

State of Florida



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: MAY 17, 2001

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYOU)

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

RE: DOCKET NO. 010382-SU - APPLICATION FOR TRANSFER OF
CERTIFICATE NO. 515-S IN POLK COUNTY FROM ABCA, INC. TO
WEST LAKELAND UTILITIES, INC.
COUNTY: POLK

AGENDA: 05/29/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR
ISSUES NOS. 2 AND 3 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\010382.RCM

CASE BACKGROUND

ABCA, Inc. (ABCA, utility, or seller) is a Class C utility located in Polk County. It provides wastewater service to approximately 291 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 and receives its water service from the City of Lakeland. According to its 2000 Annual Report, the utility reported wastewater revenues of \$43,219 and a net operating loss of \$10,873.

The utility has been in existence since 1972. On January 9, 1990, the Polk County Commission granted a franchise to Ameribanc Investors Group (Ameribanc). Later Ameribanc was acquired by First Union Corporation (First Union) through merger and foreclosure proceedings. ABCA is currently a wholly-owned subsidiary of First Union. Polk County came under Commission jurisdiction on May 14, 1996. By Order No. PSC-98-0752-FOF-SU, issued June 1, 1998, in

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Docket No. 971531-SU, the Commission granted ABCA grandfather Certificate No. 515-S.

At the December 19, 2000 agenda conference, the Commission approved a previous transfer from ABCA to West Lakeland Utilities, Inc. (West Lakeland or buyer) in Docket No. 000973-SU. At that time, West Lakeland was a corporate identity established for the utility by the developer, DGB Properties, Inc. (DGB). 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 would not go into effect. By Order No. PSC-01-0427-FOF-SU, issued February 22, 2001, the Commission acknowledged the termination of the sales contract and returned Certificate No. 515-S to ABCA.

ABCA then made provisions for a public auction of the utility and undeveloped acreage on March 20, 2001. Developed acreage belongs to the lot owners. The winning bidders were Ms. Suzzane Averett Britt and Mr. Sam A. Averett. Ms. Britt and Mr. Averett are only interested in owning and operating the utility. The undeveloped acreage is intended to be assigned to DGB to develop. Since DGB no longer needed the corporate name it had previously established for the utility, the corporate identity was transferred to Ms. Britt and Mr. Averett. Hence, the transfer in this docket is from ABCA to West Lakeland, but as a corporation owned and controlled by Ms. Britt and Mr. Averett. On April 2, 2001, an application was filed for approval of the transfer of Certificate No. 515-S from ABCA to West Lakeland, opening this docket.

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

DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of Certificate No. 515-S from ABCA, Inc. to West Lakeland Utilities, Inc. be approved?

RECOMMENDATION: Yes. The transfer should be approved. The territory being transferred is described in Attachment A. ABCA should be responsible for 2001 regulatory assessment fees up to the date of closing on the sales contract. West Lakeland should be responsible for annual reports and regulatory assessment fees from the date of closing forward. Within 30 days from the date of closing, West Lakeland should provide proof that it owns the land upon which the utility treatment facilities are located or a copy of an agreement which provides for the continued use of the land. (BRADY, CROSBY)

STAFF ANALYSIS: On April 2, 2001, an application was filed for approval of the transfer of wastewater facilities from ABCA to West Lakeland. The Contract for "Sale and Purchase of Real Estate" (sales contract) was executed on March 20, 2001, pursuant to a public auction organized by ABCA for the sale of the utility along with all the undeveloped acreage in the mobile home community. The winning bidders were Ms. Suzzane A. Britt and Mr. Sam A. Averett. The closing is contingent upon Commission approval.

The application as filed and amended is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules pertaining to an application for the sale, assignment, or transfer of a certificate of authorization or utility facilities. The application contained the correct filing fee and provided the requisite proof of noticing pursuant to Rules 25-30.020 and 25-30.030, Florida Administrative Code, respectively. No objections to the noticing were filed with the Commission and the time for filing such has expired. The application also returned Certificate No. 515-S as required by Rule 25-30.037(2)(t), Florida Administrative Code. The territory being transferred is described in Attachment A.

In addition to the above administrative provisions, the application contained the following information with respect to the remaining requirements for authority to transfer.

Sales Contract, Financing, and Proof of Ownership. As required by Rules 25-30.037(2)(g), (h), (i), (k) and (q), Florida Administrative Code, the application contained a copy of the sales contract, a description of financing, and provisions for conveyance of title. The winning bid was \$175,000 plus a buyer's premium of

\$17,500 for a full purchase price of \$192,500. Financing will be by Colonial Bank in Lakeland, Florida. The buyers intend to finance 60% of the purchase price. The remainder of the purchase price will be a cash transaction at closing. The closing is scheduled to occur within two (2) business days after an order is issued by the Commission approving the transfer. Any customer deposits will be conveyed to the buyer at closing along with title to the land upon which the utility facilities are located. Within 30 days from the date of the closing, West Lakeland should be required to provide proof that it owns the land upon which the utility treatment facilities are located or a copy of an agreement which provides for the continued use of the land.

Annual Reports and RAFs. The application indicated that, prior to the actual transfer, all outstanding regulatory assessment fees (RAFs) will be satisfied and/or prorated. Staff has confirmed that the utility is current on annual reports and RAFs through 2000 and that there are no penalties, interest or refunds due. Staff recommends that ABCA should be responsible for 2001 RAFs up to the date of closing. From the date of closing forward, West Lakeland should be responsible for 2001 RAFs as well as for filing a consolidated 2001 annual report on behalf of the utility in the time-frame and manner prescribed by Commission rules. Both ABCA and West Lakeland are aware of, and have agreed to, these provisions. In addition, ABCA has indicated its intent to pre-pay its portion of 2001 RAFs and forms have been sent to facilitate the transaction.

Environmental Compliance. Pursuant to Rule 25-30.037(2)(p), Florida Administrative Code, the application contains a statement that the buyer has inspected the utility facilities and that they appeared to be in satisfactory condition. Staff has verified that the utility was last inspected by the Florida Department of Environmental Protection (FDEP) on August 11, 2000, at which time it was certified to be in satisfactory condition. Staff would also note that the pro forma plant improvements required by Order No. PSC-00-1163-PAA-SU, issued June 26, 2000, in Docket No. 990937-SU, were made by the seller prior to the execution of the sales contract. The improvements were verified by staff and Docket No. 990937-SU has been closed.

Financial and Technical Ability. Pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, the application contains a statement of buyers' experience in utility operations and financial ability to provide wastewater service. The application indicates that Ms. Suzzane Averett Britt, President, and Mr. Sam A. Averett, Secretary/Treasurer, are the sole officers of West

Lakeland. The parent of West Lakeland will be Averett Septic Tank Co., Inc. (Averett Septic).

Averett Septic was established in 1958. According to the application, it is currently the largest septic tank company in Southeast United States. Mr. Averett, as President, and Ms. Britt, as Vice President, are the second generation management team for the family business. Averett Septic is equipped with 7 tanker trucks and 42 personnel capable of providing regular and 24-hour emergency septic pumping and lift station repair work. Averett Septic's residual management facility (RMF) plant is licensed by the FDEP and is equipped to process 100,000 gallons of residual waste per day. To the extent that the RMF treats septic waste, it is not subject to Section 367, Florida Statutes. To the extent that the RMF disposes of industrial waste, it is exempt from Commission regulation pursuant to Section 367.022(9), Florida Statutes. According to the application, Averett Septic currently provides service to Polk County as well as the cities of Lakeland, Winter Haven and Auburndale. Based on its experience with residual waste and lift station management, as well as its experience with the FDEP's environmental compliance regulations, the buyer believes it can provide its customers with exceptional wastewater and billing services. In addition, West Lakeland is retaining the services of the FDEP licensed operator currently operating the systems.

Since West Lakeland is a newly formed corporation to which the utility facilities have not yet been transferred, it does not have financial statements. In lieu of a financial statement for West Lakeland, the application contained the most recently available financial statements for Ms. Britt and Mr. Averett, as well as for Averett Septic. Such statements indicate substantial liquid assets capable of maintaining and repairing utility facilities under emergency conditions. Finally, the application contained the buyer's statement that it intends to fulfill all commitments, obligations and representations of the seller with regard to utility matters.

Based on all of the above, staff recommends that the transfer of wastewater facilities from ABCA to West Lakeland is in the public interest and should be approved. The territory being transferred is described in Attachment A. ABCA should be responsible for 2001 RAFs up to the date of closing on the sales contract. West Lakeland should be responsible for annual reports and RAFs from the date of closing forward. Within 30 days of the date of closing, West Lakeland should provide proof that it owns the land upon which the utility treatment facilities are located or

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a copy of an agreement which provides for the continued use of the land.

ISSUE 2: What is the rate base of ABCA, Inc., at the time of the transfer?

RECOMMENDATION: Rate base for transfer purposes is \$31,392 as established by Order No. PSC-00-1163-PAA-SU as of June 30, 1999. (BRADY)

STAFF ANALYSIS: Since the contract to transfer the utility facilities was executed at the auction conducted on March 20, 2001, staff would normally request an audit to establish the net book value of the utility as December 31, 2000, excluding the normal rate making calculations of used and useful adjustments and working capital. However, rate base for the utility, as of June 30, 1999, had recently been established by Order No. PSC-00-1163-PAA-SU, issued June 26, 2000, in Docket No. 990937-SU (SARC Order). As such, staff recommends adopting the rate base established by the SARC Order for purposes of rate base at the time of the transfer.

It should be noted that rate base in the SARC Order includes a negative adjustment of \$4,763 in non-used and useful plant along with a positive adjustment of \$6,241 in working capital allowance. The net of these two values is a positive \$1,478. In addition, a pro forma adjustment of \$4,954 was added to utility plant-in-service for elevating manholes, rebuilding the main lift station, replacing the tank cover, and relining the spray field. In March, 2001, staff conducted an on-site verification which determined that ABCA had exceeded the pro forma requirements in the SARC Order and Docket No. 990937-SU was closed. The pro forma work exceeding requirements would have the affect of offsetting the net positive adjustments of \$1,478 for used and useful and working capital allowance included in the SARC Order rate base.

The rate base calculation approved in the SARC Order is attached as Schedule No. 1. Based on this schedule, the Commission established rate base for ABCA, as of June 30, 1999, at \$31,392. For rate base for transfer purposes, staff recommends that the Commission adopt the rate base in the SARC Order of \$31,392, as of June 30, 1999.

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SCHEDULE 1

ABCA, INC.
SCHEDULE OF WASTEWATER RATE BASE
AS OF JUNE 30, 1999

	<u>BALANCE PER ORDER NO. PSC-00-1163-PAA-SU</u>
UTILITY PLANT IN SERVICE	\$ 239,411
LAND/NON-DEPRECIABLE ASSETS	59,727
NON-USED AND USEFUL PLANT	(4,763)
ACCUMULATED DEPRECIATION	(185,726)
CONTRIBUTIONS IN AID OF CONSTRUCTION (CIAC)	(157,240)
ACCUM. AMORTIZATION OF CIAC	73,742
WORKING CAPITAL ALLOWANCE	<u>6,241</u>
WASTEWATER RATE BASE	<u>\$ 31,392</u>

ISSUE 3: Should an acquisition adjustment be approved?

RECOMMENDATION: No. An acquisition adjustment should not be included in the calculation of rate base for transfer purposes. (BRADY)

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. As previously noted, the buyer acquired the utility facilities along with considerable undeveloped acreage. The mobile home community is platted for approximately 1,000 lots at build out of which less than 300 are currently connected to the utility. The winning bid for the acquisition was \$192,500. The auction was an "As Is, Where Is" sale for the land and the improvements thereon. As such, there was no attempt in the contract to assign a separate value to the utility property.

The buyer stated in the application that it was not seeking an acquisition adjustment. Further, in the absence of extraordinary circumstances, it has been Commission practice that a subsequent purchase of a utility system at a premium or discount should not affect the rate base calculation. There are no extraordinary circumstances regarding this purchase that would justify an acquisition adjustment to rate base. The treatment of the acquisition adjustment in this instance is consistent with previous Commission decisions. See Order No. PSC-00-1675-PAA-WS, issued September 19, 2000, in Docket No. 991984-WS; Order No. PSC-00-1659-PAA-WU, issued September 18, 2000, in Docket No. 000334-WU; Order No. PSC-00-1515-PAA-WU, issued August 21, 2000, in Docket No. 000333-WU; and Order No. PSC-00-1389-PAA-WU, issued July 31, 2000, in Docket No. 991001-WU.

In summary, the buyer is not requesting an acquisition adjustment, the buyer is unable to identify a separate purchase price for the utility assets, and there do not appear to be any extraordinary circumstances warranting an acquisition adjustment. For these reasons, staff recommends that an acquisition adjustment should not be included in the calculation of rate base for transfer purposes.

ISSUE 4: Should the rates and charges approved for ABCA, Inc., be continued?

RECOMMENDATION: Yes. The rates and charges approved for the utility should be continued until authorized to change by the Commission in a subsequent proceeding. The tariff reflecting the transfer should be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. (BRADY)

STAFF ANALYSIS: Rule 25-9.044(1), Florida Administrative Code, provides that:

In case of change of ownership or control of a utility which places the operation under a different or new utility, or when its name is changed, the company which will thereafter operate the utility business must adopt and use the rates, classifications and regulations of the former operating company (unless authorized to change by the commission).

The utility's current wastewater service charges, schedule of customer deposits, and service availability fees and charges were implemented pursuant to Order No. PSC-00-1163-PAA-SU, issued on June 26, 2000, in Docket No. 990937-SU, and made effective August 1, 2000. The utility has the standard schedule of miscellaneous service charges.

**WASTEWATER TARIFF
RESIDENTIAL SERVICE**

Monthly Base Facility Charge

All Meter Sizes \$ 9.15

Gallonge Charge \$ 3.03
per 1,000 gallons
8,000 gallons maximum per month

**WASTEWATER TARIFF
 GENERAL SERVICES**

Monthly Base Facility Charges

<u>Meter Size</u>	<u>Charge</u>
5/8" x 3/4"	\$ 9.15
3/4"	13.72
1"	22.87
1 1/2"	45.74
2"	73.18
3"	146.36
4"	228.68
6"	457.36

Gallage Charge \$ 3.63 per 1,000 gallons

**WASTEWATER TARIFF
 CUSTOMER DEPOSITS**

	<u>Residential</u>	<u>General Service</u>
5/8" x 3/4"	\$ 40.00	\$ 40.00
Over 5/8" x 3/4"	<u>N/A</u>	<u>2 x average bill</u>

**WASTEWATER TARIFF
 SERVICE AVAILABILITY FEES AND CHARGES**

Main Extension Charge	\$ 450.00 per ERC
Plant Capacity Charge	\$ 430.00 per ERC

Staff recommends that West Lakeland continue to charge the utility's existing rates and charges until authorized to change by the Commission in a subsequent proceeding. West Lakeland has filed wastewater tariff sheets reflecting the transfer. The tariff sheets should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

ISSUE 5: Should this docket be closed?

RECOMMENDATION: No. If no timely protest is received to the proposed agency action issues, upon the expiration of the protest period a Consummating Order should be issued. The docket should remain open for receipt of proof that West Lakeland owns the land upon which the utility treatment facilities are located or a copy of an agreement which provides for the continued use of the land. Upon receipt and verification of such proof, the docket should be administratively closed. (CROSBY)

STAFF ANALYSIS: If no timely protest is received to the proposed agency action issues, upon the expiration of the protest period a Consummating Order should be issued. The docket should remain open for receipt of proof that West Lakeland owns the land upon which the utility treatment facilities are located or a copy of an agreement which provides for the continued use of the land. Upon receipt and verification of such proof, the docket should be administratively closed.

ABCA, INC.

WASTEWATER SERVICE TERRITORY, ONLY
POLK COUNTY

Township 28 South, Range 24 East
Sections 14 and 23

Beginning at the SW corner of Section 14, Township 28 South, Range 24 East; run thence East along the South boundary of said Section 14 to the SE corner of the SW 1/4 of the SW 1/4 of said Section 14; thence North to the NW corner of the South 1/2 of the SE 1/4 of the SW 1/4 of said Section 14; thence East to the NE corner of said South 1/2 of the SE 1/4 of the SW 1/4; thence South along the East boundary of the West 1/2 of said Section 14 and the East boundary of the West 1/2 of Section 23 of said Township and Range to the SE corner of the NW 1/4 of said Section 23; thence East to the NE corner of the West 1/4 of the SE 1/4 of said Section 23; thence South to the SE corner of said West 1/4 of the SE 1/4; thence West along the South boundary of said Section 23 to a point 220 feet West of the SE corner of the SW 1/4 of said Section 23; thence North 1,247.05 feet, West 100 feet, North 600 feet, West 180 feet, North 500 feet, West to the West boundary of the East 1/2 of the SW 1/4 of said Section 23; thence North along said West boundary of said East 1/2 of said SW 1/4 and along the West boundary of the SE 1/4 of the NW 1/4 of said Section 23 to the NW corner of said SE 1/4 of the NW 1/4; thence West along the South boundary of the NW 1/4 of the NW 1/4 of said Section 23 to the West boundary of said Section 23; thence North along said West boundary to the point of beginning. All in Sections 14 and 23, Township 28 South, Range 24 East.