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DIVISION OF WATER & WASTEWATER  
CHARLES H. HILL  
DIRECTOR  
(850) 413-6900

# Public Service Commission

June 24, 1999

Mr. Ivan Bloch  
Lake Yale Utility Treatment Associates, Inc.  
30600 Telegraph Road, # 2250  
Binham Farms, MI 480258

Re: Docket No. 990194-WS, Application for transfer of Certificates Nos. 560-W and 488-S in Lake County from Lake Yale Corporation d/b/a Lake Yale Utility Company to Lake Yale Treatment Associates, Inc.

Dear Mr. Bloch:

On February 22, 1999, the above-referenced application was received by Commission. Although staff had proofed several draft versions of the notice prior to the filing, the version of the notice that was actually given contained an incomplete legal description. However, that was only one of numerous problems with filing. It is my understanding that staff advised Ms. Norma Davis and, later, Mr. Michael Varick of the magnitude of the deficiencies but other workload considerations have taken precedent over written notification until now. I apologize for the delay.

However, in the case of transfers of certificates, a recommendation cannot be made until an audit is conducted. The results of that audit will not be available until next month so the deficiencies are not delaying a recommendation.

For reference in responding to the information requested on the following pages, staff is enclosing a copy of Section 367.071, Florida Statutes, which governs the sale, assignment or transfer of certificates of authorization. Also enclosed is a copy of Rule 25-30.020, Florida Administrative Code (F.A.C.), which lists the filing fees, Rule 25-30.030, F.A.C., which details the noticing requirements, and Rule 25-30.037, F.A.C., which contains the specific information required for a transfer of certificate.

- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- MAS \_\_\_\_\_
- OPC \_\_\_\_\_
- RRR \_\_\_\_\_
- SEC   1
- WAW \_\_\_\_\_
- OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE

07917 JUN 30 99

FPSC-RECORDS/REPORTING

**Deficiencies:**

1. **Notice Format:** The notice given by the utility at the time of the filing contained only part of the full description of the utility's service territory. As a consequence, the utility will have to renotice its application for transfer. Staff's engineer, Mr. Redemann, P.E., had provided the utility with an abridged version of the territory description that is acceptable for noticing pursuant to Rule 25-30.030(4), F.A.C. Enclosed for your use in renoticing is a sample notice containing the abridged territory description.

For the renotices listed below you may either use the abridged or the complete version of the utility's territory description. If you use the complete version, you must give the entire territory description listed on Page 12 of attached Order No. PSC-94-0171-FOF-WS. This is the order which originally granted the utility its certificates of authorization and approved its service territory. There have been no other orders affecting the utility's service territory.

If you wish, the sample notice may be modified to indicate that this is a renotice to correct the legal description. However you modify the sample notice, please ensure that the date the renotice is given is filled-in on the notice format so that the entities receiving the notice will know when the 30 days to respond elapses.

- a. **Notice to Applicable Governments and Local Utilities:** Pursuant to Rule 25-30.030(5), F.A.C., the utility shall provide a copy of the notice of the application by regular mail to the applicable governments and local utilities. Enclosed with this letter is the list of the applicable governments and local utilities in Lake County. Please mail each entity on the list a copy of the notice described above within seven days of the receipt of this letter.
- b. **Notice to Customers:** Pursuant to Rule 25-30.030(6), F.A.C., the utility shall provide a copy of the notice of the application by regular mail or personal service to each customer of the system to be transferred. Please mail, or deliver by personal service, to each current customer of the utility a copy of the notice described above within seven days of the receipt of this letter.
- c. **Notice Published in Newspaper of General Circulation in Area:** Pursuant to Rule 25-30.030(7), F.A.C., the notice shall be published at least once in a newspaper of general circulation in the territory proposed to be served. Please ensure that the notice described above is published in a local newspaper of general circulation within seven days of the receipt of this letter.

- d. Affidavits of Notices: The notices in Items a and b above are not required to be sent by registered or certified mail. However, Rule 25-30.030(8), F.A.C., requires an affidavit by the utility that the notices have been given. Please ensure that affidavits of all three notices given pursuant to Items a, b, and c, above, are filed with the Commission within fifteen days of the date given. The affidavit of the notice to governments and local utilities should be accompanied by a copy of the notice and a copy of the list provided with this letter. The affidavit of the notice given to customers should be accompanied by a copy of the notice. The affidavit of the published notice should be furnished by the newspaper in which it is given.
2. Filing Fee: Rule 25-30.020(1), F.A.C., requires that a separate filing fee shall apply for water and wastewater service. Rule 25-30.020(2)(c), F.A.C., requires that applications for transfer be accompanied by \$750.00 for utilities with the capacity to serve up to 500 ERCs (equivalent residential connections). The application was accompanied by a \$750.00 filing fee. However, since the utility provides both water and wastewater service, the total filing fee should have been \$1,500.00. Please remit the remaining \$750.00 filing fee with the utility's response to this letter.
3. Name of the Buyer: Rule 25-30.037(2)(b), F.A.C., requires the complete name and address of the buyer. Please indicate the full legal name of the buyer and the appropriate address.
- Note: Unless otherwise requested, the name that appears on certificates pursuant approval of a transfer is the legal name of the buyer. It was probably inadvertent, but the application filed in this docket specified the name to appear on the certificates as "Lake Yale Treatment Assoc., Inc." However, the name of the buyer as currently recorded with Florida's Department of State, Division of Corporations, is "Lake Yale Treatment Associates, Inc." Until the buyers' recorded name is changed, or a fictitious name is filed, with the Division of Corporations, the utility's certificates and tariffs must reflect the buyer's legal name.
4. Buyer's Business Organization: Rule 25-30.037(2)(c), F.A.C., requires the application to specify the buyer's business organization type. Please so specify.
5. Ownership: Rule 25-30.037(2)(d), F.A.C., requires the application to disclose the control or ownership of the utility. If the buyer is a corporation, please disclose the names, addresses and titles of all corporate officers or directors as well as any other entity which owns an interest in the utility. If the buyer is a partnership, please disclose the names, addresses and ownership interest of all partners as well as any other entity which owns an interest in the utility. If the buyer is a part of a larger corporate structure, please describe the structure or provide an organization chart.

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6. Date of Incorporation: Rule 25-30.037(2)(e), F.A.C., requires the application to specify the date of incorporation or organization of the buyer. According to the State's records, the buyer was incorporated on October 10, 1998. Please confirm.
7. Other Utilities Owned by Buyer: Rule 25-30.037(2)(f), F.A.C., requires the buyer to disclose the names and locations of any other water or wastewater utilities which it owns. This information is useful analyzing the buyer's technical ability. If the buyer owns any other utilities, please provide the information required by the rule. If there are no other utilities, please so indicate. Also, if the buyer is part of a larger corporate structure, please indicate the extent to which the utility's parent or related subsidiaries have utility experience.
8. Sales Contract: Rule 25-30.037(2)(g), Florida Administrative Code, requires a copy of the contract for sale and all auxiliary or supplemental agreements. There was no sales contract provided with the application. Please provide a copy of the executed agreement for sale and purchase of the utility and all attachments or exhibits thereto. If the attachments and exhibits are massive, you only need to provide one copy. Otherwise, please follow the instructions at the end of the letter for the number of copies.

Also, if the sales contract does not provide for the disposition of customer deposits, guaranteed revenue contracts, developer agreements, customer advances, debt of the utility, or leases because such do not exist, please specifically indicate that in your response.

9. Effective Date of Transfer: It appears that the effective date of the transfer was October 27, 1998. However, if the closing date is not specifically stated in the contract, please verify the effective date. Section 367.071(1), Florida Statutes, also requires that:

No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof...without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility.

Since the utility was transferred prior to the determination and approval of the Commission, staff must indicate in its recommendation to the Commission whether or not it believes the transferee should be required to show cause in writing for why it should not be fined for violation of this statute. Please explain why the transfer occurred prior to Commission approval. Also, if the contract has a provision for the sale to be contingent upon approval of the Commission, please indicate that in your response.

10. Financing: Rule 25-30.037(2)(i), F.A.C., requires a statement describing the financing of the purchase. Please provide such statement. If the transaction was entirely in cash, that still needs to be indicated.

10. **Public Interest**: Rule 25-30.037(2)(j), F.A.C., requires a statement indicating how the transfer is in the public interest, including a summary of the buyer's experience in water and wastewater utility operations, a showing of the buyer's financial ability to provide service, and a statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters. There was nothing responsive to this rule in the original application. Please be advised that this rule provision is very important and careful thought should be given to the utility's response. The following provides some guideline for the type of information which needs to be provided.

For technical ability, if the buyer or its parent or affiliates do not have any prior utility experience, the response should indicate the entity or organization which the buyer will be relying on to provide day-to-day operations of the water and wastewater facilities. The operator should be licensed by the Florida Department of Environmental Protection (FDEP) and the license type and number provided in the response.

For financial ability, at a minimum, the buyer should provide year-end 1998 financial statements showing its assets and liabilities. If the buyer is part of a larger corporate structure from which additional financial support is available, then the financial statements of the other entities should be provided as well.

For a statement of commitment, the buyer simply needs to specifically affirm that it will fulfill the commitments, obligations and representations of the seller with regard to utility matters.

11. **Financial Reliance**: Rule 25-30.037(2)(k), F.A.C., requires a list of all entities upon which the buyer is relying for funding of the purchase. The requirement does not apply to any entity holding less than 10 percent ownership interest. Please provide a list, if applicable. If the buyer is not relying on any other entity, please so indicate.
12. **Acquisition Adjustment**: Rules 25-30.037(2)(l) and (m), F.A.C., require a statement of the proposed net book value of the utility at the time of transfer as well as a statement on acquisition adjustment. Since the audit of the utility has already commenced, the book value of the utility at the time of the transfer will be disclosed in the audit findings.

However, the buyer must still specify its intention regarding an acquisition adjustment. An acquisition adjustment results when the purchase price of the utility differs from the original cost calculation, adjusted to the time of the transfer. It is currently the Commission's policy not to approve acquisition adjustments absent extraordinary circumstances. If the buyer wishes to request an acquisition adjustments, it must provide substantial justification. If the buyer is not requesting an acquisition adjustment, please so indicate.

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13. Income Tax Statements: Rule 25-30.037(2)(o), F.A.C., requires a statement from the buyer that it has acquired all the seller's federal income tax statements from the date the seller was first established, or from the date the seller's rates were last established, whichever is later. If all the applicable federal income tax statements were not obtained by the buyer, the rule requires an explanation. Please provide the information required by this rule.
14. Environmental Compliance: Rule 25-30.037(2)(p), F.A.C., requires a statement from the buyer of the environmental condition of the utility when it was acquired. If improvements were necessary, then the rule requires an explanation of how compliance was handled between the seller and the buyer. The application contained some FDEP letters but not the actual information required by this rule. Please provide such information.
15. Tariffs: Rule 25-30.037(2)(s), F.A.C., requires two copies of sample tariff sheets reflecting the change in ownership. Tariff sheets were provided for the rate sheets only. For transfers of certificate, all pages of the utility's tariffs must be replaced to indicate the change in ownership.

Enclosed with this letter is a copy of the utility's existing water and wastewater tariffs along with a copy of the Commission's model water and wastewater tariff. Please follow the instructions for preparing the water and wastewater tariffs given at the beginning of the model tariffs. It is still likely Mr. Varick will need assistance in preparing the tariffs and my staff is available to answer questions and provide help.

The most important matter right now is to ensure that the notices required in Item Nos. 1a, 1b, and 1c, above, are given within seven days of the receipt of this letter. The affidavits described in Item No. 1d, above, should then be filed with the Commission within fifteen days of the notices. Please file the utility's responses to the remaining items by July 20, 1999.

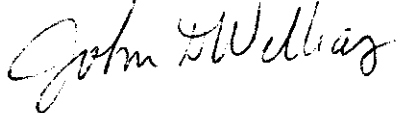
Except where otherwise indicated above, an original and five copies of all responses should be provided. The Docket Number should be referenced on all responses and they should be filed directly with the:

**Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850**

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If you or Mr. Varick have any questions about the information required, please contact either Ms. Patricia Brady at (850) 413-6686 or Mr. Richard Redemann at (850) 413-6999. If you have any legal questions, please contact staff's legal counsels, Ms. Stephanie Crossman, at (850) 413-6179 or Ms. Alice Crosby, at (850) 413-6222.

Sincerely,



John D. Williams  
Chief, Bureau of Policy Development  
and Industry Structure

Enclosures

JDW:pb

cc: Division of Water and Wastewater (Brady, Redemann, Chase--See Item 2)  
Division of Administration (Knight--See Item 2)  
Division of Legal Services (Crossman, Crosby)  
Division of Records and Reporting

**SECTION 367.071, FLORIDA STATUTES  
SALE, ASSIGNMENT, OR TRANSFER OF CERTIFICATE OF  
AUTHORIZATION, FACILITIES, OR CONTROL**

(1) No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility.

(2) The commission may impose a penalty pursuant to s. 367.161 when a transfer occurs prior to approval by the commission. The transferor remains liable for any outstanding regulatory assessment fees, fines, or refunds of the utility.

(3) An application for proposed sale, assignment, or transfer shall be accompanied by a fee as provided by s. 367.145. No fee is required to be paid by a governmental authority that is the buyer, assignee, or transferee.

(4) An application shall be disposed of as provided in s. 367.045, except that:

(a) The sale of facilities, in whole or part, to a governmental authority shall be approved as a matter of right; however, the governmental authority shall, prior to taking any official action, obtain from the utility or commission with respect to the facilities to be sold the most recent available income and expense statement, balance sheet, and statement of rate base for regulatory purposes and contributions-in-aid-of-construction. Any request for rate relief pending before the commission at the time of sale is deemed to have been withdrawn. Interim rates, if previously approved by the commission, must be discontinued, and any money collected pursuant to interim rate relief must be refunded to the customers of the utility with interest.

(b) When paragraph (a) does not apply, the commission shall amend the certificate of authorization as necessary to reflect the change resulting from the sale, assignment, or transfer.

(5) The commission by order may establish the rate base for a utility or its facilities or property when the commission approves a sale, assignment, or transfer thereof, except for any sale, assignment, or transfer to a governmental authority.

(6) Any person, company, or organization that obtains ownership or control over any system, or part thereof, through foreclosure of a mortgage or other encumbrance, shall continue