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DATE: JUNE 28, 2001

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

FROM: DIVISION OF REGULATORY OVERSIGHT (BRADY) ^{3/5m} **pb**
DIVISION OF LEGAL SERVICES (CROSBY, GERVASI) *pb pd of*

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: JULY 10, 2001 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

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

CASE BACKGROUND

ABCA, Inc. (ABCA, utility, or seller) is a Class C utility, which 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.

ABCA has been in existence in Polk County (County) since 1972. The 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, the Commission granted ABCA grandfather Certificate No. 515-S.

At the December 19, 2000 agenda conference, the Commission approved the transfer of Certificate No. 515-S from ABCA to West Lakeland Utilities, Inc. (West Lakeland) in Docket No. 000973-SU.

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At that time, West Lakeland was a corporation established for the utility by the developer, Mr. Dennis Corbett, owner of DGB Properties, Inc. (DGB). The order memorializing the Commission's decision was scheduled to be issued January 8, 2001. However, the sales contract was terminated by both the buyer and the seller prior to closing and issuance of the order and the transfer did not occur. 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.

Subsequent to that time, the utility and all undeveloped acreage were sold by ABCA to Ms. Suzanne Averett Britt and Mr. Sam A. Averett at public auction on March 20, 2001. Since DGB no longer needed the corporate name it had previously established for the utility, the corporate identity was to be transferred by DGB to Ms. Britt and Mr. Averett. Hence, the transfer in this docket was from ABCA to West Lakeland, but as a corporation which was to be 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.

On June 6, 2001, the Commission issued Order No. PSC-01-1271-PAA-SU, in this docket, transferring Certificate No. 515-S and the utility to West Lakeland. Subsequent to issuance of the Order, Mr. Corbett indicated that he would release the corporate name to Ms. Britt and Mr. Averett for \$20,000. Because, according to Ms. Britt, this was not the agreement and because Ms. Britt and Mr. Averett were unable to obtain ownership and use of the corporate name, West Lakeland, they incorporated under the name West Lakeland Wastewater, Inc. Since the certificates have not yet been issued, staff believes that Order No. PSC-01-1271-PAA-SU should be modified to reflect that the transfer of ABCA is to West Lakeland Wastewater, Inc., instead of to West Lakeland. This is more fully discussed in Issue 1 of this recommendation.

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

DISCUSSION OF ISSUES

ISSUE 1: Should Order No. PSC-01-1271-PAA-SU be modified to reflect that Certificate No. 515-S is transferred from ABCA to West Lakeland Wastewater, Inc., which is the correct name of the utility as registered with the Division of Corporations, Department of State?

RECOMMENDATION: Yes. Order No. PSC-01-1271-PAA-SU should be modified to reflect that Certificate No. 515-S is being transferred from ABCA to West Lakeland Wastewater, Inc. West Lakeland Wastewater, Inc. should be required to notice the customers of the change in name of the utility. Further, by September 14, 2001, West Lakeland Wastewater, Inc. should provide proof that it owns the land or possesses the right to continued use of the land upon which the utility treatment facilities are located. (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, which occurred on June 20, 2001, was contingent upon Commission approval. On June 6, 2001, this Commission issued Order No. PSC-01-1271-PAA-SU, transferring Certificate No. 515-S and the utility to West Lakeland.

Subsequent to the issuance of Order No. PSC-01-1271-PAA-SU approving the transfer, Ms. Britt and Mr. Averett contacted Mr. Dennis Corbett to finalize the transfer of the West Lakeland corporate identity. According to Ms. Britt, Mr. Corbett indicated that he would transfer the corporation if Ms. Britt and Mr. Averett would pay him \$20,000. The information provided by Ms. Britt indicates that there was a verbal agreement between the parties that Mr. Corbett would sell the corporation, which existed in name only, to Ms. Britt and Mr. Averett for what it cost him to set up the corporation. As stated previously, the corporation, West Lakeland, was established by DBG to own and control the utility, but the sales contract was terminated prior to closing. Therefore, the utility was never in the name of West Lakeland and was never owned by DGB.

Because of the problems with transferring the corporation from Mr. Corbett, on June 7, 2001, Ms. Britt and Mr. Averett incorporated under the name West Lakeland Wastewater, Inc., and have requested that the Commission acknowledge that the transfer is to West Lakeland Wastewater, Inc., instead of to West Lakeland. Proof of name registration has been provided along with tariffs reflecting the correct name of the utility. Ms. Britt has also provided a copy of the notice to be sent to the customers of the utility in order to explain the change in name.

Staff has had several conversations with Mr. Corbett, owner of DGB, regarding Ms. Britt and Mr. Averett and the transfer of West Lakeland. According to those conversations, Mr. Corbett is very upset about the transfer from ABCA to West Lakeland. On June 19, 2001, Mr. Corbett stated in a telephone conversation with the Legal staff that he looked on the Internet and found out that ABCA had been transferred to West Lakeland. He stated that he had never authorized such a transfer. He stated that he was aware of the public auction and the sale to Ms. Britt and Mr. Averett, but that Ms. Britt and Mr. Averett had included false information that they were President and Vice President of West Lakeland.

Mr. Corbett further stated that he could not believe the Commission would grant a certificate to someone who included false information on their application, and that if they provided false information in this instance, information included elsewhere would also be suspect. Mr. Corbett was assured by the Legal staff that the Commission would be made aware of his position and that he would be provided with a copy of this recommendation.

On June 22, 2001, Ms. Britt forwarded to the Division of Legal Services, by facsimile (with hard copy to follow), a letter explaining her dealings with Mr. Corbett with regard to West Lakeland. According to the letter, on March 29, 2001, Mr. Corbett provided Ms. Britt with forms to pay the fees to keep the corporation from lapsing and to change the officers of the corporation in the records of the Division of Corporations. Also, included with the letter was a copy of the form changing the name of the officers, which was filed with the Division of Corporations, and a copy of Check No. 502951, dated March 30, 2001, in the amount of \$158.75, for West Lakeland to ensure that the corporation remained active and to change the officers of the corporation. A certain amount of time is required between the time of filing with the Division of Corporations and the time the filing appears in the

records. According to the information at the Division of Corporations, Florida Department of State, Ms. Suzanne A. Britt has been the President, and Mr. Sam A. Averett has been the Vice President, of West Lakeland since at least April 18, 2001.

Ms. Britt also indicated in the letter that she had on several occasions called Mr. Corbett to determine how much money was owed for the corporation. Ms. Britt indicated that Mr. Corbett stated he would have to discuss the costs with his attorney, that they would not be much, and not to worry. After filing with the Division of Corporations and after the Order had been issued approving the transfer, Ms. Britt discovered that an additional form needed to be signed by Mr. Corbett for the shares to be signed over to them so that West Lakeland's Articles of Incorporation could be amended. Mr. Corbett was called once again and asked how much was owed to him for the corporation. When Mr. Corbett called back, he spoke to Mr. Averett and told him that the cost was \$20,000.

At that time, Ms. Britt paid \$87.50 to the Division of Corporations and filed for a new corporation, West Lakeland Wastewater, Inc. All bank account names and the Federal Tax identification number were also changed to the new name. According to Ms. Britt, neither Mr. Corbett's "name or financials" were ever used on any of the forms. As stated previously, the closing of transfer of ABCA to West Lakeland occurred on June 20, 2001, contingent upon Commission approval.

After reviewing all of the information provided by Ms. Britt and Mr. Averett and the information in the records of the Division of Corporations, it does not appear that incorrect information was provided to the Commission or that Ms. Britt and Mr. Averett included false information on the application. Their request for changes in the records was mailed to the Division of Corporations at the same time they sent the application to this Commission for approval of the transfer. The application for transfer was filed with the Commission on April 2, 2001.

Based on the foregoing, staff recommends that Order No. PSC-01-1271-PAA-SU be modified to reflect that Certificate No. 515-S and the wastewater facilities are being transferred from ABCA to West Lakeland Wastewater, Inc. Further, by September 14, 2001, West Lakeland Wastewater, Inc. should provide proof that it owns the land or possesses the right to continued use of the land upon

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which the treatment facilities are located. West Lakeland Wastewater, Inc. should also be required to notice the customers of the change in the name of the utility within 30 days of the date of issuance of the Order arising from this recommendation.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. The docket should remain open pending receipt of proof that West Lakeland Wastewater, Inc., owns the land or possesses the right to continued use of the land upon which the utility treatment facilities are located. The docket should also remain open to verify that West Lakeland Wastewater, Inc. has notice the customers of the utility of the change in the name of the utility. Upon receipt and verification of such proof, the docket should be administratively closed. (CROSBY)

STAFF ANALYSIS: This docket should remain open pending receipt of proof that West Lakeland owns the land or possesses the right to continued use of the land upon which the utility treatment facilities are located. The docket should also remain open to verify that West Lakeland Wastewater, Inc. has notice the customers of the utility of the change in the name of the utility. Upon receipt and verification of such proof, the docket should be administratively closed.