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**** ONLY ADMITTED IN OH

March 31, 2011

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

Via E-mail and Hand Delivery

Attention: Sharla Dillon

filed electronically in docket office on 03/31/11

Re: Consumer Advocate's 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
Docket 11-00005

Dear Chairman Freeman:

I have enclosed for filing an original and five copies of a Motion to Continue Oral
Argument and to Stay Proceeding in this docket.

This Motion and this cover letter are being filed electronically by electronic mail this
same date. A copy has been served on Vance L. Broemel, Esq. and Mary Leigh White, Esq.,
with the Office of the Attorney General and Consumer Advocate. Please return the additional
copy of the Motion stamped filed to me.

Thank you for your assistance.

Sincerely yours,



DONALD L. SCHOLLES

c: Vance Broemel
Tyler Ring
Jim Ford

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

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

MOTION TO CONTINUE ORAL ARGUMENT AND TO STAY PROCEEDING

Comes now the Respondent, Berry's Chapel Utility, Inc. (Berry's Chapel) and moves the Authority to continue the oral argument set in this matter to be heard on April 4, 2011, at 1:00 p.m. and to stay further action in this proceeding on the grounds that the oral argument and this proceeding is not necessary because Berry's Chapel has amended its corporate charter to become a nonprofit corporation with members which will operate as a utility cooperative.

On March 24, 2011, Berry's Chapel filed an amendment to its charter with the Tennessee Secretary of State which changes the corporation from a nonprofit mutual benefit corporation without members to a nonprofit mutual benefit corporation with members. I have attached a copy of the amendment filed with the Tennessee Secretary of State's office. Members of Berry's Chapel must be a sewer customer of the utility.

The primary concern of the Consumer Advocate which prompted the filing of this Petition was that Berry's Chapel was a nonprofit corporation without members. Because the customers of Berry's Chapel were not members of the corporation, the customers did not have the protection of a self-governing cooperative which the Consumer Advocate claims is necessary for Berry's Chapel to come within the definition of a nonutility under T.C.A. § 65-4-101(6)(E).

The Consumer Advocate argues that the term “cooperative” in T.C.A. § 65-4-101(6)(E) must be interpreted to modify “association” and “corporation” as well “organization.” Therefore, to be a nonutility under T.C.A. § 65-4-101(6)(E), a nonprofit corporation which provides a utility service must be a “cooperative nonprofit corporation” in which the members of the corporation control the corporation by electing the board of directors who run and operate the utility.

With this amendment to the charter of Berry’s Chapel, it has become a cooperative nonprofit corporation which is a nonutility under language of T.C.A. § 65-4-101(6)(E). Berry’s Chapel is mailing the letter attached as Exhibit 2 to this Motion to all of its customers to notify them of the change in the corporate structure of the utility and to encourage the customers to become members of the utility cooperative by completing a membership application. The initial membership meeting of Berry’s Chapel Utility, Inc. is scheduled for May 9, 2011 at 7:00 p.m. at the Walnut Grove Elementary School which is located within Berry’s Chapel’s service area. At this meeting the members will elect a new five members board of directors.

After the new board of directors is in place, the new board will govern the operations of Berry’s Chapel, including the setting of rates for the utility. If the new board of directors wants to remove the \$20.00 monthly facilities charge which the utility implemented effective November 1, 2010, it may do so. If the new board of directors wants to refund the \$20.00 monthly facilities charges paid by the utility’s customers since November 1, 2010, it may choose to do so. The customers of the utility which become members will self govern the utility.

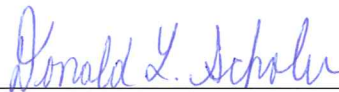
When 85% of the revenues of Berry’s Chapel utility are derived from its customer-members, Berry’s Chapel will qualify for a exemption from federal income tax as a 501(c)(12) utility cooperative.

The Consumer Advocate’s Petition requires the Authority to determine whether Berry’s Chapel is a nonutility under T.C.A. § 65-4-101(6)(E) even though it has no members and is not a

The Consumer Advocate's Petition requires the Authority to determine whether Berry's Chapel is a nonutility under T.C.A. § 65-4-101(6)(E) even though it has no members and is not a cooperative nonprofit corporation. Berry's Chapel is now a cooperative nonprofit corporation with members. Berry's Chapel suggests that having the oral argument at this time is unnecessary since the decision on the legal issue to be resolved no longer applies to Berry's Chapel with the amendment to its charter. Rather than dismiss the Consumer Advocate's Petition, Berry's Chapel suggests that the Authority stay further action on the Petition until after the initial membership meeting of Berry's Chapel is held on May 9, 2011 and a new board of directors is elected by the customer-members. After a new board of directors is elected by the customer-members, Berry's Chapel believes that it may be appropriate for it to request that the Petition be dismissed at that time.

Dated March 31, 2011

Respectfully submitted,



DONALD L. SCHOLES BPR # 10102
Branstetter, Stranch & Jennings, PLLC
227 Second Avenue North, Fourth Floor
Nashville, TN 37201-1631
(615) 254-8801
dscholes@branstetterlaw.com

Attorney for Respondent, Berry's Chapel Utility, Inc.

Certificate of Service

I hereby certify that a true and exact copy of the foregoing Motion to Continue Oral Argument and to Stay Proceeding has been mailed, postage prepaid, on this 31st day of March, 2011, to the following:

Vance L. Broemel, Esq.
Mary Leigh White, Esq.
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202-0207
(615) 741-8733



Donald L. Scholes

**ARTICLES OF AMENDMENT TO THE
CHARTER
OF
BERRY'S CHAPEL UTILITY, INC.**

RECEIVED
STATE OF TENNESSEE
2011 MAR 24 PM 3:45

THE HARGETT
SECRETARY OF STATE

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Pursuant to the provisions of Section 48-60-105 of the Tennessee Nonprofit Corporation Act, the undersigned corporation adopts the following articles of amendment to its charter:

1. The name of the corporation is Berry's Chapel Utility, Inc.
2. The text of the amendment to paragraph 6 of the corporation's charter adopted is:
 6. This corporation will have members.
3. This amendment was duly adopted on March 11, 2011 by the board of directors without members' approval, as such was not required.
4. Additional approval of the amendment by anyone other than the board of directors is not required.

DATED this 11th day of March, 2011.



Tyler L. Ring, Director - President



STATE OF TENNESSEE
Tre Hargett, Secretary of State
Division of Business Services
William R. Snodgrass Tower
312 Rosa L. Parks AVE, 6th FL
Nashville, TN 37243-1102

Berry's Chapel Utility, Inc.

321 Billingsly Court
Suite 4
Franklin, TN 37065

March 24, 2011

Filing Acknowledgment

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

Control # : 635712 Status: Active

Filing Type: Corporation Non-Profit - Domestic

Document Receipt

Receipt # : 401534

Filing Fee: \$20.00

Payment-Cash - Berry's Chapel Utility, Inc., Franklin, TN

\$20.00

Amendment Type: Articles of Amendment

Image # : 6857-1015

Filed Date: 03/24/2011 3:45 PM

This will acknowledge the filing of the attached articles of amendment with an effective date as indicated above. When corresponding with this office or submitting documents for filing, please refer to the control number given 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.

Tre Hargett
Secretary of State

Processed By: Cynthia Dunn

BERRY'S CHAPEL UTILITY, INC.
321 BILLINGSLEY COURT, SUITE 4
FRANKLIN, TN 37067
PHONE: 615/790-3632 FAX: 615/599-0797

March 30, 2011

Re: Becoming a Member of Berry's Chapel Utility, Inc., a Member-Owned Utility Cooperative

Dear Customer:

As President of Berry's Chapel Utility, Inc., I am writing you to respectfully request that you become a member of Berry's Chapel Utility, Inc. Berry's Chapel has revised its corporate charter and is now a member-owned, not-for-profit utility cooperative. This cooperative, under the leadership of a member-elected board of directors, will have controlling authority over the operation of your sewer collection and treatment system.

The present board of directors of Berry's Chapel has carefully considered the merits of becoming a cooperative for some time. We encourage you to review the following information regarding the structure and function of the cooperative, and then complete the enclosed application to become a member. We also invite you to attend the first membership meeting of the cooperative on May 9, 2011, at Walnut Grove Elementary School at 7:00 p.m. If you are interested in serving on the new member-elected board of directors of the cooperative and willing to have your name placed in nomination for election to the new board, please do so on the membership application.

What is Berry's Chapel Utility, Inc.?

Berry's Chapel Utility, Inc. acquired the sewer system of Lynwood Utility Corporation on September 1, 2010. Today, Berry's Chapel provides quality wastewater treatment services to approximately 850 customers in three communities while environmentally protecting the Harpeth River watershed.

Since 2002, more than \$2,144,000 has been invested in the plant, equipment and collection system of Berry's Chapel to ensure stability of the sewer system. Berry's Chapel also has worked diligently to successfully comply with the strict environmental regulations of the Tennessee Department of Environment and Conservation (TDEC) as they relate to the Harpeth River watershed.

Why is Berry's Chapel Utility, Inc. making this change?

In the face of sharply higher operating costs, ongoing capital improvements to the sewer system and increasingly burdensome regulatory costs, management believes that change in the structure of the utility is the most appropriate course of action for the utility. Environmental regulations from the TDEC as they relate to the Harpeth River watershed continue to become more stringent which increases the utility's costs to operate. Regulatory costs for the Tennessee Regulatory Authority average \$10,000 - \$12,000 annually. A rate proceeding to change rates costs the utility \$30,000 - \$35,000 in regulatory costs. These regulatory costs are paid by you through your sewer rates. Over the near term, this change will enable our utility to meet the financial stability requirements of the TDEC. Longer term, we are confident that the benefits derived from the cooperative will be in the best interest of our customers. With this new structure, the cooperative will have autonomous control over the operation of its wastewater treatment services and be exempted from all regulations other than those set forth by the TDEC.

What will be the structure of the new cooperative and how will it function?

The new cooperative will be owned by the present customers of Berry's Chapel Utility who join the cooperative as members, with each member having equal ownership (husbands and wives shall have one joint ownership with a single vote). The new cooperative will be governed by a board of directors elected by members. The goal of the cooperative will be to provide the best service to its members and customers at the lowest possible cost.

Will excess revenues be reinvested in the utility? Who makes this decision?

Any excess revenue over expenses for the year derived from the cooperative's operation will be either reinvested in its infrastructure or used to reduce rates. The board determines which of these applications will occur.

What will it cost to become a member of the new cooperative?

There is no charge to be a member of the new cooperative. Any customer of Berry's Chapel may become a member by completing the enclosed membership application.

How many directors will be elected and how long is a director's term of office?

Five directors, each elected by the members, will serve on the new cooperative. Each director's term of office will be one year.

Will the present management team of Berry's Chapel Utility be retained to operate the utility?

This will be the decision of the new board of directors.

Who will establish sewer service rates?

The cooperative's rates will be set by its board of directors.

As a non-profit entity, will the cooperative have access to government grants?

The cooperative may have the ability to apply for various government grants for which it is not eligible under its current corporate structure. If obtained, such grants could reduce the future costs of operations and positively impact future rates set by the cooperative's board of directors.

Will the cooperative be subject to Federal taxes?

The cooperative will be exempt from Federal taxes after most of its customers become members, and the cooperative receives at least 85% of its revenues from its members.

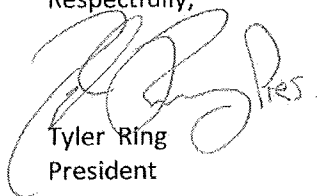
Every customer should vote for membership in the cooperative

We believe operating the utility as a member-owned cooperative presents the most sustainable strategy to reduce regulatory complexities and costs and allow the utility fewer distractions as it seeks to provide customers with the best possible wastewater treatment services.

We believe that every customer should become a member of this cooperative and encourage your neighbors to do the same so you will have a say in how the utility, which provides your sewer service, is run. This will include the setting of rates.

We appreciate your interest and look forward to receiving your ballot and to seeing you at the meeting on May 9. In the meantime, please do not hesitate to contact us directly should you have any questions.

Respectfully,



Tyler Ring
President

BERRY'S CHAPEL UTILITY, INC.

321 Billingsly Court, Suite 4
Franklin, TN 37065
(615) 790-3632

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APPLICATION FOR MEMBERSHIP

On March 24, 2011, the corporate charter of Berry's Chapel Utility, Inc., a Tennessee nonprofit corporation, was amended to provide that the corporation have members. As a corporation with members, the board of directors will be elected by the members. The corporation's members must be sewer customers of Berry's Chapel Utility, Inc.

Please check:

_____ I am (We are) a sewer customer of Berry's Chapel Utility, Inc. *

_____ I (We) want to become a member of Berry's Chapel Utility, Inc.

NAME: _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP:** _____

HOME PHONE: _____ **WORK PHONE:** _____

EMAIL (optional): _____

_____ I am interested in serving on the new Board of Directors of Berry's Chapel Utility, Inc. and agree to have my name placed in nomination for election to the Board at the first membership meeting.

* A husband and wife receiving service in the same residence shall have a joint membership and are entitled one joint vote as members.