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BEFORE THE TENNESSEE REGULATORY AUTHORITY

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IN RE:

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

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T.R.A. DOCKET ROOM

DOCKET # 12-00046

AGREEMENT REGARDING THE NECESSARY CONDITIONS

ON THE TRANSFER

OF CERTIFICATE OF CONVENIENCE AND NECESSITY

Comes now the Tennessee Regulatory Authority staff participating as a party ("staff") and Berry's Chapel Utility, Inc. ("BCUI") who respectfully requests that the Tennessee Regulatory Authority ("Authority") impose certain conditions on the transfer of Lynwood Utility Corporation's ("Lynwood") Certificate of Convenience and Necessity ("CCN") to BCUI. Staff avers that these conditions are necessary given BCUI's status as a small non-profit corporation operating a wastewater treatment system.

I. Basis for Agreement

1. Lynwood was a wastewater treatment system operating in Williamson County, Tennessee.
2. On September 1, 2010, Lynwood was merged with BCUI. Since the merger Lynwood ceased to exist and BCUI has operated the system.
3. On September 17, 2010, the Authority received notice from counsel for BCUI that as a non-profit they were no longer subject to regulation by the Authority.
4. On June 6, 2011, TENN. CODE ANN. §65-4-101 was amended to explicitly state that BCUI and other similar companies were subject to regulation by the Authority.
5. On August 5, 2011, the Authority issued an Order declaring that BCUI was subject to regulation including for the time period from September 1, 2010 until June 6, 2011. This Order is currently the subject of an appeal to the Tennessee Court of Appeals.
6. Due the pendency of the appeal, multiple issues are not appropriate for determination by the Authority at this time. These issues include the appropriateness of any indebtedness incurred by BCUI.

7. Additionally, there are multiple open dockets involving BCUI including an investigation as to whether a show cause order should be issued against BCUI for violation of rules and statutes – the issue of whether BCUI must pay a refund for certain charges is included in this docket (11-0065), petition to approve alternate form of financial security (11-00174), a petition to recover costs to repair flood damage and to refund customer service fees (11-00180), and a petition to increase rates (11-00198).
8. Prior to this proceeding BCUI has never requested a CCN.
9. On May 25, 2012, BCUI filed a Petition to Transfer Authority Nunc Pro Tunc (“transfer petition”) seeking to have Lynwood’s CCN transferred retroactively to September 1, 2010. BCUI stated in the transfer petition that, notwithstanding its request to transfer authority, the company expressly preserved the right to continue its appeal of the Authority’s August 5, 2011, Order.
10. The Authority should not address the issues in the other dockets until a CCN has been issued to BCUI nor can the agency compel resolution of issues that are currently on appeal.


## II. Proposed Conditions on the Transfer

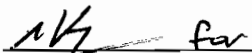
11. To ensure that BCUI’s Board of Directors will continually possess the technical and managerial expertise necessary to maintain utility operations BCUI shall develop a continuity plan comprising of a “management contract” for facility management, managerial, and accounting services that ensures the long term stability of utility operations.
  - a. Within thirty days of the Authority’s transfer of the CCN, BCUI will provide the Authority a draft copy of a management contract with a firm that will provide facility management, managerial and accounting services that ensure the long term stability of utility operations.
  - b. The contract shall be for a term of three years and shall provide for transparent accounting that complies with the generally accepted standards of regulatory accounting. Subject to the review by the Authority, whose employees shall review the contract and provide BCUI with any necessary changes within thirty days of the receipt of the draft contract.

- c. BCUI and its contract partner will execute the contract within fifteen days of receiving the Authority's changes.
  - d. The Authority's review will be solely to ensure that sufficient managerial, technical, and financial qualifications will be maintained for the term of the contract.
- 12. Within thirty days of their occurrence BCUI will file a summary of its Annual Meetings and Board of Directors meetings. Additionally, BCUI will file the minutes of its Annual Meetings upon ratification.
- 13. Prior to filing any petition to change rates or tariff BCUI will give not less than thirty days notice to its customers.
- 14. After entering the management contract BCUI will refrain from entering any construction, maintenance, service or other contracts without requesting bids from multiple suppliers except in circumstances requiring emergent action. In emergent situations BCUI will not enter into long term arrangements that extend past the period of emergency.
- 15. BCUI will submit to billing audits every three months beginning ninety days after the transfer of the CCN said audits to be conducted by the Authority. The Authority will audit that percentage of the billing records it deems necessary. After four such audits there will be two additional audits at six month intervals and then an annual audit for two additional years. BCUI expressly permits the billing information to be shared with the Consumer Advocate and Protection Division.
- 16. BCUI will provide a detailed description of their process for handling complaints within ninety days of the entry of this order. This description will reflect any changes from entering into the management contract.
- 17. BCUI shall give not less than thirty days notice to the Authority prior to all Annual Meetings.
- 18. BCUI will pay its annual inspection fees within one hundred twenty days of the transfer of the CCN.
- 19. BCUI will file its annual report within ninety days of the transfer of the CCN.

WHEREFORE, Staff and BCUI respectfully request that the Authority transfer Lynwood's CCN to BCUI subject to the proposed conditions.

Respectfully submitted,

  
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