

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 Wastewater, Inc.

DOCKET NO. 010382-SU  
ORDER NO. PSC-01-1576-FOF-SU  
ISSUED: July 30, 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

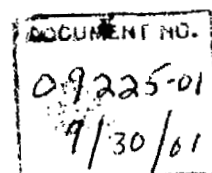
ORDER MODIFYING ORDER NO. PSC-01-1271-PAA-SU TO REFLECT THAT  
CERTIFICATE NO. 515-S IS TRANSFERRED FROM ABCA, INC. TO WEST  
LAKELAND WASTEWATER, INC., AND REQUIRING PROOF OF OWNERSHIP  
OF THE LAND UPON WHICH THE UTILITY'S FACILITIES ARE LOCATED

BY THE COMMISSION:

Background

ABCA, Inc. (ABCA, utility, or seller) is a Class C utility,  
which 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, we approved the  
transfer of Certificate No. 515-S from ABCA to West Lakeland  
Utilities, Inc. (West Lakeland) in Docket No. 000973-SU. 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 our 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 the transfer  
did not occur. By Order No. PSC-01-0427-FOF-SU, issued February  
22, 2001, we 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. 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.

#### Name Change

On June 6, 2001, this Commission issued Order No. PSC-01-1271-PAA-SU, transferring Certificate No. 515-S and the utility from ABCA to West Lakeland. Subsequent to the issuance of that Order, 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.

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 requested that we 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.

Our 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 our 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 further 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 in the application indicating that they were President and Vice President of West Lakeland.

Mr. Corbett also stated that he could not believe the Commission would grant a certificate to persons who included false information on their application, and that if they provided false information in this instance, information included elsewhere would also be suspect.

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. 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 on file with 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, Mr. Corbett's "name or financials" were never used on any of the forms. As stated previously, the closing of the transfer of ABCA to West Lakeland occurred on June 20, 2001, contingent upon Commission approval.

Mr. Corbett, Ms. Britt and Mr. Averett participated at the July 10, 2001, agenda conference via telephone, and each was given an opportunity to state his or her position. Positions and information provided by Mr. Corbett, Ms. Britt and Mr. Averett were the same as was previously discussed in this Order. Mr. Corbett indicated that he intends to pursue the matter.

After reviewing all of the information provided by Mr. Corbett, Ms. Britt and Mr. Averett, it appears that the problems which exist between the parties involve a verbal agreement. Such an agreement is beyond the scope and jurisdiction of this Commission. However, the Commission staff will track the problem and keep this Commission informed as to the outcome of the dispute.

Based on the foregoing, we find it appropriate to modify Order No. PSC-01-1271-PAA-SU to reflect that Certificate No. 515-S and the wastewater facilities have been transferred from ABCA to West Lakeland Wastewater, Inc. West Lakeland Wastewater, Inc. shall provide proof, by September 14, 2001, that it owns or has continued use of the land upon which the treatment facilities are located. Further, West Lakeland Wastewater, Inc. shall notice the customers of the change in the name of the utility within 30 days of the issuance date of this Order.

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

Based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that Order No. PSC-01-1271-PAA-SU is hereby modified to reflect that Certificate No. 515-S and the wastewater facilities have been transferred from ABCA, Inc. to West Lakeland Wastewater, Inc. It is further

ORDERED that Order No. PSC-01-1271-PAA-SU is hereby affirmed in all other respects. It is further

ORDERED that West Lakeland Wastewater, Inc. shall provide proof, by September 14, 2001, that it owns or has continued use of the land upon which the treatment facilities are located. it is further

ORDERED that West Lakeland Wastewater, Inc. shall notice the customers of the change in the name of the utility within 30 days of the date this Order is issued. It is further

ORDERED that this docket shall remain open pending receipt of proof that West Lakeland owns or has continued use of the land upon which the utility treatment facilities are located. The docket shall also remain open pending verification that West Lakeland Wastewater, Inc. has noticed the customers of the utility of the change in the name of the utility. Upon receipt and verification of such proof, the docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 30th day of July, 2001.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

( S E A L )

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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.

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.