

11-00005

STATE OF TENNESSEE

Office of the Attorney General



ROBERT E. COOPER, JR.
ATTORNEY GENERAL AND REPORTER
CORDELL HULL AND JOHN SEVIER STATE
OFFICE BUILDINGS

LUCY HONEY HAYNES
CHIEF DEPUTY ATTORNEY GENERAL

LAWRENCE HARRINGTON
CHIEF POLICY DEPUTY

MAILING ADDRESS
P.O. BOX 20207
NASHVILLE, TN 37202

MICHAEL E. MOORE
SOLICITOR GENERAL

TELEPHONE (615) 741-3491
FACSIMILE (615) 741-2009

December 29, 2010

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

RECEIVED
2011 JAN 18 AM 9:08
TRA, L. B. L. ROOM

Re: Lynwood Utility Corporation – Berry’s Chapel Utility, Inc.

Dear Mr. Scholes:

In the last week the Consumer Advocate and Protection Division has received complaints about Berry’s Chapel Utility, Inc.’s announcement that it is increasing rates by \$20.00 per month. In a letter dated September 17, 2010, to the Tennessee Regulatory Authority (“TRA”) you informed the TRA of the merger of Lynwood Utility Company into Berry’s Chapel Utility, Inc. In that same letter you requested the TRA to “cancel the certificate of public convenience and necessity issued to Lynwood Utility Corporation.” I have enclosed a copy of your letter for your reference.

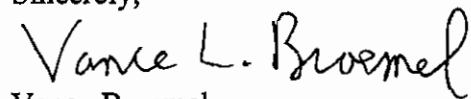
Based on the announcement of the \$20.00 per month increase without TRA approval, it appears that you consider that Berry’s Chapel is no longer regulated by the TRA on the ground that it is a “non-profit corporation” as you referred to it in your letter to the TRA. The Consumer Advocate and Protection Division has seen nothing to indicate the non-profit status of Berry’s Chapel other than papers which merely show that Berry’s Chapel has been incorporated as a non-profit corporation. Furthermore, we disagree with your interpretation of Tenn. Code Ann § 65-4-101(6)(E) as exempting Berry’s Chapel from TRA supervision. Accordingly, we are prepared to challenge the alleged non-profit status of Berry’s Chapel and the recent rate increases.

Donald L. Scholes, Esq.
December 29, 2010
Page 2 of 2

In an effort to avoid litigation in this matter, we are requesting a meeting with Berry's Chapel within 10 days in order to discuss Berry's Chapel's asserted status as a non-profit corporation and the withdrawal of the recent rate increase which was made without TRA approval. If Berry's Chapel is unwilling to engage in such discussions, please inform us immediately.

We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "Vance L. Broemel". The signature is written in a cursive, flowing style.

Vance Broemel
Senior Counsel
(615) 741-8733

Enclosure

cc: TRA Directors
Tyler Ring
John Ring
James Ford
Wade Murphy

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. JAM JENNINGS *
JOE P. LENISKI, JR.
DONALD L. SCHOLES
JAMES G. STRANCH, III
J. GERARD STRANCH, IV
JANE B. STRANCH

*ALSO ADMITTED IN GA

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

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

SEP 20 2010

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

Sincerely yours,

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



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

FILED
RECEIVED
STATE OF TENNESSEE

2010 JUL 16 PM 4:08

TRE HARGETT
SECRETARY OF STATE

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

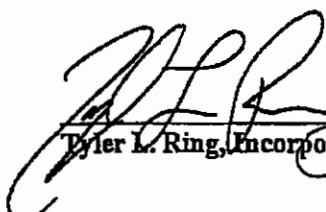
James B. Ford
9679 Aurora Court
Brentwood, TN 37027

6745-2519

6745.2528

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
NYG TAX	0.00
TRW 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
2010 JUL 16 PM 4:08
TRE HARGETT
SECRETARY OF STATE



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

STATE OF TENNESSEE

**ARTICLES OF MERGER OF LYNWOOD UTILITY CORPORATION
INTO BERRY'S CHAPEL UTILITY, INC.** 2010 AUG 20

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:

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.

LYNWOOD UTILITY CORPORATION

By:

Dyler L. Ring President

BERRY'S CHAPEL UTILITY, INC.

By:

~~Tyler L. Ring, President~~