

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer  
of Certificate No. 515-S in Polk  
County from ABCA, Inc. to West  
Lakeland Utilities, Inc.

DOCKET NO. 010382-SU  
ORDER NO. PSC-01-1271-PAA-SU  
ISSUED: June 6, 2001

The following Commissioners participated in the disposition of  
this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

ORDER APPROVING TRANSFER AND  
REQUIRING PROOF OF OWNERSHIP OR CONTINUED USE OF  
THE LAND UPON WHICH THE UTILITY IS LOCATED

AND

NOTICE OF PROPOSED AGENCY ACTION  
ORDER ESTABLISHING RATE BASE FOR PURPOSES OF THE TRANSFER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service  
Commission that the action establishing rate base for purposes of  
the transfer, 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 April 2, 2001, an application was filed with this  
Commission seeking approval of the transfer of Certificate No. 515-  
S in Polk County from ABCA, Inc. (ABCA or utility) to West Lakeland  
Utilities, Inc. (West Lakeland). ABCA is a Class C utility that

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provides wastewater service to approximately 291 residential and two general service customers in a mobile home community formerly known as Village Lakeland. ABCA, which is located in a water use caution area, receives water service from the City of Lakeland.

ABCA has been in existence in Polk County (County) since 1972. On January 9, 1990, the 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 Docket No. 971531-SU, ABCA was granted Certificate No. 515-S to provide wastewater service in the County.

At the December 19, 2000 agenda conference, the transfer of the utility from ABCA to West Lakeland was approved 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). On January 2, 2001, prior to issuance of the Order memorializing our decision on the transfer, we were informed that the sales contract had been terminated prior to closing. Order No. PSC-01-0427-FOF-SU was issued on February 22, 2001, in Docket No. 000973-SU, acknowledging termination of the contract and returning Certificate No. 515-S to ABCA.

Subsequent to that time, the utility and undeveloped acreage in the mobile home community were sold by ABCA at public auction to Ms. Suzzane Averett Britt and Mr. Sam A. Averett. The sale occurred on March 20, 2001. According to the Contract for Sale and Purchase of Real Estate (sales contract), the sale is contingent upon Commission approval. In addition, the corporate name, West Lakeland Utilities, Inc., was transferred to the new owners. Further, because Ms. Britt and Mr. Averett are only interested in owning and operating the utility, the undeveloped acreage is intended be to assigned to DGB for development. As stated previously, the application for approval of the transfer was filed on April 2, 2001. We have jurisdiction pursuant to Section 367.071, Florida Statutes.

Application

Except as discussed herein, the application, as filed and amended, 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 as required by Rule 25-30.020, Florida Administrative Code. The application also contains proof of compliance with the noticing provisions of Rule 25-30.030, Florida Administrative Code. No objections to the application have been received and the time for filing such has expired.

Rule 25-30.037(2)(g), Florida Administrative Code, requires that a utility provide proof that it owns the land upon which its utility treatment facilities are located or an agreement which provides for the continued use of the land. Because closing has not yet occurred, the application does not contain such proof. Therefore, within 30 days of the date of closing, West Lakeland shall provide proof that it owns or has continued use of the land upon which its facilities are located.

Pursuant to Rule 25-30.037(2)(g), (h), (i), and (k), Florida Administrative Code, the application contains a copy of the sales contract, and a description of financing of the transfer. According to the information provided, the purchase price was \$192,500. The Colonial Bank in Lakeland, Florida, will finance 60 percent of the purchase price for the buyers. The remainder of the purchase price will be paid in cash at closing, which is scheduled to occur within two business days of the issuance date of this Order. Any customer deposits will be conveyed to the buyer at closing along with title to the land upon which the utility facilities are located.

The application indicates that all outstanding regulatory assessment fees (RAFs) will be paid and/or prorated prior to the actual transfer. We have verified that the utility is current on annual reports and RAFs through 2000 and there are no penalties, interest or refunds due. ABCA shall be responsible for 2001 RAFs up to the date of closing. From the date of closing forward, West Lakeland shall be responsible for RAFs as well as for filing the annual reports on behalf of the utility within the time-frame and

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manner prescribed by Commission rules. ABCA has indicated that it intends to prepay its portion of the 2001 RAFs.

Pursuant to Rule 25-30.037(2)(p), Florida Administrative Code, the application contains a statement that the buyer has inspected the facilities and that they appear to be in satisfactory condition. 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. It should also be noted 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.

With regard to technical ability, the application contains a statement of the buyers' experience in utility operations and their financial ability to continue to provide wastewater service. Ms. Britt, President, and Mr. Averett, Secretary/Treasurer, are the sole officers of West Lakeland. West Lakeland's parent company is Averett Septic Tank Company, Inc. (Averett Septic).

Averett Septic was established in 1958 and is currently the largest septic tank company in the Southeast United States. Averett Septic has seven 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 Chapter 367, Florida Statutes. Further, 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 the County and the cities of Lakeland, Winter Haven and Auburndale. Based on its experience with residual waste and lift station management, and its experience with FDEP's environmental regulations, it appears that the buyers have the experience to operate the utility. Further, West Lakeland is retaining the services of the FDEP licensed operator currently operating the system.

With regard to financial ability, because West Lakeland is a newly formed corporation, it does not yet have financial statements. Instead, the application contains financial statements for Ms. Britt, Mr. Averett and Averett Septic. These statements indicate that there are substantial liquid assets capable of maintaining and repairing utility facilities under emergency conditions. In addition, the application contains a statement from the buyers that they intend to fulfill all commitments, obligations and representations of the seller with regard to utility matters.

Based on the foregoing, we find that the transfer of the wastewater facilities and Certificate No. 515-S from ABCA to West Lakeland is in the public interest and it is approved. The territory which West Lakeland is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein. Certificate No. 515-S has been returned to this Commission for entry reflecting the change in ownership.

ABCA shall be responsible for 2001 RAFs up to the date of closing. West Lakeland shall be responsible for annual reports and RAFs from the date of closing forward. Further, within 30 days of the date of closing, West Lakeland shall provide proof that it owns or has continued use of the land upon which the utility facilities are located.

#### Rate Base

Because of the circumstances of this transfer, an audit would normally be conducted to establish the net book value of the utility as of December 31, 2000. However, since rate base was recently established by Order No. PSC-00-1163-PAA-SU, we find it appropriate to adopt the rate base established by that Order, for purposes of the transfer.

It should be noted that rate base established by Order No. PSC-00-1163-PAA-SU 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, an on-site verification was

conducted which determined that ABCA had exceeded the pro forma requirements contained in Order No. PSC-00-1163-PAA-SU.

Therefore, for purposes of the transfer, we find rate base to be \$31,392 for ABCA, as of June 30, 1999. The rate base calculation approved in Order No. PSC-00-1163-PAA-SU is shown on Schedule No. 1 of this Order, which by reference is incorporated herein.

#### Acquisition Adjustment

An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of transfer. As previously noted, the buyers acquired the utility along with undeveloped acreage. The mobile home community is platted for approximately 1,000 lots at build out. Less than 300 lots are currently connected to the utility.

The facilities were sold at public auction for \$192,000. The auction was an "As Is, Where Is" sale of the land and improvement thereon. There was no attempt to assign a separate value to the utility property.

According to the application, the buyers have not requested an acquisition adjustment. Further, in the absence of extraordinary circumstances, it is Commission practice that the purchase of a utility system at a premium or discount shall not affect the rate base calculation. Because there do not appear to be any extraordinary circumstances in this transaction that would justify including an acquisition adjustment in rate base, an acquisition adjustment is not included in the calculation of rate base. This 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.

#### Rates and Charges

Rule 25-9.044(1), Florida Administrative Code, requires the new owner of a utility to adopt and use the rates, classifications

and regulations of the former operating company unless authorized to change by this Commission. ABCA's current service charges, schedule of customer deposits, and service availability fees and charges became effective August 1, 2000, pursuant to Order No. PSC-00-1163-PAA-SU. The utility has the standard schedule of miscellaneous service charges. ABCA's rates and charges are set forth below.

Residential Service  
Monthly Rates

Base Facility Charge  
Meter Size

All Meter Sizes \$ 9.15

Gallorage Charge (per 1,000 Gallons)

8,000 Gallons Maximum Per Month \$ 3.03

General Service  
Monthly Rates

Base Facility Charge  
Meter Size

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

Gallorage Charge (per 1,000 Gallons) \$ 3.63

Customer Deposits

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

Service Availability Fees and Charges

Main Extension Charge	\$ 450.00*
Plant Capacity Charge	\$ 430.00*

\*Per Equivalent Residential Connection

West Lakeland has not requested to change the rates of the utility and we see no reason to change them at this time. West Lakeland shall continue to charge these rates and charges until authorized to change by this Commission in a subsequent proceeding. West Lakeland has filed revised tariff sheets reflecting the change in ownership. The tariff sheets shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of utility facilities and Certificate No. 515-S from ABCA, Inc., c/o Douglas A. Carson, Vice President, First Union National Bank, 7<sup>th</sup> Floor, 1970 Chain Bridge Road, McLean, Virginia 22102, to West Lakeland Utilities, Inc., 2901 Brooks Street, Lakeland, Florida 33803, is hereby granted. The territory West Lakeland Utilities, Inc. is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that within 30 days of the date of closing, West Lakeland Utilities, Inc. shall provide proof that it owns or has continued use of the land upon which its treatment facilities are located. It is further



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ORDERED that ABCA, Inc. shall remain responsible for 2001 regulatory assessment fees up to the date of closing. It is further

ORDERED that West Lakeland Utilities, Inc. shall be responsible for filing annual reports and paying regulatory assessment fees from the date of closing forward. It is further

ORDERED that West Lakeland Utilities, Inc. shall continue to charge the rates and charges approved in ABCA, Inc.'s tariff and as set forth in the body of this Order until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that the tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

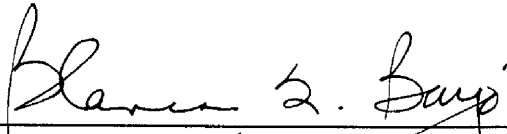
ORDERED that rate base, for purposes of the transfer, is \$31,392, as of June 30, 1999, as established by Order No. PSC-00-1163-PAA-SU, issued June 26, 1999, in Docket No. 990937-SU. An acquisition adjustment has not been included in the calculation of rate base. The calculation of rate base is shown on Schedule No. 1 of this Order, which by reference is incorporated herein. It is further

ORDERED that the provisions of this Order, 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 remain open pending receipt of proof that West Lakeland Utilities, Inc. owns or has continued use of the land upon which its facilities are located as set forth in the body of this Order. Upon receipt and verification of such proof, the docket shall be closed administratively.

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By ORDER of the Florida Public Service Commission this 6th day of June, 2001.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

ALC

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 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 purpose of the transfer 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 June 27, 2001. 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.

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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

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

BALANCE PER ORDER NO.  
PSC-00-1163-PAA-SU

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>

ATTACHMENT A

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.