

BEFORE THE TENNESSEE REGULATORY AUTHORITY NASHVILLE, TENNESSEE

RECEIVED
2012 FEB 21 PM 3:12

**IN RE: PETITION OF BERRY'S CHAPEL)
TO APPROVE ALTERNATE FORM OF)
FINANCIAL SECURITY UNDER RULE #)
1220-4-13-07)**

DOCKET NO. TRA-14-00174
TRA DOCKET ROOM

PETITION

Attached are the responses to Data Request dated January 20, 2012 from David Foster, Director of Utilities at the TRA.

cc: Henry Walker
Bradley Arant Boult Cummings LLP

Vance Broemel
Consumer Advocate and Protection Division

January 20, 2012

Henry Walker
Bradley Arant Boult Cummings LLP
1600 Division Street, Suite 700
Nashville, TN 37203

Re: Docket 11-00174 - Petition of Berry's Chapel Utility, Inc. to Approve
Alternative Form of Financial Security under Rule 1220-4-13-.07

Dear Mr. Walker:

To assist the Authority in its review of the above captioned matter, please respond to the following:

1. Describe all efforts and/or attempts made by or on the behalf of Berry's Chapel, Inc. and/or Lynwood Utility Corporation ("the Company") during the past twelve (12) months to obtain either a bond or irrevocable letter of credit to meet the TRA's financial security requirement. Include all written documentation from the institutions and/or insurance companies responding to such requests.
2. Provide documentation of the reason H.B. and T.S. Utility District declined to renew its billing contract with Berry's Chapel.
3. Provide the number of customers that the Company is billing for in place of H.B. and T.S. Utility District and the number of customer bills that the City of Franklin is responsible for billing.
4. Provide the amount of revenue that the Company billed for the last twelve months and the amount revenue that the City of Franklin billed for the last twelve months.
5. Provide documentation that the letter of credit for \$20,000 remains in place.
6. Provide the amount of debt and equity, by month and year that the owners have contributed to the Company for the last three years. Detail the reason each amount was needed/provided.
7. Provide an aging of accounts receivables from September 1, 2010 to the present.

8. Would the owners of Berry's Chapel, inclusive of spouses, sign personal guarantees backing any Company's guarantees?

It is requested that you provide response no later than 2:00 P.M. on Friday, February 3, 2012 and reference Docket No. 11-00174. Pursuant to TRA Rule 1220-1-1-.03(4), please submit either (a) the original and thirteen (13) copies or (b) four (4) written copies and an electronic version. Should you have any questions regarding this request, please contact Paul Greene at (615) 741-2904 (extension 156) or Tiffany Underwood (extension 172) before responding.

Sincerely,

David Foster
Chief of Utilities Division

C: Docket File

BERRYS CHAPEL UTILITY INC.

Response to Data Request Dated 1/20/2012 Docket 11-00174

1. BCUI renewed its Letter of Credit with Tennessee Commerce Bank in 2011.
2. See letter from HB & TS General Manager. Customer Complaints related to BCUI/TRA matters were disrupting HB & TS staff to a level where normal work could not be completed.
3.

HB & TS	484	(2 Off)	Billed by BCUI
MVUD	7		Billed by BCUI
COF	<u>352</u>		Billed by COF
	843		
4.

HB & TS	\$119,327
BCUI	149,943
COF	<u>340,108</u>
Total Revenue December 31, 2011	\$609,378
5. See Letter from FDIC regarding Tennessee Commerce Bank attached.
6. NONE
7. Amounts from September 1, 2010 not possible. The amount of past due amounts of December 31, 2011 is \$72,610.76.
8. Company is owned by its Customer Base of 843. See BCUI Charter.



Federal Deposit Insurance Corporation
As Receiver for Tennessee Commerce Bank
381 Mallory Station Road, Suite 105
Franklin, TN 37067-8264

February 9, 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT NO. _7011 1570 0001 3508 4841

Berry's Chapel Utility, Inc.
321 Billingsley Court Suite 4 Franklin, Tennessee 37067

Subject: FIN # 10423 - Tennessee Commerce Bank
Franklin, Tennessee- In Receivership
Closing Date: January 27, 2012
Standby Letter of Credit No. 2011002

Dear Sir or Madam:

The above-captioned institution (the "Institution") was closed on the Closing Date referenced above and the Federal Deposit Insurance Corporation was appointed as receiver of the Institution (the "Receiver"). Under the laws of the United States, the Receiver is charged with the duty of winding up the affairs of the Institution. In order to achieve this goal, the Receiver is given the right under 12 U.S.C. Section 1821(e) to repudiate contracts entered into by the Institution where it finds such undertakings to be burdensome and where such repudiation will promote the orderly administration of the Institution's affairs.

The Institution's records indicate that you may be an account party of a letter of credit as referenced above. The Receiver is in the process of reviewing all agreements entered into by the failed institution and specifically reserves the right to repudiate any obligations this Institution may have had within a reasonable period of time upon a determination by the Receiver that the obligation is burdensome and that the repudiation would promote the orderly administration of the affairs of the Receivership.

The Receiver strongly suggests that you immediately take any action necessary to protect your interests. You may wish to arrange for the issuance of a new standby letter of credit from another financial institution. Please contact the Receiver if there is information or documentation you will require in order to facilitate action you intend to take along these lines.



Federal Deposit Insurance Corporation
As Receiver for Tennessee Commerce Bank
381 Mallory Station Road, Suite 105
Franklin, TN 37067-8264

The Receiver recognizes that the failure of the Institution may cause disruptions in your business and personal affairs. To assist you, FDIC personnel are available to discuss the impact of the failure of the Institution.

If you wish to provide additional information that you think is relevant to the review of the status of your standby letter of credit and any associated loan, please submit within 10 days from the date of this letter. Any request based on your financial position should be supported by a complete financial package submitted for our consideration. Below is an outline of the minimum information required:

- o Daytime and evening phone number for a representative to contact you.
- o Detailed planned usage for the letter of credit and any related loan.
- o Proposed repayment schedule.
- o Completed and notarized current financial statement for all borrowers and guarantors.
Last 2 years federal tax returns for all borrowers and guarantors.

If you have any further questions, you may direct your inquiry to the Receiver at the address provided.

Federal Deposit Insurance Corporation
as Receiver of
Tennessee Commerce Bank

By: Tom N. Wineland
Title: Post Closing Asset Manager

H. B. & T. S. Utility District

505 Downs Blvd Franklin, Tennessee 37064
615-794-7796 Fax 615-591-9094

April 27, 2011

Berry's Chapel Utility, Inc.
321 Billingsly Court, Suite 4
Franklin, Tennessee 37067

Ph: 790-3632
Fax: 599-0797

Attn: Tyler Ring

This is to advise you that today the HB&TS Board of Commissioners voted to terminate the billing agreement with Berry's Chapel Utility, Inc. (formerly known as Lynwood Utility). This letter is to be the 30 day termination notice.

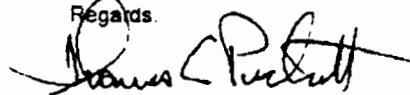
We acknowledge receipt of your letter dated April 25, 2011, that instructed HB&TS to suspend charging the monthly (sewer) facility charge of \$20.00 beginning with the bills rendered in May. Be advised that when your letter was received, the April billing had been processed including the \$20.00 facility charge, and had been sent for mailing to customers.

Around May 25, 2011, HB&TS will process the final billing for sewer service without the additional \$20.00 facility charge and will send to customers.

HB&TS believes that more efficient customer service can be provided by Berry's Chapel Utility, Inc. (BCU) directly conducting billing activities and maintaining sewer customer account records. HB&TS will assist BCU in transferring existing customer account records and in the future, HB&TS will transfer monthly water usage to BCU billing system by electronic means.

If you have any questions, do not hesitate to call.

Regards,



THOMAS C. PUCKETT
General Manager

CC: Cynthia Ford, Office Manager
Dewey Branstetter

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

FILED
RECEIVED
STATE OF TENNESSEE

2010 JUL 16 PM 4:08

TRL HARSETT
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

6745.2513

6745.2520

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
TRM 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
TIRE HARGETT
SECRETARY OF STATE

randetta
X



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, Secretary of State
Business Services Division

Processed By: Cheryl Donnell

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

These Bylaws shall regulate the affairs of the Corporation, subject to the provisions of the Corporation's Charter and any applicable provisions of the Tennessee Nonprofit Corporation Act, *T.C.A. § 48-51-101, et seq.* (the "Act").

SECTION 1 – OFFICES AND REGISTERED AGENT

Section 1.01. *Registered Office.* The Corporation shall designate and continuously maintain a registered office in the State of Tennessee.

Section 1.02. *Principal Office.* The principal office of the Corporation shall be that which is designated as such in its Charter.

Section 1.03. *Other Offices.* The Corporation may also have other offices within and without the State of Tennessee at such places as the Board of Directors may from time to time determine.

Section 1.04. *Registered Agent.* The Corporation shall designate and continuously maintain a registered agent in the State of Tennessee at its registered office.

SECTION 2 MEMBERS

Section 2.01. *Eligibility.* Any natural person, firm, association, corporation, cooperative, business trust, partnership, federal, state or local government, or departments, agencies or any other political subdivision thereof (each hereinafter referred to as "person," "applicant," "him" or "his") that receives sewer service from Berry's Chapel Utility, Inc. (hereinafter called the "Corporation") at one or more premises owned or directly occupied or used by the person is eligible to become a member of the Corporation.

Section 2.02. *Admission of Members.* An eligible person shall become a member upon completing and executing an application for membership and delivering it to the Corporation.

Section 2.03. *Rights and Obligations.* Except as set forth in Section 2.04, each member shall have one (1) vote and shall have the same rights and obligations with respect to voting, dissolution, redemption, transfer and all other matters as all other members.

Section 2.04. *Joint Membership.* A husband and wife, by specifically so requesting in writing, may be accepted into joint membership or, if one of them is already a member, may automatically convert such membership into a joint membership. The words "member," "applicant," "person," "his," and "him," as used in these Bylaws, shall include a husband and wife applying for or holding a joint membership, unless otherwise clearly distinguished in the text; and all provisions relating to the rights, powers, terms, conditions, obligations,

responsibilities and liabilities of membership shall apply equally, severally and jointly to them. Without limiting the generality of the foregoing:

- (a) the presence at a meeting of either or both shall constitute the presence of one member and a joint waiver of notice of the meeting;
- (b) the vote of either or both shall constitute, respectively, one joint vote; provided, if both be present but in disagreement on such vote, each shall cast only one-half (1/2) vote;
- (c) notice to, or waiver of notice signed by, either or both shall constitute, respectively, a joint notice or waiver of notice; and
- (d) suspension or termination in any manner of either shall constitute suspension or termination of the joint membership.

Section 2.05. *Excess Payments to be Credited as Member-Furnished Capital.* All amounts paid for sewer service in excess of the cost thereof shall be treated as member-furnished capital as provided in Section 7 of these Bylaws.

Section 2.06. *Resignation.* A member may resign at any time by delivering to the Secretary of the Corporation a written notice of such resignation signed by the member which shall be included in the corporate records. A resignation shall not be effective before the date and time the Secretary actually receives written notice of it. A person's membership shall be terminated upon his death.

Section 2.07. *Termination by Withdrawal.* A member may withdraw from membership upon such generally applicable conditions as the Board of Directors shall prescribe and upon either (a) ceasing to (or, with the approval of the Board of Directors resigning his membership in favor of a new applicant who also shall) own or directly occupy or use all premises being furnished sewer service, or (b) totally and permanently abandoning the use of sewer service on such premises.

Section 2.08 *Expulsion or Suspension.* A member may be expelled or suspended by the Board of Directors, but notice and an opportunity to be heard shall first be given to the member as set forth below, and the expulsion or suspension procedure shall be fair, reasonable and carried out in good faith:

- (a) The member shall be given not less than fifteen (15) days' prior written notice of the expulsion or suspension, and the reason(s) therefor; and
- (b) The member must be given the opportunity to be heard, orally or in writing, by the Board of Directors not less than five (5) days before the effective date of the expulsion or suspension.

For purposes of this Section 2.08 only, any written notice given by mail shall be sent postage prepaid by first class United States mail or by certified United States mail, return receipt requested, and sent to the last address of the member shown on the Corporation's records.

Section 2.09. *Effect of Death, Legal Separation or Divorce Upon a Joint Membership.* Upon the death of either spouse of a joint membership, such membership shall continue to be held solely by the survivor, in the same manner and to the same effect as though such membership had never been joint; Upon the legal separation or divorce of the holders of a joint membership, such membership shall continue to be held solely by the one who continues directly to occupy or use the premises covered by such membership in the same manner and to the same effect as though such membership had never been joint.

Section 2.10. *Transfers and Encumbrances.* No member shall transfer, by operation of law or otherwise, or encumber in any way his membership or any right arising therefrom.

Section 2.11. *Annual Meeting.* The annual meeting of the members of the Corporation shall be held at such date, time and place as fixed by the Board of Directors. At the annual meeting, the members shall elect Directors, receive reports on the activities and financial condition of the Corporation, and transact such other business as may properly come before the meeting.

Section 2.12. *Special Meetings.* A special meeting of the members may be called by the Board of Directors, by that number of directors that is one (1) less than a majority of the directors in office, or by a petition signed by no fewer than ten (10%) percent of the members, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided in Section 2.13. The notice of a special meeting shall include the purpose or purposes of the meeting.

Section 2.13. *Notice of Meetings.*

(a) The Corporation shall notify its members of the date, time and place of each annual and special meeting of members no fewer than ten (10), nor more than forty-five (45) days before the meeting date. Notice of a meeting shall be by mail (and, in the case of a special meeting, at the direction of those calling the meeting). Any such notice may be included with member service billings or as an integral part of the Corporation's monthly publication. Such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Corporation, with postage thereon prepaid and mailed not later than or earlier than the required days prior to the meeting date.

(b) The incidental and non-intended failure of any member to receive such notice shall not invalidate any action which may be taken by the members at any such meeting, and the attendance in person of a member at any meeting of the members shall constitute a waiver of notice of such meeting unless such attendance shall be for the express purpose of objecting to the transaction of any business, or one or more items of business, on the ground that the meeting shall not have been lawfully called or convened. Any member attending any meeting for the purpose of making such objection shall notify the Secretary prior to or at the beginning of the meeting of his objection. Appearance at meeting is waiver of notice.

Section 2.16. *Quorum.* A quorum for the transaction of business at meetings of the members shall be five percent (5%) of all members.

Section 2.17. *Voting Requirements.* Each member shall be entitled to only one vote upon each matter submitted to a vote at any meeting of the members regardless of the number of memberships held. Voting by members other than members who are natural persons shall be allowed upon the presentation to the Corporation, prior to or upon registration at each member meeting, of satisfactory evidence entitling the person presenting the same to vote. At all meetings of the members, all questions shall be decided by a majority of the members voting thereon, except as otherwise provided by law or by the Corporation's Charter or these Bylaws.

Section 2.18. *Action by Written Ballot.* Any action that may be taken at any annual or special meeting of members may be taken without a meeting if the Corporation delivers a written ballot to every member entitled to vote on the matter. The written ballot shall set forth each proposed action and shall provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall:

- (a) Indicate the number of responses needed to meet the quorum requirements;
- (b) State the percentage of approvals necessary to approve each matter other than election of Directors; and
- (c) Specify the time by which the ballot must be received by the Corporation in order to be counted.

SECTION 3 BOARD OF DIRECTORS

Section 3.01. *General Powers and Qualifications.* All corporate powers of the Corporation shall be exercised by and under the authority of, and the affairs of the Corporation shall be managed under the direction of, the Board of Directors. All Directors must be natural persons, must receive sewer service from the Corporation at his residence and shall be at least eighteen (18) years of age.

Section 3.02. *Number of Directors.* The Board of Directors shall be comprised of five (5) Directors, but these Bylaws may be amended from time to time to increase or decrease the number of Directors within the limits provided by law, although at no time shall there be fewer than three (3) Directors.

Section 3.03. *Election and Tenure.* Directors shall be elected by the members at each annual meeting of the members, and each Director shall be elected to serve for a term of one (1) year, or until his or her successor is elected and qualifies; subject, however, to the removal of any Director by the members as provided in these Bylaws. The three Directors serving on the Corporation's Board of Directors on the effective date of these bylaws shall continue to serve

until the first annual meeting of the members. Nominations for members to serve on the Board of Directors shall be submitted to the Corporation before or at the annual meeting.

Section 3.04. *Regular Meetings.* Except as otherwise provided herein, regular meetings of the Board of Directors may be held without notice at such time and place as the Board of Directors shall determine from time to time, but no less frequently than once a year.

Section 3.05. *Special Meetings.* Special meetings of the Board of Directors may be called by the President or by any two (2) Directors.

Section 3.06. *Notice of Meetings.* Except as otherwise provided herein, regular meetings of the Board of Directors may be held without notice of the date, time, place, or purpose of the meeting. Except as otherwise provided herein, special meetings of the Board of Directors must be preceded by at least two (2) days' notice to each Director of the date, time and place, but not the purpose, of such special meeting. Notice of any adjourned meeting need not be given if the time and place to which the meeting is adjourned are fixed at the meeting at which the adjournment is taken, and if the period of adjournment does not exceed one (1) month in any one (1) adjournment.

Section 3.07. *Waiver of Notice.* If a Director attends or participates in a meeting, he waives any required notice to him of the meeting unless the Director at the beginning of the meeting (or promptly upon arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 3.08. *Quorum and Voting.* A quorum of the Board of Directors consists of a majority (but no fewer than two (2)) of the Directors then in office before a meeting begins. If a quorum is present when a vote is taken, the affirmative vote of a majority of the Directors present is the act of the Board of Directors, unless these Bylaws, the Charter or the Act require the vote of a greater number of Directors.

Section 3.09. *Vacancy.* If a vacancy occurs on the Board of Directors during the term of a Director, the vacancy shall be filled by the affirmative vote of the remaining Directors until the next annual member meeting.

Section 3.10. *Removal of Directors.* The members may remove any one (1) or more Directors, with or without cause, at any special meeting that is specifically called for that purpose.

Section 3.11. *Action Without Meeting.* Action that is required or permitted to be taken at a meeting of the Board of Directors may be taken without such a meeting if all Directors consent to taking such action without a meeting. If all Directors so consent, the affirmative vote of the number of Directors that would be necessary to authorize or take such action at a meeting shall be the act of the Board, except as otherwise provided in these Bylaws. Such consent shall describe the action taken, be in writing, be signed by each Director entitled to vote, indicate each signing Director's vote or abstention on the action, and be delivered to the Secretary of the Corporation and included in the minutes filed with the corporate records.

Section 3.12. *Indemnification.* With respect to claims or liabilities arising out of service as a Director of the Corporation, the Corporation shall indemnify and advance expenses to each present and future Director (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.

Section 3.13. *Immunity.* To the fullest extent allowed by the laws of the State of Tennessee, both as now in effect and as hereafter adopted or amended, each present and future Director (and his or her estate, heirs, and personal representatives) shall be immune from suit arising from the conduct of the affairs of the Corporation.

SECTION 4 – OFFICERS

Section 4.01. *Required Officers.* The officers of the Corporation shall be a President, Vice-President and Secretary-Treasurer and such other officers as may from time to time be elected or appointed by the Board of Directors. Except for the offices of President and Secretary-Treasurer, the same individual may simultaneously hold more than one (1) office in the Corporation. All officers must be natural persons and shall be at least eighteen (18) years of age.

Section 4.02. *Election.* Each year at a meeting fixed and held by the Board of Directors, the Board shall elect the officers of the Corporation by a majority vote of those Directors present, provided a quorum exists.

Section 4.03. *Term of Office.* The officers of the Corporation shall hold office for one (1) year or until their successors are chosen and qualify in their stead, subject, however, to the right and authority of the Board of Directors to remove any officer at any time with or without cause.

Section 4.04. *Powers and Duties of Officers.* The powers and duties of the officers of the Corporation shall be as follows:

- (a) *President.* The President shall be the Chief Executive Officer of the Corporation, shall have general and active management of the Corporation, and shall see that all orders and resolutions of the Board of Directors are carried into effect, subject, however, to the right of the Board of Directors to delegate any specific powers, unless exclusively conferred upon the President by law, to any other officer of the Corporation.
- (b) *Vice President.* The Vice President shall have such powers and perform such duties as may be assigned to him or her by the Board of Directors or the President. In the absence or disability of the President, the Vice President shall perform the duties and exercise the powers of the President. The Vice President may sign and execute contracts and other obligations pertaining to the regular course of his or her duties.
- (c) *Secretary-Treasurer.* The Secretary-Treasurer shall attend all meetings of the Board of Directors of the Corporation and shall be responsible for preparing the minutes of such

meetings. The Secretary-Treasurer shall be responsible for the care and custody of the minute book of the Corporation and for authenticating records of the Corporation. It shall be his or her duty to give or cause to be given notice of all meetings of the Board of Directors. In the event the Secretary-Treasurer is absent for some reason from any meeting where minutes are to be prepared or is otherwise unable to take such minutes, the presiding officer of such meeting shall appoint another person, subject to the approval of those present and entitled to vote at such meeting, to take the minutes thereof. The Secretary-Treasurer shall have custody of the Corporation funds and securities, shall keep full and accurate account of receipts and disbursements in the appropriate Corporation books, and shall require the deposit of all monies and other valuable assets in the name of and to the credit of the Corporation in such financial institutions as may be designated by the Board of Directors. The Secretary-Treasurer shall require disbursement of the funds of the Corporation as may be ordered by the Board of Directors, and shall render to the President and the Board of Directors, at any time they may require, an account of his or her transactions as Secretary-Treasurer and of the financial condition of the Corporation. The Secretary-Treasurer shall also perform such other duties as may be assigned to him or her by the Board of Directors or by the President, under whose supervision he shall act.

Section 4.05. *Removal.* The Board of Directors may remove any officer at any time with or without cause.

Section 4.06. *Vacancies.* Any vacancies occurring in the offices of the President, Vice President, Secretary-Treasurer shall be filled by the Board of Directors as soon as practicable. Vacancies in other offices may be filled at the discretion of the Board of Directors.

Section 4.07. *Delegation of Powers and Duties.* In case of the absence of any officer of the Corporation, or for any reason that the Board of Directors may deem sufficient, the Board of Directors may delegate the powers of such officer to any other officer or to any Director for the time being.

Section 4.08. *Indemnification.* With respect to claims or liabilities arising out of service as an officer of the Corporation, the Corporation shall indemnify and advance expenses to each present and future 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.

SECTION 5 – RECORDS AND REPORTS

Section 5.01. *Corporate Records.* The Corporation shall keep as permanent records minutes of all meetings of its members and Board of Directors, a record of all actions taken by the members or Board of Directors without a meeting, appropriate accounting records, and a list of its members in alphabetical order by class showing their respective addresses and the number of votes each member is entitled to vote.

Section 5.02. *Records at Principal Office.* The Corporation shall keep at all times a copy of the following records at its principal office:

- (a) Its Charter or Restated Charter and all amendments thereto;
- (b) These Bylaws and all amendments thereto;
- (c) Resolutions adopted by the Board of Directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members;
- (d) The minutes of all meetings of members and the records of all actions taken by members without a meeting for the past three (3) years;
- (e) All written communications to members generally within the past three (3) years, including the past three (3) years' annual financial statements;
- (f) A list of the names and business or home addresses of its current Directors and officers; and
- (g) The most recent annual report delivered to the Tennessee Secretary of State.

Section 5.03. *Annual Financial Statements.* The Corporation shall prepare annual financial statements that include a balance sheet as of the end of the fiscal year, an income statement for that year, and such other information necessary to comply with the requirements of the applicable provisions of the Act.

SECTION 6 – MISCELLANEOUS PROVISIONS

Section 6.01. *Fiscal Year.* The fiscal year of the Corporation shall be July 1 through June 30.

Section 6.02. *No Seal.* The Corporation shall have no seal.

Section 6.03. *Notices.* Whenever notice is required to be given to Directors or officers, unless otherwise provided by law, the Charter or these Bylaws, such notice may be given in person, or by telephone, telegraph, teletype or other form of wire or wireless communication, or by mail or private carrier or by electronic mail. If such notice is given by mail, it shall be sent postage prepaid by first class United States mail or by registered or certified United States mail, return receipt requested, and addressed to the respective address that appears for each such person on the books of the Corporation. Written notice shall be deemed to have been given at the earliest of the following:

- (a) When received;
- (b) Five (5) days after its deposit in the United States mail if sent first class, postage prepaid; or
- (c) On the date on the return receipt, if sent by registered or certified United States mail, return receipt requested, postage prepaid and the receipt is signed by or on behalf of the addressee.

Section 6.04. *Waiver of Notice.* Whenever any notice is required to be given under the provisions of any statute, or of the Charter or these Bylaws, a waiver thereof in writing signed by the person entitled to such notice, whether before or after the date stated thereon, and delivered to the Secretary of the Corporation and included in the minutes or corporate records, shall be deemed equivalent thereto.

Section 6.05. *Negotiable Instruments.* All checks, drafts, notes or other obligations of the Corporation shall be signed by such of the officers of the Corporation, or by such other person(s), as may be authorized by the Board of Directors.

Section 6.06. *Deposits.* The monies of the Corporation may be deposited in the name of the Corporation in such bank(s) or financial institution(s) as the Board of Directors shall designate from time to time and shall be drawn out by check signed by the officer(s) or person(s) designated by resolution adopted by the Board of Directors.

SECTION 7 – NONPROFIT OPERATION

Section 7.01. *Interest or Dividends on Capital Prohibited.* The Corporation shall at all times be operated on a cooperative non-profit basis for the mutual benefit of its patrons. No interest or dividends shall be paid or payable by the Corporation on any capital furnished by its patrons.

Section 7.02. *Disposition of Revenues; Distribution of Excess.* With respect to the Corporation's furnishing of sewer service, the revenues therefrom for any fiscal year, in excess of the amount thereof necessary:

- (a) to defray expenses of the Corporation, including the operation and maintenance of its facilities during such fiscal year;
- (b) to pay interest and principal obligations of the Corporation coming due in such fiscal year;
- (c) to finance, or to provide a reserve to finance, the construction or acquisition by the Corporation of additional facilities to the extent determined by the Board;
- (d) to provide a reasonable reserve for working capital;
- (e) to provide a reserve for the payment of indebtedness of the Corporation maturing more than one year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following year; and
- (f) to comply with any covenant or obligation of the Corporation pursuant to any contract in which it has entered;

Shall be distributed or credited by the Corporation to patrons:

- (a) as patronage refunds prorated in accordance with the patronage of the Corporation by the respective patrons paid for during or with respect to such fiscal year; or
- (b) by way of general reductions of rates or other charges; or
- (c) by any combination of such methods.

Section 7.03. *Use of Contributed Capital.* The primary purpose of the Corporation is to furnish its patrons with sewer service at the lowest rates and charges consistent with prudent management and sound economy. Therefore, all amounts received and receivable from the furnishing of sewer service to patrons, members and non-members alike, in excess of operating costs and expenses properly chargeable thereto are at the moment of receipt by the Corporation received with the understanding that they are furnished by the patrons as capital. Capital contributed by the patrons shall be used only for capital purposes, including, without limitation, new sewer system improvements, the retirement of sewer system indebtedness at or prior to maturity, and working capital adequate for all purposes, and for facilitation of general rate reductions.

Section 7.04. *Ascertainment of Contributed Capital.* The Corporation shall maintain such books and records as will enable it at any time, upon reasonable notice, to compute the amount of capital contributed during any given accounting period by each of its patrons.

Section 7.05. *Contract.* The patrons of the Corporation, by dealing with the Corporation, acknowledge that the provisions of this Section of the Bylaws shall constitute and be a contract between the Corporation and non-member patrons, and both the Corporation and such patrons are bound by such contract as fully as though each patron had individually signed a separate instrument containing such terms and provisions. The provision of this Section of the Bylaws shall be called to the attention of such patrons by being posted in the Corporation's offices.

SECTION 8 - WAIVER OF NOTICE

Any member or director may waive, in writing, any notice of meetings required to be given by these Bylaws or any notice that may otherwise be legally required, either before or after such notice is required to be given.

SECTION 9 - RULES OF ORDER

Parliamentary procedure at all meetings of the members, of the Board of Directors, of any committee provided for in these Bylaws and of any other committee of the members or Board of Directors which may from time to time be duly established shall be governed by the most recent edition of Robert's Rules of Order, except to the extent such procedure is otherwise determined by law or by the Corporation's Charter or Bylaws. This Article shall be subordinate to any other provision of these Bylaws pertaining to the votes required for action by members, directors or committees.

SECTION 10 - RATES AND RULES AND REGULATIONS

The Board of Directors shall set the Corporation's rates and charges for sewer service and shall establish the rules and regulations governing the provision of sewer service by the Corporation. The Corporation's rates and charges and rules and regulations governing the provision of sewer services on the effective date of these Bylaws are attached as Appendix A to these Bylaws. The Board of Directors may change, alter and amend the rates and charges for sewer service and the

rules and regulations governing the provision of sewer service at any time. The Corporation's rates and charges for sewer service and the rules and regulations governing the provision of sewer services shall become a part of every contract with any patron receiving sewer service from the Corporation.

SECTION 11 – AMENDMENT OF BYLAWS

Section 11.01. *By Members.* The Members may amend or repeal these Bylaws at any annual or special meeting of the members where a quorum is present, provided that the notice of such meeting shall state that the purpose, or one (1) of the purposes, of the meeting is to amend the Bylaws and shall also contain a description of the amendment to be considered. An amendment to these Bylaws must be approved by the members by the lesser of: (a) two-thirds (2/3) of the votes cast, or (b) a majority of the total number of votes entitled to be cast. These Bylaws may also be amended by the members without a meeting in the same manner as provided therefor herein, except that such action to amend must be by: (a) two-thirds (2/3) of the votes cast, or (b) a majority of the total number of votes entitled to be cast, whichever is less.

Section 11.02. *By Board of Directors.* By a majority vote of the Directors then in office, the Board of Directors may amend these Bylaws, including bylaws adopted by the members, at any regular or special meeting of the Board of Directors where a quorum is present, provided that such meeting is preceded by at least two (2) days' notice to each Director of the date, time and place of the meeting. Such notice shall also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the Bylaws, and shall contain or be accompanied by a copy or summary of the proposed amendment or state the general nature thereof. These Bylaws may also be amended by the Directors without a meeting in the same manner as provided therefor herein, except that such action to amend must be by a majority vote of the Directors then in office.