INTO BERRY'S CHAPEL UTILITY, INC.** 2010 AUG 20 PM 3:13

JOHN C. SMITH
SECRETARY OF STATE

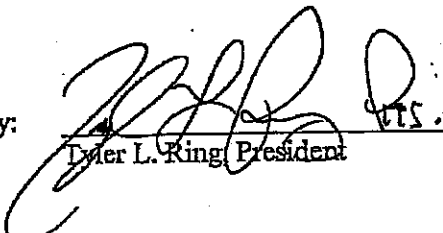
Pursuant to the provisions of Section 48-21-107 of the Tennessee Business Corporation Act and Section 48-61-104 of the Tennessee Nonprofit Corporation Act, the undersigned domestic corporations hereby submit these Articles of Merger and state as follows:

6759.0426

1. The Plan of Merger is attached hereto and was approved by each of the herein named corporations in the manner prescribed by Section 48-21-104 of the Tennessee Business Corporation Act and Section 48-61-103 of the Tennessee Nonprofit Corporation Act.
2. As to Lynwood Utility Corporation, approval of the Plan by its shareholders is required by Section 48-21-101, *et seq.*, of the Tennessee Business Corporation Act, and the Plan was duly approved by the affirmative vote of all of the votes entitled to be cast, there being no voting by voting group.
3. As to Berry's Chapel Utility, Inc., which is the surviving corporation of the merger, the Plan was duly approved by a unanimous vote of its board of directors. Berry's Chapel Utility, Inc. has no members; therefore, no vote by the corporation's members was required.
4. These Articles of Merger shall not be effective upon filing by the Secretary of State, but the delayed effective date and time they are to become effective, and the merger is to take effect, is September 1, 2010, at 12:00 a.m.

Dated this 18th day of August, 2010.

LYWOOD UTILITY CORPORATION

By: 
Tyler L. Ring, President

BERRY'S CHAPEL UTILITY, INC.

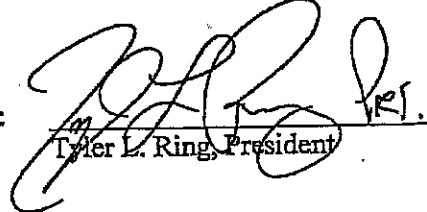
By: 
Tyler L. Ring, President

Exhibit C

AGREEMENT AND PLAN OF MERGER

RECEIVED
STATE OF TENNESSEE
2010 AUG 20 PM 3:13

TRE HADGETT
SECRETARY OF STATE

Pursuant to the provisions of Section 48-61-101 of the Tennessee Nonprofit Corporation Act, Lynwood Utility Corporation (Lynwood), and Berry's Chapel Utility, Inc. (Berry's Chapel) enter into this AGREEMENT AND PLAN OF MERGER this 18th day of August, 2010.

1. **Merger.**

(a) On the effective date set forth in this section and upon the terms and subject to the conditions set forth in this Agreement, Lynwood shall be merged with and into Berry's Chapel whereupon the separate existence of Lynwood will cease and Berry's Chapel shall be the surviving corporation in the merger (the Surviving Corporation).

(b) As soon as practicable after the satisfaction or waiver of the conditions to obligations of the parties to consummate the Merger, Lynwood and Berry's Chapel will file articles of merger with the Tennessee Secretary of State and make all other filings and recordings required by applicable law in connection with the merger.

(c) The effective date of the Merger is September 1, 2010.

(d) On the effective date of the Merger, Lynwood will no longer exist as a separate corporation, and all responsibility, coverage and liability for the terms and conditions of Lynwood's NPDES Permit TN0029718 shall transfer to Berry's Chapel.

2. **The Surviving Corporation.**

(a) The charter of the Surviving Corporation in effect on the effective date shall be the charter of the Surviving Corporation until amended in accordance with applicable law.

(b) The by-laws of the Surviving Corporation in effect on the effective date shall be the charter of the Surviving Corporation until amended in accordance with applicable law.

RECEIVED
STATE OF TENNESSEE

2010 AUG 20 PM 3:13

TRE HARGETT
SECRETARY OF STATE

3. Effect of the Merger.

The Merger shall have the effect set forth in T.C.A. § 48-64-105. Upon the Merger, Berry's Chapel, the surviving corporation, shall assume the contracts, obligations and liabilities of every nature of Lynwood and shall thereupon and thereafter possess all rights, privileges, immunities, assets, property, debts, liabilities and choses in action of the merging corporations, without the necessity of any other formal documentation, except as may be required by law.

4. Covenants.

(a) For the Lynwood sewer system, Berry's Chapel shall issue a promissory note to John Ring in the approximate amount of \$1,200,000 and a promissory note to Tyler L. Ring in the approximate amount of \$1,200,000, John Ring and Tyler Ring being the shareholders of Southern Utility Corporation, the sole shareholder of Lynwood, with such promissory notes to be secured by a second mortgage on the real property and a first lien on the personal property of Berry's Chapel. Each promissory note shall have the following terms:

Date of maturity – September 1, 2030

Interest rate 2% for the first two years of the note
 2.5% for the third year of the note
 3.0 % for the remaining 17 years of the note

Payments Beginning on September 1, 2013, an annual payment in the amount of \$50,000 will be due on August 31st of each year with a balloon payment on August 31, 2030.

(b) With the Merger of Lynwood with and into Berry's Chapel, all shares of stock of Lynwood shall thereupon be cancelled and extinguished in all respects.

(c) On the effective date of the Merger, the Lynwood sewer treatment and collection

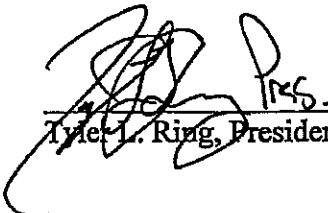
6759.0428

system shall be transferred to the books and records of Berry's Chapel at the fair market value on the effective date with an approximate value of \$5,580,000.

IN WITNESS WHEREOF, the parties have caused their names to be subscribed hereto on the day and year first above written.

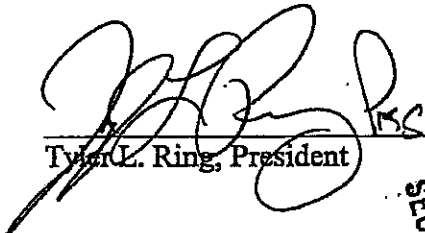
LYNWOOD UTILITY CORPORATION

By:


Tyler L. Ring, President

BERRY'S CHAPEL UTILITY, INC.

By:


Tyler L. Ring, President

RECEIVED
STATE OF TENNESSEE
2010 AUG 20 PM 3:13
TERRY HAFEGERT
SECRETARY OF STATE

6759.0429

Exhibit D

Lynwood Utility Corporation
Balance Sheet Detail
As of December 31, 2008

Type	Date	Num	Name	Memo	Class	Ch	Split	Amount	Balance
Check	8/24/2007	1040	Alley & Associates	Sewer Servia...		X	731 - Contract...	-130.00	101,453.15
Check	8/24/2007	1041	Branstetter Kilgore ...	Client # 0027...		X	733 - Contract...	-2,693.75	98,759.40
Check	8/24/2007	1042	Brentwood Rental & ...	Cust#452/Co...		X	736.1 - Repair...	-58.73	98,700.67
Check	8/24/2007	1043	Williamson County ...	CO-OP Patro...		X	720 - Materials...	-98.31	98,602.36
Check	8/24/2007	1044	Grainger	Grainger/Inv#...		X	736 - Contract...	-859.51	97,742.85
Check	8/24/2007	1045	Labtronx, Inc.	LabtronX/Inv...		X	-SPLIT-	-1,497.67	96,245.18
Check	8/24/2007	1046	McBee	McBee/Inv#8...		X	720.1 - Office ...	-180.41	95,054.77
Check	8/24/2007	1047	Ortala Kelly Heibel...	Ortala Kelly I...		X	733 - Contract...	-158.75	94,896.02
Check	8/24/2007	1048	Research Solvents	Inv#215415...		X	-SPLIT-	-1,156.50	94,739.52
Check	8/24/2007	1049	Sentry Steel Servc...	Sentry Steel...		X	720 - Materials...	-625.00	94,114.52
Check	8/24/2007	1050	Waste Management...	Inv#1487310...		X	711 - Sludge ...	-2,269.56	91,844.96
Check	8/24/2007	1051	Waste Management...	Inv#1485760...		X	711 - Sludge ...	-529.65	91,315.31
Check	8/24/2007	1052	Webtrails LLC	Inv#10041		X	736 - Contract...	-983.25	90,332.06
Check	8/24/2007	1053	Middle Tennessee ...	MD TN Elect...		X	715.1 - Electr...	-48.00	90,284.06
Check	8/24/2007	1054	City of Franklin	#071-02100...		X	-SPLIT-	-21.74	90,262.32
Deposit	8/28/2007	1055	TN Dept. of Revenue	Deposit		X	8010 - Other E...	100.00	90,362.32
Check	8/28/2007	1056	TN Dept. of Revenue	Estimated tax...		X	408 - Taxes	-770.00	89,592.32
Check	8/30/2007	1057	HB & TS	Estimated tax...		X	408 - Taxes	-770.00	88,822.32
Deposit	8/30/2007	3372	HB & TS	Deposit		X	141 - Customs...	3,000.00	81,822.32
Payment	8/30/2007	1057	Spanish Today	Inv#L VN-1-1...		X	731.2 - Consul...	19,838.53	111,660.85
Check	8/30/2007	1058	Bobby Winfrey	Plant operato...		X	-SPLIT-	-100.00	111,560.85
Check	8/4/2007	1059	Tyler Ring	Sept		X	-SPLIT-	-4,000.00	107,560.85
Check	8/4/2007	1060	Rory Rowan	Sept		X	-SPLIT-	-2,500.00	105,060.85
Check	8/4/2007	1061	Scott C. Fendley	August		X	-SPLIT-	-600.00	104,460.85
Check	8/4/2007	1062	Middle Tennessee ...	MD TN Elect...		X	732.3 - Accou...	-800.00	103,660.85
Check	8/4/2007	1063	AT&T MOBILITY	615-790-363...		X	715.1 - Electr...	-3,698.00	99,961.85
Check	8/4/2007	1064	Lowes Business Ac...	Materials/048...		X	720.13 - Telep...	-133.67	99,828.18
Check	9/7/2007	1064	Lowes Business Ac...	Materials/048...		X	720.1 - Office ...	-139.84	99,688.34
Check	9/10/2007	1065	Visions, Inc.	Fees for Aug...		X	-SPLIT-	-2,400.00	97,288.34
Deposit	8/11/2007	1066	Home Depot Credit ...	Deposit		X	-SPLIT-	81,000.00	178,288.34
Deposit	9/11/2007	1067	JOHN RING	Deposit		X	-SPLIT-	3,000.00	181,288.34
Deposit	9/11/2007	1068	JOHN RING	Deposit		X	-SPLIT-	3,000.00	184,288.34
Check	8/12/2007	1069	JOHN RING	Deposit		X	-SPLIT-	3,000.00	187,288.34
Check	9/13/2007	1066	Home Depot Credit ...	HD/5713		X	720 - Materials...	-18.15	187,270.19
Check	9/13/2007	1067	JOHN RING	Office 1/1/07 ...		X	-SPLIT-	-5,000.00	182,270.19
Check	9/13/2007	1068	JOHN RING	Office 4/1/07 ...		X	-SPLIT-	-5,000.00	177,270.19
Check	9/13/2007	1069	JOHN RING	Office 7/1/07 ...		X	-SPLIT-	-5,000.00	172,270.19
Check	9/13/2007	1070	Tenn. Contractors L...	1ST QTR INT		X	427.3 - Interse...	-25,273.97	146,996.22
Check	9/13/2007	1071	Tenn. Contractors L...	2nd Qtr Inter...		X	427.3 - Interse...	-25,554.79	121,441.43
Check	9/13/2007	1072	Middle Tennessee ...	MD TN Elect...		X	-SPLIT-	-448.00	120,993.43
Check	9/13/2007	1073	H.B. & T.S. Utility D...	814/07 Curr...		X	710.2 - Water ...	-527.20	120,466.23
Check	9/13/2007	1074	City Of Franklin/ Se...	Inv#BMS324...		X	186.7 - Bell...	-655.39	119,800.84
Payment	9/13/2007	1075	City Of Franklin/ Se...	Amount colle...		X	141 - Customs...	38,083.10	157,883.94
Deposit	8/20/2007	1075	DISCOUNT PLUMB...	Deposit		X	-SPLIT-	3,500.00	161,383.94
Check	8/20/2007	1076	Southern Sales Co...	Inv#420078		X	720 - Materials...	-24.09	161,359.85
Check	8/21/2007	1076	Southern Sales Co...	Inv#25557		X	736.12 - Equip...	-286.00	161,081.85
Check	9/21/2007	1077	Waste Management...	Inv#1497247...		X	-SPLIT-	-2,678.57	158,403.28
Check	9/21/2007	1078	KraftCPAS	VA15574		X	732.4 - TAX A...	-1,000.00	157,403.28
Check	9/21/2007	1079	ADC	Inv#30689 A...		X	-SPLIT-	-1,431.25	155,972.03

PM
1/09
rual Basis

Lynwood Utility Corporation
Balance Sheet Detail
As of December 31, 2008

Schedule 36

ASSETS	Type	Date	Num	Name	Memo	Class	Clr	Split	Amount	Balance
Current Assets										1,887,317.78
Checking/Savings										172,014.72
RELANT BANK CHECKING ACCT.										133,896.96
Check		7/16/2007	3856	Lynwood Utility Cor...	Transfer for ...	X	X	131 - Cash - C...	1,000.00	1,000.00
Payment		7/30/2007	3357	HB & TS	Amount Colle...	X	X	141 - Custome...	14,467.66	15,467.66
Check		7/31/2007	1000	STAPLES	Computer Ptl...	X	X	720.1 - Office	-805.63	14,662.03
Check		7/31/2007	1003	Bobby Winfrey	Plant operato...	X	X	734.1 - On Sit...	-4,000.00	10,662.03
Check		7/31/2007	1004	MCI	MCI #4DR22...	X	X	720.13 - telep...	-50.00	10,612.03
Check		7/31/2007	1005	City of Franklin	#071-021001...	X	X	522.15 - City o...	-16.24	10,795.79
Check		7/31/2007	1006	Middle Tennessee ...	MD TN Elect...	X	X	715.1 - Electr...	-3,710.00	7,085.79
Check		7/31/2007	1007	Middle Tennessee ...	MD TN Elect...	X	X	715.1 - Electr...	-116.00	6,969.79
Check		8/3/2007	1008	Home Depot Credit ...	HD/5623	X	X	720 - Materials...	-115.78	6,854.01
Deposit		8/3/2007			Deposit	X	X	-SPLT-	3,000.00	9,854.01
Deposit		8/6/2007			Deposit	X	X	131 - Cash - C...	45,000.00	54,854.01
Check		8/6/2007	1010	AT&T MOBILITY	615-780-363...	X	X	720.13 - telep...	-133.61	54,720.40
Check		8/6/2007	1011	Rory Rowan	July 2007 Co...	X	X	734 - Contract...	-600.00	54,120.40
Check		8/6/2007	1012	Scott C. Fendley	Aug. Clerical...	X	X	732 - Contract...	-800.00	53,320.40
Check		8/6/2007	1013	Tyler Ring	Aug. Mgt 2007	X	X	734 - Contract...	-2,820.00	50,500.40
Check		8/6/2007	1014	ADC	Inv#29897	X	X	718 - Chemicals	-877.50	49,622.90
Check		8/6/2007	1015	Alley & Associates	Sewer Insp L...	X	X	731 - Contract...	-130.00	49,492.90
Check		8/6/2007	1016	Brennstetter Kigore ...	Client # 0027...	X	X	733 - Contract...	-2,169.08	47,323.82
Check		8/6/2007	1017	Brenntag Mid South...	Inv#BMS283...	X	X	718 - Chemicals	-219.60	47,104.22
Check		8/6/2007	1018	Brenntag Mid South...	Inv#BMS293...	X	X	718 - Chemicals	-549.00	46,555.22
Check		8/6/2007	1019	Brenthwood Rental &...	Cust#452/Co...	X	X	-SPLT-	-478.77	46,076.45
Check		8/6/2007	1020	Ciba Specialty Che...	Invoice#1150...	X	X	718 - Chemicals	-846.98	45,229.47
Check		8/6/2007	1021	Williamson County...	CO-OP	X	X	710 - Purchas...	-813.80	44,415.67
Check		8/6/2007	1022	H.B. & T.S. Utility D...	7/9/07 Readl...	X	X	-SPLT-	-230.76	44,184.91
Check		8/6/2007	1023	K & S Steel Fabrica...	Inv#5379	X	X	720 - Materials...	-1,250.00	42,934.91
Check		8/6/2007	1024	KraftCPAs	VA15574	X	X	732 - Contract...	-500.00	42,434.91
Check		8/6/2007	1025	Labronx, Inc.	Inv#8131	X	X	-SPLT-	-1,785.91	40,648.00
Check		8/6/2007	1026	Microltel, Inc.	Inv#214463	X	X	720.1 - Office	-87.38	40,560.62
Check		8/6/2007	1027	Research Solvents	Inv#214463	X	X	718 - Chemicals	-665.25	40,115.37
Check		8/6/2007	1028	San-Tech JetVac S...	Inv#1398	X	X	736.12 - Equip...	-1,425.00	38,690.37
Check		8/6/2007	1029	Southern Sales Co...	Inv#25431	X	X	736.12 - Equip...	-96.00	38,594.37
Check		8/6/2007	1030	Test America	Inv#4970139...	X	X	735 - Contract...	-247.50	38,346.87
Check		8/6/2007	1031	Visions, Inc.	VOID: Lynwo...	X	X	732 - Contract...	-1,350.00	36,996.87
Check		8/7/2007	1032	The Tennesseean	Lynwood Util...	X	X	775 - Miscella...	0.00	36,996.87
Check		8/8/2007	1033	The Tennesseean	Deposit	X	X	426 - Misc No...	-182.48	36,814.39
Deposit		8/9/2007			Deposit	X	X	-SPLT-	3,000.00	39,814.39
Transfer		8/13/2007	1034	Middle Tennessee ...	Funds Transfer	X	X	131 - Cash - C...	53,705.04	93,520.43
Check		8/13/2007	1035	Middle Tennessee ...	MD TN Elect...	X	X	715.1 - Electr...	-211.85	93,308.58
Check		8/14/2007			MD TN Elect...	X	X	715.1 - Electr...	-212.84	93,095.74
Deposit		8/16/2007	1037	Williamson County ...	Deposit	X	X	-SPLT-	6,000.00	99,095.74
Check		8/21/2007			Tags for 198...	X	X	5202 - Taxes ...	-60.25	99,035.49
Deposit		8/23/2007	1038	Vulcan Materials Co...	Deposit	X	X	-SPLT-	3,000.00	102,035.49
Check		8/23/2007			Lynwood Inv...	X	X	-SPLT-	-2,322.34	99,713.15
Deposit		8/23/2007			Deposit	X	X	-SPLT-	3,000.00	102,713.15
Check		8/24/2007	1039	Cooper Environmen...	Lynwood Inv...	X	X	736 - Contract...	-1,130.00	101,583.15

Lynwood Utility Corporation
Balance Sheet Detail
As of December 31, 2008

Type	Date	Num	Name	Memo	Class	Cir	Split	Amount	Balance
224.3 - Long Term Debt-TCI									
General Journal	1/1/2007	0101...		Record Long ...			-SP/LT-	1,000,000.00	1,000,000.00
Check	12/7/2007	1195	Tenn. Contractors L...	Payment on ...			RELANT BA...	-50,000.00	950,000.00
General Journal	12/31/2007	1231...		Long Term D...			232.1 - N/P-S...	-950,000.00	0.00
Check	1/7/2008	1006	Tennessee Comm...	Loan#12308 ...			Tennessee Co...	-2,874.57	-2,874.57
General Journal	1/31/2008	0131...		To Correct p...			224.4 - Long T...	-5,748.14	-5,748.14
General Journal	1/31/2008	0131...		Posting error ...			224.4 - Long T...	5,749.14	0.00
Check	2/5/2008	1052	Tennessee Comm...	Long Term D...			Tennessee Co...	-2,874.57	-2,874.57
General Journal	2/29/2008	0229...		To Correct p...			224.4 - Long T...	2,874.57	0.00
Total 224.3 - Long Term Debt-TCI									
								0.00	0.00
232.1 - N/P-Short Term Loan- TNC									
Deposit	10/23/2007			Notes Payabl...			RELANT BA...	250,000.00	250,000.00
General Journal	12/31/2007	1231...	Tenn. Contractors L...	To record loa...			-SP/LT-	-250,000.00	0.00
Total 232.1 - N/P-Short Term Loan- TNC									
								0.00	0.00
232.2 - Current Liabilities TCB									
General Journal	12/31/2007	1231...		Short Term L...			232.1 - N/P-S...	212,956.20	212,956.20
Deposit	5/29/2008		Tennessee Comm...	Draw on Loan			Tennessee Co...	12,041.80	225,000.00
Deposit	6/30/2008		Tennessee Comm...	Draw on Line...			Tennessee Co...	15,000.00	240,000.00
Total 232.2 - Current Liabilities TCB									
								240,000.00	240,000.00
236.3 - Accounts Payable-Trade other									
General Journal	12/31/2007	1231...		To record pa...			736.15 - Treat...	10,885.00	10,885.00
General Journal	2/29/2008	0229...		To correct po...			736.15 - Treat...	-10,885.00	0.00
Total 236.3 - Accounts Payable-Trade other									
								0.00	0.00
253 - Other Current Liability									
General Journal	12/31/2006	1231...		To set up def...			271 - Contribut...	-74,250.00	-74,250.00
General Journal	1/21/2007	1231...		To correct po...			536.2 - Tap Fe...	3,500.00	-70,750.00
General Journal	12/31/2007	1231...		To Correct P...			271 - Contribut...	148,500.00	77,750.00
Total 253 - Other Current Liability									
								77,750.00	77,750.00
2916 - Accrued Inspection Fee									
General Journal	9/30/2007	0930...		To balance A...			-SP/LT-	-4,426.00	4,426.00
Total 2916 - Accrued Inspection Fee									
								-4,426.00	0.00
Total Other Current Liabilities									
								-826,936.91	317,750.00
Total Current Liabilities									
								-813,619.41	355,827.80
Long Term Liabilities									
224 - Other Long-Term Debt									
224.1 - Operations Payable to LIC									
Total 224.1 - Operations Payable to LIC									
								1,044,711.52	1,044,711.52
								72,481.62	72,481.62
								0.00	0.00

Lynwood Utility Corporation
Balance Sheet Detail
As of December 31, 2008

Type	Date	Num	Name	Memo	Class	Cir	Split	Amount	Balance
224.2 - Improvements Payable to LIC									
Check	1/10/2006	3408	Lumbermens Invest..	Tap fee RL 7...			131 - Cash - C...	-33,000.00	72,481.52
General Journal	1/1/2007	0101...		Record Long ...			224.3 - Long T...	-33,944.70	39,481.52
General Journal	9/30/2007	0830...		To balance A...			2915 - Accru...	-5,536.82	5,536.82
								-72,481.52	0.00
Total 224.2 - Improvements Payable to LIC									
224 - Other Long-Term Debt - Other									
Total 224 - Other Long-Term Debt - Other									
Total 224 - Other Long-Term Debt									
224.4 - Long Term Liabilities TN Comm B									
General Journal	12/31/2007	1231...		Long Term D...			232.1 - N/P-S...	1,000,000.00	1,000,000.00
General Journal	1/31/2008	0131...		To correct po...			224.3 - Long T...	2,874.57	1,002,874.57
General Journal	1/31/2008	0131...		Posting error ...			224.3 - Long T...	-5,749.14	997,125.43
General Journal	2/29/2008	0228...		To correct P...			224.3 - Long T...	-2,874.57	994,250.86
Check	4/22/2008	1152	Tennessee Comm...	Long Term Li...			Tennessee Co...	-1,704.41	992,546.45
General Journal	5/1/2008	0511...		To correct po...			427.4 - Long T...	-2,092.45	990,454.00
Check	5/20/2008	1189	Tennessee Comm...	Long Term Li...			Tennessee Co...	-1,704.41	988,749.59
Check	6/25/2008	1226	Tennessee Comm...	Long Term Li...			Tennessee Co...	-1,704.41	987,045.18
Check	7/22/2008	1262	Tennessee Comm...	Long Term Li...			Tennessee Co...	-5,846.10	981,199.08
Check	8/14/2008	1303	Tennessee Comm...	Long Term Li...			Tennessee Co...	-5,245.74	975,953.34
Check	9/11/2008	1331	Tennessee Comm...	Long Term Li...			Tennessee Co...	-5,897.16	970,056.18
Check	10/16/2008	1376	Tennessee Comm...	Long Term Li...			Tennessee Co...	-3,253.86	966,802.32
Check	11/17/2008	1440	Tennessee Comm...	Long Term Li...			Tennessee Co...	-4,076.54	962,725.78
Check	12/2/2008	1475	Tennessee Comm...	Long Term Li...			Tennessee Co...	-4,294.57	958,431.11
General Journal	12/31/2008	1214...		To adjust LT...			427.4 - Long T...	3,002.62	961,433.73
								961,433.73	961,433.73
Total 224.4 - Long Term Liabilities TN Comm B									
234 - LIC Note Payable									
234.1 - LIC Interest on Note Payable									
Total 234.1 - LIC Interest on Note Payable									
234 - LIC Note Payable - Other									
Total 234 - LIC Note Payable - Other									
Total 234 - LIC Note Payable									
271 - Contribution in Aid of Construct									
General Journal	12/31/2006	1231...		To set up def...			263 - Other Cu...	74,250.00	972,230.00
General Journal	1/1/2007	0101...		To adjust liba...			3900 - Retain...	65,995.00	1,046,480.00
General Journal	1/1/2007	0101...		\$872230.00 ...			3900 - Retain...	-235,583.00	1,112,475.00
General Journal	1/1/2007	0101...		To balance pl...			3900 - Retain...	-65,945.00	876,882.00
General Journal	8/30/2007	0830...		To record tap...			536.2 - Tap Fe...	126,500.00	937,447.00
General Journal	9/30/2007	0930...		To record am...			404.1 - Amort...	-78,524.00	857,923.00
Deposit	10/3/2007			Tap Fee/Try...			RELIANT BA...	3,500.00	861,423.00
General Journal	11/1/2007	1231...		Tap Fee from ...			RELIANT BA...	3,500.00	864,923.00
General Journal	12/31/2007	1231...		To correct Ba...			404.1 - Amort...	4,425.00	869,348.00
General Journal	12/31/2007	1231...		To correct P...			233 - Other CL...	-148,500.00	720,848.00

Lynwood Utility Corporation
Balance Sheet Detail
As of December 31, 2008

Type	Date	Num	Name	Memo	Class	Cir	Split	Amount	Balance
General Journal	1/31/2008	0131...		Contribution I...			404.1 - Amort...	6,500.00	727,343.00
General Journal	1/31/2008	0131...		To Balance A...			SPLIT-	-1,250.00	726,093.00
General Journal	2/28/2008	0228...		To record Am...			404.1 - Amort...	6,500.00	732,593.00
Deposit	3/12/2008		Tennessee Comm...	Tap Fee/Rob...			Tennessee Co...	3,500.00	736,093.00
General Journal	3/31/2008	0331...		Contribution I...			404.1 - Amort...	6,500.00	742,593.00
General Journal	3/31/2008	0331...		To correct po...			404.1 - Amort...	-39,000.00	703,593.00
Deposit	4/15/2008		Tennessee Comm...	Tap Fee/Lot ...			Tennessee Co...	3,500.00	707,093.00
General Journal	4/30/2008	0430...		Contribution I...			404.1 - Amort...	-6,500.00	700,593.00
General Journal	5/2/2008	0502...		Contribution ...			404.1 - Amort...	-6,500.00	694,093.00
General Journal	6/2/2008	0601...		Contribution I...			404.1 - Amort...	-6,500.00	687,593.00
Deposit	6/26/2008		Tennessee Comm...	Tap Fee Lot ...			Tennessee Co...	3,500.00	691,093.00
General Journal	7/2/2008	0702...		To Record A...			404.1 - Amort...	-6,500.00	684,593.00
General Journal	8/2/2008	0802...		Contribution I...			404.1 - Amort...	-6,500.00	678,093.00
General Journal	9/2/2008	0902...		Contribution I...			404.1 - Amort...	-6,500.00	671,593.00
Deposit	9/18/2008		Tennessee Comm...	Tap fee Lot 1...			Tennessee Co...	3,500.00	675,093.00
General Journal	10/31/2008	1002...		Contribution I...			404.1 - Amort...	-6,500.00	668,593.00
General Journal	11/30/2008	1110...		Contribution I...			404.1 - Amort...	-6,500.00	662,093.00
General Journal	12/31/2008	1202...		Contribution I...			404.1 - Amort...	-6,500.00	655,593.00
General Journal	12/31/2008	1209...		Contribution I...			404.1 - Amort...	31,926.00	687,524.00
Total 271 - Contribution In Aid of Construct									687,524.00
2901 - Operations Payable to SC Ventur									0.00
Total 2901 - Operations Payable to SC Ventur									0.00
2902 - Operations Payable to SC Capita									0.00
Total 2902 - Operations Payable to SC Capita									0.00
Total Long Term Liabilities									604,246.21
Total Liabilities									-208,373.20
Equity									
Accum. Adj. Account									
General Journal	-1/1/2007	0101...		To adjust liba...			3900 - Retaine...	12,900.00	-326,840.65
Total Accum. Adj. Account									-12,900.00
201 - Common Stock									0.00
Total 201 - Common Stock									0.00
210 - Southern Utility Equity									1,000.00
Total 210 - Southern Utility Equity									1,000.00
211 - Add'l Paid In Capital									0.00
General Journal	12/31/2005			Balance Adj...			131 - Cash - C...	1,068.00	659,720.59
General Journal	1/1/2007	0101...		To adjust liba...			3900 - Retaine...	-1,067.59	670,788.59
Total 211 - Add'l Paid In Capital									659,721.00
Total 211 - Add'l Paid In Capital									659,721.00

Lynwood Utility Corporation
Balance Sheet Detail
As of December 31, 2008

Type	Date	Num	Name	Memo	Class	Cir	Split	Amount	Balance
3200 - Accumulated Adj. Acct	1/1/2007	0101...		To adjust liba...			3900 - Retain...	-48,000.00	48,000.00
General Journal								0.00	
Total 3200 - Accumulated Adj. Acct								-48,000.00	0.00
3900 - Retained Earnings	12/31/2008								
Closing Entry									
General Journal	1/1/2007	1010...		Retained Eas...			101 - Utility Pl...	3,854.80	-1,032,661.24
General Journal	1/1/2007	1010...		To Adjust ac...			108 - Accum...	859,127.53	-1,029,006.44
General Journal	1/1/2007	1010...		To Adjust Pla...			114 - Utility Pl...	-556,487.46	-59,878.91
General Journal	1/1/2007	0101...	City of Franklin	To adjust mls...			-SPLT-	-23,086.00	-849,452.37
General Journal	1/1/2007	0101...	City of Franklin	To adjust mls...			-SPLT-	28,160.11	-823,292.26
General Journal	1/1/2007	0101...		To adjust liba...			141.01 - Acco...	28,160.11	-597,132.15
General Journal	1/1/2007	0101...	City of Franklin	To adjust liba...			-SPLT-	-31,759.84	-628,891.99
General Journal	1/1/2007	0101...		To adjust cor...			236 - Accrued	3,118.04	-625,773.95
General Journal	1/1/2007	0101...		Record Long ...			224.3 - Long T...	-752,003.96	-1,377,777.91
General Journal	1/1/2007	0101...		To Balance o...			Loan from So...	639,000.00	-738,777.91
General Journal	1/1/2007	0101...		To record coll...			101 - Utility Pl...	161,750.00	-567,027.91
General Journal	1/1/2007	0101...		To record de...			108 - Accum...	-22,252.00	-509,279.91
General Journal	1/1/2007	0101...		\$97230.00 ...			271 - Contribut...	235,583.00	-373,696.91
General Journal	1/1/2007	0101...		To adjust to c...			Deferred Debits	-5,169.00	-378,865.91
General Journal	1/1/2007	0101...		To adjust cor...			124 - Utility In...	-5,000.00	-383,865.91
General Journal	1/1/2007	0101...		To reverse y...			121 - Non Util...	-75,000.00	-458,865.91
General Journal	1/1/2007	0101...		To reverse y...			141.01 - Acco...	-26,160.11	-485,026.02
General Journal	1/1/2007	0101...	Legends Ridge Pl...	To reverse y...			Accrued Interest	94,018.38	-391,007.64
General Journal	1/1/2007	0101...		To Balance P...			141 - Custom...	-61,765.66	-452,773.30
General Journal	1/1/2007	0101...		To balance pl...			101 - Utility Pl...	-66,178.11	-517,951.41
General Journal	1/1/2007	0101...		To correct Re...			271 - Contribut...	65,945.00	-452,006.41
General Journal	9/30/2007	9300...	J & J R Real Estate	Retained Eas...			522.13 - HB & ...	49,501.79	-402,504.62
General Journal	9/30/2007	9300...	J & J R Real Estate	Rent Reversal			231 - Account...	16,567.00	-385,937.62
General Journal	9/30/2007	9300...	Tenn. Contractors L...	Main Office E...			231 - Account...	3,268.66	-381,068.96
General Journal	9/30/2007	9300...	Tenn. Contractors L...	Salaries & Be...			231 - Account...	17,804.89	-363,264.07
General Journal	9/30/2007	9300...		To balance A...			2915 - Accru...	9,982.82	-353,301.25
General Journal	12/31/2007	0930...	Tenn. Contractors L...	To adjust a/p ...			Accounts Pay...	-4,044.06	-357,345.31
General Journal	12/31/2007	1231...		Retained Eas...				-129,244.21	-486,589.52
Closing Entry								-1,386.14	-487,975.66
Total 3900 - Retained Earnings								544,685.58	-487,975.66
436 - Approp of Retained Earnings									
436.1 - Partner Distributions								0.00	0.00
Total 436.1 - Partner Distributions								0.00	0.00
436.2 - Southern Utility Distributions								0.00	0.00
Total 436.2 - Southern Utility Distributions								0.00	0.00
436 - Approp of Retained Earnings - Other								0.00	0.00
Total 436 - Approp of Retained Earnings - Other								0.00	0.00
Total 436 - Approp of Retained Earnings								0.00	0.00

PM
1/09
Annual Basis

Lynwood Utility Corporation
Balance Sheet Detail
As of December 31, 2008

Type	Date	Num	Name	Memo	Class	Cir	Split	Amount	Balance
437 - Distributions									0.00
Total 437 - Distributions									0.00
439 - Adjustments to Retained Earning									0.00
Total 439 - Adjustments to Retained Earning									0.00
Net Income									0.00
Total Net Income								-166,836.42	-166,836.42
Total Equity								342,749.57	15,908.92
TOTAL LIABILITIES & EQUITY								133,376.37	2,020,694.16

Exhibit E

VMS
TN 0029718

BRANSTETTER, STRANCH & JENNINGS, PLLC
ATTORNEYS AT LAW

227 SECOND AVENUE NORTH

FOURTH FLOOR

NASHVILLE, TENNESSEE 37201-1631

DONALD L. SCHOLES

TELEPHONE
(615) 254-8801

dscholes@branstetterlaw.com

FACSIMILE
(615) 250-3937

November 1, 2010

Via Hand Delivery

Jim Fyke, Commissioner
Tennessee Department of Environment and Conservation
L & C Annex, 1st Floor
401 Church Street
Nashville, TN 37243

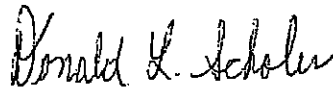
Re: Berry's Chapel Utility, Inc.
Petition for Review and Hearing and Request for Permit Amendment Regarding
NPDES Permit TN0029718

Dear Commissioner Fyke:

I have enclosed for filing the original and one copy of a Petition for Review and Hearing and Request for Permit Amendment regarding NPDES Permit TN0029718 on behalf of my client, Berry's Chapel Utility, Inc.

I would appreciate your marking filed on the copy of the Petition enclosed and returning it to me. Thank you for your assistance in this matter.

Sincerely yours,



DONALD L. SCHOLES

WPC Permit Section

RECEIVED

NOV 12 2010

TN Division Of Water
Pollution Control

Enclosures

c: Paul E. Davis
General Counsel, Tennessee Department of Environment & Conservation
Tyler Ring
Jim Ford

RECEIVED
DIRECTOR'S OFFICE

NOV 04 2010

TN Division Of Water
Pollution Control

{004472/10312/00210484.DOC / Ver.1}

**STATE OF TENNESSEE
DIVISION OF ENVIRONMENT AND CONSERVATION
TENNESSEE WATER QUALITY CONTROL BOARD**

IN THE MATTER OF:

BERRY'S CHAPEL UTILITY, INC.

Petitioner

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)
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)

**DIVISION OF WATER
POLLUTION CONTROL**

Case No. _____

**PETITION FOR REVIEW AND HEARING AND REQUEST FOR PERMIT
AMENDMENT REGARDING NPDES PERMIT TN0029718**

Pursuant to the Tennessee Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301, *et seq.*, and the Tennessee Water Quality Control Act, T.C.A. §§ 69-3-101, *et seq.* (the "Act"), including in particular §§ 69-3-105(i) and 69-3-110, Petitioner Berry's Chapel Utility, Inc. ("Petitioner") hereby: (i) petitions the Tennessee Water Quality Control Board (the "Board") to review certain terms and conditions described below imposed by the Tennessee Division of Water Pollution Control (the "Division") in Tennessee NPDES Permit No. TN0029718, issued by the Division on September 30, 2010, and to be effective November 1, 2010, (the "Permit"); (ii) appeals the Permit with respect to these certain terms and conditions; and, (iii) requests a hearing on these matters before the Tennessee Water Quality Control Board.

The appealed terms and conditions of the Permit are:

(1) The requirement to develop and implement within three months of the Permit's effective date a Nutrient Management Plan to address the enhanced control of nitrogen and phosphorus in treated wastewater in Part 3.5 of the Permit and any other terms and conditions of the Permit to the extent they relate thereto.

(2) The requirement that the Petitioner reserve 125,000 gpd of capacity for the use of 419 homes in the Hillsboro Acres, Meadowgreen and Farmington Subdivisions (the Subdivisions) in Part 3.6 of the Permit and any other terms and conditions of the Permit to the extent they relate thereto.

(3) The requirement that the Petitioner create and maintain a reserve fund in Part 3.8.2 of the Permit and any other terms and conditions of the Permit to the extent they relate thereto.

(4) The requirement that the Petitioner obtain and maintain financial security in the amount and kind of security in Part 3.8.3 of the Permit and any other terms and conditions of the Permit to the extent they relate thereto.

Without limiting its rights to raise additional objections, Petitioner seeks review of the Permit on the following grounds:

(1) The three month period to develop and implement a new Nutrient Management Plan is not reasonable in light of the size and resources of the Petitioner and the current demand on its employees and officers, including continued recovery work in connection with the flood in May of 2010. The Petitioner further desires the need to see wintertime results (November thru April) to properly evaluate and implement an effective plan. Petitioner asserts that a twelve month period is necessary for it to develop an effective Nutrient Treatment Plan which contains all of the elements the Division wants in the Plan and which meets the goals of the Plan.

(2) The requirement to reserve 125,000 of additional capacity for the Subdivisions no longer serves a purpose in the Permit. Williamson County has entered into an agreement with the City of Franklin to treat the effluent of the Subdivisions. Williamson County has begun the construction of the collection system within the Subdivisions which project should be completed

in approximately six months. The needless reservation of this capacity will adversely affect the Petitioner. It will limit the ability of the Petitioner to commit to provide sewer service to new developments in its service area which will limit customer growth and the benefits derived from the additional revenue from such customer growth.

(3) The requirement that the Petitioner create and maintain a reserve fund for the repair of the collection system and to pay penalties, fines and damage assessments will unduly burden the Petitioner's customers with a rate increase which may be needed to fund the reserve fund. Unlike startup sewer systems the Petitioner has been in operation for 40 years and has made ongoing capital improvements to its system without the necessity of a reserve fund. In addition, the Petitioner requires new developments to finance any improvements the Petitioner's treatment plant or collection system necessary to serve the development at no cost to the Petitioner. The Petitioner's predecessor Lynwood Utility Corporation, a private company, has never been required to have a formal audit of its financial statements, but has submitted annually its unaudited financial statements and related information to the Tennessee Regulatory Authority for its review. The Petitioner is willing to have annual audit done of its financial statements, but the cost of the annual audit is estimated to be in the \$10,000 to \$12,000 range. The Petitioner will have no choice except to recover the costs of the annual audits through the monthly service rate it charges its customers for sewer service.

(4) The cost of the amount of financial security required by Part 3.8.3 will probably necessitate a rate increase to cover the cost of the financial security with no appreciable benefit to the Petitioner's customers. Unlike a new sewer system, the Petitioner has an ongoing monthly revenue stream which will be in place to finance the operation, maintenance and repair of the system. The Division is already requiring that the Petitioner establish rates to cover its

operation, maintenance and repair expenses. Because of its size and existing debt, the Petitioner may not be able to obtain a letter of credit or surety bond in the amount required by Part 3.8.3.

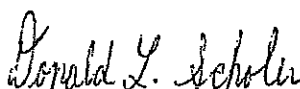
Moreover, the Division appears not to have any legal authority to require the Petitioner to submit and maintain the amount of financial security required by Part 3.8.3. The Division's authority to require the Petitioner to provide it financial security is found in T.C.A. § 69-3-122. Subsection (b) of this statute provides, "The board may by regulation establish the amount and form of such bond or financial security for various sizes and types of facilities. In no case shall the amount of the bond or financial security exceed seventy-five thousand dollars (\$75,000)." Subsection (f) of this statute provides that this statute shall not apply to "[f]acilities in operation prior to May 25, 1984." The Petitioner's treatment plant and collection system have been in operation for several years before 1984. The Division is only authorized to impose a financial security requirement after the adoption of a regulation by the Board establishing the amount and form of such financial security. The Board has not adopted a regulation regarding financial security; therefore, a question may exist as to whether the Division can impose such a requirement in the Petitioner's Permit. Finally, the amount of financial security set forth in the Permit exceeds the maximum amount of financial security for sewer systems permitted by T.C.A. § 69-3-122 which is \$75,000.

This Petition does list all terms and conditions hereby appealed but is not an exhaustive list of the grounds and reasons for Petitioner's objections to terms and conditions of the Permit, and Petitioner reserves the right hereafter to raise additional grounds and reasons by amendment of this Petition or otherwise. All terms and conditions of the Permit not hereby appealed are accepted by Petitioner.

For the reasons described above, Petitioner hereby requests that the Division of Water Pollution Control amend the Permit to delete Parts 3.6, 3.8.2 and 3.8.3. and to allow the Petitioner 12 months to develop and implement a Nutrient Management Plan. If the Permit is so amended, the forgoing appeal would be moot and would be withdrawn by Petitioner.

Dated this 1st day of November, 2010.

Respectfully submitted,

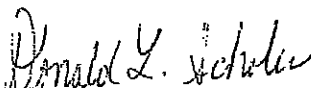


DONALD L. SCHOLES BPR #10102
Branstetter, Stranch & Jennings, PLLC
227 Second Avenue North, Fourth Floor
Nashville, TN 37219
615-254-8801
dscholes@branstetterlaw.com

Attorney for Berry's Chapel Utility, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by hand delivery upon Jim Fyke, Commissioner of the Tennessee Division of Environment and Conservation, and Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, each c/o Division of Water Pollution Control, 6th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534, and by mail at to the Office of General Counsel, 20th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243-1548, on the 1st day of November 2010.



DONALD L. SCHOLES

Exhibit F

THIS INSTRUMENT PREPARED BY:
Douglas A. Brace, Reg. #3485
ORTALE, KELLEY, HERBERT & CRAWFORD
200 Fourth Avenue North
Nashville, TN 37219-8985

PICK UP

TENNESSEE DEED OF TRUST

THIS DEED OF TRUST ("Deed of Trust") is executed as of September 1, 2010, by Berry's Chapel Utility, Inc., a Tennessee not for profit corporation (hereinafter referred to as "Grantor") in favor of Douglas A. Brace, Trustee, Trustee (hereinafter referred to as "Trustee," said term reflecting always to the Trustee and his successors in trust), for the use and benefit of John D. Ring, (hereinafter referred to as "Beneficiary"), and his successors and assigns, said term referring always to the lawful owner and holder of the indebtedness secured hereby.

WITNESSETH:

FOR AND IN CONSIDERATION of Ten (\$10.00) Dollars, cash in hand paid, and other good and valuable consideration, including the debt and trust herein provided, the receipt and sufficiency of all of which are hereby acknowledged, Grantor has this day bargained and sold, and does hereby transfer, assign and convey unto Trustee, all right, title and interest of Grantor in and to certain real property in Williamson County, State of Tennessee, more particularly described in Exhibit A which is attached hereto and incorporated herein by reference (the "Property"), together with all buildings, structures and improvements now or hereafter located thereon, all fixtures of every nature and description now or hereafter located therein or thereon, all easements, rights-of-way and other rights appurtenant thereto or used in connection therewith, all tenements, hereditaments and appurtenances thereto and all other property interests of Grantor therein (hereinafter collectively referred to as the "Premises");

TO HAVE AND TO HOLD the Premises to Trustee forever.

Grantor covenants that Grantor is lawfully seized of the Premises, has a good right to convey same, and that the same are unencumbered. Grantor further covenants and binds itself, its successors, heirs and representatives, to warrant and defend the title to the Premises to Trustee forever against the lawful claims of all persons.

But this conveyance is made **IN TRUST** for the following uses and trusts, and for no other purposes, to wit:

- (a) To secure to Beneficiary the payment of indebtedness in the principal amount of One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00), together with interest thereon, due or to become due to Beneficiary, evidenced by a Promissory Note (the "Note") made by Grantor payable to the order of Beneficiary. This Deed of Trust secures Grantor's payment of the indebtedness evidenced by the Note, principal and interest, and any extensions, modifications and/or renewals thereof and any notes given in payment of any such principal and/or interest.

THE MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE TAX RECORDING
PURPOSES IS \$1,200,000.00

- (b) To secure all sums due or to become due to Beneficiary pursuant to the terms of this Deed of Trust, with interest thereon as provided herein, and the faithful performance of all terms and conditions contained herein.
- (c) To secure the payment of all court costs, expenses and costs of whatever kind incident to the collection of any indebtedness secured hereby and the enforcement or protection of the lien of this conveyance, including without limitation reasonable attorney's fees, all of which Grantor agrees to pay to Beneficiary on demand.

Should the above-described indebtedness secured by this Deed of Trust (sometimes hereinafter collectively referred to as the "Secured Indebtedness") be paid in accordance with its terms when due and payable, and should Grantor perform all covenants herein contained in a timely manner, then this Deed of Trust shall be canceled and released by Beneficiary.

GRANTOR FURTHER COVENANTS AND AGREES WITH TRUSTEE AND BENEFICIARY AS FOLLOWS:

I. **COVENANTS OF GRANTOR WITH BENEFICIARY.** In addition to the Covenants and warranties hereinabove provided, Grantor further covenants and agrees with Beneficiary as follows:

- (a) **Performance Under Note.** To perform its obligations under the Note.
- (b) **No Liens or Assessments.** Not to permit any lien or assessment other than current taxes not delinquent, to encumber the Premises. Beneficiary has not consented and will not consent to the performance of any work or the furnishings of any materials which might be deemed to create a lien or liens superior to the lien hereof, either under T.C.A. §66-11-108, as the same may be amended from time to time, or otherwise.
- (c) **Insurance.** To maintain insurance on all buildings and other improvements on the Premises against damage by fire, windstorm and other risks normally insured against under so-called "extended coverage," in companies and amounts satisfactory to Beneficiary. All policies evidencing such insurance shall have attached thereto standard mortgagee riders making such insurance payable to Beneficiary as its interest may appear, and a certificate[s] of all such policies shall be deposited with Beneficiary.
- (d) **Maintenance, Waste, Use, Alterations and Encumbered Personalty.** To keep all buildings, fences and other improvements on the Premises in as good repair and condition as the same are in at this date, or shall be upon their construction, as the case may be, to permit no waste, and to permit no cutting of timber or removal of minerals. In the event of any destruction of or damage to the Premises, Grantor shall promptly restore the Premises to their condition prior to such damage or destruction, notwithstanding the insufficiency of any proceeds of insurance. Grantor shall not make or permit, without Beneficiary's written consent, (i) any use of the Premises for any purpose other than that for which the same are now used or intended to be used; (ii) any alterations of the buildings, improvements, fixtures, apparatus, machinery and equipment now or hereafter erected or located upon or otherwise constituting a part of the Premises; and (iii) any purchase, lease or agreement under which title is reserved in the vendor respecting any fixtures,

apparatus, machinery, equipment or personal property to be placed in or upon the Premises unless any such interest is subordinated to the lien of this Deed of Trust.

- (e) **Rents and Profits.** In the event any Event of Default (as hereafter defined) shall have occurred and be continuing under the provisions of this Deed of Trust or of the Note or other instrument evidencing all or any portion of the Secured Indebtedness, Beneficiary or its agent shall have the right forthwith to take possession of the Premises and to collect the rents and profits then owing or thereafter accruing therefrom, to be credited to the Secured Indebtedness in such order of priority as Beneficiary shall determine.
- (f) **Appointment of Receiver.** Grantor acknowledges the propriety of, and consents to, the appointment of a receiver for the Premises in the event that any action is commenced involving the Premises or to foreclose or exercise the power of sale under this Deed of Trust.
- (g) **Advancements by Beneficiary.** Beneficiary may, at its option, advance and pay all sums necessary to protect and preserve the Premises and/or to perform any of the covenants of Grantor hereunder. All sums so advanced by Beneficiary shall become a part of the Secured Indebtedness and shall bear interest from the date or dates of payment at the maximum contract rate of interest now or hereafter permitted by applicable law. Such sums may include, but are not limited to, insurance premiums, taxes, assessments and liens which may be or become prior and senior to the lien of this Deed of Trust as a lien on the Premises or any part thereof, and all costs, expenses and attorney's fees incurred by Beneficiary in respect of any and all legal or equitable proceedings which relate to this Deed of Trust or to the Premises.
- (h) **Condemnation.** In the event of a public taking or condemnation respecting any part of the Premises by proper authority, any damages paid or award allowed shall, at the option of Beneficiary, be applied first toward the satisfaction of the Secured Indebtedness in such order of priority as Beneficiary shall determine.
- (i) **Conveyance of Premises.** Grantor shall not convey, transfer, or assign other than permitted under paragraph 1.(b), above, any or all of its interest in the Premises without the prior written consent of Beneficiary. Beneficiary's consent to any such transfer, if given, shall not release or alter in any manner the liability of Grantor or anyone who has assumed or guaranteed or is otherwise liable for the payment of the Secured Indebtedness or any portion thereof. At the option of Beneficiary, the Secured Indebtedness shall be immediately due and payable in full in the event that Grantor conveys all or any portion of the Premises or any interest therein, or in the event that any of Grantor's equitable title thereto or interest therein shall be assigned, transferred or conveyed in any manner, without obtaining Beneficiary's prior written consent thereto, and any waiver or consent given by Beneficiary for any prior transfer shall not preclude Beneficiary from declaring the Secured Indebtedness due and payable for any subsequent transfer.

2. **EVENTS OF DEFAULT AND ACCELERATION.** The occurrence of any of the following events shall constitute an Event of Default hereunder unless the same has been cured within any applicable grace or cure period:

- (a) A default shall occur in the performance and/or payment of the Secured Indebtedness or any portion thereof;
- (b) Grantor shall default in the payment and/or performance of its obligations under this Deed of Trust or any other instrument or document now or hereafter further evidencing, securing or otherwise related to the Secured Indebtedness or any portion thereof;
- (c) Grantor shall abandon the Premises;
- (d) Any claim of priority to the lien of this Deed of Trust, whether by title, lien or otherwise, is asserted in any legal or equitable proceeding; or
- (e) A default shall occur in the performance and/or payment of any other indebtedness which is secured by a deed of trust or other instruments evidencing a security interest in the Premises, regardless of whether such security interest is prior or subordinate to the security interest granted hereunder.

Upon the occurrence of any Event of Default then, unless such default shall be cured within thirty (30) days from written notice by Beneficiary to Grantor, except for a default under Paragraph 2(a), above, which shall require no notice but which shall have a fifteen (15) day grace period, Beneficiary at any time thereafter may, at its option, accelerate the maturity of the Secured Indebtedness; all without notice of any kind.

Upon the occurrence of any Event of Default, Beneficiary shall provide Grantor written notice of the same and Grantor shall have the right, but not the obligation, to cure said default within thirty (30) days of said notice.

3. **REMEDIES.** Upon the occurrence of any Event of Default and the acceleration of the maturity of the Secured Indebtedness, in addition to any other remedies herein provided, Trustee is hereby authorized and empowered, upon giving twenty (20) days notice by three (3) publications in any newspaper, daily or weekly, published in the County wherein the Premises are wholly or partially located, to sell the Premises (or any part thereof) at the front door of the Courthouse in said County to the highest bidder for cash, for credit upon the Secured Indebtedness at the option of Beneficiary (if Beneficiary is the successful bidder), or upon such other terms as are satisfactory to Trustee and Beneficiary, at public outcry, free from any statutory right of redemption (including but not limited to that provided by Tennessee Code Annotated §66-8-101), the equity of redemption, homestead, dower, elective share, any right of appraisement or valuation and all other rights and exemptions of every kind, all of which are hereby expressly waived, and Trustee is authorized and empowered to execute and deliver a deed to the purchaser. Beneficiary may bid at any sale under this trust conveyance.

To the extent permitted by applicable law, any sale hereunder may be adjourned by Trustee and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date that such sale is originally set.

Grantor agrees that Trustee may, at any time after default in the payment of any part of the Secured Indebtedness, enter and take possession of the Premises, and Grantor further agrees that, in the event Trustee fails to enter and take possession of the Premises prior to selling same as herein provided, the purchaser shall nevertheless be entitled to immediate possession thereof upon the delivery to such purchaser by Trustee of a deed to said property.

At any time after the occurrence of an Event of Default, Beneficiary may at its option continue the abstract of title to the Premises or obtain other appropriate title evidence, and may add the cost thereof to the Secured Indebtedness.

In the event of Trustee's death, absence, inability or refusal to act at any time when action under the foregoing powers and trusts may be required or contemplated, or for any other reason at the option of Beneficiary, Beneficiary is hereby authorized to name and appoint a successor to execute this trust, and the title herein conveyed to the above named Trustee shall be vested in said successor without the necessity for any further conveyance.

In the event of a sale of the Premises under and by virtue of this trust, Grantor and all persons holding under it shall be and become the tenants at will of the purchaser, said tenancy to be terminable at the option of said purchaser upon five (5) days written notice unless otherwise agreed in writing by Beneficiary.

Upon any sale under this Deed of Trust, the proceeds will be applied by Trustee:

FIRST - To pay all the costs and charges of executing this trust, including attorneys' fees and the expenses of any litigation which may arise on account of the execution and enforcement of this trust, or in connection therewith as above provided.

SECOND - To pay all of the Secured Indebtedness, or any balance thereof then remaining unpaid, principal and/or interest, in such order of priority as Beneficiary shall determine in its sole discretion.

THIRD - The residue to be paid to Grantor or such other person or persons as may be lawfully entitled thereto.

4. **NONWAIVER; REMEDIES.** Delay by Beneficiary in the exercise of any of its rights or remedies hereunder shall not preclude the exercise thereof so long as an Event of Default has occurred and is continuing, and no failure of Beneficiary to exercise any of its rights hereunder shall constitute a waiver of any such rights nor preclude the exercise thereof with respect to any such Event of Default or any subsequent Event of Default hereunder, all such rights being continuing ones. Beneficiary may enforce any one or more of its rights or remedies hereunder successively or concurrently, and as often as deemed expedient by Beneficiary.

5. **SALE BY FORECLOSURE OF PRIOR ENCUMBRANCES.** In the event that this Deed of Trust shall now or at any time after the date hereof be subordinate to any other encumbrance on the Premises, Grantor hereby agrees that the lien of this conveyance shall extend to the entire interest of Grantor in the Premises conveyed hereby, and shall extend to the interest of Grantor in the proceeds from any sale of said Premises, whether by foreclosure of any such prior encumbrance or otherwise, to the extent any such proceeds exceed the amount necessary to satisfy such prior encumbrance(s). Any trustee or other person conducting any such sale or foreclosure is hereby directed to pay such excess proceeds to Beneficiary to the extent necessary to pay the Secured Indebtedness in full, notwithstanding any provision to the contrary contained in any prior encumbrance.

6. **EXTENSIONS, ETC.** Grantor and Beneficiary may agree to extend the time for payment and/or performance of all or any part of the Secured Indebtedness, or reduce, rearrange or otherwise modify the terms of payment thereof, or accept a note or notes therefor, all without notice to or the consent of any junior lienholder or any other person having an interest in the Premises subordinate to the lien of this Deed of Trust, and without the consent of Grantor if Grantor has then parted with title to the Premises. No such

extension, reduction, modification or renewal shall affect the priority of this Deed or Trust or impair the security hereof in any manner whatsoever, or release, discharge or otherwise affect in any manner the personal liability of any other person now or hereafter liable for payment of the Secured Indebtedness or any part thereof.

7. **FURTHER ASSURANCES.** Grantor agrees to furnish Trustee and Beneficiary with such further instruments, documents and certificates, and to take such further actions as Beneficiary may deem necessary or desirable in order to perfect and/or maintain the perfection and priority of the lien of this Deed of Trust on the Premises.

8. **GREATER ESTATE.** In the event Grantor is the owner of a leasehold estate or any other estate less than a fee simple with respect to any portion of the Premises and, prior to the satisfaction of the Secured Indebtedness and the cancellation of this Deed of Trust of record, Grantor obtains any greater estate or interest in the Premises, then such greater estate shall automatically and without further action of any kind on the part of Grantor, pass to Trustee and be and become subject to the lien of this Deed of Trust.

9. **SEVERABILITY.** If any provision(s) of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Deed of Trust and the application of such provision(s) to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

10. **MISCELLANEOUS.** The defined terms and paragraph titles used herein are for convenience only, and do not limit the contents of this Deed of Trust. All rights and obligations hereunder shall extend to, and be binding upon, the respective heirs, representatives, successors and assigns of Grantor, Trustee and Beneficiary. When applicable, use of the singular form of any word shall mean or apply to the plural, and the masculine or neuter form shall mean and apply to the masculine, feminine or neuter gender as the case may be.

11. **NOTICE.** Except for the method of publishing notice of foreclosure described in Paragraph 3 hereof, any notice to the Grantor or the Beneficiary provided for in this Deed of Trust shall be given by mailing such notice by certified mail addressed as indicated below or to such other address(es) as the Grantor or Beneficiary shall specify in writing:

Beneficiary: John D. Ring
P. O. Box 314
Franklin, TN 37065-0314

With a copy to: Douglas A. Brace, Esq.
Ortale, Kelley, Herbert & Crawford
200 Fourth Avenue North, 3rd Floor
P.O. Box 198985
Nashville, TN 37219-8985

Notices to Grantor shall, unless Grantor otherwise advises Beneficiary in writing, be addressed or delivered to:

Grantor: Berry's Chapel Utility, Inc.
321 Billingsly Court, Suite 4
Franklin, TN 37067

Such notice shall be deemed to have been given when delivered in person or when deposited in any United States Post Office which accepts said certified mail.

Any notice provided for in this Deed of Trust shall be deemed to have been given to the appropriate party when given in the manner designated herein.

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust, or has caused this Deed of Trust to be executed, as of the day and year first above written.

GRANTOR:

BERRY'S CHAPEL UTILITY, INC.

By:  P.R.
Tyler L. Ring, President

STATE OF TENNESSEE |
COUNTY OF WILLIAMSON|

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared Tyler L. Ring with whom I am personally acquainted and who, upon oath, acknowledged himself to be President of Berry's Chapel Utility, Inc., a Tennessee not for profit corporation, and that as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

WITNESS my hand and official seal of office, at Nashville, Tennessee this 1st day of September, 2010.

My Commission Expires:

F:\DAB\Lynwood Utility\Deed of Trust (Berry's Chapel) #2.doc


NOTARY PUBLIC



NOTARY PUBLIC
Ruby Rainey
My Commission Expires
March 12, 2011
STATE OF TENNESSEE

Exhibit "A"

Land in the Sixth Civil District of Williamson County, Tennessee, described according to a survey by James L. Murphy, Jr. and Company, Engineer, dated May 31, 1973, and shown on the Revised Plan of Cottonwood Estates of record in Plat Book 5, page 68, in the Register's Office for Williamson County, Tennessee, as "Private Area" – Lynwood Utility Company, as follows:

Beginning at a point at the southwest terminus of a 25 foot public utility drainage and access easement located between Lots Nos. 120 and 121 on said Plan and extending across a portion of an area designated "Common Area" on said Plan, the southeast corner of this tract; thence North 56° 39' 44" West 372.34 feet to a point, the southwest corner of this tract; thence northeastwardly with a slight curve having a Delta of 5° 15' 38", a radius of 1,493.07 feet, a tangent of 68.59 feet, a distance of 137.08 feet to a point; thence North 35° 40' 16" East 173.10 feet to a point; thence 56° 39' 44" West 189.33 feet to a point in the center of the Harpeth River, passing the present southerly bank of said River at 168.49 feet; thence with the center of said River, North 70° 08' East 49.49 feet, North 59° 40' 00" East 100.0 feet, North 45° 30' 00" East 111.0 feet, North 38° 41' 00" East 87.79 feet, the northwest corner of the subject tract; thence leaving said River, South 56° 39' 44" East 413.36 feet to a point, the northeast corner of subject tract; thence South 33° 20' 15" West 325.00 feet to a point; thence South 32° 51' 40" West 309.56 feet to the point of beginning, containing 5.89 acres, more or less.

Being the same property conveyed to Lynwood Utility Corporation, a Tennessee corporation, now Berry's Chapel Utility, Inc., by merger, a Tennessee not for profit corporation, by Deed from Lynwood Utility Co., a Tennessee corporation, also known as Lynwood Utility Company, of record in Book 1428, page 48, in the Register's Office for Williamson County, Tennessee.

BK/PG:5131/335-342

10029869

TRUST DEED	
09/01/2010	01:17 PM
BATCH	187489
MTG TAX	1377.70
TRN TAX	0.00
REC FEE	40.00
DP FEE	2.00
ARC FEE	0.00
TOTAL	1420.70

STATE OF TENNESSEE, WILLIAMSON COUNTY

SADIE WADE
REGISTER OF DEEDS

Exhibit G

THIS INSTRUMENT PREPARED BY:

Douglas A. Brace, Reg. #3485

ORTALE, KELLEY, HERBERT & CRAWFORD

200 Fourth Avenue North

Nashville, TN 37219-8985

TENNESSEE DEED OF TRUST

PICK UP

THIS DEED OF TRUST ("Deed of Trust") is executed as of September 1, 2010, by Berry's Chapel Utility, Inc., a Tennessee not for profit corporation (hereinafter referred to as "Grantor") in favor of Douglas A. Brace, Trustee, Trustee (hereinafter referred to as "Trustee," said term reflecting always to the Trustee and his successors in trust), for the use and benefit of Tyler L. Ring, (hereinafter referred to as "Beneficiary"), and his successors and assigns, said term referring always to the lawful owner and holder of the indebtedness secured hereby.

WITNESSETH:

FOR AND IN CONSIDERATION of Ten (\$10.00) Dollars, cash in hand paid, and other good and valuable consideration, including the debt and trust herein provided, the receipt and sufficiency of all of which are hereby acknowledged, Grantor has this day bargained and sold, and does hereby transfer, assign and convey unto Trustee, all right, title and interest of Grantor in and to certain real property in Williamson County, State of Tennessee, more particularly described in Exhibit A which is attached hereto and incorporated herein by reference (the "**Property**"), together with all buildings, structures and improvements now or hereafter located thereon, all fixtures of every nature and description now or hereafter located therein or thereon, all easements, rights-of-way and other rights appurtenant thereto or used in connection therewith, all tenements, hereditaments and appurtenances thereto and all other property interests of Grantor therein (hereinafter collectively referred to as the "**Premises**");

TO HAVE AND TO HOLD the Premises to Trustee forever.

Grantor covenants that Grantor is lawfully seized of the Premises, has a good right to convey same, and that the same are unencumbered. Grantor further covenants and binds itself, its successors, heirs and representatives, to warrant and defend the title to the Premises to Trustee forever against the lawful claims of all persons.

But this conveyance is made **IN TRUST** for the following uses and trusts, and for no other purposes, to wit:

- (a) To secure to Beneficiary the payment of indebtedness in the principal amount of **One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00)**, together with interest thereon, due or to become due to Beneficiary, evidenced by a Promissory Note (the "**Note**") made by Grantor payable to the order of Beneficiary. This Deed of Trust secures Grantor's payment of the indebtedness evidenced by the Note, principal and interest, and any extensions, modifications and/or renewals thereof and any notes given in payment of any such principal and/or interest.

THE MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE TAX RECORDING
PURPOSES IS \$1,200,000.00

- (b) To secure all sums due or to become due to Beneficiary pursuant to the terms of this Deed of Trust, with interest thereon as provided herein, and the faithful performance of all terms and conditions contained herein.
- (c) To secure the payment of all court costs, expenses and costs of whatever kind incident to the collection of any indebtedness secured hereby and the enforcement or protection of the lien of this conveyance, including without limitation reasonable attorney's fees, all of which Grantor agrees to pay to Beneficiary on demand.

Should the above-described indebtedness secured by this Deed of Trust (sometimes hereinafter collectively referred to as the "Secured Indebtedness") be paid in accordance with its terms when due and payable, and should Grantor perform all covenants herein contained in a timely manner, then this Deed of Trust shall be canceled and released by Beneficiary.

GRANTOR FURTHER COVENANTS AND AGREES WITH TRUSTEE AND BENEFICIARY AS FOLLOWS:

1. **COVENANTS OF GRANTOR WITH BENEFICIARY.** In addition to the Covenants and warranties hereinabove provided, Grantor further covenants and agrees with Beneficiary as follows:

- (a) **Performance Under Note.** To perform its obligations under the Note.
- (b) **No Liens or Assessments.** Not to permit any lien or assessment other than current taxes not delinquent, to encumber the Premises. Beneficiary has not consented and will not consent to the performance of any work or the furnishings of any materials which might be deemed to create a lien or liens superior to the lien hereof, either under T.C.A. §66-11-108, as the same may be amended from time to time, or otherwise.
- (c) **Insurance.** To maintain insurance on all buildings and other improvements on the Premises against damage by fire, windstorm and other risks normally insured against under so-called "extended coverage," in companies and amounts satisfactory to Beneficiary. All policies evidencing such insurance shall have attached thereto standard mortgagee riders making such insurance payable to Beneficiary as its interest may appear, and a certificate[s] of all such policies shall be deposited with Beneficiary.
- (d) **Maintenance, Waste, Use, Alterations and Encumbered Personalty.** To keep all buildings, fences and other improvements on the Premises in as good repair and condition as the same are in at this date, or shall be upon their construction, as the case may be, to permit no waste, and to permit no cutting of timber or removal of minerals. In the event of any destruction of or damage to the Premises, Grantor shall promptly restore the Premises to their condition prior to such damage or destruction, notwithstanding the insufficiency of any proceeds of insurance. Grantor shall not make or permit, without Beneficiary's written consent, (i) any use of the Premises for any purpose other than that for which the same are now used or intended to be used; (ii) any alterations of the buildings, improvements, fixtures, apparatus, machinery and equipment now or hereafter erected or located upon or otherwise constituting a part of the Premises; and (iii) any purchase, lease or agreement under which title is reserved in the vendor respecting any fixtures,

apparatus, machinery, equipment or personal property to be placed in or upon the Premises unless any such interest is subordinated to the lien of this Deed of Trust.

- (e) **Rents and Profits.** In the event any Event of Default (as hereafter defined) shall have occurred and be continuing under the provisions of this Deed of Trust or of the Note or other instrument evidencing all or any portion of the Secured Indebtedness, Beneficiary or its agent shall have the right forthwith to take possession of the Premises and to collect the rents and profits then owing or thereafter accruing therefrom, to be credited to the Secured Indebtedness in such order of priority as Beneficiary shall determine.
- (f) **Appointment of Receiver.** Grantor acknowledges the propriety of, and consents to, the appointment of a receiver for the Premises in the event that any action is commenced involving the Premises or to foreclose or exercise the power of sale under this Deed of Trust.
- (g) **Advancements by Beneficiary.** Beneficiary may, at its option, advance and pay all sums necessary to protect and preserve the Premises and/or to perform any of the covenants of Grantor hereunder. All sums so advanced by Beneficiary shall become a part of the Secured Indebtedness and shall bear interest from the date or dates of payment at the maximum contract rate of interest now or hereafter permitted by applicable law. Such sums may include, but are not limited to, insurance premiums, taxes, assessments and liens which may be or become prior and senior to the lien of this Deed of Trust as a lien on the Premises or any part thereof, and all costs, expenses and attorney's fees incurred by Beneficiary in respect of any and all legal or equitable proceedings which relate to this Deed of Trust or to the Premises.
- (h) **Condemnation.** In the event of a public taking or condemnation respecting any part of the Premises by proper authority, any damages paid or award allowed shall, at the option of Beneficiary, be applied first toward the satisfaction of the Secured Indebtedness in such order of priority as Beneficiary shall determine.
- (i) **Conveyance of Premises.** Grantor shall not convey, transfer, or assign other than permitted under paragraph 1.(b), above, any or all of its interest in the Premises without the prior written consent of Beneficiary. Beneficiary's consent to any such transfer, if given, shall not release or alter in any manner the liability of Grantor or anyone who has assumed or guaranteed or is otherwise liable for the payment of the Secured Indebtedness or any portion thereof. At the option of Beneficiary, the Secured Indebtedness shall be immediately due and payable in full in the event that Grantor conveys all or any portion of the Premises or any interest therein, or in the event that any of Grantor's equitable title thereto or interest therein shall be assigned, transferred or conveyed in any manner, without obtaining Beneficiary's prior written consent thereto, and any waiver or consent given by Beneficiary for any prior transfer shall not preclude Beneficiary from declaring the Secured Indebtedness due and payable for any subsequent transfer.

2. **EVENTS OF DEFAULT AND ACCELERATION.** The occurrence of any of the following events shall constitute an Event of Default hereunder unless the same has been cured within any applicable grace or cure period:

- (a) A default shall occur in the performance and/or payment of the Secured Indebtedness or any portion thereof;
- (b) Grantor shall default in the payment and/or performance of its obligations under this Deed of Trust or any other instrument or document now or hereafter further evidencing, securing or otherwise related to the Secured Indebtedness or any portion thereof;
- (c) Grantor shall abandon the Premises;
- (d) Any claim of priority to the lien of this Deed of Trust, whether by title, lien or otherwise, is asserted in any legal or equitable proceeding; or
- (e) A default shall occur in the performance and/or payment of any other indebtedness which is secured by a deed of trust or other instruments evidencing a security interest in the Premises, regardless of whether such security interest is prior or subordinate to the security interest granted hereunder.

Upon the occurrence of any Event of Default then, unless such default shall be cured within thirty (30) days from written notice by Beneficiary to Grantor, except for a default under Paragraph 2(a), above, which shall require no notice but which shall have a fifteen (15) day grace period, Beneficiary at any time thereafter may, at its option, accelerate the maturity of the Secured Indebtedness; all without notice of any kind.

Upon the occurrence of any Event of Default, Beneficiary shall provide Grantor written notice of the same and Grantor shall have the right, but not the obligation, to cure said default within thirty (30) days of said notice.

3. **REMEDIES.** Upon the occurrence of any Event of Default and the acceleration of the maturity of the Secured Indebtedness, in addition to any other remedies herein provided, Trustee is hereby authorized and empowered, upon giving twenty (20) days notice by three (3) publications in any newspaper, daily or weekly, published in the County wherein the Premises are wholly or partially located, to sell the Premises (or any part thereof) at the front door of the Courthouse in said County to the highest bidder for cash, for credit upon the Secured Indebtedness at the option of Beneficiary (if Beneficiary is the successful bidder), or upon such other terms as are satisfactory to Trustee and Beneficiary, at public outcry, free from any statutory right of redemption (including but not limited to that provided by Tennessee Code Annotated §66-8-101), the equity of redemption, homestead, dower, elective share, any right of appraisement or valuation and all other rights and exemptions of every kind, all of which are hereby expressly waived, and Trustee is authorized and empowered to execute and deliver a deed to the purchaser. Beneficiary may bid at any sale under this trust conveyance.

To the extent permitted by applicable law, any sale hereunder may be adjourned by Trustee and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date that such sale is originally set.

Grantor agrees that Trustee may, at any time after default in the payment of any part of the Secured Indebtedness, enter and take possession of the Premises, and Grantor further agrees that, in the event Trustee fails to enter and take possession of the Premises prior to selling same as herein provided, the purchaser shall nevertheless be entitled to immediate possession thereof upon the delivery to such purchaser by Trustee of a deed to said property.

At any time after the occurrence of an Event of Default, Beneficiary may at its option continue the abstract of title to the Premises or obtain other appropriate title evidence, and may add the cost thereof to the Secured Indebtedness.

In the event of Trustee's death, absence, inability or refusal to act at any time when action under the foregoing powers and trusts may be required or contemplated, or for any other reason at the option of Beneficiary, Beneficiary is hereby authorized to name and appoint a successor to execute this trust, and the title herein conveyed to the above named Trustee shall be vested in said successor without the necessity for any further conveyance.

In the event of a sale of the Premises under and by virtue of this trust, Grantor and all persons holding under it shall be and become the tenants at will of the purchaser, said tenancy to be terminable at the option of said purchaser upon five (5) days written notice unless otherwise agreed in writing by Beneficiary.

Upon any sale under this Deed of Trust, the proceeds will be applied by Trustee:

FIRST - To pay all the costs and charges of executing this trust, including attorneys' fees and the expenses of any litigation which may arise on account of the execution and enforcement of this trust, or in connection therewith as above provided.

SECOND - To pay all of the Secured Indebtedness, or any balance thereof then remaining unpaid, principal and/or interest, in such order of priority as Beneficiary shall determine in its sole discretion.

THIRD - The residue to be paid to Grantor or such other person or persons as may be lawfully entitled thereto.

4. **NONWAIVER; REMEDIES.** Delay by Beneficiary in the exercise of any of its rights or remedies hereunder shall not preclude the exercise thereof so long as an Event of Default has occurred and is continuing, and no failure of Beneficiary to exercise any of its rights hereunder shall constitute a waiver of any such rights nor preclude the exercise thereof with respect to any such Event of Default or any subsequent Event of Default hereunder, all such rights being continuing ones. Beneficiary may enforce any one or more of its rights or remedies hereunder successively or concurrently, and as often as deemed expedient by Beneficiary.

5. **SALE BY FORECLOSURE OF PRIOR ENCUMBRANCES.** In the event that this Deed of Trust shall now or at any time after the date hereof be subordinate to any other encumbrance on the Premises, Grantor hereby agrees that the lien of this conveyance shall extend to the entire interest of Grantor in the Premises conveyed hereby, and shall extend to the interest of Grantor in the proceeds from any sale of said Premises, whether by foreclosure of any such prior encumbrance or otherwise, to the extent any such proceeds exceed the amount necessary to satisfy such prior encumbrance(s). Any trustee or other person conducting any such sale or foreclosure is hereby directed to pay such excess proceeds to Beneficiary to the extent necessary to pay the Secured Indebtedness in full, notwithstanding any provision to the contrary contained in any prior encumbrance.

6. **EXTENSIONS, ETC.** Grantor and Beneficiary may agree to extend the time for payment and/or performance of all or any part of the Secured Indebtedness, or reduce, rearrange or otherwise modify the terms of payment thereof, or accept a note or notes therefor, all without notice to or the consent of any junior lienholder or any other person having an interest in the Premises subordinate to the lien of this Deed of Trust, and without the consent of Grantor if Grantor has then parted with title to the Premises. No such

extension, reduction, modification or renewal shall affect the priority of this Deed or Trust or impair the security hereof in any manner whatsoever, or release, discharge or otherwise affect in any manner the personal liability of any other person now or hereafter liable for payment of the Secured Indebtedness or any part thereof.

7. **FURTHER ASSURANCES.** Grantor agrees to furnish Trustee and Beneficiary with such further instruments, documents and certificates, and to take such further actions as Beneficiary may deem necessary or desirable in order to perfect and/or maintain the perfection and priority of the lien of this Deed of Trust on the Premises.

8. **GREATER ESTATE.** In the event Grantor is the owner of a leasehold estate or any other estate less than a fee simple with respect to any portion of the Premises and, prior to the satisfaction of the Secured Indebtedness and the cancellation of this Deed of Trust of record, Grantor obtains any greater estate or interest in the Premises, then such greater estate shall automatically and without further action of any kind on the part of Grantor, pass to Trustee and be and become subject to the lien of this Deed of Trust.

9. **SEVERABILITY.** If any provision(s) of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Deed of Trust and the application of such provision(s) to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

10. **MISCELLANEOUS.** The defined terms and paragraph titles used herein are for convenience only, and do not limit the contents of this Deed of Trust. All rights and obligations hereunder shall extend to, and be binding upon, the respective heirs, representatives, successors and assigns of Grantor, Trustee and Beneficiary. When applicable, use of the singular form of any word shall mean or apply to the plural, and the masculine or neuter form shall mean and apply to the masculine, feminine or neuter gender as the case may be.

11. **NOTICE.** Except for the method of publishing notice of foreclosure described in Paragraph 3 hereof, any notice to the Grantor or the Beneficiary provided for in this Deed of Trust shall be given by mailing such notice by certified mail addressed as indicated below or to such other address(es) as the Grantor or Beneficiary shall specify in writing:

Beneficiary: Tyler L. Ring
P. O. Box 314
Franklin, TN 37065-0314

With a copy to: Douglas A. Brace, Esq.
Ortale, Kelley, Herbert & Crawford
200 Fourth Avenue North, 3rd Floor
P.O. Box 198985
Nashville, TN 37219-8985

Notices to Grantor shall, unless Grantor otherwise advises Beneficiary in writing, be addressed or delivered to:

Grantor: Berry's Chapel Utility, Inc.
321 Billingsly Court, Suite 4
Franklin, TN 37067

Such notice shall be deemed to have been given when delivered in person or when deposited in any United States Post Office which accepts said certified mail.

Any notice provided for in this Deed of Trust shall be deemed to have been given to the appropriate party when given in the manner designated herein.

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust, or has caused this Deed of Trust to be executed, as of the day and year first above written.

GRANTOR:

BERRY'S CHAPEL UTILITY, INC.

By: 

Tyler L. Ring, President

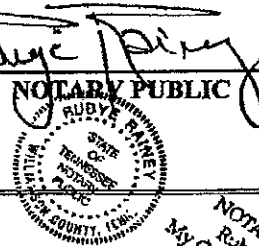
STATE OF TENNESSEE]
COUNTY OF WILLIAMSON]

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared **Tyler L. Ring** with whom I am personally acquainted and who, upon oath, acknowledged himself to be President of **Berry's Chapel Utility, Inc.**, a Tennessee not-for-profit corporation, and that as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

WITNESS my hand and official seal of office, at Nashville, Tennessee this 1st day of September, 2010.

My Commission Expires:

F:\DAB\Lynwood Utility\Deed of Trust (Berry's Chapel) - Tyler.doc



NOTARY PUBLIC
Ruby Rainey
My Commission Expires
March 12, 2011
STATE OF TENNESSEE

Exhibit "A"

Land in the Sixth Civil District of Williamson County, Tennessee, described according to a survey by James L. Murphy, Jr. and Company, Engineer, dated May 31, 1973, and shown on the Revised Plan of Cottonwood Estates of record in Plat Book 5, page 68, in the Register's Office for Williamson County, Tennessee, as "Private Area" - Lynwood Utility Company, as follows:

Beginning at a point at the southwest terminus of a 25 foot public utility drainage and access easement located between Lots Nos. 120 and 121 on said Plan and extending across a portion of an area designated "Common Area" on said Plan, the southeast corner of this tract; thence North 56° 39' 44" West 372.34 feet to a point, the southwest corner of this tract; thence northeastwardly with a slight curve having a Delta of 5° 15' 38", a radius of 1,493.07 feet, a tangent of 68.59 feet, a distance of 137.08 feet to a point; thence North 35° 40' 16" East 173.10 feet to a point; thence 56° 39' 44" West 189.33 feet to a point in the center of the Harpeth River, passing the present southerly bank of said River at 168.49 feet; thence with the center of said River, North 70° 08' East 49.49 feet, North 59° 40' 00" East 100.0 feet, North 45° 30' 00" East 111.0 feet, North 38° 41' 00" East 87.79 feet, the northwest corner of the subject tract; thence leaving said River, South 56° 39' 44" East 413.36 feet to a point, the northeast corner of subject tract; thence South 33° 20' 15" West 325.00 feet to a point; thence South 32° 51' 40" West 309.56 feet to the point of beginning, containing 5.89 acres, more or less.

Being the same property conveyed to Lynwood Utility Corporation, a Tennessee corporation, now Berry's Chapel Utility, Inc., by merger, a Tennessee not for profit corporation, by Deed from Lynwood Utility Co., a Tennessee corporation, also known as Lynwood Utility Company, of record in Book 1428, page 48, in the Register's Office for Williamson County, Tennessee.

BK/PG:5131/343-350

10029870

TRUST DEED	
09/01/2010	01:17 PM
HATCH	187489
REG TAX	1377.70
TRM TAX	0.00
REC FEE	40.00
DP FEE	2.00
ARC FEE	0.00
TOTAL	1420.70

STATE OF TENNESSEE, WILLIAMSON COUNTY

SADIE WADE
REGISTER OF DEEDS

Exhibit H

Westlaw.

T. C. A. § 65-4-101

Page 1

C

West's Tennessee Code Annotated Currentness

Title 65. Public Utilities and Carriers (Refs & Annos)

▣ Chapter 4. Regulation of Public Utilities by Authority (Refs & Annos)

▣ Part 1. General Provisions (Refs & Annos)

→ § 65-4-101. Definitions

As used in this chapter, unless the context otherwise requires:

(1) "Competing telecommunications service provider" means any individual or entity that offers or provides any two-way communications service, telephone service, telegraph service, paging service, or communications service similar to such services and is certificated as a provider of such services after June 6, 1995 unless otherwise exempted from this definition by state or federal law.

(2) "Current authorized fair rate of return" means:

(A) For an incumbent local exchange telephone company operating pursuant to a regulatory reform plan ordered by the former public service commission under TPSC rule 1220-4-2-.55, any return within the range contemplated by TPSC rule 1220-4-2-.55(1)(c)(1) or TPSC rule 1220-4-2-.55(d);

(B) For any other incumbent local exchange telephone company, the rate of return on rate base most recently used by the former public service commission in an order evaluating its rates.

(3) "Gross domestic product-price index (GDP-PI)" used to determine limits on rate changes means the final estimate of the chain-weighted gross domestic product-price index as prepared by the United States department of commerce and published in the Survey of Current Business, or its successor.

(4) "Incumbent local exchange telephone company" means a public utility offering and providing basic local exchange telephone service as defined by § 65-5-208 pursuant to tariffs approved by the former public service commission prior to June 6, 1995.

(5) "Interconnection services" means telecommunications services, including intrastate switched access service, that allow a telecommunications service provider to interconnect with the networks of all other telecommunications service providers.

(6) "Public utility" means every individual, copartnership, association, corporation, or joint stock company, its

lessees, trustees, or receivers, appointed by any court whatsoever, that own, operate, manage or control, within the state, any interurban electric railway, traction company, all other common carriers, express, gas, electric light, heat, power, water, telephone, telegraph, telecommunications services, or any other like system, plant or equipment, affected by and dedicated to the public use, under privileges, franchises, licenses, or agreements, granted by the state or by any political subdivision thereof. "Public utility" as defined in this section shall not be construed to include the following nonutilities:

- (A) Any corporation owned by or any agency or instrumentality of the United States;
- (B) Any county, municipal corporation or other subdivision of the state of Tennessee;
- (C) Any corporation owned by or any agency or instrumentality of the state;
- (D) Any corporation or joint stock company more than fifty percent (50%) of the voting stock or shares of which is owned by the United States, the state of Tennessee or by any nonutility referred to in subdivisions (a)(1), (2), and (3);
- (E) Any cooperative organization, association or corporation not organized or doing business for profit;
- (F) Any individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission; provided, that the real and personal property of such domestic public cellular radio telephone entities shall be assessed by the comptroller of the treasury pursuant to §§ 67-5-801(a)(1), 67-5-901(a)(1), and § 67-5-1301(a)(2); provided, however, that until at least two (2) entities, each independent of the other, are authorized by the federal communications commission to offer domestic public cellular radio telephone service in the same cellular geographical area within the state, the customer rates only of a company offering domestic public cellular radio telephone service shall be subject to review by the Tennessee regulatory authority pursuant to §§ 65-5-101--65-5-104. Upon existence in a cellular geographical area of the conditions set forth in the preceding sentence, domestic public cellular radio telephone service in such area, for all purposes, shall automatically cease to be treated as a public utility under this title. The Tennessee regulatory authority's authority over domestic public cellular radio telephone service is expressly limited to the above extent and the authority shall have no authority over resellers of domestic public cellular radio telephone service. For the purpose of this subdivision (6)(F), "authorized" means six (6) months after granting of the construction permit by the federal communications commission to the second entity or when the second entity begins offering service in the same cellular geographical area, whichever should first occur. This subdivision (6)(F) does not affect, modify or lessen the regulatory authority's authority over public utilities that are subject to regulation pursuant to chapter 5 of this title;
- (G) Any county, municipal corporation or other subdivision of a state bordering Tennessee, but only to the extent that such county, municipal corporation or other subdivision distributes natural gas to retail customers within the municipal boundaries and/or urban growth boundaries of a Tennessee city or town adjoining such

bordering state;

(H) Any of the foregoing nonutilities acting jointly or in combination or through a joint agency or instrumentality; and

(I) For purposes of §§ 65-5-101 and 65-5-103, "public utility" shall not include interexchange carriers. "Interexchange carriers" means companies, other than incumbent local exchange telephone companies, owning facilities in the state which consist of network elements and switches, or other communication transmission equipment used to carry voice, data, image, and video traffic across the local access and transport area (LATA) boundaries within Tennessee.

(7) "Public utility" does not mean nonprofit homeowners associations or organizations whose membership is limited to owners of lots in residential subdivisions, which associations or organizations own, construct, operate or maintain water, street light or park maintenance service systems for the exclusive use of that subdivision; provided, however, that the subdivisions are unable to obtain such services from the local utility district. None of the property, property rights or facilities owned or used by the association or organization for the rendering of such services shall be under the jurisdiction, supervision or control of the Tennessee regulatory authority.

(8) "Telecommunications service provider" means any incumbent local exchange telephone company or certificated individual or entity, or individual or entity operating pursuant to the approval by the former public service commission of a franchise within § 65-4-207(b), authorized by law to provide, and offering or providing for hire, any telecommunications service, telephone service, telegraph service, paging service, or communications service similar to such services unless otherwise exempted from this definition by state or federal law.

CREDIT(S)

1919 Pub. Acts, c. 49, § 3; 1935 Pub. Acts, c. 42, § 1; 1943 Pub. Acts, c. 51, § 1; 1979 Pub. Acts, c. 195, § 1; 1984 Pub. Acts, c. 869, § 1; 1995 Pub. Acts, c. 305, § 14, eff. July 1, 1995; 1995 Pub. Acts, c. 305, § 20, eff. July 1, 1996; 1995 Pub. Acts, c. 408, §§ 2, 3, eff. June 6, 1995; 1999 Pub. Acts, c. 317, § 1, eff. May 26, 1999; 2001 Pub. Acts, c. 27, § 1, eff. March 22, 2001.

Formerly Shannon's Code Supp., § 3059a86; 1932 Code, § 5448; 1950 Code Supp., § 5448; § 65-401.

CROSS REFERENCES

Advertising material affixed to public utility property, see § 2-19-144.

LIBRARY REFERENCES

Key Numbers

Public Utilities ⇨ 103.

Exhibit I

CHAPTER 42

SENATE BILL No. 124

(Moss, Carter, Maxwell, Boyd, Harris, Sprouse, Evins, Cate, Wright, Bramley, Draper, Fowler, Lowe, Abernathy, Atchley, Dodson, Hale, Trotter, Ewell, Howell, Ashley, Carden.)

AN ACT to define and limit the authority, powers and jurisdiction of the Railroad and Public Utilities Commission so as to exempt therefrom certain Federal and State Corporations, Agencies, Instrumentalities, and other public bodies and certain non-profit organizations herein defined as non-utilities; to authorize utilities to sell, lease or otherwise dispose of their property to non-utilities; and as a part hereof to amend sections 5380 to 5508, inclusive, of the official code of Tennessee, passed at the regular session of the General Assembly of the State of Tennessee in 1931, known as the Code of Tennessee of 1932, said section of the code defining the term "Public Utility."

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee, That* Section 5448 of the Code of Tennessee, passed by the regular session of the Legislature of Tennessee of 1931, known as the Code of Tennessee of 1932, which section defines the term "public utility" be, and the same is hereby amended by making said Section 5448 read, as follows: Section 5448:

Public Utilities are Defined.—The term "public utility" is defined to include every individual, co-partnership, association, corporation, or joint stock company, their lessees, trustees, or receivers, appointed by any court whatsoever, that own, operate, manage or control, within the State of Tennessee, any street railway, interurban electric railway, traction company, all other common carriers, express, gas, electric light, heat, power, water, telephone, telegraph, or any other like system, plant or equipment, affected by and dedicated to the public

use, under privileges, franchises, licenses, or agreements, granted by the state or by any political subdivision thereof; *Provided, however*, that the term "public utility" as herein defined shall not be construed to include the following (hereinafter called non-utilities): (a) any corporation owned by or any agency or instrumentality of the United States; (b) any county, municipal corporation or other subdivision (subdivision*) of the State of Tennessee; (c) any corporation owned by or any agency or instrumentality of the State of Tennessee; (d) any corporation or joint stock company more than fifty per cent of the voting stock or shares of which is owned by the United State (States*), the State of Tennessee or by any non-utility referred to in (a), (b), and (c) hereof; (e) any cooperative organization, association or corporation not organized or doing business for profit; (f) any of the foregoing non-utilities acting jointly or in combination or through a joint agency or instrumentality.

SEC. 2. *Be it further enacted, That* any public utility as defined in Section 1 of this Act, may, without the approval or consent of the State of Tennessee, or of the Railroad and Public Utilities Commission, or any other agency of the State of Tennessee, sell, lease, or otherwise dispose of any of its property, including but without limitation, franchises, rights, facilities, and other assets, and its capital stock, to any of the foregoing non-utilities.

SEC. 3. *Be it further enacted, That* if any section, sentence, clause or provision of this Act or any application thereof shall be held invalid, the same shall not affect the validity of any other section, sentence, clause or provision of this Act, or of any other application thereof.

SEC. 4. *Be it further enacted, That* this Act

shall continue in force until expressly repealed by the specific provisions of a subsequent enactment.

SEC. 5. *Be it further enacted*, That this Act shall take effect from and after its passage, the public welfare requiring it.

Passed February 13, 1935.

W. P. Moss,
Speaker of the Senate.

WALTER M. HAYNES,
Speaker of the House of Representatives.

Approved February 19, 1935.

HILL McALISTER,
Governor.

CHAPTER 43

SENATE BILL No. 123

(Moss, Carter, Maxwell, Boyd, Harris, Sprouse, Evins, Loveless, Chambers, Bramley, Cate, Wright, Hale, Howell, Trotter, Draper, Abernathy, Atchley, Ewell, Ashley, Carden, Fowler, Jones, Elkins, Mosby, Dodson.)

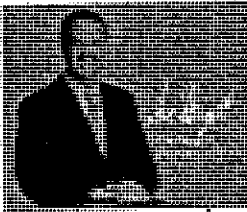
AN ACT to provide for the creation and establishment of a State Planning Commission of the State of Tennessee: to provide for the government and maintenance of such commission and to prescribe the powers and duties of such commission; to empower such commission to create and define the boundaries of planning regions within the State and to create, establish and appoint a regional planning commission in any such planning region; to provide the government, procedure and maintenance of regional planning commissions; to prescribe the powers and duties of such regional planning commissions; to provide for the legal effect of a regional plan upon the

acquisition, construction or authorization of public and public utility ways, grounds, spaces, buildings and structures within the nonmunicipal territory of such regions and to regulate the supply or appropriation of State aid in such planned regions.

SECTION 1. CREATION AND APPOINTMENT OF STATE PLANNING COMMISSION. *Be it enacted by the General Assembly of the State of Tennessee*, That the State Planning Commission of the State of Tennessee is hereby created and established. It shall consist of nine members, namely the Governor of the State and eight citizens of the State appointed by the Governor. The term of each appointive member shall be four (4) years; except that of the initial appointments by the Governor, two shall be designated by the Governor to serve for two years and three for three years. Of the eight appointive members, two shall be residents of each of the three grand geographical divisions of the State and two shall be from the State at large. Not more than six of these eight appointees shall be members of the same political affiliation. Said appointive members shall hold no full time salaried public office or public employment. All members of the State Planning Commission shall serve as such without compensation; but they shall be allotted necessary travelling and other expenses while engaged in the work of or for the commission. The Governor may remove a member for cause specified in writing and after hearing. Any vacancy in the appointive membership shall be filled by the Governor for the unexpired term.

SEC. 2. ORGANIZATION, RULES, STAFF AND FINANCES. *Be it further enacted*, That the State Planning Commission shall elect its chairman from amongst the appointive members, whose term shall be for one year with eligibility for reelection, and the commission may create and fill such other of-

Exhibit J

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Business Entity Detail

Entity details cannot be edited. This detail reflects the current state of the filing in the system.
[Click Here to return to the Business Information Search](#)

000118764: Corporation Non-Profit - Domestic**Name:** HICKMAN-FULTON COUNTIES RURAL ELECTRIC COOPERATIVE CORPORATION**Old Name:****Business Type:****Status:** Active**Initial Filing:** 05/16/1940**Formed in:** Tennessee**Delayed Effective Date:****Fiscal Year Close:** June**AR Due Date:** 10/01/2011**Term of Duration:** Perpetual**Inactive Date:****Principal Office:** 1702 MOSCOW
HICKMAN, KY 420500190 USA**Annual Report P.O. BOX 190**
Mailing Address: HICKMAN, KY 420500000 USA**AR Exempt:** No**Mutual Benefit Corporation:** Yes**Assumed Names****History****Registered Agent**

Name	Status	Date	Expires
No Assumed Names Found...			

[Printer Friendly Version](#)

Division of Business Services
312 Rosa L. Parks Avenue, Snodgrass Tower, 6th Floor
Nashville, TN 37243
615-741-2286

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Exhibit K-1

BRANSTETTER, STRANCH & JENNINGS, PLLC

ATTORNEYS AT LAW

227 SECOND AVENUE NORTH

CECIL D. BRANSTETTER, SR.
C. DEWEY BRANSTETTER, JR.
RANDALL C. FERGUSON
R. JAN JENNINGS*
JOE P. LENISKI, JR.
DONALD L. SCHOLES.
JAMES G. STRANCH, III
J. GERARD STRANCH, IV
JANE B. STRANCH

FOURTH FLOOR
NASHVILLE, TENNESSEE 37201-1631

TELEPHONE
(615) 254-8801

FACSIMILE
(615) 250-3937

April 16, 2008

B. DENARD MICKENS
J. D. STUART
MICHAEL J. WALL

*ALSO ADMITTED IN CA

J. Richard Collier, General Counsel
Shilina Chatterjee Brown, Legal Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

*Re: Inquiry regarding Wastewater Services Provided by
Fairfield Glade Community Club*

Dear Mr. Collier and Ms. Brown:

I am writing you in follow up to your letter to Gerry Miller of March 28, 2008, at the request of the Fairfield Glade Community Club. In that letter, you express an opinion that Fairfield Glade Community Club would not exempt from regulation as a public utility by the Tennessee Regulatory Authority (TRA) under T.C.A. § 65-4-101(7), as a “nonprofit homeowners association,” in the event it contracts to provide wastewater treatment service beyond the property owners within the Fairfield Glade residential community.

Fairfield Glade Community Club is a Tennessee not-for-profit corporation and has been recognized as a tax-exempt not-for-profit 501(c)(4) corporation by the IRS. I have enclosed a copy of its corporate charter which states that it is a not-for-profit corporation. Under T.C.A. § 65-4-101(6)(E), "[a]ny cooperative organization, association or corporation not organized or doing business for profit" is a nonutility and is not subject to regulation by the TRA as a public utility. Because Fairfield Glade Community Club is a not-for-profit corporation, it clearly fits within this exemption and is not subject to regulation by the TRA.

Unlike the exemption from TRA regulation for a homeowners association set forth in T.C.A. § 65-4-101(7), the exemption for a not-for-profit corporation under T.C.A. § 65-4-101(6)(E) does not limit the exemption from regulation to a specific subdivision or geographic territory. Therefore, to the extent the wastewater system of Fairfield Glade Community Club provides sewer service to a commercial or residential customer outside of the Fairfield Glade residential community does not affect its classification as a nonutility as determined by the Tennessee legislature.

J. Richard Collier
Shilina Chatterjee Brown
April 11, 2008
Page 2

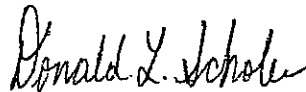
I hope this letter explains why the sewer system of Fairfield Glad Community Club is not subject to economic regulation by the TRA. As a community wastewater system, Fairfield Glade Community Club is subject to all statutes and regulations of the Tennessee Department of Environment and Conservation for community wastewater systems.

Because Fairfield Glad Community Club is a nonutility under T.C.A. § 65-4-101(6)(B), I have advised it that it does not need to file an application for a certificate of public convenience and necessity. I am sending a copy of this letter to Darlene Standley since she received a copy of your March 28, 2008, letter to Gerry Miller.

I wanted to make you aware that Gerry Miller is not an authorized representative of Fairfield Glade Community Club. He is neither a board member nor officer of Fairfield Glade Community Club. He has not been authorized to speak on behalf of Fairfield Glade Community Club.

If you would like to discuss this issue further, please do not hesitate to contact me.

Sincerely yours,

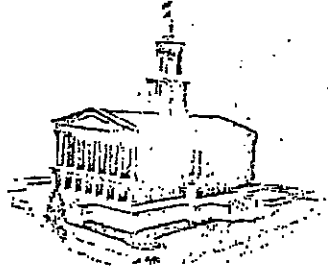


DONALD L. SCHOLES

Enclosure

c: Harvey Hoffman (via fax and first class mail)
Darlene Standley

State of Tennessee



Department of State

CERTIFICATE

The undersigned, as Secretary of State of the State of Tennessee, hereby certifies that the attached document was received for filing on behalf of FAIRFIELD GLADE COMMUNITY CLUB
(Name of Corporation)
was duly executed in accordance with the Tennessee General Corporation Act, was found to conform to law and was filed by the undersigned, as Secretary of State, on the date noted on the document.

THEREFORE, the undersigned, as Secretary of State, and by virtue of the authority vested in him by law, hereby issues this certificate and attaches hereto the document which was duly filed on MAY FOURTH, 1970.



Secretary of State

CHARTER
OF
FAIRFIELD GLADE COMMUNITY CLUB

The undersigned natural person, having capacity to contract and acting as the incorporator of a corporation under the Tennessee General Corporation Act, adopts the following charter for such corporation:

1. The name of the corporation is
Fairfield Glade Community Club.
2. The duration of the corporation is perpetual.
3. The address of the principal office of the corporation in the State of Tennessee shall be P. O. Box 293, Crossville, County of Cumberland.
4. The corporation is not for profit.
5. The purposes for which the corporation is organized are:
To construct, maintain and operate recreational facilities, including marinas, golf courses, tennis courts, club houses, swimming pools, parks, playgrounds, streets, common areas and like facilities for the benefit of its members, and to do all other things incidental or desirable in connection therewith.
6. This corporation is to have members.
7. The directors of the corporation shall be divided into three (3) classes for terms of office which expire at different times.

49
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NM
4
NM
016

B. One-tenth (1/10) of the members of the corporation entitled to vote shall constitute a quorum.

Dated May 1, 1970.

Charles K. Wynn
Incorporator

STATE OF TENNESSEE, CUMBERLAND COUNTY.

The foregoing instrument and certificate were noted in Note Book F, Page 33 at 1:50 o'clock P.M. May 11 1970 and recorded in Map Book 82, Series Page 43 State Tax Paid \$ Fee Recording Fee 5 Total \$ 5

Witness My hand.

Receipt No. 8755

Grady H. Dierick
Register

Exhibit K-2

BRANSTETTER, STRANCH & JENNINGS, PLLC

ATTORNEYS AT LAW
227 SECOND AVENUE NORTH

FOURTH FLOOR
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JANE B. STRANCH

B. DENARD MICKENS
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MICHAEL J. WALL

TELEPHONE
(615) 254-8801

FACSIMILE
(615) 250-3937

June 24, 2008

*ALSO ADMITTED IN GA

Via Hand Delivery

J. Richard Collier, General Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Inquiry regarding Sewer Services Provided by
Fairfield Glade Community Club

Dear Richard:

I am writing you in follow up to our telephone conversation a couple of weeks ago regarding the position taken by me in my April 16, 2008, letter to you in which I asserted that the sewer collection and treatment system operated by Fairfield Glade Community Club is not subject to regulation by the Tennessee Regulatory Authority (TRA). I asserted that Fairfield Glade Community Club is a nonutility under T.C.A. § 65-4-101(6)(E) because it is a Tennessee nonprofit corporation.

You did not question whether a Tennessee nonprofit corporation is exempt from regulation by the TRA under T.C.A. § 65-4-101(6)(E). Instead you raised an issue about whether Fairfield Glade Community Club could actually provide sewer service under its charter as a Tennessee nonprofit corporation. Under its corporate charter Fairfield Glade Community Club was organized:

To construct, maintain and operate recreational facilities, including marinas, golf courses, tennis courts, club houses, swimming pools, parks, playgrounds, streets, common areas and like facilities for the benefit of its members, and to do all other things incidental or desirable in connection therewith.

Under T.C.A. § 48-53-101 (copy enclosed), a Tennessee nonprofit corporation "has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the charter." The legislature used very broad language when it described the type of businesses in which a nonprofit corporation can engage. A Tennessee nonprofit corporation can engage in *any lawful business*. The provision of sewer service is a lawful business. Therefore, Fairfield Glade

J. Richard Collier

June 24, 2008

Page 2

Community Club has the right and power to provide sewer service as a Tennessee nonprofit corporation.

Fairfield Glade Community Club was created before the legislature adopted the Tennessee Nonprofit Corporation Act in 1987. Paragraph 4 of its charter provides that the corporation is a not-for-profit corporation. Fairfield Glade Community Club became subject to the Tennessee Nonprofit Corporation Act pursuant to T.C.A. §§ 48-68-101(a) and 48-68-104 (4)(copies enclosed). Together these statutes operated to subject Fairfield Glade Community Club to the Tennessee Nonprofit Corporation Act and to designate Fairfield Glade Community Club as a mutual benefit corporation.

The sewer collection and treatment system operated by Fairfield Glade Community Club has been and is operated for the benefit of its members. The construction and operation of a sewer system certainly falls within the scope of "like facilities for the benefit of its members" as used in the purpose provision of its charter. The purpose provision of its charter permits Fairfield Glade Community Club "to do all other things incidental or desirable in connection" with its purposes. The supermarket to which Fairfield Glade Community Club is providing sewer service is an integral part of the Fairfield Glade Community. The supermarket is to be located on real property which is contiguous to the Fairfield Glade Community.

The extension and expansion of sewer service to any person or business who is not a member of the Fairfield Glade Community Club benefits the corporation's sewer system and is incidental and desirable in connection with the operation of its sewer system. Economically feasible expansions of the corporation's sewer system to obtain new customers increase the system's revenues and enhance the financial operation of the sewer system. Increased revenues from expansions of the sewer system provide a benefit to all the corporation's members who are served by the sewer system.

I hope that this letter has adequately addresses your concern about whether Fairfield Glade Community Club has the power to operate a sewer system as a Tennessee nonprofit corporation. A Tennessee nonprofit corporation can engage in any lawful business, including providing sewer service. No question should exist that the operation of the sewer system by the Fairfield Glade Community Club benefits its members and that service to persons or businesses outside the development is incidental and desirable to its members. To the extent any question exists about whether Fairfield Glade Community Club has the power to own and operate a sewer system is a corporate issue not a regulatory issue and is outside the scope of the TRA's authority granted to it by the legislature.

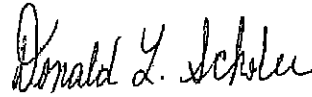
J. Richard Collier

June 24, 2008

Page 2

If I can provide any further information to you for you to response to my April 16, 2008, letter, please let me know.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Donald L. Scholes".

DONALD L. SCHOLES

Enclosures

c: Harvey Hoffman

LEXSTAT TCA 48-53-101

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*** CURRENT THROUGH THE 2007 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 25, 2008 ***

Title 48 Corporations And Associations
Nonprofit Corporations
Chapter 53 Purposes and Powers

Go to the Tennessee Code Archive Directory

Tenn. Code Ann. § 48-53-101 (2008)

48-53-101. Purposes.

(a) Every corporation incorporated under chapters 51-68 of this title has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the charter.

(b) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under chapters 51-68 of this title only if permitted by, and subject to all limitations of, the other statute.

HISTORY: [Acts 1987, ch. 242, § 3.01.]

NOTES:

Cross-References.

Application of nonprofit corporation law, title 48, chs. 51-67, to corporations existing on January 1, 1988, § 48-68-101.

Business corporations, purposes and powers, title 48, ch. 13.

Section to Section References.

Chapters 51-68 are referred to in §§ 4-52-105, 37-10-209, 45-8-204, 48-51-101 -- 48-51-104, 48-51-201, 48-51-202, 48-51-301 -- 48-51-304, 48-51-306, 48-51-401, 48-51-402, 48-51-601, 48-51-701, 48-52-102, 48-52-104, 48-52-105, 48-53-101, 48-53-102, 48-54-101, 48-54-103, 48-56-101, 48-56-302, 48-57-104, 48-57-106, 48-57-203, 48-57-204, 48-58-101, 48-58-202, 48-58-204, 48-58-205, 48-58-302, 48-58-304, 48-58-509, 48-58-601, 48-60-102, 48-60-103, 48-60-202, 48-60-203, 48-60-302, 48-61-102, 48-61-103, 48-62-102, 48-64-109, 48-64-201, 48-64-205, 48-65-105, 48-66-102, 48-67-101, 48-67-102, 48-68-101 -- 48-68-104, 48-101-702, 48-101-802, 48-101-805, 48-101-806, 49-4-105, 49-9-1301, 65-25-201, 65-25-225, 66-27-102, 67-5-212, 69-6-148.

Chapters 51-67 are referred to in §§ 48-68-101 -- 48-68-104.

This chapter is referred to in § 65-25-205.

This section is referred to in § 48-54-101.

Comparative Legislation.

Nonprofit corporations, purposes, powers:

Ala. Code § 10-3A-20 et seq.

Ark. Code § 4-28-205.

Ga. O.C.G.A. § 14-3-301 et seq.

1 of 2 DOCUMENTS

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*** CURRENT THROUGH THE 2007 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 25, 2008 ***

Title 48 Corporations And Associations
Nonprofit Corporations
Chapter 68 Transition Provisions
Part 1 --General Provisions

Go to the Tennessee Code Archive Directory

Tenn. Code Ann. § 48-68-101 (2008)

48-68-101. Application to existing domestic corporations.

(a) Chapters 51-68 of this title apply to all domestic nonprofit corporations in existence on January 1, 1988, that were incorporated under any general statute of this state providing for incorporation of nonprofit corporations. The provisions of chapters 51-68 of this title shall, however, not apply to corporations, the charters of which were granted by special legislative act prior to the adoption of the Constitution of 1870. Such corporations may amend their charters for any purposes consistent with chapters 51-68 of this title and in the manner set out in chapters 51-68 of this title. Such amendments and the particular rights, obligations, duties, and privileges conferred or imposed by the amendments shall be subject to § 48-51-102.

(b) The provisions of § 48-52-102(a) do not apply to the charter of any corporation existing on January 1, 1988, unless and until a charter amendment is filed. The first charter amendment filed by a corporation following January 1, 1988, shall include any information required by § 48-52-102(a) not otherwise on file in the office of the secretary of state, except that the name and address of each incorporator may be excluded, and the information required by § 48-52-102(a)(4) shall be provided for the current registered agent and registered office. Until such a charter amendment is filed, a corporation's registered agent shall be that agent specified in the office of the secretary of state on January 1, 1988, and such corporation's registered office shall be deemed to be that office specified as the address of its registered agent unless such agent or office is changed thereafter pursuant to the provisions of chapter 55 or 65 of this title.

(c) The provisions of chapters 51-68 of this title shall not apply to municipal corporations; provided, that this chapter shall apply to any public governmental corporation or authority created by or established under the authority of a municipal corporation or county or both for the performance of public functions, including industrial development boards created pursuant to the provisions of title 7.

(d) The provisions of Acts 1968, ch. 523, § 1 (3.06 -- 3.11), as amended, in effect on January 1, 1988, shall apply to any claims, applications, or proceedings for indemnification, or any corporate action authorizing indemnification, made or begun before January 1, 1988.

(e) The provisions of Acts 1968, ch. 523, § 1 (12.01 -- 12.12, 12.14) and Acts 1969, ch. 66, §§ 1 and 2, in effect on January 1, 1988, shall apply to any dissolution as to which a statement of intent to dissolve has been filed or a court proceeding filed before January 1, 1988.

HISTORY: [Acts 1987, ch. 242, § 18.01.]

NOTES:

Cross-References.

Business corporations, transition provisions, title 48, ch. 27.

Tenn. Code Ann. § 48-68-104

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*** CURRENT THROUGH THE 2007 REGULAR SESSION ***
*** ANNOTATIONS CURRENT THROUGH MARCH 25, 2008 ***

Title 48 Corporations And Associations
Nonprofit Corporations
Chapter 68 Transition Provisions
Part 1 --General Provisions

Go to the Tennessee Code Archive Directory

Tenn. Code Ann. § 48-68-104 (2008)

48-68-104. Public benefit and mutual benefit corporations.

On January 1, 1988, each domestic corporation existing on January 1, 1988, that is or becomes subject to chapters 51-68 of this title, shall be designated as a public benefit or a mutual benefit corporation as follows:

(1) Any corporation designated by statute as a public benefit corporation or a mutual benefit corporation is the type of corporation designated by statute;

(2) Any corporation which does not come within subdivision (1) but which is recognized as exempt under § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)), or any successor section, is a public benefit corporation;

(3) Any corporation which does not come within subdivision (1) or (2), but which is organized for a public or charitable purpose and which upon dissolution must distribute its assets to the United States, a state or a person which is recognized as exempt under § 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation; and

(4) Any corporation which does not come within subdivision (1), (2) or (3) is a mutual benefit corporation.

HISTORY: [Acts 1987, ch. 242, § 18.06.]

NOTES:

Section to Section References.

This section is referred to in § 48-51-201.

Textbooks.

Tennessee Forms (Robinson, Ramsey and Harwell), No. 5-1401.

Exhibit K-3

TENNESSEE REGULATORY AUTHORITY

Eddie Roberson, Chairman
Tre Hargett, Director
Sara Kyle, Director
Ron Jones, Director



460 James Robertson Parkway
Nashville, Tennessee 37243-0505

June 26, 2008

VIA FACSIMILE AND U.S. MAIL

Donald L. Scholes, Esq.
Branstetter, Stranch & Jennings, PLLC
227 Second Avenue North, Fourth Floor
Nashville, TN 37201-1631

Re: Inquiry Regarding Sewer Services Provided by
Fairfield Glade Community Club

Dear Don:

Thank you for your letters of April 16, 2008 and June 24, 2008 and the discussion we have had during the time period between those two letters. Your letter of June 24, 2008 is especially helpful in addressing the remaining concerns regarding the operation of the wastewater treatment system by Fairfield Glade Community Club. The documentation provided with your letters demonstrates that Fairfield Glade Community Club is a nonprofit corporation, not merely a nonprofit homeowners association, a premise which was relied upon in our letter of March 28, 2008 to Gerry Miller. Once we established that Fairfield Glade Community Club was operating as a nonprofit corporation, the issue became whether Fairfield Glade Community Club would be acting beyond the authority in its charter as a nonprofit corporation by performing a utility function. Your letter of June 24, 2008 points out that a nonprofit corporation can engage in "any lawful business unless a more limited purpose is set forth in the charter." (Tenn. Code Ann. § 48-53-107). You have interpreted the language in the charter of Fairfield Glade Community Club as broad enough to include the provision of wastewater treatment service to the supermarket in question because the supermarket "is an integral part of the Fairfield Glade Community" and "is to be located on real property which is contiguous to the Fairfield Glade Community."

The position set forth in our March 28, 2008 letter was not based on the fact that Fairfield Glade Community Club was operating the wastewater treatment system as a nonprofit corporation. In our prior review, as requested by a resident of Fairfield Glade, we examined only Tenn. Code Ann. § 65-4-101(7) and not Tenn. Code Ann. § 65-4-101(6)(E) in reaching our the conclusion that a Certificate of Convenience and Necessity ("CCN") was required for the operation of the wastewater treatment system.

Donald L. Scholes, Esq.
June 25, 2008
Page 2

Based on the information you have provided in your April 16, 2008 and June 24, 2008 letters and through our discussion of this matter, the Legal Division of the Tennessee Regulatory Authority is of the opinion that because Fairfield Glade Community Club is a nonprofit corporation, a CCN is not required for its operation of a wastewater treatment system as you have described. The question of whether Fairfield Glade Community Club is operating beyond the scope of its nonprofit corporation charter is sufficiently addressed in your letter of June 24, 2008.

Should you have any questions regarding this letter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script that reads "J. Richard Collier".

J. Richard Collier
General Counsel

C: Shilina Chatterjee, Counsel
Darlene Standley, Chief, Utilities Division

Exhibit L

BERRY'S CHAPEL UTILITY, INC.
RATE CHANGE NOTICE

Based on our rate study as of September 1, 2010, we are not producing enough revenue to meet the requirements as set forth in our TDEC (Tennessee Dept. Environment & Conservation) permit.

This, along with the repairs and replacement required by the flood damages to the Treatment Plant not covered by our National Flood Insurance Plan will require an increase in our annual revenues.

Effective November 1, 2010, our rates will be adjusted by a \$20.00 per month facility charge to each customer. The volume rates will not be changed and will remain at \$8.35 per 1000 gallons of water consumed by residential customers. This charge will appear on the bill that customers receive in December, 2010. Questions related to this matter may be made to 615/790-3632 or faxed to 615/599-0797.