

STATE OF FLORIDA

Commissioners:  
JOE GARCIA, CHAIRMAN  
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SUSAN F. CLARK  
JULIA L. JOHNSON  
E. LEON JACOBS, JR.



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

**Public Service Commission**

January 20, 1999

Mr. Kenneth J. Wankowski  
147 Breeze Hill  
Lake Wales, Florida 33853-7300

Mr. Phillip Bradford  
125 Breeze Hill  
Lake Wales, Florida 33853-7349

RE: Docket No. 971192-WS - Application for grandfather certificates to operate a water and wastewater utility in Polk County by Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities.

Dear Messrs. Wankowski and Bradford:

Your letter dated December 30, 1998, addressed to Chairman Julia L. Johnson has been referred to this office for response. Each of your concerns is addressed below.

Please be advised that prior to May 14, 1996, the Commission had no jurisdiction in Polk County. Therefore, any previous efforts on the part of Mr. Ricardo Pines to sell the utility cannot be addressed by this Commission. When the Commission obtains jurisdiction over privately-held water and wastewater utilities within a County, efforts are made to educate existing utilities regarding our regulation. Mr. Paul E. Bieber originally filed an application for grandfather certificates. Neither the Statutes nor rules require notification of grandfather certificate applications, because, pursuant to Florida Law, when the Commission receives jurisdiction from a county, existing privately-owned water and wastewater utilities receive certificates as a matter of right. However, because the utility was owned by Ricardo Pines and not Mr. Bieber when this Commission received jurisdiction in Polk County, this Commission decided that notice of the application should be provided to the customers.

Order No. PSC-98-1550-FOF-WS issued on November 23, 1998, required Mr. Bieber to provide a copy of the Order within seven days of its issuance to the Office of Public Counsel, the Polk County Commission, and to the utility's customers. The Order also required Mr. Bieber to publish the notice once in a newspaper of general circulation in the service area. Mr. Bieber provided proof of publication of the notice in The Ledger published in Lakeland, Polk County, Florida. According to the affidavit from The Ledger, the notice was published on December 4. He also provided an affidavit that notice was given to the Office of Public Counsel and the Polk County Commission.

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
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FPSC RECORDS/FOLLOW-UP

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By affidavit dated December 14, 1998, Mr. Bieber indicated that he had misunderstood the requirement to provide a copy of the Order to the customers. He further stated that he read the Order to the customers at an association meeting, about a week before the deadline for filing objections. The deadline was December 14, 1998.

With regard to the Agreement for Deed provided by Breeze Hill, the Commission found the Agreement for Deed to be sufficient to meet the requirements of Rule 25-30.035(6), Florida Administrative Code. Because the agreement is for the purchase of the utility and the sewerage drainage beds mentioned in your letter are a part of the utility, the agreement covers the drainage beds.

Your letter also made reference to Department of Environmental Protection (DEP) violations against Breeze Hill. Mr. Bieber and DEP have been contacted regarding the violations. The violation mentioned in your letter involved the requirement to obtain a Sovereignty Submerged Lands Lease by Breeze Hill. According to DEP and Mr. Bieber, the requirement does not affect the utility. The violation is against Breeze Hill Subdivision.

As stated in the Order, in grandfather certificate cases, the existing rates and rate structure of the utility, previously approved by the County are "grandfathered." However, Rule 25-30.255, Florida Administrative Code, requires utilities to implement metered rates unless otherwise approved by the Commission and in certain circumstances. The specifics in each case are reviewed to determine whether it is appropriate to require a utility to implement metered rates or maintain the existing rate structure until ordered to change in a limited proceeding or rate case. In the instant case, the Commission found it appropriate to approve the existing rates. Mr. Bieber was, however, placed on notice that Breeze Hill will be required to install meters and implement base facility and gallonage charges in its next filing with the Commission. Usage, total gallons pumped, fire-flow requirements, and appropriate "profit" will also be addressed in that filing.

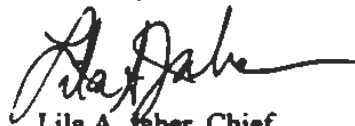
With regard to the water tank, we have a copy of a letter from W. A. Read, Jr. & Associates (an engineering firm) to Mr. Eugene Jeffers of the Polk County Public Health Department, which states that they found the water treatment plant to be in good condition and that the tank and supports had been repaired and painted. They further stated that the premises were clean and sanitary. Mr. Eugene Jeffers was contacted to determine if the system is in good condition or if the tank needs to be replaced. According to Mr. Jeffers, an inspector was sent to reinspect Breeze Hill after they received the letter from the engineering firm. The inspector confirmed the engineering firm's findings.

From our review of the filing, conversations with the Health Department, and various individuals at DEP, it appears that Mr. Bieber is making every effort to assure that Breeze Hill is in good condition and provides continued and satisfactory service to its customers.

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I hope this letter addresses your concerns. Regrettably, you did not receive confirmation of the Agenda Conference when this item was considered. If this letter does not satisfy your concerns and you continue to have a complaint about this utility, you may file a complaint pursuant to Rule 25-22.032, Florida Administrative Code. Rule 25-22.032 is enclosed for your convenience. If you have any additional questions, please contact me at (850) 413-6199.

Sincerely,



Lila A. Faber, Chief  
Bureau of Water and Wastewater  
Division of Legal Services

LAJ/ALC/dr

Enclosure

cc: Mr. Paul E. Bieber, Breeze Hill Utilities  
Division of Records and Reporting  
Division of Water and Wastewater (Messer, Johnson)  
Division of Legal Services (Crosby)

(5) Any person who receives notice and who fails to file a timely request for a §120.57 hearing shall have waived his or her right to request a hearing on the decision.

(6) In the absence of a timely request for a §120.57 hearing, and unless otherwise provided by a Commission order, the proposed action shall become effective upon the expiration of the time within which to request a hearing. Specific Authority: §120.53, F.S.

Law Implemented: §120.53, F.S.  
History: New 12/21/81, formerly 25-22.29, amended 7/8/92.

25-22.030 Reserved.

25-22.031 Reserved.

25-22.032 Customer Complaints.

(1) Any customer of a utility regulated by this Commission may file a complaint with the Division of Consumer Affairs whenever he has an unresolved dispute with the utility regarding his electric, gas, telephone, water, or wastewater service. The complaint may be communicated orally or in writing. Upon receipt of the complaint a staff member designated by the Director of the Division shall notify the utility of the complaint and request a response. The response should explain the utility's actions in the disputed matter and the extent to which those actions were consistent with the utility's tariffs and procedures, applicable state laws, and Commission rules, regulations, and orders.

(2) The designated staff member shall investigate the complaint and attempt to resolve the dispute informally. To that end, the staff member may request the parties to provide copies of bills, billing statements, field reports, written documents, or other information in their possession which may be necessary to resolve the dispute. The staff member may perform such tests, on-site inspections, and reviews of utility records as he considers appropriate and may request the utility to collect data and to perform tests which are necessary to aid in the resolution of the dispute.

(3) As soon as possible the staff member shall propose a resolution of the complaint based on his findings, applicable state laws, the utility's tariffs, and Commission rules, regulations, and orders. The proposed resolution may be communicated to the parties orally or in writing. Upon request, either party shall be entitled to a written copy of the proposed resolution, which shall be delivered by first-class mail.

(4) If a party objects to the proposed resolution, he may file a request for an informal conference on the complaint. The request shall be in writing and should be filed with the Division of Consumer Affairs within 30 days after the proposed resolution is mailed or personally communicated to the parties. Upon receipt of the request the Director of the Division may appoint a staff member to conduct the informal conference or the Director may make a recommendation to the Commission for dismissal based on a finding that the complaint states no basis for relief under the Florida statutes, Commission rules or orders, or the applicable tariffs. If a conference is granted the appointed staff member shall have had no prior contact with the complainant. After consulting with the parties, the appointed staff member shall issue a written notice to the parties setting forth the procedures to be employed, the dates by which written materials are to be filed, and the time and place for the informal conference, which shall be held in the service area, or such other convenient location to which the parties agree, no sooner than 10 days following the notice.

(5) In conjunction with conducting the informal conference, the appointed staff member may:

(a) Require the utility to provide any information in its possession which may be relevant to the complaint and may specify the form in which such information is to be provided;

(b) Request a customer to provide any information in the customer's possession which is necessary to prove any facts the customer may assert in support of his position;

(c) Direct the utility to conduct meter tests and inspections, diversion of service inspections, and other tests the appointed staff member deems necessary or appropriate;

(d) Question the parties directly regarding all matters related to the case.

(6) At the conference, the parties shall have the opportunity to present information, orally or in writing, in support of their positions. During the conference, the appointed staff member may encourage the parties to discuss and resolve their dispute. The Commission shall be responsible for tape-recording, but not transcribing, the informal conference. A party may arrange for transcription at his own expense.

(7) The appointed staff member may permit any party to file, following the conference, further information, documentation, or arguments. The opposing party shall have an opportunity to file a response.

(8) If a settlement is not reached, then within 30 days following the informal conference or the last post-conference filing, the appointed staff member shall submit a recommendation to the Commission and shall mail copies of the recommendation to the parties. The Commission shall dispose of the matter at the next available agenda conference by issuing a notice of proposed agency action or by setting the matter for hearing pursuant to section 120.57, Florida Statutes. The Commission may permit the parties to respond to the recommendation at the agenda conference.

(9) At any point during the complaint proceedings, a party has the right to be represented by an attorney or other qualified representative. For purposes of this rule a qualified representative may be any person the party chooses, unless the Commission sees the matter for hearing. At such hearing the parties must be represented by an attorney or Class B practitioner as provided for in Rule 25-22.006 or may represent themselves. Each party shall be responsible for his own expenses in the handling of the complaint.

(10) During the pendency of the complaint proceedings, a utility shall not discontinue service to a customer because of an unpaid disputed bill. However, the utility may require the customer to pay that part of a bill which is not in dispute. If the parties cannot agree as to the amount in dispute, the staff member will make a reasonable estimate to establish an interim disputed amount until the complaint is resolved. If the customer fails to pay the undisputed portion of the bill the utility may discontinue the customer's service pursuant to Commission rules.

(11) At any time the parties may agree to settle their dispute. If a settlement is reached, the parties or their representatives shall file with the Division of Consumer Affairs a written statement to that effect. The statement shall indicate that the settlement is binding on both parties and that the parties waive any right to further review or action by the Commission. The Division shall, if the complaint has been docketed, submit the statement to the Commission for approval. If the complaint has not been docketed, then the Division shall acknowledge the statement of settlement by letter to the parties.

Specific Authority: 120.53(1), 120.127(2), F.S.  
 Law Implemented: 120.52(1), 120.57, 120.59(4), F.S.  
 History: New 1/3/89, Amended 10/28/93.

Rule 25-22.033 - Communications Between Commission Employees and Parties - The Commission recognizes that Commission employees must exchange information with parties who have an interest in Commission proceedings. However, the Commission also recognizes that all parties to adjudicatory proceedings need to be notified and given an opportunity to participate in certain communications. The intent of this rule is not to prevent or hinder in any way the exchange of information, but to provide all parties to adjudicatory proceedings notification of and the