



# Public Service Commission

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

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** JANUARY 25, 2001

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF REGULATORY OVERSIGHT (BRADY) *ASm pb*  
DIVISION OF LEGAL SERVICES (CROSBY, GERVASI) *PS*

**RE:** DOCKET NO. 000973-SU - APPLICATION FOR TRANSFER OF  
CERTIFICATE NO. 515-S IN POLK COUNTY FROM ABCA, INC. TO  
WEST LAKE LAND UTILITIES, INC.  
COUNTY: POLK

**AGENDA:** 02/06/01 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\RGO\WP\000973A.RCM

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*ASm pb PS*

### CASE BACKGROUND

ABCA, Inc. (ABCA, utility, or seller) is a Class C wastewater utility located in Polk County. It provides wastewater service to approximately 277 residential and two general service customers in a mobile home community formerly known as Village Lakeland. The utility is located in a water use caution area. Its customers receive their water service from the City of Lakeland. According to its 1999 Annual Report, the utility reported wastewater revenues of \$43,591 and a net operating loss of \$8,490.

On April 4, 2000, ABCA entered into a Contract for Sale and Purchase (sales contract) with DGB Properties, Inc., or its assigns, for the acquisition of the mobile home community along with the wastewater facilities. The sales contract was subsequently amended to assign the utility facilities to West Lakeland Utilities, Inc. (West Lakeland or buyer). On July 28, 2000, an application for transfer of Certificate No. 515-S from

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ABCA to West Lakeland was filed with the Commission. At the December 19, 2000 agenda conference, the Commission approved the transfer. The order memorializing the Commission's vote was scheduled to be issued January 8, 2001. However, on January 2, 2001, staff was informed by ABCA that both parties had agreed to terminate the sales contract prior to closing and that the transfer will not go into effect.

Staff notified the Commission by memorandum dated January 4, 2001, that the order approving the transfer would not be issued and that staff would bring a recommendation to the Commission to reflect that the transfer did not take place and to return Certificate No. 515-S to ABCA.

The Commission has jurisdiction pursuant to Section 367.071, Florida Statutes.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission acknowledge that the sales contract of ABCA to West Lakeland has been terminated and return Certificate No. 515-S to ABCA?

**RECOMMENDATION:** Yes. The Commission should acknowledge that the sales contract of ABCA to West Lakeland has been terminated and return Certificate No. 515-S to ABCA. (BRADY, CROSBY)

**STAFF ANALYSIS:** As noted in the Case Background, on April 4, 2000, ABCA entered into a sales contract with DGB Properties, Inc., for the acquisition of the mobile home community along with the wastewater facilities. The sales contract was subsequently amended to assign the utility facilities to West Lakeland. On July 28, 2000, an application for transfer of Certificate No. 515-S from ABCA to West Lakeland was filed with the Commission. At the December 19, 2000 agenda conference, the Commission voted to approve the transfer.

The order memorializing the Commission's vote was scheduled to be issued January 8, 2001. However, on January 2, 2001, staff was informed by ABCA that both parties had mutually agreed to terminate the sales contract on December 29, 2000, prior to closing. On January 3, 2001, ABCA filed a letter confirming the agreement to terminate the sales contract and requesting that the Commission take appropriate action to reflect the fact that ABCA will continue to own and operate the wastewater facility. A copy of the letter is attached to this recommendation as Attachment A. By memorandum dated January 4, 2001, staff notified the Commission that the order memorializing the Commission's vote on the transfer would not be issued January 8, 2001, as scheduled, and that instead staff would file a recommendation to reflect that the transfer did not take place and to return the certificate to ABCA.

In the abundance of caution, staff contacted the buyer, who also confirmed that the sales contract had been mutually terminated prior to closing. The buyer indicated interest in ultimately purchasing the property if the issues which terminated the sales contract were resolved. However, according to the seller, such a transfer would, necessarily, occur at a later date and under another sales contract.

Based on the foregoing, staff recommends that the Commission acknowledge that the sales contract of ABCA to West Lakeland has been terminated and return Certificate No. 515-S to ABCA.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes, the docket should be closed. (CROSBY)

**STAFF ANALYSIS:** Since no further action is necessary, this docket should be closed.



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## WRITER'S INFORMATION

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January 2, 2001

VIA FEDERAL EXPRESS  
(ORIGINAL AND FIVE COPIES)

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

Re: *ABCA, Inc./West Lakeland Utilities, Inc.*  
*Docket No. 000973-SU*

To Whom It May Concern:

This office represents ABCA, Inc. in connection with the above-referenced transfer application docket.

On December 29, 2000, ABCA, Inc., as seller, and DGB Properties, Inc. and West Lakeland Utilities, Inc., as buyer, agreed to terminate a Contract for Sale and Purchase, as amended from time to time (the "Contract"), under which West Lakeland Utilities, Inc. had agreed to purchase the Village Lakeland wastewater treatment facility. I enclose a copy of my letter to D. Brian Kuehner, Esquire, dated December 29, 2000, which confirms the parties' agreement to terminate the Contract. The proposed transfer of the Village Lakeland wastewater treatment facility to West Lakeland Utilities, Inc. will not go into effect.

Please take such appropriate action as is necessary to reflect the fact that ABCA, Inc. will continue to own and operate the Village Lakeland wastewater treatment facility.

Please contact me with any questions or concerns.

Very truly yours,

Matthew W. Cheney

Enclosure

cc: David S. Musgrave, Esquire  
D. Brian Kuehner, Esquire (via facsimile w/enclosure)  
Ms. Pamela C. McCarthy (via facsimile w/enclosure)  
Mr. Paul Lowry (w/enclosure)  
Ms. Pat Brady (via facsimile w/enclosure)

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December 29, 2000

VIA FACSIMILE AND FIRST CLASS MAIL

D. Brian Kuehner, Esquire  
D. Brian Kuehner, P.A.  
Southfork Professional Center  
4921 Southfork Drive  
Lakeland, Florida 33813-2078

*Re: ABCA, Inc./West Lakeland Utilities, Inc./DGB Properties, Inc.*

Dear Brian:

This will follow up on and confirm our last telephone conversation on December 29, 2000, which occurred at approximately 2:00 p.m.

You told me that the Buyer (DGB Properties, Inc. and West Lakeland Utilities, Inc.), who you represent, decided not to close on the above-referenced sale. This will confirm that all parties to the Contract for Sale and Purchase, as amended from time to time (the "Contract"), have agreed to terminate the Contract.

We will notify the Florida Public Service Commission and the Florida Department of Environmental Protection that the sale of the wastewater treatment facility fell through. I will notify you if either agency requires that the Buyer confirm that it is not going to purchase the wastewater treatment facility. This will confirm that all parties agree to execute and deliver, or cause to be executed and delivered, from time to time, such further instruments or documents as may be required to facilitate the termination of the Contract.

Please return to me by overnight mail all of the documents that were sent to you in connection with the closing, including the two Special Warranty Deeds, the Seller's Closing Statements, the Closing Affidavits, the Title Affidavits, the Non-Foreign Certifications by Entity Transferor, the Tax Reproration Agreements, the Secretary's

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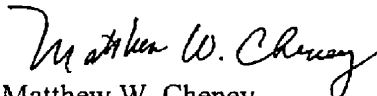


D. Brian Kuehner, Esquire  
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Certificate containing a Resolution Regarding Execution of Documents, and all surveys and engineering reports. I understand that your office is holding the \$15,000 deposit that was made by the Buyer (and that you will return the deposit to the Buyer).

Please contact me to discuss any post-termination matters.

Very truly yours,



Matthew W. Cheney

MWC/

cc: David S. Musgrave, Esquire  
Ms. Pamela C. McCarthy (via facsimile)