

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 17, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Clapp, Kaproth, Rieger)
Office of the General Counsel (Klancke)

Handwritten initials and signatures: KK, CF, SDP, JS, CMK, and other illegible marks.

RE: Docket No. 080167-WS – Application for authority to transfer water and wastewater systems of Cal Clair, Inc. d/b/a Breeze Hill Utility to Aqua Utilities Florida, Inc., request for amendment of Aqua Utilities Florida, Inc.'s Certificate Nos. 587-W and 506-S in Polk County, to include Cal Clair, Inc. d/b/a Breeze Hill water and wastewater territory, and request for cancellation of Cal Clair, Inc. d/b/a Breeze Hill's Certificate Nos. 598-W and 513-S.
County: Polk

AGENDA: 07/29/08 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080167.RCM.DOC

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Case Background

Cal Clair, Inc. d/b/a Breeze Hill Utility (Breeze Hill, seller, or utility) is a Class C water and wastewater utility serving approximately 1 general service and 122 residential customers in Polk County. The utility is located in an area of the South Florida Water Management District (SFWMD), which is not considered a water use caution area. The utility's operating income reported for 2007 is \$32,896 and \$36,650 for water and wastewater, respectively.

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Breeze Hill was granted Certificate Nos. 598-W and 513-S in 1998.¹ Two transfers of these certificates have subsequently been approved.²

On March 21, 2008, Aqua Utilities Florida, Inc. (AUF or buyer), submitted an application for transfer of the Breeze Hill water and wastewater systems to AUF and for the cancellation of Breeze Hill's certificates. AUF is a Class A utility providing water service to approximately 16,730 residential and 234 general service customers, and wastewater service to approximately 6,434 residential and 171 general service customers. The AUF's 2007 annual report shows total operating revenue of \$5,456,559 and \$3,093,735 and net operating income of (\$416,704) and (\$681,260) for water and wastewater, respectively.

This recommendation addresses the transfer of the Breeze Hill water and wastewater systems to AUF. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes.

¹ Order No. PSC-98-1550-FOF-WS, issued November 23, 1998, in Docket No. 971192-WS, In Re: Application for grandfather certificates to operate a water and wastewater utility in Polk County by Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities.

² Order No. PSC-01-1985-FOF-WS, issued October 5, 2001, in Docket No. 010801-WS, In re: Application for transfer of majority organizational control of Bieber Enterprises d/b/a Breeze Hill Utilities, Inc., holder of Certificates Nos. 598-W and 513-S in Polk County, from Paul E. Bieber to Terrance Hartigh. Order No. PSC-03-1114-PAA-WS, issued October 6, 2003, in Docket No. 030471-WS, In Re: Application for transfer of Certificate Nos. 598-W and 513-S in Polk County from Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities to Cal Clair, Inc. d/b/a Breeze Hill Utility.

Discussion of Issues

Issue 1: Should the transfer of the Breeze Hill systems to AUF, the amendment of AUF's Certificate Nos. 587-W and 506-S, and the cancellation of Certificate Nos. 598-W and 513-S be approved?

Recommendation: Yes. The transfer of the Breeze Hill systems to AUF is in the public interest and should be approved. Certificate Nos. 587-W and 506-S should be amended to include the Breeze Hill service area and Certificate Nos. 598-W and 513-S should be cancelled effective as of the date of the Commission vote. The resultant order should serve as AUF's water and wastewater certificates and should be retained by the buyer. The territory being transferred is described in Attachment A. The tariff pages reflecting the transfer should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, Florida Administrative Code. (Clapp, Rieger, Kaproth, Klancke)

Staff Analysis: As stated in the case background, AUF applied for a transfer of the Breeze Hill systems in Polk County to AUF on March 21, 2008. The closing on the sale of the utility facilities took place on June 14, 2007, subject to approval by the Commission as provided in Section 367.071(1), Florida Statutes.

All of the filing requirements for the application were completed on April 30, 2008. The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and Rule 25-30.037, Florida Administrative Code, pertaining to an application for the sale, assignment, or transfer of certificates of authorization. The territory being transferred is described in Attachment A. Pursuant to Rule 25-30.030, Florida Administrative Code, the application contained the requisite proof of noticing. No objections to the application were received by the Commission and the time for filing such objections has expired.

The application indicates that Breeze Hill has the water capacity to pump 100,000 gallons per day (gpd) and wastewater treatment capacity to process 40,000 gpd. The application contains a statement that the buyer has performed a reasonable investigation of the utility systems and found the overall condition to be satisfactory and in general compliance with the requirements of the Florida Department of Environmental Protection (DEP). Staff has contacted DEP and verified that there are currently no outstanding notices of violation. In addition, staff has contacted SFWMD and the Polk County health department concerning the status of the utility. Both entities found that the utility systems were satisfactory and in compliance with their respective regulations.

According to the application, AUF has the necessary financial and technical ability to provide adequate, safe, and reliable water and wastewater service to the Breeze Hill customers. The buyer is a wholly-owned subsidiary of Aqua America, Inc., the largest publicly traded water and wastewater utility based in the United States, which provides service to more than 800,000 customers in thirteen states. Aqua America, Inc. has substantial economies of scale through mass purchasing of certain goods and the provision of centralized services. The Breeze Hill customers will benefit from the economies of scale of AUF's parent company, Aqua America, Inc. AUF was granted Certificate Nos. 587-W and 506-S as a Class A utility in a transfer docket

in 2005.³ The application included executed and recorded copies of a special warranty deed and an assignment and grant of easement.

Pursuant to Section 367.071, Florida Statutes, the Commission may set rate base in transfer dockets. Rate base was last set for Breeze Hill at \$68,257 and \$45,552 for water and wastewater, respectively, as of December 31, 2001.⁴ The 2006 Breeze Hill annual report reflects rate base, excluding working capital, of \$55,861 and \$41,853 for water and wastewater, respectively.

Pursuant to Rule 25-30.0371, Florida Administrative Code, a negative acquisition adjustment shall not be included in rate base unless there is proof of extraordinary circumstances or where the purchase price is less than 80 percent of net book value. The purchase price for Breeze Hill (\$95,000) is greater than 80 percent of the estimated net book value (\$97,714) and there do not appear to be any extraordinary circumstances that would justify a negative acquisition adjustment; therefore, no acquisition adjustment should be made.

Staff discussed with the buyer the need to obtain from the seller all records pertaining to utility plant in service and depreciation for the water and wastewater utility since rate base was last set so that the buyer will have supporting documentation for rate base in any future rate proceeding. The buyer understands the need to obtain this information and has made every effort to collect this information.

Breeze Hill has no outstanding regulatory assessment fees (RAFs), and no fines or refunds are owed. Breeze Hill paid the 2007 RAFs for January 1, 2007 through June 14, 2007. AUF paid the RAFs for June 15, 2007 through December 31, 2007. AUF will be responsible for the 2008 RAFs. Breeze Hill filed the 2006 annual report and no penalties and interest are owed. AUF included the Breeze Hill systems in its 2007 annual report and will be responsible for future annual reports.

Breeze Hill's rates and charges were established pursuant to Order No. PSC-02-1114-PAA-WS. Its current late payment charge was established in 2000.⁵ Rule 25-9.044(1), Florida Administrative Code, provides that in the case of a change of ownership or control of a utility, the rates, classifications, and regulations of the former owner must continue unless authorized to change by the Commission. The new owner has not requested a change; therefore, the existing rates and charges shown on Attachment B should continue in effect.

Based on the foregoing, staff recommends that the application for transfer of the Breeze Hill systems to AUF is in the public interest and should be approved. Certificate Nos. 587-W

³ Order No. PSC-05-1242-PAA-WS, issued December 20, 2005, in Docket No. 040951-WS, In re: Joint application for approval of sale of Florida Water Services Corporation's land, facilities, and certificates in Brevard, Highlands, Lake, Orange, Pasco, Polk, Putnam, and a portion of Seminole, Volusia, and Washington counties to Aqua Utilities Florida, Inc.

⁴ Order No. PSC-02-1114-PAA-WS, issued August 14, 2002, in Docket No. 011481-WS, In re: Application for staff-assisted rate case in Polk County by Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities, holder of Certificate Nos. 598-W and 513-S.

⁵ Order No. PSC-00-2165-TRF-WU, issued November 14, 2000, in Docket No. 001325-WU, In re: Request for approval of a tariff filing to establish a late payment charge in Polk County by Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities.

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and 506-S should be amended to include the Breeze Hill service area and Certificate Nos. 598-W and 513-S should be cancelled effective as of the date of the Commission vote. The resultant order should serve as AUF's water and wastewater certificates and should be retained by the buyer. The territory being transferred is described in Attachment A. The tariff pages reflecting the transfer should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, Florida Administrative Code.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, no further action will be necessary and this docket should be closed. (Klancke)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, no further action will be necessary and this docket should be closed.

TERRITORY DESCRIPTION

BREEZE HILL

POLK COUNTY

WATER AND WASTEWATER SERVICE

Township 30 South, Range 29 East

Section 32

The north 1,620 feet, east of Lake Walk in the Water Road, and west of Lake Walk in the Water Road, further described as:

Commence at the Northwest corner of said Section 32, thence North $89^{\circ}22'30.49''$ East, a distance of 130 feet, more or less, to the Point of Beginning (POB), this point also the east right-of-way of the Walk in the Water Road, thence continue North $89^{\circ}22'30.49''$ East, distance of 3,709.14 feet to the waters edge of Lake Walk in the Water, (this point also 3,839.14 feet from the Northwest corner of said Section 32), thence meander southerly and slightly westerly along the waters edge a distance of approximately 1,660 feet, more or less, thence run North $89^{\circ}58'44.5''$ West, a distance of 1,907.00 feet to the east right-of-way of Walk in the Water Road, thence northerly along the east right-of-way of Walk in the Water Road the following courses to the POB: thence North $44^{\circ}30'$ West, a distance of 1,950 feet, more or less, along the east right-of-way of Walk in the Water Road, thence North 40° West, a distance of 150 feet, more or less, along the east right-of-way of Walk in the Water Road, thence North 32° West, a distance of 130 feet, more or less, along the East right-of-way of Walk in the Water Road to the POB.

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

Aqua Utilities Florida, Inc.
pursuant to
Certificate Number 587-W

to provide water service in Polk County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-96-1568-FOF-WS	12/23/96	960989-WS	Grandfather Certificate
PSC-96-1568-A-FOF-WS	12/24/96	960989-WS	Amendatory
PSC-97-0376-FOF-WS	04/07/97	960909-WS	Grandfather Certificate
PSC-97-0427-FOF-WS	04/16/96	970028-WS	Name Change
PSC-98-0371-FOF-WS	03/06/98	961014-WS	Grandfather Certificate
PSC-98-1550-FOF-WS	11/23/98	971192-WS	Grandfather Certificate
PSC-99-0483-FOF-WS	03/08/99	981508-WS	Transfer of Majority Control
PSC-99-1882-PAA-WS	09/21/99	981697-WS	Transfer of Certificate
PSC-01-1985-FOF-WS	10/05/01	010801-WS	Transfer of Majority Control
PSC-03-1114-PAA-WS	10/06/03	030471-WS	Transfer of Certificate
PSC-04-0715-FOF-WS	07/21/04	040359-WS	Name Change
PSC-04-0859-FOF-WU	09/02/04	040484-WU	Amendment
PSC-05-1242-PAA-WS	12/20/05	040951-WS	Transfer of Certificate
PSC-06-0973-FOF-WS	11/22/06	060643-WS	Reorganization/Name Change
*	*	080167-WS	Transfer of Certificate

***Order Number and date to be provided at time of issuance.**

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

Aqua Utilities Florida, Inc.
pursuant to
Certificate Number 506-S

to provide wastewater service in Polk County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-96-1568-FOF-WS	12/23/96	960989-WS	Grandfather Certificate
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PSC-97-0376-FOF-WS	04/07/97	960909-WS	Grandfather Certificate
PSC-97-0427-FOF-WS	04/16/97	970028-WS	Name Change
PSC-98-0371-FOF-WS	03/06/98	961014-WS	Grandfather Certificate
PSC-98-1550-FOF-WS	11/23/98	971192-WS	Grandfather Certificate
PSC-99-0483-FOF-WS	03/08/99	981508-WS	Transfer of Majority Control
PSC-99-1882-PAA-WS	09/21/99	981697-WS	Transfer of Certificate
PSC-01-1985-FOF-WS	10/05/01	010801-WS	Transfer of Majority Control
PSC-03-1114-PAA-WS	10/06/03	030471-WS	Transfer of Certificate
PSC-04-0715-FOF-WS	07/21/04	040359-WS	Name Change
PSC-05-1242-PAA-WS	12/20/05	040951-WS	Transfer of Certificate
PSC-06-0973-FOF-WS	11/22/06	060643-WS	Reorganization/Name Change
*	*	080167-WS	Transfer of Certificate

***Order Number and date to be provided at time of issuance.**

Breeze Hill

Monthly Service Rates

Water Residential Service and General Service

Meter Size:	
5/8" x 3/4"	\$ 14.92
3/4"	22.39
1"	37.30
1 1/2"	74.60
2"	119.37
3"	238.73
4"	373.02
6"	746.05
Gallonge Charge per 1,000 gallons	\$2.60

Wastewater

Residential Service

All Meter Sizes	\$18.36
Per 1,000 Gallons	\$3.27
(6,000 Gallon Cap)	

General Service

Meter Size:	
5/8" x 3/4"	\$ 18.36
3/4"	27.55
1"	45.89
1 1/2"	91.81
2"	146.90
3"	293.83
4"	459.04
6"	918.08
Charge per 1,000 gallons	\$3.91

Miscellaneous Service Charges

	Water	Wastewater
	Normal Hours	Normal Hours
Initial Connection Fee	\$15.00	\$15.00
Normal Reconnection Fee	15.00	15.00
Violation Reconnection Fee	15.00	Actual Cost
Premises Visit Fee (in lieu of disconnection)	10.00	10.00
Late Payment Fee	4.00	

Service Availability Charges

	Water	Wastewater
Meter Installation Fee 5/8"x3/4"	\$190.00	N/A
Plant Capacity Charge		
Per ERC	\$400.00	\$600.00