

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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.

DOCKET NO. 010801-WS  
ORDER NO. PSC-01-1985-FOF-WS  
ISSUED: October 5, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

ORDER APPROVING TRANSFER OF  
MAJORITY ORGANIZATIONAL CONTROL AND CLOSING DOCKET

BY THE COMMISSION:

Background

On June 4, 2001, Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities (Breeze Hill or utility) filed an application with this Commission for approval of the transfer of majority organizational control of the utility from Paul E. Bieber (Seller) to Terrance Hartigh (Buyer). The Contract for Sale and Purchase was executed on November 21, 2000. The transfer and closing occurred on April 13, 2001, subject to this Commission's approval.

Breeze Hill was granted Certificates Nos. 598-W and 513-S by Order No. PSC-98-1550-FOF-WS, issued November 23, 1998, in Docket No. 971192-WS, pursuant to Rule 25-30.035, Florida Administrative Code. Breeze Hill is a Class C water and wastewater utility providing service to 116 residential customers and 1 general

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service customer in Polk County. The utility is located in the South Florida Water Management District.

#### Application

The application is in compliance with Section 367.071, Florida Statutes, and other pertinent Statutes and provisions of the Florida Administrative Code. In particular, the application contains the correct filing fee, as required by Rule 25-30.020, Florida Administrative Code. The application contains the utility's certificates which were returned for entry reflecting the change in control.

**Noticing** - The application contains evidence of compliance with the noticing requirements of Rule 25-30.030, Florida Administrative Code. One letter was received from a customer who was concerned about the effect of the transfer on the utility's rates and charges. On June 14, 2001, our legal staff contacted the customer and explained that the rates and charges do not change as a result of a transfer of majority organizational control. A follow-up letter was sent on June 16, 2001, asking for a response by July 6, 2001, if the customer wished to pursue the objection to the application and request a hearing. No response has been received. No other objections to the application have been received and the time for filing such has expired.

**Financing** - In accordance with Rules 25-30.037(3)(e) and (g), Florida Administrative Code, the application contains a statement describing the financing of the purchase, the entities providing funding to the Buyer, and an explanation of the manner and amount of such funding. Copies of the Contract, and Closing Statement and Disbursement Schedule, which describe the financing, were included with the application. According to information provided, 100 percent of utility stock was transferred from Mr. Bieber to Mr. Hartigh.

The total purchase price for the utility facilities, park infrastructure, and future lots was \$230,000, of which \$170,000 was for utility facilities. The Buyer paid \$101,000 in cash, credits, and a 1031 IRS Exchange. A 1031 IRS Exchange allows for the sale of one property to pay for the purchase of another property without having to pay any capital gains. The remaining \$69,000 is being

financed by a promissory note held by the Seller. The Buyer will pay the promissory note in 60 consecutive monthly payments at an interest rate of 7.5 percent per annum.

**Proof of Ownership** - The application contains a copy of a recorded warranty deed as evidence that the utility owns the land upon which its facilities are located, in accordance with Rule 25-30.037(3)(i), Florida Administrative Code.

**Annual Reports and Regulatory Assessment Fees (RAFTs)** - The utility is current on annual reports through 2000 and there are no outstanding fees, fines or refunds due. The Seller shall be responsible for paying all 2001 RAFTs accrued prior to the closing. The Buyer shall be responsible for filing the 2001 annual report for the period from January 1 through December 31, 2001, and remitting the 2001 RAFTs accrued after the closing.

**Environmental Compliance** - Pursuant to Rule 25-30.037(3)(h), Florida Administrative Code, the application contains a statement from the Buyer that, after reasonable investigation, the systems being transferred appear to be in satisfactory condition and in compliance with all standards set by the Florida Department of Environmental Protection (DEP).

Privately owned potable water systems in Polk County are regulated by the Polk County Health Department (PCHD). Wastewater service is regulated by the Southwest District of the DEP. We have confirmed with PCHD and DEP that the utility's systems are currently in compliance with both agencies' standards.

**Public Interest** - Pursuant to Rule 25-30.037(3)(f), Florida Administrative Code, the application contains a statement of how the transfer is in the public interest, including a summary of the Buyer's experience in water and wastewater operations and a showing of the Buyer's financial and technical ability to provide service. Although the Buyer has no prior utility experience, a licensed operator has been retained to oversee utility operations. In addition, the Seller has agreed to continue to work for a period of time as a technical advisor to the Buyer.

With regard to financial ability, the Buyer provided personal financial statements which indicate sufficient assets to maintain normal utility operations and provide for any emergency situations which may arise. The Buyer also provided a statement of intent to fulfill the commitments, obligations and representations of the Seller with regard to utility matters.

Rate Base - Rate base was last established for the utility by Order No. PSC-99-2394-FOF-WS, issued December 7, 1999, in Docket No. 990356-WS. It has been our practice not to establish rate base for transfers of majority organizational control because publicly traded stock has no regulatory relationship to rate base. Further, because rate base is not affected by stock transfers, it is not part of the determination that the transfer is in the public interest. In addition, it has been our practice that an acquisition adjustment in a stock transfer is not part of the determination of public interest. Therefore, we are not establishing rate base in this proceeding.

Based on the foregoing, we find that the transfer of majority organizational control of Breeze Hill from Paul E. Bieber to Terrance Hartigh is in the public interest and it is approved. Mr. Bieber shall be responsible for paying 2001 RAFs accruing prior to the closing. Mr. Hartigh shall be responsible for filing the 2001 annual report for the period January 1 through December 31, 2001, and paying the balance of the 2001 RAFs accruing after the date of closing. The territory the utility is authorized to serve is shown on Attachment A, which by reference is incorporated herein.

#### Rates and Charges

The utility's current rates and charges became effective August 14, 2000, pursuant to Order No. PSC-99-2394-FOF-WS, issued December 7, 1999, in Docket No. 990356-WS. The utility does not require customer deposits. However, its existing tariffs include standard charges for meter test deposits and miscellaneous services. In addition, a late payment fee of \$4 for water service was approved by Order No. PSC-00-2166-TRF-WU, issued December 13, 2000, in Docket No. 001325-WU. The utility's approved rates and charges are set forth below.

WATER

(Monthly Rates)

Residential and General Service

Base Facility Charge

Meter Size:

|             |           |
|-------------|-----------|
| 5/8" x 3/4" | \$ 11.83  |
| 3/4"        | \$ 17.75  |
| 1"          | \$ 29.58  |
| 1 1/2"      | \$ 59.16  |
| 2"          | \$ 94.66  |
| 3"          | \$ 189.32 |
| 4"          | \$ 295.81 |
| 6"          | \$ 591.61 |

Gallonage Charge

|                   |         |
|-------------------|---------|
| Per 1,000 Gallons | \$ 1.20 |
|-------------------|---------|

WASTEWATER

(Monthly Rates)

Residential Service

Base Facility Charge

Meter Size:

|                 |          |
|-----------------|----------|
| All Meter Sizes | \$ 12.65 |
|-----------------|----------|

Gallonage Charge

|                                      |         |
|--------------------------------------|---------|
| Per 1,000 Gallons (6,000 Gallon Cap) | \$ 1.75 |
|--------------------------------------|---------|

General Service

Base Facility Charge

Meter Size:

|             |           |
|-------------|-----------|
| 5/8" x 3/4" | \$ 12.65  |
| 3/4"        | \$ 18.97  |
| 1"          | \$ 31.61  |
| 1 1/2"      | \$ 63.23  |
| 2"          | \$ 101.17 |
| 3"          | \$ 202.33 |
| 4"          | \$ 316.14 |
| 6"          | \$ 632.28 |

Gallonage Charge

|                   |         |
|-------------------|---------|
| Per 1,000 Gallons | \$ 1.75 |
|-------------------|---------|

SERVICE AVAILABILITY CHARGES

|                           | <u>Water</u> | <u>Wastewater</u> |
|---------------------------|--------------|-------------------|
| Plant Capacity Charge     | \$ 400.00    | \$ 600.00         |
| Meter Installation Charge | \$ 190.00    | -                 |

Rule 25-9.044, Florida Administrative Code, requires the new owner of a utility to adopt and use the rates, classifications and regulations of the former owner unless authorized to change by this Commission in a subsequent proceeding. The Buyer has not requested to change the rates and charges and we see no reason to change them at this time. Mr. Hartigh shall continue to charge the rates and charges approved in Breeze Hill's tariff until authorized to change by this Commission in a subsequent proceeding. Mr. Hartigh has filed revised tariffs reflecting the change in issuing officer as a result of the transfer. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of majority organizational control of Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities, 152 Breeze Hill, Lake Wales, Florida 33853, from Paul E. Bieber, to Terrance Hartigh is hereby approved. The territory the utility is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that Terrance Hartigh shall continue to charge the rates and charges approved in Breeze Hill Utilities' tariffs until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that the tariffs reflecting the change in issuing officer as a result of the transfer of majority organizational control shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

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ORDERED that Paul E. Bieber shall be responsible for paying the 2001 regulatory assessment fees accrued up to the date of closing. Mr. Terrance Hartigh shall be responsible for filing the 2001 annual report for the period January 1 through December 31, 2001, and paying the 2001 regulatory assessment fees accruing after the date of closing. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 5th day of October, 2001.



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BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

ALC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.



TERRITORY DESCRIPTION  
BIEBER ENTERPRISE, INC. D/B/A BREEZE HILL UTILITIES

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, 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  $40^{\circ}30'$  West, a distance of 1,950 feet, more or less, along the east right-of-way of Walk in the Water Road, thence North  $40^{\circ}$  West, a distance of 150 feet, more or less, along the east right-of-way of Walk in the Water Road, thence North  $32^{\circ}$  West, a distance of 130 feet, more or less, along the East right-of-way of Walk in the Water Road to the POB.