

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



DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

October 26, 1999

Mr. J.R. Brown
Vice President,
Breeze Hill Homeowners' Association
335 Breeze Hill
Lake Wales, Florida 34652

Re: Docket No. 990356-WS - Application for staff assisted rate case in Polk County, by Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities.

Dear Mr. Brown:

This letter is an informal opinion of the Division of Legal Services in response to your concern regarding what protections the customers of Breeze Hill Utilities have if the utility owner defaults. This letter in no way binds the Commission to any of the information or opinions contained herein.

In response to your inquiry regarding what happens if the utility owner defaults, Section 367.071(6), Florida Statutes states:

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 service without interruption and may not remove or dismantle any portion of the system previously dedicated to public use which would impair the ability to provide service, without the express approval of the commission. This provision may be enforced by an injunction issued by a court of competent jurisdiction.

Pursuant to this provision, in the event Bieber Enterprises defaults on the contract for deed or a mortgage, the entity who holds the deed is responsible for maintaining the system. In our opinion, it is not necessary for such language to be included in the utility's application or to require the deed holder to sign something to this effect because of this statutory obligation.

- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- MAS _____
- OPC _____
- PAI _____
- SEC _____
- WAW _____
- OTH _____

DOCUMENT NUMBER-DATE

13247 OCT 28 99

FPSC-REGISTRATION/REGISTRATION

Mr. J. R. Brown
Page 2
October 26, 1999

There is also a statutory provision that governs in the event of the abandonment of a utility system. Section 367.165, Florida Statutes, provides that "[n]o person, lessee, trustee, or receiver owning, operating, managing, or controlling a utility shall abandon the utility without giving 60 days' notice to the county or counties in which the utility is located and to the commission." Subsequent to receiving such notice, the county or counties are required to petition the circuit court to appoint a receiver, which may be the county itself, the governing body of a political subdivision or any other person deemed appropriate by the court. Subsection (2) of this statute also provides that the receiver is obligated to operate the utility "from the date of abandonment until such time as the receiver disposes of the property of the utility in a manner designed to continue the efficient and effective operation of utility service."

I hope this letter addresses your questions and concerns. If you need additional information or if I can be of any further assistance, please do not hesitate to contact me at (850) 413-6179.

Sincerely,



Stephanie A. Crossman
Attorney

SAC

cc: Division of Legal Services (Gervasi)
✓ Division of Records and Reporting
Division of Water and Wastewater (Casey, Butts, Davis, Golden, Rieger)