

BLANCHARD, MILLER, LEWIS & STYERS, P. A.

LAWYERS

PHILIP R. MILLER, III*
E. HARDY LEWIS
M. GRAY STYERS, JR.*
KAREN M. KEMERAIT
STEPHON J. BOWENS

CHARLES F. BLANCHARD
DEBORAH K. ROSS*
OF COUNSEL

FILED

NOV 09 2009

Clerk's Office
N.C. Utilities Commission

1117 HILLSBOROUGH STREET
RALEIGH, NORTH CAROLINA 27603

TELEPHONE (919) 755-3993
FACSIMILE (919) 755-3994
WEBSITE: www.bmlslaw.com
*CERTIFIED SUPERIOR COURT MEDIATORS

WRITER'S DIRECT

TELEPHONE (919) 747-8102

E-MAIL: kkemerait@bmlslaw.com

November 9, 2009

OFFICIAL COPY

Renne Vance, Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

HAND DELIVERED

RE: Briar Chapel Utilities, LLC
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
Docket No. W-1230, Sub 0

Dear Ms. Vance:

Please find enclosed for filing in the above-referenced docket, one original and thirty (30) copies of the **Joint Recommended Order Granting Franchise, Approving Stipulation, Approving Rates, and Requiring Customer Notice** in the above-referenced docket. Please also find enclosed with the filing a CD identified the same. We would appreciate your filing these documents and returning one "filed" stamped copy to me via our courier.

If you have any questions or comments, please do not hesitate to contact me.

Thank you in advance for your assistance and cooperation.

Sincerely,

Sherry Purvis

Sherry Purvis

Legal Assistant to Karen M. Kemeraït

skp

Enclosures

cc: All parties of record
Bill Grantmyre

CD to Amy
AG
Broom
Kite
Ac. dy.
Ed/Re
Wates

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

FILED

NOV 09 2009

**Clerk's Office
N.C. Utilities Commission**

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**

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.

BY THE HEARING OFFICER:

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 13, 2009, BCU filed a bond in the amount of \$50,000 and surety.

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 - North Carolina Utilities Commission ("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 CPCN.

14. The service area for which this certificate of public convenience and necessity 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 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 this Order is filed.
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 this Order is filed.
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 _____ day of November, 2009.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount, Deputy Clerk

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 PUBLIC CONVENIENCE AND NECESSITY

to provide sewer utility service

in

BRIAR CHAPEL SUBDIVISION, which includes 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 _____ day of _____, 2009.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount, Deputy Clerk

SCHEDULE OF RATES

for

BRIAR CHAPEL UTILITIES, LLC

for providing sewer utility service in

BRIAR CHAPEL SUBDIVISION, which includes 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 _____ day of _____, 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 <i>1/</i>	\$45.00
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Nonresidential Service:

Monthly Flat Rate per REU <i>1/</i>	\$45.00
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Connection Fee per REU <i>1/</i>	\$1,500
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*1/*REU is a residential equivalent unit

ISSUED BY ORDER OF THE COMMISSION.

This the _____ day of _____, 2009.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount, Deputy Clerk