



Public Service Commission  
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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK

**DATE:** SEPTEMBER 6, 2001

**TO:** DIRECTOR, DIVISION OF THE COMMISSION  
ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** DIVISION OF REGULATORY OVERSIGHT (BRADY, RIEGER) *B5m*  
DIVISION OF ECONOMIC REGULATION (IWENJIORA) *DM RRT*  
DIVISION OF LEGAL SERVICES (CROSBY, GERVASI) *PS*

**RE:** DOCKET NO. 010801-WS - APPLICATION FOR TRANSFER OF  
MAJORITY ORGANIZATIONAL CONTROL OF BIEBER ENTERPRISES,  
INC. D/B/A BREEZE HILL UTILITIES, HOLDER OF CERTIFICATES  
NOS. 598-W AND 513-S IN POLK COUNTY, FROM PAUL E. BIEBER  
TO TERRANCE HARTIGH.  
COUNTY: POLK

**AGENDA:** 09/18/01 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\RGO\WP\010801.RCM

CASE BACKGROUND

Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities (Breeze Hill or utility), is a Class C water and wastewater utility providing service to 116 residential customers and 1 general service customer in Polk County. Breeze Hill is in an area of the South Florida Water Management District which is not a water use caution area. According to its 2000 Annual Report, the utility had combined gross revenues of \$55,662 with a combined net operating loss of \$4,335.

Breeze Hill was issued grandfather Certificates Nos. 598-W and 513-S pursuant to Rule 25-30.035, Florida Administrative Code, by Order No. PSC-98-1550-FOF-WS, issued November 23, 1998, in Docket

DOCUMENT NUMBER-DATE

11065 SEP-6

FPSC-COMMISSION CLERK

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No. 971192-WS. On June 4, 2001, the utility filed an application for transfer of majority organizational control from Paul E. Bieber (seller) to Terrance Hartigh (buyer). The Contract for Sale and Purchase (Contract) was executed on November 21, 2000. The transfer and closing occurred on April 13, 2001, subject to final Commission approval.

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

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the transfer of majority organizational control of Bieber Enterprises d/b/a Breeze Hill Utilities from Paul E. Bieber to Terrance Hartigh be approved?

**RECOMMENDATION:** Yes. The transfer of majority organizational control should be approved. The seller should be held responsible for remitting to the Commission 2001 regulatory assessment fees accrued prior to the closing. The buyer should be held responsible for the 2001 annual report for the period January 1, through December 31, 2001, and remitting to the Commission the balance of 2001 regulatory assessment fees accrued after the closing. (BRADY, RIEGER, CROSBY, IWENJIORA)

**STAFF ANALYSIS:** On June 4, 2001, an application was filed for approval of the transfer of majority organizational control of Breeze Hill from Paul E. Bieber (seller) to Mr. Terrance Hartigh (buyer). As stated in the case background, the Contract was executed on November 21, 2000, and made subject to Commission approval in compliance with Section 367.071, Florida Statutes. The closing occurred on April 13, 2001.

As filed and clarified, the application is in compliance with the governing statute, Section 367.071, Florida Statutes, pertaining to an application for transfer of majority organizational control. The application contained the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. Pursuant to Rule 25-30.037(3)(k), Florida Administrative Code, the utility's original certificates were returned for modification. A description of the territory granted by Certificates Nos. 598-W and 513-S is appended to this memorandum as Attachment A.

**Noticing.** The application contained evidence of compliance with the noticing requirements of Rule 25-30.030, Florida Administrative Code. One letter in response to the notice was timely filed on June 11, 2001. The letter was from a customer of the utility who was concerned about the effect of the transfer on rates and charges. On June 14, 2001, legal staff contacted the customer to explain that the utility's approved rates and charges do not change as a result of an application for transfer of majority organizational control. On June 16, 2001, legal staff sent the customer a follow-up letter asking for a response by July 6, 2001, if the customer wished to pursue an objection to the

application and request a hearing. No response has been received. Therefore, there are no further objections to the application.

**Financing.** Pursuant to Rules 25-30.037(3)(e) and (g), Florida Administrative Code, the application contained a statement describing the financing of the purchase, the entities providing funding to the buyer, and an explanation of the manner and amount of such funding. According to application, 100% of the stock of the utility was transferred from Mr. Beiber to Mr. Hartigh. In addition to a copy of the original Contract, the application contained a copy of the Closing Statement and Disbursement Schedule (Closing Statement) which describes the financing.

The total purchase price for the utility facilities, park infrastructure, and future lots was \$230,000 of which \$170,000 was for utility facilities. Of this amount, the buyer paid \$101,000 through cash, credits, and a 1031 IRS Exchange. A 1031 IRS Exchange allows for the sale of one property to pay for the purchase of another property without having to pay any capital gains. The remaining \$69,000 is being financed by a promissory note held by the seller. The buyer has agreed to pay the promissory note in 60 consecutive monthly payments at an interest rate of 7.5% per annum.

**Proof of Ownership.** Pursuant to Rule 25-30.037(3)(i), Florida Administrative Code, the application contained a recorded warranty deed as evidence that the utility owns the land upon which the utility facilities are located.

**Annual Reports and Regulatory Assessment Fees (RAFs).** Staff has verified that the utility is current on annual reports through 2000 and that there are no outstanding fees, fines or refunds due. The seller should be held responsible for remitting to the Commission 2001 RAFs accrued prior to the closing. The buyer should be held responsible for the 2001 annual report for the period January 1, through December 31, 2001, and remitting to the Commission the balance of 2001 RAFs accrued after the closing.

**Environmental Compliance.** Pursuant to Rule 25-30.037(3)(h), Florida Administrative Code, the application contained a statement from the buyer that, after reasonable investigation, the systems being acquired appeared to be in satisfactory condition and in compliance with all standards set by the Florida Department of Environmental Protection (FDEP).

In Polk County, privately owned potable water systems are regulated by the Polk County Health Department (PCHD). Wastewater service is regulated by the Southwest District of the FDEP. Staff has confirmed with both the PCHD and the FDEP that the utility's water and wastewater systems are currently in environmental compliance with respect to both agencies' standards.

**Public Interest.** Pursuant to Rule 25-30.037(3)(f), Florida Administrative Code, the application contained a statement of how the transfer is in the public interest including a summary of the buyer's experience in water and wastewater operations and a showing of the buyer's financial ability to provide service. While the buyer has no prior utility experience, the services of an FDEP licensed operator have been retained to oversee utility operations. In addition, the seller has agreed to continue to work for the time being as a technical advisor to the buyer.

For a showing of financial ability, the buyer provided personal financial statements which appear to indicate sufficient liquid assets to maintain normal utility operations as well as address any utility emergencies. Finally, the buyer provided a statement of intent to fulfill the commitments, obligations and representations of the seller with regard to utility matters.

**Rate Base.** It has been Commission practice not to establish rate base for transfers of majority organizational control because publicly traded stock has no regulatory relationship to rate base. Moreover, since rate base is not affected by stock transfers, it is not part of the consideration of public interest. Similarly, it has also been Commission practice that an acquisition adjustment for a stock transfer is not part of the consideration of public interest. Therefore, staff's recommendation does not include issues regarding the establishment of rate base at the time of transfer nor an acquisition adjustment. For informational purposes, the Commission recently established rate base for water and wastewater, as of December 31, 1998, by Order No. PSC-99-2394-FOF-WS, issued December 7, 1999, in Docket No. 990356-WS, a staff-assisted rate case.

**Conclusion.** Based on all of the above, staff recommends that the transfer of majority organizational control of Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities from Paul E. Bieber to Terrance Hartigh is in the public interest and should be approved. The seller should be held responsible for remitting to

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the Commission 2001 regulatory assessment fees accrued prior to the closing. The buyer should be held responsible for the 2001 annual report for the period January 1, through December 31, 2001, and remitting to the Commission the balance of 2001 regulatory assessment fees accrued after the closing.

**ISSUE 2:** Should the existing rates and charges for the utility be continued?

**RECOMMENDATION:** Yes. The rates and charges approved for the utility should be continued. The tariff reflecting the transfer of majority organizational control should be approved effective for services rendered or connections made on or after the stamped approval date. (BRADY)

**STAFF ANALYSIS:** The utility's current rates and charges were effective August 14, 2000, pursuant to Order No. PSC-99-2394-FOF-WS, issued December 7, 1999, in Docket No. 990356-WS, which was a staff assisted rate case.

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, classification and regulations of the former operating company (unless authorized to change by the Commission).

In addition, the buyer has not requested any changes to the rates and charges of the utility in this application. Accordingly, staff recommends that the buyer continue to operate the utility under its approved rates, classifications and regulations. The buyer has filed revised tariffs reflecting the change in issuing officer pursuant to the transfer of majority control. For informational purposes, the utility's existing rates and charges are described below.

The utility does not require customer deposits. However, its existing tariffs include the Commission's standard charges for meter test deposits and miscellaneous services. In addition, a late payment fee of \$4.00 for water service was approved pursuant to Order No. PSC-00-2166-TRF-WU, issued December 13, 2000, in Docket No. 001325-WU. The utility's approved rates and charges are as follows:

**WATER SERVICE**

**RESIDENTIAL and GENERAL SERVICE  
MONTHLY**

<u>Base Facility Charge</u>	
5/8" x 3/4"	\$ 11.83
3/4"	17.75
1"	29.58
1 1/2"	59.16
2"	94.66
3"	189.32
4"	295.81
6"	591.61
<u>Gallonage Charge</u>	
per 1,000 gallons	\$ 1.20

**WASTEWATER SERVICE**

**RESIDENTIAL SERVICE  
MONTHLY**

<u>Base Facility Charge</u>	
All Meter Sizes	\$ 12.65
<u>Gallonage Charge</u>	
per 1,000 gallons (6,000 gallon cap)	\$ 1.75

**GENERAL SERVICE  
MONTHLY**

<u>Base Facility Charge</u>	
5/8" x 3/4"	\$ 12.65
3/4"	18.97
1"	31.61
1 1/2"	63.23
2"	101.17
3"	202.33
4"	316.14
6"	632.28
<u>Gallonage Charge</u>	
per 1,000 gallons	\$ 1.75



**SERVICE AVAILABILITY CHARGES**

	<b>Water</b>	<b>Wastewater</b>
<b>Plant Capacity Charge</b>	\$400.00	\$600.00
<b>Meter Installation Charge</b>	\$190.00	

Staff recommends that the rates and charges approved for the utility be continued. The tariffs reflecting the transfer of majority organizational control should be approved effective for services rendered or connections made on or after the stamped approval date.

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**ISSUE 3**: Should the docket be closed?

**RECOMMENDATION**: Yes. There are no issues remaining and the docket should be closed upon the issuance of the Final Order. (CROSBY)

**STAFF ANALYSIS**: There are no issues remaining and the docket should be closed upon the issuance of the Final Order.

TERRITORY DESCRIPTION  
BIEBER ENTERPRISE, INC. D/B/A BREEZE HILL UTILITIES

POLK COUNTY

WATER AND WASTEWATER SERVICE

Township 30, South, Range 29 East  
Section 32

The north 1,620 feet, east of Lake Walk in the Water Road, and west of Lake Walk in the Water, further described as:

Commence at the Northwest corner of said Section 32, thence North  $89^{\circ}22'30.49''$  East, a distance of 130 feet, more or less, to the Point of Beginning (POB), this point also the east right-of-way of the Walk in the Water Road, thence continue North  $89^{\circ}22'30.49''$  East, distance of 3,709.14 feet to the waters edge of Lake Walk in the Water, (this point also 3,839.14 feet from the Northwest corner of said Section 32), thence meander southerly and slightly westerly along the waters edge a distance of approximately 1,660 feet, more or less, thence run North  $89^{\circ}58'44.5''$  West, a distance of 1,907.00 feet to the east right-of-way of Walk in the Water Road, thence northerly along the east right-of-way of Walk in the Water Road the following courses to the POB: thence North  $40^{\circ}30'$  West, a distance of 1,950 feet, more or less, along the east right-of-way of Walk in the Water Road, thence North  $40^{\circ}$  West, a distance of 150 feet, more or less, along the east right-of-way of Walk in the Water Road, thence North  $32^{\circ}$  West, a distance of 130 feet, more or less, along the East right-of-way of Walk in the Water Road to the POB.