

State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSIONER
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DATE: SEPTEMBER 4, 2003
TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)
FROM: DIVISION OF ECONOMIC REGULATION (BRADY, JONES)
OFFICE OF THE GENERAL COUNSEL (HOLLEY)
RE: DOCKET NO. 030471-WS - APPLICATION FOR TRANSFER OF
CERTIFICATE NOS. 598-W AND 513-S IN POLK COUNTY FROM
BIEBER ENTERPRISES, INC. D/B/A BREEZE HILL UTILITIES TO
CAL CLAIR, INC. D/B/A BREEZE HILL UTILITY.
COUNTY: POLK
AGENDA: 09/16/03 - PROPOSED AGENCY ACTION ISSUES 2 AND 3 -
INTERESTED PERSONS MAY PARTICIPATE
CRITICAL DATES: NONE
SPECIAL INSTRUCTIONS: NONE
FILE NAME AND LOCATION: S:\PSC\ECR\WP\030471.RCM

CASE BACKGROUND

Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities (Bieber or utility) is a Class C water and wastewater utility providing service to 118 residential customers and 1 general service customer in Polk County. The utility is located in an area of the South Florida Water Management District (SFWMD) which is not considered a water use caution area. According to its 2002 annual report, the utility had combined gross revenues of \$52,828 with a combined net operating income of \$2,288.

Bieber was issued grandfather Certificate Nos. 598-W and 513-S pursuant to Order No. PSC-98-1550-FOF-WS, issued November 23, 1998, in Docket No. 971192-WS. By Order No. PSC-01-1985-FOF-WS, issued October 5, 2001, in Docket No. 010801-WS, the Commission approved

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COMMISSION CLERK

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a transfer of majority control of the utility from Paul E. Bieber to Terrance Hartigh.

On March 16, 2003, Mr. Hartigh entered into a Contract for Sale and Purchase (sales contract) of the utility facilities with Cal Clair, Inc. d/b/a Breeze Hill Utility (Cal Clair or buyer). The effective date of the transfer was April 30, 2003, subject to Commission approval. On May 30, 2003, an application was filed for authority to transfer Bieber's facilities and certificates to Cal Clair.

The purpose of this recommendation is to address the transfer of certificates, rate base at the time of transfer, acquisition adjustment, and rates and charges. The Commission has jurisdiction pursuant to Section 367.071, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of Certificate Nos. 598-W and 513-S from Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities to Cal Clair, Inc. d/b/a Breeze Hill Utility be approved?

RECOMMENDATION: Yes. The transfer is in the public interest and should be approved. The territory authorized for Certificate Nos. 598-W and 513-S is described in Attachment A. The buyer is responsible for filing the utility's 2003 annual report and remitting regulatory assessment fees from May 1, 2003 through December 31, 2003 in the time-frame and manner prescribed by Commission rules. (BRADY, JONES, HOLLEY)

STAFF ANALYSIS: On May 30, 2003, an application was filed for the transfer of utility facilities and certificates from Bieber to Cal Clair. The effective date of the sales contract and transfer was April 30, 2003. The transfer was made contingent upon Commission approval in compliance with Section 367.071(1), Florida Statutes.

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. The application contained the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant also returned Certificate Nos. 598-W and 513-S for modification as required by Rule 25-30.037(2)(t), Florida Administrative Code. The territory being transferred is described in Attachment A.

Noticing. Pursuant to Rule 25-30.030, Florida Administrative Code, the application contained the requisite proof of noticing. One objection in response to the notice was timely filed on June 24, 2003. The letter was from a customer of the utility who had several questions and concerns. On July 8, 2003, legal staff sent the customer a follow-up letter asking the customer to respond by July 28, 2003 as to whether he intended to pursue his objection and request a formal hearing. By letter dated July 21, 2003, the customer indicated that he did not. Meanwhile, staff investigated each of the customer's concerns and, by letter dated August 13, 2003, addressed those questions and concerns.

Sales Contract and Financing. As required by Rule 25-30.037(2)(g), (h), (i), and (k), Florida Administrative Code, the application contained a copy of the sales contract and a description of financing. The sales contract was part of a larger transaction which included non-utility property. The total purchase price was \$695,000 of which the sales contract indicated that \$200,000 was for the utility property.

The total amount financed was \$495,000 with the buyer assuming a \$100,000 mortgage balance owed by the seller, payable in monthly installments with a balloon payment due November 1, 2003. The seller is also providing financing to the buyer in the amount of a \$50,000 deferred payment note, payable on or before October 30, 2003, and a recorded mortgage of \$345,000, payable in monthly installments, with a balloon payment due October 28, 2005. Copies of the Mortgage Modification and Assumption Agreement, Promissory Notes, and Mortgage Deed were provided.

Proof of Ownership. Rule 25-30.037(2)(q), Florida Administrative Code, requires proof that the utility owns or has provided for the continued use of the land upon which the utility facilities are located. As proof of ownership, a recorded warranty deed was provided transferring ownership of the parcel containing the utility facilities from Bieber to Cal Clair effective April 25, 2003.

Annual Reports and Regulatory Assessments Fees (RAFs). Staff has verified that Bieber has paid RAFs through December 31, 2002, filed all annual reports through 2002, and that no interest, penalties, or refunds are due or outstanding as of December 31, 2002. The application indicated that the applicable RAFs for the period of January 1, 2003, through the effective date of the transfer on April 30, 2003, are the responsibility of Bieber. Staff has confirmed that Bieber has pre-paid these RAFs based on actual revenues from January 1 through April 30, 2003. The buyer, Cal Clair, will be responsible for the balance of 2003 RAFs from May 1, 2003 through December 31, 2003. Also, Cal Clair will be responsible for filing the utility's annual report for the whole year of 2003.

Environmental Compliance. Pursuant to Rule 25-30.037(3)(h), Florida Administrative Code, the application contained a statement that Cal Clair believes the systems being acquired to be in

satisfactory condition and in reasonable compliance with all standards set by the Department of Environmental Protection (DEP).

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 DEP. Staff has confirmed with both the PCHD and the DEP that the utility's water and wastewater systems are currently in environmental compliance with respect to both agencies' standards. Staff has also confirmed with SFWMD that there are no water use issues.

Public Interest. Pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, the application contained a statement indicating how the transfer is in the public interest. The statement included a summary of the buyer's experience and a showing of financial ability.

Cal Clair provided a statement that it agrees to fulfill the commitments, obligations, and representations of the seller with regard to utility matters. In addition, the application indicates that the President, Mr. Blake, met with customers of the utility and made a personal commitment to provide reliable service and to be responsive to any problems which may arise.

With regard to technical ability, Cal Clair has pledged to continue to provide water and wastewater service utilizing existing personnel to manage day to day operations. The existing DEP licensed operator will continue as operations manager with the former owners, Terrance Hartigh and Paul Bieber, staying on as advisors to Cal Clair. In addition, Mr. Blake has been in the development business for a number of years, and while he holds no prior Commission certificates, as part of his developments, Mr. Blake has built and operated utility facilities.

With regard to financial ability, the application contained Mr. Blake's financial statement which indicates sufficient net worth. While most of the assets are in real estate, the statement also indicates reasonable liquid reserves as well as the ability to attract financing.

Conclusion. Based on all the above, staff recommends that the transfer of facilities and Certificate Nos. 598-W and 513-S from Bieber Enterprises d/b/a Breeze Hill Utilities to Cal Clair, Inc. d/b/a Breeze Hill Utility is in the public interest and should be

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approved. The territory to be transferred is described in Attachment A. The buyer is responsible for filing the utility's 2003 annual report and remitting 2003 RAFs from May 1, 2003 through December 31, 2003, in the time frame and manner prescribed by Commission rules.

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ISSUE 2: What is the rate base for Bieber Enterprises, Inc.'s water and wastewater systems at the time of the transfer?

RECOMMENDATION: The rate base is \$68,257 for water and \$45,552 for wastewater as of December 31, 2001 as previously established by Order No. PSC-02-1114-PAA-WS. (BRADY)

STAFF ANALYSIS: It is Commission practice to establish rate base as of the date of the transfer, in this case April 30, 2003. Rate base as of December 31, 2001, was recently established for this utility by Order No. PSC-02-1114-PAA-WS, issued August 14, 2002, pursuant to the staff assisted rate case (SARC) in Docket No. 011481-WS.

Staff examined the utility's 2002 annual report and found no plant additions subsequent to December 31, 2001. The only adjustment in the utility's 2002 annual report was the reduction of water and wastewater rate base by \$650.00 for each service to retire transportation equipment. Therefore, for purposes of the transfer, staff believes it is appropriate to use the rate base established by the Commission in the recent SARC.

It should be noted that the SARC included a negative used and useful adjustment to wastewater rate base adjustment in the amount of \$54 and working capital allowances of \$2,275 for water and \$3,182 for wastewater. Adjustments for used and useful and working capital are not typically made for purpose of setting rate base at the time of transfer. Therefore, the calculation of an acquisition adjustment in Issue 3, will be shown with and without these adjustments.

Staff therefore recommends that rate base for transfer purpose be the rate base established by the Commission as of December 31, 2001, in the utility's most recent SARC. The rate base calculations approved in the SARC Order are attached as Schedules 1 and 2. Based on these schedules, the Commission established rate base of \$68,257 for water and \$45,552 for wastewater as of December 31, 2001.

ISSUE 3: Should a positive acquisition adjustment be approved?

RECOMMENDATION: No. A positive 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 noted in Issue 2, the calculation of an acquisition adjustment is shown below first with, and then without, the inclusion of the used and useful adjustment and working capital allowances.

Purchase Price	\$200,000
Commission Established Rate Base	<u>113,809</u>
Positive Acquisition Adjustment	\$ 86,191

The acquisition adjustment, excluding a negative \$54 wastewater used and useful adjustment and \$2,275 water and \$3,182 wastewater working capital allowance, is calculated as follows:

Purchase Price	\$200,000
Commission Established Rate Base less used and useful adjustment and working capital allowance	<u>108,406</u>
Positive Acquisition Adjustment	\$ 91,594

Pursuant to Rule 25-30.0371, Florida Administrative Code, a positive acquisition adjustment shall not be included in rate base absent proof of extraordinary circumstances. The buyer has neither requested an acquisition adjustment nor identified any extraordinary circumstances. Therefore, staff recommends that a positive acquisition adjustments should not be included in the calculation of rate base for transfer purposes.

ISSUE 4: Should the utility's existing rates and charges be continued?

RECOMMENDATION: Yes. The existing rates and charges for the utility should be continued until authorized to change by the Commission in a subsequent proceeding. The tariff sheets reflecting the transfer should be effective for services rendered or connections made on or after the stamped approval date. (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 water and wastewater rates were established August 14, 2002, pursuant to Order No. PSC-02-1114-PAA-WS, in Docket No. 011481-WS, and have been adjusted once pursuant to a 2002 price index. The utility's service availability charges were established by Order No. PSC-99-2394-FOF-WS, issued December 7, 1999, in Docket No. 990356-WS. The utility does not require customer deposits but has the Commission's standard meter test deposits and miscellaneous service charges and a late payment fee of \$4.00. The existing rates and charges are set forth below.

**MONTHLY RATES - WATER
RESIDENTIAL & GENERAL SERVICE**

<u>Meter Sizes</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 14.22
3/4"	\$ 21.33
1"	\$ 35.54
1 1/2"	\$ 71.09
2"	\$113.74
3"	\$227.48
4"	\$355.44
6"	\$710.88
<u>Gallonge Charge</u>	
Per 1,000 gallons	\$ 2.48

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**MONTHLY RATES - WASTEWATER
RESIDENTIAL**

All Meter Sizes	\$ 16.28
Gallonge Charge Per 1,000 Gallons (6,000 gallon cap)	\$ 2.90

**MONTHLY RATES - WASTEWATER
GENERAL SERVICE**

<u>Meter Sizes</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 16.28
3/4"	\$ 24.43
1"	\$ 40.71
1 1/2"	\$ 81.43
2"	\$130.29
3"	\$260.61
4"	\$407.14
6"	\$814.28
<u>Gallonge Charge</u> Per 1,000 Gallons	\$ 3.47

SERVICE AVAILABILITY CHARGES

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

Staff recommends that the existing rates and charges for the utility should be continued until authorized to change by the Commission in a subsequent proceeding. The tariff sheets reflecting the transfer should be effective for services rendered or connections made on or after the stamped approval date.

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ISSUE 5: Should this docket be closed?

RECOMMENDATION: Yes. If no timely protest is received to the proposed agency action issues on rate base and acquisition adjustment, a Consummating Order should be issued upon the expiration of the protest period closing the docket. (HOLLEY)

STAFF ANALYSIS: If no timely protest is received to the proposed agency action issues on rate base and acquisition adjustment, a Consummating Order should be issued upon the expiration of the protest period closing the docket.

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SCHEDULE 1

BIEBER ENTERPRISES, INC.
SCHEDULE OF WATER RATE BASE
AS OF DECEMBER 31, 2001

BALANCE PER ORDER NO.
PSC-02-1114-PAA-WS

UTILITY PLANT IN SERVICE	\$ 127,032
LAND & LAND RIGHTS	2,997
NON-USED AND USEFUL COMPONENTS	0
CONTRIBUTIONS-IN-AID-OF CONSTRUCTION (CIAC)	(31,433)
ACCUMULATED DEPRECIATION	(54,953)
AMORTIZATION OF CIAC	22,339
WORKING CAPITAL ALLOWANCE	<u>2,275</u>
WATER RATE BASE	<u>\$ 68,257</u>

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SCHEDULE 1

BIEBER ENTERPRISES, INC.
SCHEDULE OF WASTEWATER RATE BASE
AS OF DECEMBER 31, 2001

	<u>BALANCE PER ORDER NO.</u> <u>PSC-02-1114-PAA-WS</u>
UTILITY PLANT IN SERVICE	\$ 251,809
LAND & LAND RIGHTS	18,519
NON-USED AND USEFUL COMPONENTS	(54)
CONTRIBUTIONS-IN-AID-OF CONSTRUCTION (CIAC)	(117,903)
ACCUMULATED DEPRECIATION	(208,026)
AMORTIZATION OF CIAC	98,025
WORKING CAPITAL ALLOWANCE	<u>3,182</u>
WASTEWATER RATE BASE	<u>\$ 45,552</u>

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 Road, further described as:

Commence at the Northwest corner of said Section 32, thence North 89°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°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°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°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° West, a distance of 150 feet, more or less, along the east right-of-way of Walk in the Water Road, thence North 32° West, a distance of 130 feet, more or less, along the East right-of-way of Walk in the Water Road to the POB.