



BRADLEY ARANT
BOULT CUMMINGS
LLP

Henry Walker
Direct: 615.252.2363
Fax: 615.252.6363
hwalker@babco.com

May 25, 2012

Kenneth Hill, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

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Re: Petition of Berry's Chapel Utility, Inc. to Transfer Authority *Nunc Pro Tunc*
Docket No. 1200046

Dear Chairman Hill:

Enclosed please find the original and thirteen copies of a petition of Berry's Chapel Utility, Inc. to transfer authority *nunc pro tunc*.

Also enclosed is our check in the amount of \$25.00, payable to the Tennessee Regulatory Authority for the filing fee.

I have also sent a copy of this petition to the Office of the Attorney General, Consumer Advocate and Protection Division.

Sincerely,



Henry Walker

HW/jhh
Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 25, 2012

IN RE:

**PETITION OF BERRY'S CHAPEL
UTILITY, INC. TO TRANSFER
AUTHORITY *NUNC PRO TUNC***

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PETITION TO TRANSFER AUTHORITY *NUNC PRO TUNC*

Pursuant to T.C.A. § 65-4-113, Berry's Chapel Utility, Inc. ("Berry's Chapel" or "BCUI") petitions the Tennessee Regulatory Authority to transfer the authority to provide utility service formerly held by Lynwood Utility Corporation ("Lynwood") to Berry's Chapel and asks that the transfer be approved *nunc pro tunc* effective September 1, 2010, the date when Lynwood merged into Berry's Chapel and Berry's Chapel took over the operation of Lynwood's sewer treatment and collection system.

Following the merger on September 1, 2010, Lynwood ceased to exist. On September 17, 2010, Berry's Chapel notified the Authority of the merger and also explained that Berry's Chapel, as a nonprofit corporation, was a "nonutility" under Tennessee law and not subject to the jurisdiction of the Authority.¹ Effective June 6, 2011, the Tennessee General

¹ See Docket 11-00005, Final Order, page 1 and footnote 1. Attached to the Order in Docket 11-00005 are copies of relevant documents concerning the creation of BCUI and the merger of Lynwood into BCUI. Berry's Chapel asks that the Authority take administrative notice of the Order and all filings in that docket.

Assembly amended the TRA's jurisdiction to include Berry's Chapel as a regulated public utility. See Chapter 430 of the Public Acts of 2011.

The issue of whether BCUI was a regulated company under the TRA's jurisdiction between September 1, 2010 and June 6, 2011, is now pending before the Tennessee Court of Appeals.² It is not disputed, however, that Berry's Chapel is today a public utility subject to the Authority's jurisdiction and has been so at least since June 6, 2011. Therefore, BCUI asks that the operating authority formerly held by Lynwood be transferred to Berry's Chapel *nunc pro tunc*, effective September 1, 2010.

T.C.A. § 65-4-113(b) requires that the Authority approve of the transfer of operating authority from a public utility to a new entity. The statute states:

(b) Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

BCUI has owned and operated Lynwood's collection and treatment facility since September 1, 2010 and holds TDEC Permit No. NPDESTN0029718 to operate that system. The utility has also filed a petition for an increase in rates (TRA Docket 11-00198) which is now pending before the Authority. The testimony and exhibits filed with the rate petition describe the carrier's ability to provide wastewater services, its current financial situation and current

² The Authority ruled on August 5, 2011 in Docket 11-00005 that Berry's Chapel remained a regulated public utility during this period. BCUI has appealed the Order and the matter is now pending before the Tennessee Court of Appeals. In filing this petition, BCUI expressly preserves its right to continue to argue that the company was unregulated from September 6, 2010 until June 6, 2011.

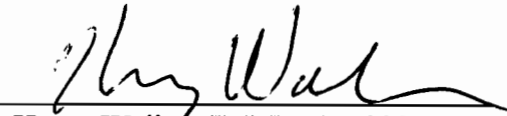
management team.³ The company's future financial stability hinges on the result of the rate case. Berry's Chapel is also committed to maintaining a management team that will insure its efficient operations and is willing to include such conditions and restrictions in the certificate which the Authority finds are necessary to accomplish that goal. BCUI is unaware of any other entity which is willing to take over the ownership and operation of this system. Therefore, approval of this transfer, subject to such conditions as the Authority finds appropriate, will serve the public interest.

Because of the unusual circumstances under which this matter arises and the carrier's need for immediate financial relief, BCUI asks that this transfer petition be placed before the agency at its next conference on June 8, 2011.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

By:



Henry Walker (B.P.R. No. 000272)
Bradley Arant Boulton Cummings, LLP
1600 Division Street, Suite 700
Nashville, TN 37203
Phone: 615-252-2363
Email: hwalker@babbc.com

Attorney for Berry's Chapel

³ BCUI asks that the Authority take administrative notice of the record in Docket 11-00198.