

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 990194-WS  
ORDER NO. PSC-99-2190-PAA-WS  
ISSUED: November 8, 1999

The following Commissioners participated in the disposition of  
this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.

ORDER APPROVING TRANSFER, REQUIRING PROVISION OF  
LONG TERM LEASE, AND DECLINING TO INITIATE  
SHOW CAUSE PROCEEDING

AND

NOTICE OF PROPOSED AGENCY ACTION  
ORDER ESTABLISHING RATE BASE FOR PURPOSES OF THE  
TRANSFER, AND APPROVING A MAXIMUM GALLONAGE CAP  
ON RESIDENTIAL WASTEWATER SERVICE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service  
Commission that the action regarding the establishment of rate base  
for purposes of the transfer, and approving a maximum gallonage cap  
on residential wastewater service, as discussed herein, 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.

Background

On February 22, 1999, Lake Yale Treatment Associates, Inc.  
(LYTA or utility) filed an application with this Commission for  
approval of the transfer of facilities from Lake Yale Corporation

DOCUMENT NUMBER-DATE

13715 NOV-89

FPSC-RECORDS/REPORTING

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d/b/a Lake Yale Utility Company (LYUC) to LYTA. LYUC is a Class C water and wastewater utility providing service to Sandpiper Mobile Manor mobile home park (Sandpiper), Lake Yale Estates mobile home park (Lake Yale), and Kings Peninsula in Lake County, Florida. According to LYUC's most recent annual report, it serves a total of 257 water and 237 wastewater customers.

On April 7, 1998, LYUC executed an agreement with LYTA for the development rights to Sandpiper and Lake Yale. The utility facilities were included in the transaction. The actual transfer occurred on October 27, 1998. Because the transfer occurred prior to Commission approval, LYUC is in apparent violation of Section 367.071, Florida Statutes.

Show Cause

As stated previously, LYUC is in apparent violation of Section 367.071, Florida Statutes, which states, in part, "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." LYUC sold the utility to LYTA on October 27, 1998, prior to Commission approval. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes.

Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Failure of LYUC to obtain Commission approval prior to transferring the utility to LYTA appears to be due to lack of knowledge of the statutes and Commission rules. From information received, neither LYUC nor LYTA were aware of the requirement to obtain Commission approval prior to transferring the system. When

LYTA purchased Sandpiper and Lake Yale, it received ownership of the utility as part of the total transaction. Shortly after becoming aware of the requirement to obtain Commission approval, LYUC and LYTA filed an application for approval of the transfer.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we do not find that the violation of Section 367.07, Florida Statutes, rises in these circumstances to the level of warranting initiation of a show cause proceeding. Therefore, we do not find it appropriate to order LYUC to show cause for failing to obtain approval prior to transferring the utility facilities to LYTA.

#### Application

The application, as filed on February 22, 1999, contained deficiencies. Correction of deficiencies was completed on September 24, 1999. Except as discussed previously, 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, pursuant to Rule 25-30.020, Florida Administrative Code.

LYTA provided proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. Because the territory description in the original notice was incomplete, LYTA was required to renotice. In addition, the notice was published a third time in the newspaper due to newspaper error. No objections to the application have been received and the time for filing such has expired.

Pursuant to Rule 25-30.037(2)(q), Florida Administrative Code, a utility must provide evidence that it owns or has continued use of the land upon which its facilities are located. The land where the utility facilities are located were transferred to LYTA along with the land and property of Sandpiper and Lake Yale. Although LYTA has agreed to provide a long-term lease, none has been provided to date. Therefore, LYTA shall file a recorded copy of a long-term lease in the name of the utility for the land where the facilities are located within sixty days of the issuance date of this Order.

LYTA provided a copy of the sales contract, in accordance with Rule 25-30.037(2)(g)(h),(i) and (k), Florida Administrative Code.

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According to the contract, the mobile home parks and the utility were purchased for \$2,825,000. The value of the utility facilities was estimated to be \$147,000, exclusive of land. The purchase of Sandpiper was financed by a first mortgage with TransAtlantic, a wholly-owned subsidiary of Deutsche Bank. The purchase of Lake Yale was financed by a first mortgage with Old Kent Bank. From title information on Sandpiper and Lake Yale provided by LYTA, the water and wastewater infrastructures are exceptions on both mortgage title policies and are, therefore, not considered financed.

Regulatory assessment fees (RAFs) were paid by LYUC through the transfer date, October 27, 1998. LYTA submitted an annual report for 1998 and paid RAFs for the remainder of 1998. There are no penalties, interest, or refunds outstanding for the utility.

In accordance with Rule 25-30.037(2)(p), Florida Administrative Code, LYTA provided a statement that the utility systems were in satisfactory condition at the time of the acquisition. In addition, according to the Department of Environmental Protection (DEP), the utility is currently in satisfactory compliance with environmental requirements and rules.

With regard to technical and financial ability, LYTA does not own any other water and wastewater facilities and has no prior experience in utility operations. LYTA has, however, hired Plan Technicians Laboratory, which is licensed by the DEP, to perform day-to-day utility operations.

Further, although LYTA has little in the way of assets, it is supported by Sandpiper Mobile Manor Associates, L.L.C. and Eustia Associates, L.L.C. (LLCs). Both of the LLCs are owned by Mr. Peter Beer who also owns LYTA. Mr. Beer provided a statement that both LLCs pledge their financial support to LYTA. Therefore, it appears LYTA has the necessary financial ability to assure continued operation of the utility.

Based on the foregoing, we find that the transfer of the utility facilities and Certificates Nos. 560-W and 488-S from LYUC to LYTA is in the public interest and it is approved. Further, we find it appropriate to require LYTA to file with this Commission a recorded copy of a long-term lease, in the name of the utility, for the land upon which the utility facilities are located within sixty days of the issuance date of this Order. A description of the territory being transferred is shown on Attachment A of this Order,

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which by reference is incorporated herein. LYTA has returned Certificates Nos. 560-W and 488-S to this Commission for entry reflecting the change in ownership.

#### Rate Base

Rate base for LYUC was last established by Order No. PSC-94-0171-FOF-WS, issued February 10, 1994, in Docket No. 930133-WS. At that time rate base was found to be \$128,687 for the water system and \$174,439 for the wastewater system. According to the utility's books, the net book value of the systems was \$120,141 for the water system and \$205,976 for the wastewater system as of October 31, 1998. The transfer occurred on October 27, 1998.

An audit of the utility's books and records resulted in three audit exceptions. First, the utility was not maintaining its books in accordance with Rule 25-30.115(1), Florida Administrative Code, which requires utilities to maintain their accounts and records in conformity with the NARUC Uniform System of Accounts. According to LYTA, its books and records are now in compliance with the NARUC Uniform System of Accounts.

This exception also notes that at the time the utility facilities were originally acquired by LYUC, there was no attempt to separate land for the utility facilities. As stated previously, the owner is being required to provide a long-term lease in the name of the utility for the land upon which the utility facilities are located.

The second exception indicates that the utility applied a 15-year service life to Plant Accounts 304 through 335 and 354 through 380 in calculating accumulated depreciation instead of using the Class C schedules provided in Rule 25-30.140(2), Florida Administrative Code. LYTA accepted the audit findings and the resulting corrections.

According to the third exception, the audit found that the utility had not complied with order No. PSC-94-0171-FOF-WS, which included service availability charges for meters and meter installation as well as plant capacity charges. The utility had not been collecting the contributions-in-aid-of-construction (CIAC) charges, nor recording the accumulated amortization on CIAC for the period of time from April 1, 1994, through the date of transfer. LYTA accepted the audit findings and the resulting corrections.

Based on the foregoing, we find rate base to be \$64,462 for the water system, and \$85,028 for the wastewater system as of October 31, 1998. Our calculation of rate base for the water system is shown on Schedule No. 1, with adjustments set forth on Schedule No. 2. Our Calculation of rate base for the wastewater system is shown on Schedule No. 3, with adjustments shown on Schedule No. 4.

The rate base calculations are used solely to establish the net book value of the property being transferred. The calculations do not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments.

#### Acquisition Adjustment

An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of transfer. The utility systems were acquired as part of a larger purchase, with no specific value placed on the systems. After discussion with LYTA, a value of \$147,000 was placed on the utility systems, exclusive of land. Rate base is found to be \$149,490 for the water and wastewater systems. This results in a negative acquisition adjustment of \$2,490.

In the absence of extraordinary circumstances, it has been Commission policy that the purchase of a utility system at a premium or discount shall not affect the rate base calculation. The circumstances in this exchange do not appear to be extraordinary. In addition, LYTA has not requested an acquisition adjustment. Therefore, an acquisition adjustment has not been included in the calculation of rate base.

#### Rates and Charges

The utility's current rates and charges for general and residential service were approved pursuant to a 1998 price index rate adjustment effective August 1, 1998. The utility's miscellaneous and service availability charges were approved at the time it received its original certificates. The rates became effective March 25, 1994. No customer deposits are collected.

The utility's existing wastewater tariff does not provide for a maximum gallonage cap for residential service. Although the provision for a maximum cap of 10,000 gallons for residential wastewater service was included in the work papers for the order

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granting original certificates and setting rates, the cap was inadvertently omitted. LYUC's current rates, including the cap for residential wastewater service, are set forth below.

WATER

General and Residential Services  
Monthly Rates

Base Facility Charges

<u>Meter Size</u>	<u>Charge</u>
5/8" x 3/4"	\$ 9.40
3/4"	\$ 14.10
1"	\$ 23.50
1-1/2"	\$ 47.00
2"	\$ 75.20
3"	\$ 150.39
4"	\$ 235.00
6"	\$ 469.99
8"	\$ 751.98

Gallonage Charge

Per 1,000 Gallons \$ 1.72

WASTEWATER

General Service  
Monthly Rates

Base Facility Charges

<u>Meter Size</u>	<u>Charge</u>
5/8" x 3/4"	\$ 9.78
3/4"	\$ 14.67
1"	\$ 24.43
1-1/2"	\$ 48.88
2"	\$ 78.20
3"	\$ 156.40
4"	\$ 244.38
6"	\$ 488.74
8"	\$ 782.00

Gallonage Charge

Per 1,000 Gallons \$ 2.97

WASTEWATER

Residential Service  
Monthly Rates

<u>Base Facility Charge</u>	<u>Charge</u>
All Meter Sizes	\$ 9.78
<u>Gallonge Charge</u>	
Per 1,000 Gallons up to 10,000 Gallons Maximum	\$ 2.48

WATER

Miscellaneous Service Charges

	<u>Charge</u>
Initial Connection Fee	\$ 15.00
Normal Reconnection Fee	\$ 15.00
Violation Reconnection Fee	\$ 15.00
Premises Visit Fee (in lieu of of disconnection)	\$ 10.00

WASTEWATER

Miscellaneous Service Charges

	<u>Charge</u>
Initial Connection Fee	\$ 15.00
Normal Reconnection Fee	\$ 15.00
Violation Reconnection Fee	Actual Cost*
Premises Visit Fee (in lieu of of disconnection)	\$ 10.00

\*Actual cost is equal to total cost incurred for services.



WATER

Service Availability Fees and Charges

	<u>Charge</u>
Back-flow Preventor Installation Fee	
Meters over 2"	Actual Cost*
Customer Connection (Tap-in) Charge	
Meters over 2"	Actual Cost*
Inspection Fee	Actual Cost*
Meter Installation Fee	
5/8" x 3/4" meters	\$ 125.00
Meters over 2"	Actual Cost*
Plan Review Charge	Actual Cost*
Plant Capacity Charge	
Residential-per equivalent residential connection (350 GPD)	\$ 250.00

\*Actual cost is equal to total cost incurred for services.

WASTEWATER SERVICE

Service availability Fees and Charges

	<u>Charge</u>
Customer Connection (Tap-in) Charge	
Meters over 2"	Actual Cost*
Inspection Fee	Actual Cost*
Plan Review Charge	Actual Cost*
Plant Capacity Charge	
Residential-per equivalent residential connection (280 GPD)	\$ 425.00

\*Actual cost is equal to total cost incurred for services.

Rule 25-9.044(1), Florida Administrative Code, requires the new owner of a utility to adopt and use the rates, classifications and regulation of the former owner unless authorized to change by this Commission. LYTA has not requested to change the rates and charges of the utility, and we see no reason to change them at this time, except to include a maximum gallonage cap on residential wastewater service. The utility's rates and charges, as set forth herein, include the gallonage cap. LYTA shall continue to charge these rates and charges until authorized to change by this

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Commission in a subsequent proceeding. LYTA has filed water and wastewater tariffs reflecting the rates and charges and the gallonage cap, and the change in ownership. Pursuant to Rule 25-30.475, Florida Administrative Code, the tariffs shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of Certificates Nos. 560-W and 488-S from Lake Yale Utility Corporation d/b/a Lake Yale Utility Company, 11643 Martel Court, Leesburg, Florida 34788, to Lake Yale Treatment Associates, Inc., 11643 Martel Court, Leesburg, Florida 34788, is hereby approved. The territory Lake Yale Treatment Associates, Inc. is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that Lake Yale Treatment Associates, Inc. shall provide the Commission a recorded copy of the long-term lease in the name of the utility, filed as proof of continued use of the land upon which the utility facilities are located, within sixty days of the issuance date of this Order. It is further

ORDERED that Lake Yale Utility Corporation d/b/a Lake Yale Utility Company shall not be required to show cause for failing to obtain Commission approval prior to transferring its facilities to Lake Yale Treatment Associates, Inc. It is further

ORDERED that rate base, which for transfer purposes reflects the net book value of the system being transferred, is \$64,462 for the water system and \$85,028 for the wastewater system, as of October 31, 1998. It is further

ORDERED that all schedules and attachments attached to this Order are incorporated herein by reference. It is further

ORDERED that the rates and charges set forth in the body of this Order, including the maximum 10,000 gallons usage cap placed on residential wastewater service, are hereby approved. Lake Yale Treatment Associates, Inc. shall continue to charge these rates and charges until authorized to change by this Commission in a subsequent proceeding. It is further

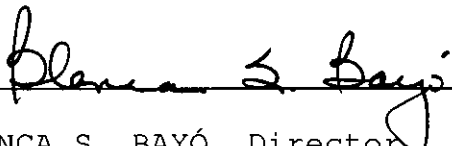
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ORDERED that the tariff filed by Lake Yale Treatment Associates, Inc., which reflects the change in ownership, shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that the provisions of this Order establishing rate base for purposes of the transfer, and approving a maximum gallonage cap on residential wastewater service, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 8th day of November, 1999.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

ALC/SAC

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

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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 establishing rate base for purposes of the transfer, and approving continuation of existing rates and charges and placing a maximum gallonage cap on residential wastewater service 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 Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 29, 1999. 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 Records and Reporting 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 or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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

LAKE YALE UTILITY COMPANY  
SCHEDULE OF WATER RATE BASE  
AS OF OCTOBER 31, 1998

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>AUDIT ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</u>
Utility Plant in Service	\$ 222,130	\$ 0	\$ 222,130
Land	0	0	0
Accumulated Depreciation	(101,989)	25,122	( 76,867)
Contributions in Advance of Construction (CIAC)	0	( 93,690)	( 93,690)
Accumulated Amortization of CIAC	0	12,889	12,889
 WATER RATE BASE	 <u>\$ 120,141</u>	 <u>\$ ( 55,679)</u>	 <u>\$ 64,462</u>

LAKE YALE UTILITY COMPANY  
SCHEDULE OF WATER RATE BASE ADJUSTMENTS

<u>EXPLANATION</u>	<u>ADJUSTMENT</u>
Accumulated Depreciation	
1) To recalculate depreciation based on service life pursuant to Rule 25-30.140(2)	\$ 25,122
Contributions in Advance of Construction (CIAC)	
1) To account for CIAC from April 1994 through October 1998.	( 93,690)
Accumulated Amortization of CIAC	
1) To account for amortization of CIAC from April 1994 through October 1998	<u>12,889</u>
TOTAL ADJUSTMENT	<u>\$ ( 55,679)</u>

LAKE YALE UTILITY COMPANY  
SCHEDULE OF WASTEWATER RATE BASE  
AS OF OCTOBER 31, 1998

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>AUDIT ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</u>
Utility Plant in Service	\$ 353,548	\$ 0	\$ 353,548
Land	0	0	0
Accumulated Depreciation	(147,572)	( 28,137)	(175,709)
Contributions in Advance of Construction (CIAC)	0	(102,850)	(102,850)
Accumulated Amortization of CIAC	<u>0</u>	<u>10,039</u>	<u>10,039</u>
WASTEWATER RATE BASE	<u>\$ 205,976</u>	<u>\$ (120,948)</u>	<u>\$ 85,028</u>

LAKE YALE UTILITY COMPANY  
SCHEDULE OF WASTEWATER RATE BASE ADJUSTMENTS

<u>EXPLANATION</u>	<u>ADJUSTMENT</u>
Accumulated Depreciation	
1) To recalculate depreciation based on service life pursuant to Rule 25-30.140(2)	\$( 28,137)
Contributions in Advance of Construction (CIAC)	
1) To account for CIAC from April 1994 through October 1998.	(102,850)
Accumulated Amortization of CIAC	
1) To account for amortization of CIAC from April 1994 through October 1998	<u>10,039</u>
TOTAL ADJUSTMENT	<u>\$(120,948)</u>



TERRITORY DESCRIPTION  
LAKE YALE UTILITY COMPANY  
LAKE COUNTY

Township 18 South, Range 25 East  
Sections 24 and 25

The following described lands located in portions of Sections 24 and 25, Township 18 South, Range 25 East, Lake County, Florida.

Section 24, Township 18 South, Range 25 East, Lake County, Florida.  
Section 25, Township 18 South, Range 25 East, less right-of-way for County Road 452.

Begin 1,802.38 feet north of the Southeast corner of Northeast 1/4 of Section 25, Township 18 South, Range 25 East, Lake County, Florida. From said Point of Beginning, run north along the east line of Northeast 1/4 of Section 25 to the Southeast corner of Section 24, Township 18 South, Range 25 East;

Thence continue north along the east line of the Southeast 1/4 of Section 24 to the waters of Lake Yale;

Thence run westerly along and with said waters to the west line of the East 1/2 of the Southeast 1/4 of the Southeast 1/4 of Section 24;

Thence run south along said west line to the south line of Section 24;

Thence along said section line run west to the east line of the West 1/2 of the SE 1/4 of Section 24;

Thence along said east line run north to the waters of Lake Yale;

Thence run northwesterly along and with said waters to a line that is 25.00 feet south of the north line of the Southeast 1/4 of Section 24;

Thence run west to the west line of the Southeast 1/4;

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ATTACHMENT A  
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Thence continue 125.00 feet;

Thence south to a point that is 138.44 feet north of the north line of the Southeast 1/2 of the Southeast 1/4 of Section 24;

Thence South 86°47'40" East, a distance of 316.98 feet;

Thence South 00°14'40" East, a distance of 261.54 feet;

Thence South 89°58'06" West, a distance of 191.41 feet to the west line of the Southeast 1/4 of Section 24;

Thence along said west line run South 00°14'40" East, a distance of 1,176.80 feet to the North 1/4 corner of aforesaid Section 25;

Thence run south along the mid-section line to the northeasterly right-of-way line of County Road C-452;

Thence southeasterly along said right-of-way line to the east line of the Northwest 1/4 of the Northeast 1/4 of Section 25;

Thence run north along said east line to a point that is west of the Point of Beginning;

Thence run east to the Point of Beginning.