

**NORTH CAROLINA UTILITIES COMMISSION
RALEIGH**

Docket No. W-1230, Sub 0 Exceptions Due on or Before December 23, 2009

NOTICE TO PARTIES

Parties to the above proceeding may file exceptions to the report and Recommended Order hereto attached on or before the day above shown as provided in G.S. 62-78. Exceptions, if any, must be filed (original and thirty (30) copies) with the North Carolina Utilities Commission, Raleigh, North Carolina, and a copy thereof mailed or delivered to each party of record, or to the attorney for such party, as shown by appearances noted. Each exception must be numbered and clearly and specifically stated in one paragraph without argument. The grounds for each exception must be stated in one or more paragraphs, immediately following the statement of the exception, and may include any argument, explanation, or citations the party filing same desires to make. In the event exceptions are filed, as herein provided, a time will be fixed for oral argument before the Commission upon the exceptions so filed, and due notice given to all parties of the time so fixed; provided, oral argument will be deemed waived unless written request is made therefor at the time exceptions are filed. If exceptions are not filed, as herein provided, the attached report and recommended decision will become effective and final on December 24, 2009 unless the Commission, upon its own initiative, with notice to parties of record modifies or changes said Order or decision or postpones the effective date thereof.

The report and Recommended Order attached shall be construed as tentative only until the same becomes final in the manner hereinabove set out.

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. W-1230, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Briar Chapel Utilities, LLC, for a Certificate of Public Convenience and Necessity to Provide Sewer Utility Service in Briar Chapel Subdivision in Chatham County, North Carolina, and for Approval of Rates.)))))))	RECOMMENDED ORDER GRANTING FRANCHISE, APPROVING STIPULATION, APPROVING RATES, AND REQUIRING CUSTOMER NOTICE
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HEARD IN: Briar Chapel Amenity Center, 1600 Briar Chapel Parkway, Chapel Hill, North Carolina, on October 27, 2009, at 7:00 p.m.

BEFORE: Hearing Examiner, Ronald D. Brown

APPEARANCES:

FOR BRIAR CHAPEL UTILITIES, LLC:

Karen M. Kemerait, Blanchard, Miller, Lewis & Styers, P.A., 1117 Hillsborough Street, Raleigh, North Carolina 27603

FOR THE USING AND CONSUMING PUBLIC:

William E. Grantmyre, Staff Attorney, Public Staff – North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699-4326.

BROWN, HEARING EXAMINER On June 12, 2008, Briar Chapel Utilities, LLC (Briar Chapel or BCU), filed an amended application for a certificate of public convenience and necessity to provide wastewater utility service and approval of rates for the Briar Chapel Subdivision service area in Chatham County, North Carolina, which includes the Herndon Woods Subdivision. Chatham County will provide the retail water service.

On February 12, 2009, BCU filed a Motion to Request Issuance of Temporary Operating Authority.

On August 27, 2009, the Commission issued an Order Granting Temporary Operating Authority, Approving Interim Rates, Scheduling Hearing, and Requiring Customer Notice. In the Order, the Commission accepted and approved the bond and surety; granted BCU Temporary Operating Authority; and approved the Schedule of Interim Rates for sewer utility service rendered by BCU in the Briar Chapel Subdivision service area for service rendered on and after the date of the Order. Pursuant to the

Schedule of Interim Rates, the Commission approved an interim monthly service flat rate of \$45 per REU and an interim connection fee of \$1,500 per REU.

On September 2, 2009, BCU filed the interim rate Undertaking.

On September 11, 2009, BCU filed the Certificate of Service indicating that customer notice had been given in accordance with the Commission's Order.

On October 16, 2009, the Public Staff filed a Notice of Affidavit and Affidavit of Calvin C. Craig, III, Financial Analyst with the Economic Research Division of the Public Staff.

On October 23, 2009, BCU filed a map, entitled "Briar Chapel Utilities, LLC Sewer Service Area (Phase 1 250,000 GPD)," that shows the service area that is the subject of BCU's application and will be served by the existing 250,000 wastewater treatment plant (WWTP).

On October 23, 2009, BCU filed a revised draft unexecuted Agreement between NNP-Briar Chapel, LLC and BCU dated September 2009.

On October 27, 2009, BCU and the Public Staff executed a Stipulation, which was filed with the Commission on November 2, 2009.

The public hearing was held as scheduled on October 27, 2009. Bill Mumford, Project Manager for Newland Communities – East Region, appeared on behalf of BCU. The Public Staff presented the testimony of Michelle Boswell and David Furr, and the Affidavit of Calvin Craig was admitted into evidence. One public witness testified at the hearing, and that witness requested confirmation that BCU would not require connection fees from residents of the Herndon Woods Subdivision. Mr. Mumford stated that BCU had waived connection fees for residents of the Herndon Woods Subdivision.

Based upon the amended application, the Commission's records, the testimony of witnesses at the public hearing, the evidence introduced at the hearing, the Stipulation of the parties, and the entire record in this matter, the Commission makes the following

FINDINGS OF FACT

1. This is the first franchise sought by BCU.
2. BCU is properly before the Commission seeking approval of a certificate of public convenience and necessity pursuant to N.C.G.S. § 62-110 to provide sewer utility service in the Briar Chapel Subdivision service area, which includes the Herndon Woods Subdivision, and approval of rates.

3. The Briar Chapel wastewater system will dispose of the wastewater effluent by land application as reclaimed water in various areas within the Briar Chapel Subdivision, which does not include a golf course. The wastewater system at build-out will consist of a 750,000 gpd WWTP, gravity and force collection mains, and effluent reclaimed water irrigation facilities to serve approximately 3,000 residential equivalent units (REUs).

4. The customer base will be primarily residential, but there will also be two schools, offices, and commercial customers. Currently there are approximately 66 residential customers and one school receiving wastewater utility service. BCU began charging these customers for the wastewater utility service upon issuance of the Commission's August 27, 2009 Order Granting Temporary Operating Authority, Approving Interim Rates, Scheduling Hearing, and Requiring Public Notice.

5. The existing wastewater utility system includes a 250,000 gpd WWTP, a collection system for 1,160 residential units, one charter school, and a spray irrigation system for the effluent reclaimed water, as approved by the Division of Water Quality of the North Carolina Department of Environment and Natural Resources (DWQ).

6. BCU is a wholly owned subsidiary of NNP-Briar Chapel, LLC (NNP-Briar Chapel), the developer of the Briar Chapel Subdivision. BCU plans to purchase the Briar Chapel wastewater utility system from its parent company NNP-Briar Chapel. The developer, NNP-Briar Chapel, LLC, will contribute 80% of the original cost of the entire wastewater utility system serving all present and future phases of the Briar Chapel Subdivision, including the effluent reclaimed water irrigation facilities. The purchase price paid BCU to NNP-Briar Chapel for the entire wastewater utility system serving all present and future phases of Briar Chapel Subdivision, including the effluent reclaimed water irrigation facilities, will be 20% of NNP-Briar Chapel's total construction cost.

7. BCU has the technical, managerial, and financial capability to provide sewer utility service in the Briar Chapel Subdivision service area, including the Herndon Woods Subdivision.

8. The quality of wastewater utility service provided to date by BCU has been satisfactory.

9. In its revised application, BCU applied for the following wastewater rates:

Monthly Service Flat Rate	\$65 per REU
Connection Fee	\$1,500 per REU.

10. BCU and the Public Staff agreed in the Stipulation that the Commission approved wastewater rates should be:

Monthly Service Flat Rate	\$45 per REU
Connection Fee	\$1,500 per REU.

11. In the future, BCU, at its option, may apply to the Commission for an increased connection fee. Any future increase in connection fee will not modify the requirement for the developer, NNP-Briar Chapel, to contribute 80% of the wastewater utility system capital costs.

12. In the Stipulation, BCU agreed that NNP-Briar Chapel will provide NNP-Briar Chapel's federal income tax returns for the years 2009, 2010, 2011, and 2012 to the Public Staff for review within 60 days of filing with the IRS

13. BCU has filed all exhibits required for the certificate of public convenience and necessity (CPCN).

14. The service area for which this CPCN is issued, that is to be served by the existing 250,000 gpd WWTP, is shown on the map entitled Briar Chapel Utilities, LLC Sewer Service Area (Phase 1 250,000 GPD), filed with the Commission on October 23, 2009.

Based upon the amended application and the entire record in this proceeding, the Hearing Examiner is of the opinion that the bond and surety filed by BCU should be accepted and approved; that the Stipulation executed by BCU and the Public Staff should be approved; that the sewer utility franchise requested by BCU should be granted; and that the agreed-upon rates are just and reasonable and should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the Stipulation entered into by BCU and the Public Staff is hereby approved.

2. That the \$50,000 bond and surety filed by BCU for the Briar Chapel Subdivision (including Herndon Woods Subdivision) is accepted and approved.

3. That BCU is granted a certificate of public convenience and necessity to provide sewer utility service in the Briar Chapel Subdivision service area in Chatham County, North Carolina, including the Herndon Woods Subdivision.

4. That Appendix A constitutes the Certificate of Public Convenience and Necessity.

5. That the Schedule of Rates, attached as Appendix B, is approved for sewer utility service rendered by the BCU in the Briar Chapel Subdivision service area, including the Herndon Woods Subdivision. The Schedule of Rates is authorized to become effective for service rendered on and after the date of this Order.

6. That the Notice to Customers, attached as Appendix C, be mailed with sufficient postage or hand delivered by BCU to all customers, including the residents in the Herndon Woods Subdivision, not later than 10 days after the date of this Order; and that BCU submit to the Commission the attached Certificate of Service properly signed and notarized no later than 15 days after the date of this Order.

7. That BCU will file with the Commission the fully executed Agreement between NNP–Briar Chapel and BCU no more than 20 days after the date of this Order.

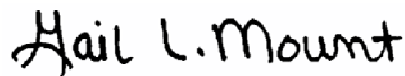
8. That BCU shall file with the Commission a copy of the executed and recorded Effluent Easement and Irrigation Agreement no more than 30 days after the date of this Order.

9. That NNP- Briar Chapel will provide to the Public Staff for review within 60 days of filing with the IRS, NNP–Briar Chapel's federal income tax returns for the years 2009, 2010, 2011, and 2012.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of December, 2009.

NORTH CAROLINA UTILITIES COMMISSION

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

Gail L. Mount, Deputy Clerk

rb120309.01

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

APPENDIX A

DOCKET NO. W-1230, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

BRIAR CHAPEL UTILITIES, LLC

is granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide sewer utility service

in

BRIAR CHAPEL SUBDIVISION SERVICE AREA
(Including HERNDON WOODS SUBDIVISION)

Chatham County, North Carolina

subject to any orders, rules, regulations,
and conditions now or hereafter lawfully made
by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of December, 2009.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

SCHEDULE OF RATES

for

BRIAR CHAPEL UTILITIES, LLC

for providing sewer utility service in

BRIAR CHAPEL SUBDIVISION SERVICE AREA
(including HERNDON WOODS SUBDIVISION)

Chatham County, North Carolina

Monthly Flat Rate for Sewer Service: \$45.00 per REU ^{1/}

Connection Fee: \$1,500.00 per REU ^{1/}

Reconnection Charges:

If sewer service cut off by utility for good cause Actual Cost ^{2/}

Returned Check Charge: \$20.00

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency: Shall be monthly for service arrears

Finance Charges for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

^{1/} REU is one Residential Equivalent Unit

^{2/} Briar Chapel Utilities shall itemize the estimated cost of disconnecting and reconnecting the service and shall provide this estimate to the customer with the cutoff notice **prior** to disconnection.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-1230, Sub 0, on this the 8th day of December, 2009.

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

APPENDIX C

NOTICE TO CUSTOMERS
DOCKET NO. W-1230, SUB 0
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Notice is given that the North Carolina Utilities Commission has issued an Order granting a Certificate of Public Convenience and Necessity to Briar Chapel Utilities, LLC to provide sewer utility service in the Briar Chapel Subdivision service area, which includes the Herndon Woods Subdivision, in Chatham County, North Carolina. The Commission has approved the following sewer rates, effective for service rendered on and after the date of this Order.

Residential Service:

Monthly Flat Rate per REU ^{1/}	\$45.00
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Nonresidential Service:

Monthly Flat Rate per REU ^{1/}	\$45.00
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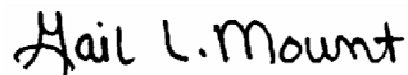
<u>Connection Fee per REU:</u> ^{1/}	\$1,500
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^{1/} REU is a residential equivalent unit

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of December, 2009.

NORTH CAROLINA UTILITIES COMMISSION



Gail L. Mount, Deputy Clerk

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Notice to Customers issued by the North Carolina Utilities Commission in Docket No. W-1230, Sub 0, and the Notice was mailed or hand delivered by the date specified in the Order.

This the _____ day of _____, 2009.

By:

Signature

Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required Notice to Customers was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-1230, Sub 0.

Witness my hand and notarial seal, this the _____ day of _____, 2009.

Notary Public

Address

(SEAL)

My Commission Expires:

Date