

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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.

DOCKET NO. 030471-WS
ORDER NO. PSC-03-1114-PAA-WS
ISSUED: October 6, 2003

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER APPROVING 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
AND
NOTICE OF PROPOSED AGENCY ACTION APPROVING
RATE BASE AND DECLINING TO INCLUDE A POSITIVE
ACQUISITION ADJUSTMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein addressing the approval
of rate base and positive acquisition adjustment is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities (Bieber
or utility) is a Class C water and wastewater utility providing
service to 118 residential customers and 1 general service customer
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. According to its 2002 annual report, the

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FPSC-COMMISSION CLERK

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utility had combined gross revenues of \$52,828, with a combined net operating income of \$2,288.

Bieber was issued grandfather Certificate Nos. 598-W and 513-S pursuant to Order No. PSC-98-1550-FOF-WS, issued November 23, 1998, 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. By Order No. PSC-01-1985-FOF-WS, issued October 5, 2001, 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, we approved a transfer of majority control of the utility from Paul E. Bieber to Terrance Hartigh.

On March 16, 2003, Mr. Hartigh entered into a Contract for Sale and Purchase (sales contract) of the utility facilities with Cal Clair, Inc. d/b/a Breeze Hill Utility (Cal Clair or buyer). The effective date of the transfer was April 30, 2003, subject to our approval, and on May 30, 2003, an application was filed seeking our approval of the transfer of Bieber's facilities and certificates to Cal Clair.

Application and Transfer

The application as filed and amended is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules pertaining to an application for the sale, assignment, or transfer of a certificate of authorization, and contained the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant also returned Certificate Nos. 598-W and 513-S for modification as required by Rule 25-30.037(2)(t), Florida Administrative Code. 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. One objection in response to the notice was timely filed on June 24, 2003. The letter was from a customer of the utility who had several questions and concerns. On July 8, 2003, our legal staff sent the customer a follow-up letter asking the customer to respond

by July 28, 2003 as to whether he intended to pursue his objection and request a formal hearing. By letter dated July 21, 2003, the customer indicated that he did not. Meanwhile, our staff investigated each of the customer's concerns and, by letter dated August 13, 2003, addressed those questions and concerns.

As required by Rule 25-30.037(2)(g), (h), (i), and (k), Florida Administrative Code, the application contained a copy of the sales contract and a description of financing. The sales contract was part of a larger transaction which included non-utility property. The total purchase price was \$695,000 of which the sales contract indicated that \$200,000 was for the utility property.

The total amount financed was \$495,000 with the buyer assuming a \$100,000 mortgage balance owed by the seller. The seller is also providing financing to the buyer in the amount of a \$50,000 deferred payment note, and a recorded mortgage of \$345,000. Copies of the Mortgage Modification and Assumption Agreement, Promissory Notes, and Mortgage Deed were provided.

Rule 25-30.037(2)(q), Florida Administrative Code, requires proof that the utility owns or has provided for the continued use of the land upon which the utility facilities are located. As proof of ownership, a recorded warranty deed was provided transferring ownership of the parcel containing the utility facilities from Bieber to Cal Clair effective April 25, 2003.

We have verified that Bieber has paid RAFs through December 31, 2002, filed all annual reports through 2002, and that no interest, penalties, or refunds are due or outstanding as of December 31, 2002. The application indicated that the applicable RAFs for the period of January 1, 2003, through the effective date of the transfer on April 30, 2003, are the responsibility of Bieber. We have confirmed that Bieber has pre-paid these RAFs based on actual revenues from January 1 through April 30, 2003. The buyer, Cal Clair, will be responsible for the balance of 2003 RAFs from May 1, 2003 through December 31, 2003. Also, Cal Clair will be responsible for filing the utility's annual report for the entire year of 2003.

Pursuant to Rule 25-30.037(3)(h), Florida Administrative Code, the application contained a statement that Cal Clair believes the systems being acquired to be in satisfactory condition and in reasonable compliance with all standards set by the Department of Environmental Protection (DEP).

In Polk County, privately owned potable water systems are regulated by the Polk County Health Department (PCHD). Wastewater service is regulated by the Southwest District of the DEP. We have confirmed with both the PCHD and the DEP that the utility's water and wastewater systems are currently in environmental compliance with respect to both agencies' standards. We have also confirmed with SFWMD that there are no water use issues.

Pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, the application contained a statement indicating how the transfer is in the public interest. The statement included a summary of the buyer's experience and a showing of financial ability. In addition, Cal Clair provided a statement that it agrees to fulfill the commitments, obligations, and representations of the seller with regard to utility matters. The application further indicates that the President, Mr. Blake, met with customers of the utility and made a personal commitment to provide reliable service and to be responsive to any problems which may arise.

With regard to technical ability, Cal Clair has pledged to continue to provide water and wastewater service utilizing existing personnel to manage day to day operations. The existing DEP licensed operator will continue as operations manager with the former owners, Terrance Hartigh and Paul Bieber, staying on as advisors to Cal Clair. In addition, Mr. Blake has been in the development business for a number of years, and while he holds no prior Commission certificates, as part of his developments, Mr. Blake has built and operated utility facilities.

With regard to financial ability, the application contained Mr. Blake's financial statement which indicates sufficient net worth. While most of the assets are in real estate, the statement also indicates reasonable liquid reserves as well as the ability to attract financing.

Based on all the above, we find that the transfer of facilities and Certificate Nos. 598-W and 513-S from Bieber Enterprises d/b/a Breeze Hill Utilities to Cal Clair, Inc. d/b/a Breeze Hill Utility is in the public interest and therefore, shall be approved. The territory to be transferred is described in Attachment A. The buyer shall be responsible for filing the utility's 2003 annual report and remitting 2003 RAFs from May 1, 2003 through December 31, 2003, in the time frame and manner prescribed by Commission rules.

Rate Base

It is our practice to establish rate base as of the date of the transfer, which in this case is April 30, 2003. However, rate base as of December 31, 2001, was recently established for this utility by Order No. PSC-02-1114-PAA-WS, issued August 14, 2002, 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.

The utility's 2002 annual report has been examined, and no plant additions subsequent to December 31, 2001 have been found. The only adjustment in the utility's 2002 annual report was the reduction of water and wastewater rate base by \$650.00 for each service to retire transportation equipment. Therefore, for purposes of the transfer, we find it appropriate to use the rate base established in the utility's recent staff-assisted rate case (SARC).

It should be noted that the SARC included a negative used and useful adjustment to wastewater rate base adjustment in the amount of \$54 and working capital allowances of \$2,275 for water, and \$3,182 for wastewater. Adjustments for used and useful and working capital are not typically made for purpose of setting rate base at the time of transfer. Therefore, the calculation of an acquisition adjustment is shown below with and without these adjustments.

Accordingly, the rate base for transfer purposes shall be the rate base established as of December 31, 2001, in the utility's most recent SARC. The rate base calculations approved in the SARC Order are attached as Schedules 1 and 2. Based on these schedules,

we have established rate base of \$68,257 for water and \$45,552 for wastewater as of December 31, 2001.

Positive Acquisition Adjustment

An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. As noted above, the calculation of an acquisition adjustment is shown below first with, and then without, the inclusion of the used and useful adjustment and working capital allowances.

Purchase Price	\$200,000
Commission Established Rate Base	<u>113,809</u>
Positive Acquisition Adjustment	\$ 86,191

The acquisition adjustment, excluding a negative \$54 wastewater used and useful adjustment and \$2,275 water and \$3,182 wastewater working capital allowance, is calculated as follows:

Purchase Price	\$200,000
Commission Established Rate Base less used and useful adjustment and working capital allowance	<u>108,406</u>
Positive Acquisition Adjustment	\$ 91,594

Pursuant to Rule 25-30.0371, Florida Administrative Code, a positive acquisition adjustment shall not be included in rate base absent proof of extraordinary circumstances. The buyer has neither requested an acquisition adjustment nor identified any extraordinary circumstances. Therefore, a positive acquisition adjustments shall not be included in the calculation of rate base for transfer purposes.

Rates and Charges

Rule 25-9.044(1), Florida Administrative Code, provides that:

In case of change of ownership or control of a utility which places the operation under a different or new utility, or when its name is changed, the company which will thereafter operate the utility business must adopt

and use the rates, classifications and regulations of the former operating company unless authorized to change by the commission.

The utility's current water and wastewater rates were established August 14, 2002, pursuant to Order No. PSC-02-1114-PAA-WS, and have been adjusted once pursuant to a 2002 price index. The utility's service availability charges were established by Order No. PSC-99-2394-FOF-WS, issued December 7, 1999, Docket No. 990356-WS, In Re: Application for staff-assisted rate case in Polk County by Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities. The utility does not require customer deposits, but has our standard meter test deposits and miscellaneous service charges and a late payment fee of \$4.00. The existing rates and charges are set forth below.

MONTHLY RATES - WATER
RESIDENTIAL & GENERAL SERVICE

<u>Meter Sizes</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 14.22
3/4"	\$ 21.33
1"	\$ 35.54
1 1/2"	\$ 71.09
2"	\$113.74
3"	\$227.48
4"	\$355.44
6"	\$710.88
<u>Gallonge Charge</u>	
Per 1,000 gallons	\$ 2.48

MONTHLY RATES - WASTEWATER
RESIDENTIAL

All Meter Sizes	\$ 16.28
<u>Gallonge Charge</u>	
Per 1,000 Gallons (6,000 gallon cap)	\$ 2.90

MONTHLY RATES - WASTEWATER
GENERAL SERVICE

<u>Meter Sizes</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 16.28
3/4"	\$ 24.43
1"	\$ 40.71
1 1/2"	\$ 81.43
2"	\$130.29
3"	\$260.61
4"	\$407.14
6"	\$814.28

<u>Gallonage Charge</u>	
Per 1,000 Gallons	\$ 3.47

SERVICE AVAILABILITY CHARGES

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

We find that the existing rates and charges for the utility shall be continued until authorized to change in a subsequent proceeding. The tariff sheets reflecting the transfer shall be effective for services rendered or connections made on or after the stamped approval date.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of Certificate Nos. 598-W and 513-S from Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities to Cal Clair, Inc. d/b/a Breeze Hill Utility is in the public interest and shall be approved. The territory authorized for Certificate Nos. 598-W and 513-S is described in Attachment A. It is further

ORDERED that the buyer shall be responsible for filing the utility's 2003 annual report and remitting regulatory assessment fees from May 1, 2003 through December 31, 2003 in the time-frame and manner prescribed by Commission rules. It is further

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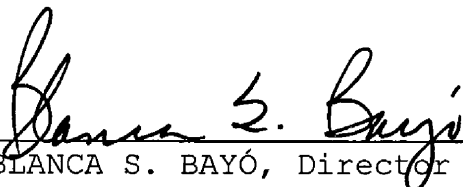
ORDERED that rate base shall be \$68,257 for water and \$45,552 for wastewater as of December 31, 2001, as previously established by Order No. PSC-02-1114-PAA-WS. It is further

ORDERED that a positive acquisition adjustment shall not be included in the calculation of rate base for transfer purposes. It is further

ORDERED that the existing rates and charges for the utility shall be continued until authorized to change in a subsequent proceeding. The tariff sheets reflecting the transfer shall be effective for services rendered of connections made on or after the stamped approval date. It is further

ORDERED that if no timely protest is received to the proposed agency action on rate base and acquisition adjustment, a Consummating Order shall be issued upon the expiration of the protest period, and this docket shall be closed.

By ORDER of the Florida Public Service Commission this 6th Day of October, 2003.



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

(S E A L)

LAH

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.

As identified in the body of this order, our action approving rate base and declining to include a positive acquisition adjustment is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 27, 2003. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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 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

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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 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.

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SCHEDULE 1

BIEBER ENTERPRISES, INC.
SCHEDULE OF WATER RATE BASE
AS OF DECEMBER 31, 2001

BALANCE PER ORDER NO.
PSC-02-1114-PAA-WS

UTILITY PLANT IN SERVICE	\$ 127,032
LAND & LAND RIGHTS	2,997
NON-USED AND USEFUL COMPONENTS	0
CONTRIBUTIONS-IN-AID-OF CONSTRUCTION (CIAC)	(31,433)
ACCUMULATED DEPRECIATION	(54,953)
AMORTIZATION OF CIAC	22,339
WORKING CAPITAL ALLOWANCE	<u>2,275</u>
WATER RATE BASE	<u>\$ 68,257</u>

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SCHEDULE 1

BIEBER ENTERPRISES, INC.
SCHEDULE OF WASTEWATER RATE BASE
AS OF DECEMBER 31, 2001

BALANCE PER ORDER NO.
PSC-02-1114-PAA-WS

UTILITY PLANT IN SERVICE	\$ 251,809
LAND & LAND RIGHTS	18,519
NON-USED AND USEFUL COMPONENTS	(54)
CONTRIBUTIONS-IN-AID-OF CONSTRUCTION (CIAC)	(117,903)
ACCUMULATED DEPRECIATION	(208,026)
AMORTIZATION OF CIAC	98,025
WORKING CAPITAL ALLOWANCE	<u>3,182</u>
WASTEWATER RATE BASE	<u>\$ 45,552</u>

ATTACHMENT A

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 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 $40^{\circ}30'$ 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° 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.