

Commissioners:  
JOE GARCIA, CHAIRMAN  
J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.  
LILA A. JABER



DIVISION OF LEGAL SERVICES  
NOREEN S. DAVIS  
DIRECTOR  
(850) 413-6199

# Public Service Commission

March 2, 2000

Rep. J.D. Alexander  
Florida House of Representatives  
District 66  
214 House Office Building  
Tallahassee, Florida 32399-9465

**Re: Docket No. 990356-WS - Application for Staff-Assisted Rate Case in Polk County by Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities.**

Dear Representative Alexander:

This letter is in response to your February 29, 2000, letter to Mr. Bob Casey. Because this matter is set for hearing on April 25-26, 2000, and Mr. Casey will be testifying on behalf of Commission staff, it is inappropriate for him to respond. Therefore, your letter has been forwarded to the Division of Legal Services for a response. Rule 25-22.033, Florida Administrative Code, a copy of which is attached hereto, governs any meetings or communications that might occur in this proceeding. This rule provides that all parties to adjudicatory proceedings need to be notified and given an opportunity to participate in certain communications. This rule further states that any response to communications shall be transmitted to all parties.

As background to this matter, Breeze Hill Utilities, Inc. (Breeze Hill or utility) provides water and wastewater service to 117 customers (116 residential and one general service). On March 18, 1999, the utility applied for a staff assisted rate case pursuant to Section 367.0814, Florida Statutes, wherein the utility requested an increase in water and wastewater rates. A customer meeting was held on October 6, 1999, in the service area to obtain information about the quality of service and to allow the customers an opportunity to provide comments. On December 7, 1999, by Order No. PSC-99-2394-FOF-WS, the Commission granted temporary rates in the event of a protest, declined to initiate show cause proceedings, and issued a notice of proposed agency action order approving an increase in rates and charges for Breeze Hill. On December 22, 1999, a timely protest to this Order was filed by Mr. Kenneth Wankowski and Mr. Charles Sheppard. The Homeowners Association notified staff that they took a formal vote and do not wish to protest the Order.

In response to your inquiry about the March 6, 2000, deadline, pursuant to Section 367.0814 Florida Statutes, the Commission has a statutory deadline within which to issue a final order in this

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docket. Further, Order No. PSC-00-0116-PCO-WS, the Order Establishing Procedure, issued January 12, 2000, specifies the controlling dates for this matter. Accordingly, that Order, which was previously sent to you on January 13, 2000, requires Mr. Wankowski and Mr. Sheppard, as intervenors, to file their testimony by March 6, 2000. Additionally, if Mr. Wankowski and Mr. Sheppard were to withdraw their protest, Order No. PSC-99-2394-FOF-WS would become final and effective upon the issuance of a Consummating Order.

With respect to the letter you received, dated February 17, 2000, from Mr. Wankowski and Mr. Sheppard, I will try to address the concerns expressed therein. First, on page one, the letter references assurances made by the Polk County Utilities Division, which date back to 1995. However, as of May 14, 1996, Polk County gave jurisdiction to the Commission. Therefore, the Commission now regulates all investor-owned utilities in Polk County.

Next, page one of the letter mentions the grandfather certificates and the lack of notice to the customers. These concerns were addressed in a response letter from Lila A. Jaber, the Chief of the Bureau of Water and Wastewater, Division of Legal Services, at that time. That response, which is attached hereto, was dated January 20, 1999, and was addressed to Mr. Wankowski and Mr. Phillip Bradford. Ms. Jaber's response addresses the fact that neither the statutes nor rules require notification of grandfather certificate applications; however, this Commission decided that, under the particular circumstances of that case, notice should be provided to customers. Moreover, by Order No. PSC-98-1550-FOF-WS, issued November 23, 1998, the Commission issued a Notice of Proposed Agency Action Order Granting Grandfather Certificates to Breeze Hill. Attached to that Order was a Notice of Further Proceedings or Judicial Review, which provided a 21-day protest period for substantially affected persons. That Order was not protested and became final.

Additionally, the letter you received mentions certain "errors" believed by Mr. Wankowski and Mr. Sheppard to be in Order No. PSC-98-1550-FOF-WS. To the best of my knowledge, I believe the first sentence of paragraph (b) on page one of the letter is referring to the show cause issue in the above-listed Order. The Commission declined to initiate show cause proceedings for the reasons listed in that Order, which I have attached to this response. The second sentence of paragraph (b) refers to a letter, dated December 7, 1992, and addressed to Mr. Pines, which states that Mr. Pines could not sell, assign, or transfer his franchise agreement without the approval of the Polk County Utilities Commission. Again, this Commission did not have jurisdiction in Polk County until May 14, 1996.

Further, page 2, paragraph (c) of the letter mentions the "Declaration of Restrictions" for the Breeze Hill community and inquires as to whether a state requirement exists for notification of the public when a utility becomes marketable. This Commission does not have jurisdiction to enforce the Declaration of Restrictions. Further, grandfather certificate cases before this Commission are not required by Statute or rule to be noticed, nor is there a Commission rule or statute requiring public notice of when a utility becomes "marketable".

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Finally, page 2, paragraph (d) states, "patently false information provided by Paul Bieber in his application for a staff assisted rate case was totally ignored by the PSC." If the Prehearing Officer determines that this is a valid issue, staff will address such issue at hearing. The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff up to and during the prehearing conference, unless modified by the Commission. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and all administrative rules applicable to this Commission. Also, if the protest is not withdrawn, the utility must prove at hearing, through submission of appropriate evidence, the amount of any rate increase to which it is entitled.

For your convenience, I have attached the following to this response: (1) Order No. PSC-98-1550-FOF-WS; (2) Rule 25-22.033, Florida Administrative Code; and (3) Lila Jaber's letter dated January 20, 1999, responding to concerns expressed by Mr. Wankowski and Mr. Bradford. I hope this response and attachments are adequate. If you need additional information or if I can be of any further assistance, please do not hesitate to contact me at (850) 413-6179.

Sincerely,



Stephanie Crossman  
Attorney

SAC

cc: Division of Legal Services (Gervasi)  
Dr. Mary A. Bane, Deputy Executive Director, Technical  
**Division of Records and Reporting**  
Division of Water and Wastewater (Casey, Butts, Rendell, Willis)  
Harold McLean, Office of Public Counsel  
Mr. Paul Bieber  
Mr. Kenneth Wankowski  
Mr. Charles Sheppard

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for  
grandfather certificates to  
operate a water and wastewater  
utility in Polk County by Bieber  
Enterprises, Inc. d/b/a Breeze  
Hill Utilities.

DOCKET NO. 971192-WS  
ORDER NO. PSC-98-1550-FOF-WS  
ISSUED: November 23, 1998

The following Commissioners participated in the disposition of  
this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS,  
ACCEPTING AGREEMENT FOR DEED, AND SETTING RATES AND CHARGES

AND

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING GRANDFATHER CERTIFICATES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service  
Commission that the action granting grandfather certificates 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 September 11, 1997, Bieber Enterprises, Inc. d/b/a Breeze  
Hill Utilities (Breeze Hill or utility) filed an application with  
the Commission for certificates to provide water and wastewater  
service under grandfather rights in Polk County, pursuant to  
Section 367.171, Florida Statutes. The application was filed after  
the Board of County Commissioners of Polk County adopted a

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resolution on May 14, 1996, which made the utilities in the County subject to the provisions of Chapter 367, Florida Statutes.

At the time the Commission received jurisdiction, the utility was owned by Lake Walk In The Water Village Associates, Ltd. (Lake Walk). The utility is a Class C utility, which provides water and wastewater service to 110 residential customers in a mobile home community in Polk County.

Breeze Hill entered into an agreement with Lake Walk on June 13, 1997, to purchase the system, and has been operating it since that time. The agreement provided for the purchase of the entire mobile home park community and the water and wastewater facilities. The transfer occurred prior to Commission approval which is an apparent violation of Section 367.071, Florida Statutes.

#### Show Cause

Section 367.071, Florida Statutes, states, in part, "No utility shall sell assign or transfer its certificate of authorization, facilities or any portion thereof . . . without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest. Lake Walk and Breeze Hill entered into the agreement for the sale of the system on June 13, 1997, prior to Commission approval. Breeze Hill began operating the system providing water and wastewater service to customers of the utility upon entering into the agreement. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes.

Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating to Tax Savings Refund For 1988 and 1989 for GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Failure of Lake Walk to obtain the Commission's approval prior to the transfer appears to be due to lack of knowledge of the statutes and Commission rules. Lake Walk and Breeze Hill indicated that they were not aware of the Commission's regulation or the requirement to file the application with the Commission for approval of the transfer because they assumed that the system was still under the jurisdiction of Polk County. Lake Walk and Breeze Hill became aware of the Commission's regulation when they were contacted by the Commission staff. Upon becoming aware of the Commission's jurisdiction, Breeze Hill immediately filed an application for grandfather certificates.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we do not find that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level of warranting the initiation of a show cause proceeding. Therefore, a show cause proceeding will not be initiated against Lake Walk for failure to obtain Commission approval prior to entering into the sales contract and turning the utility over to Breeze Hill.

#### Agreement for Deed

Rule 25-30.035(6), Florida Administrative Code, requires a utility to provide proof that it owns or has continued use of the land upon which its facilities are located. Breeze Hill provided an agreement for deed executed on June 13, 1997, by Dr. Ricardo Pine and Mr. Paul Bieber. An Agreement for Deed (also called installment land or sales contract, contract for deed, retained title or conditional sale contract) is a security device for the sale of land that is intended to take the place of a purchase money mortgage. Cain & Bultman, Inc. v. Miss Sam., Inc., 409 So.2d 114, 118 (Fla. 5th DCA 1982). Under the usual purchase and sale agreement, the seller gives the buyer a deed to the property under closing.

In an Agreement for Deed, the buyer contracts to purchase the land by making payments over a designated period of time. Usually, after the Agreement is executed, the buyer takes possession of the land, along with the burdens and benefits of ownership. Cain at 118. During the contract period, which the buyer is making payments, title to the land is bifurcated. The buyer has equitable title to the land, and the seller retains bare legal title as security for the unpaid purchase price. White v. Brousseau, 566 so.2d 832, 835 (Fla. 5th DCA 1990). When they buyer pays the full purchase price, legal title is conveyed to the buyer, usually by



warranty deed, and the buyer becomes the full legal owner of the property.

In First Federal Sav. & Loan Ass'n v. Fox, 440 So.2d 652, 653 (Fla. 2d DCA 1983), the Court held that the parties who enter into an Agreement for Deed are in essentially the same position as if the vendor had transferred the legal title and taken back a purchase money mortgage. Since Florida law deems Agreements for Deed to be mortgages, then buyers under an Agreement for Deed are deemed title holders to the property. Therefore, a buyer under an Agreement for Deed can be seen as the legal titleholder to the property, even though the seller retains possession of the actual legal title. Alternatively, an Agreement for Deed is evidence of the buyer's continued use of the land in question.

Under normal circumstances, the buyer in an Agreement for Deed does not risk losing possession or control of the land as long as he or she fulfills the terms of the Agreement. Pursuant to Florida law, if the buyer defaults in an Agreement for Deed, the seller must go through foreclosure to restore an equitable interest in (possession and control of) the property. Any attempt by the seller to repossess the land without legal process subjects the seller to liability for trespass. Mid-State Investment Corporation v. O'Steen, 133 So.2d 455, 457 (Fla. 1st DCA 1961). Thus, the buyer under an Agreement for Deed is in little danger of losing possession or control of the land, which is what the Commission wants to protect against.

Based on the foregoing, we find that the Agreement for Deed filed by Breeze Hill in this docket, is sufficient as evidence of a cost-effective alternative providing for continued use of the land, pursuant to Rule 25-30.035, Florida Administrative Code.

#### Application

Except as discussed previously, the application is in compliance with Section 367.171, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$400, as required by Rule 25-30.020, Florida Administrative Code.

The rules and statutes do not require noticing for grandfather certificate applications. However, because Breeze Hill did not own the system at the time the Commission received jurisdiction in Polk County, we find it appropriate to require Breeze Hill to notice the

customers, the Office of Public Counsel, and the Polk County Commission by providing them a copy of this Order within seven days of its issuance. We further find it appropriate to require Breeze Hill to provide notice in a newspaper of general circulation in the utility's service area. The notice to be provided in the newspaper is shown on Attachment B of this Order, which by reference is incorporated herein. Within 20 days of the issuance date of this Order, Breeze Hill shall provide the Commission proof that notice has been provided as set forth herein.

Breeze Hill has provided adequate service territory and system maps and a territory description, pursuant to Rule 25-30.035(9), (10), and (11), Florida Administrative Code. A description of the territory Breeze Hill has requested to serve is shown on Attachment A of this Order, which by reference is incorporated herein.

According to the Department of Environmental Protection (DEP), there are no outstanding notices of violation against Breeze Hill. In addition, the utility is current with respect to regulatory assessment fees for 1996 and 1997 and has filed its 1997 annual report.

Based on the foregoing, we find it appropriate to grant Breeze Hill Certificates Nos. 598-W and 513-S to serve the territory described on Attachment A of this Order.

#### Rate Base

Pursuant to Section 367.171, Florida Statutes, we have the authority to establish rate base in a grandfather certificate proceeding. However, the primary goal in a grandfather certificate proceeding is to obtain enough information about a utility to enable us to regulate that utility on a going-forward basis. Although we have the discretion to establish rate base, it has been our practice not to establish rate base in grandfather certificate proceedings.

When a county turns over jurisdiction to the Commission, the only element in the utility's operation that changes is the entity which regulates it. The utility's ownership, rate base, and rates remain the same. Consequently, there is not the same necessity to review rate base in this type proceeding as there is in other types of proceedings, such as the sale of a utility or a rate case. Rate base for utilities receiving grandfather certificates is typically established in the utility's first rate proceeding filed under our jurisdiction. Therefore, we do not find it appropriate to



establish rate base or determine the appropriateness of an acquisition adjustment in this proceeding.

Rates and Charges

Breeze Hill's existing rate is a flat rate approved by the Polk County Board of County Commissioners on August 16, 1983. The current rates and charges are set forth below.

Monthly Rates  
Residential Rates

<u>Flat Rate</u>	<u>Amount</u>
Water	\$ 11.00
Wastewater	\$ 8.00

Miscellaneous Service Charges

	<u>Water</u>	<u>Wastewater</u>
Initial Connection Fee	\$ 15.00	\$ 15.00
Normal Reconnection Fee	\$ 15.00	\$ 15.00
Violation Reconnection Fee	\$ 15.00	Actual Cost
Premises Visit Fee (in lieu of disconnection)	\$ 10.00	\$ 10.00

Customer Connection (Tap-in) Charge

	<u>Water</u>	<u>Wastewater</u>
Residential (Per Unit)	\$400.00	\$600.00

In grandfather certificate cases, we usually adopt the existing rate structure of a utility. However, Rule 25-30.255, Florida Administrative Code, requires utilities to implement metered service rates, unless otherwise approved by the commission, and in certain circumstances. The purpose of this is to facilitate customers' understanding of the impact of their consumption on their bill, and to encourage water conservation. Increasingly, Water Management Districts are mandating the installation of meters on utilities for those reasons.

Although metered rates are desirable, the lack of customer usage data or other concerns such as economic feasibility to

install meters or lack of knowledge of the location of lines can be limitations in a utility's implementation of metered rates for grandfather applications, original certificates or rate cases. Because of the increasing focus on conservation, we find it appropriate to review the specifics of each case to determine whether it is appropriate to require a utility to implement metered rates or maintain the existing rate structure until otherwise ordered to change in a limited proceeding or rate case.

In this case, Breeze Hill is a small water and wastewater utility serving 110 residential customers in a mobile home community. Based on the total gallons pumped from the well, summer usage varies from 730 to 1,000 gallons per day (gpd) per lot and winter usage is about 545 gpd per lot. Wastewater flows vary, but seem to average 90 gpd per lot returning to the system. Clearly, the community served by Breeze Hill uses excess water for purposes other than household water uses. For example, the standard water usage level for rate setting purposes is considered to be 350 gpd per equivalent residential connection (ERC), which in this case equates to a per lot amount.

The Water Management District was contacted to determine whether the utility was located in any type of special district, such as a water caution use area. Breeze Hill is not located in such an area.

The owner of Breeze Hill, Mr. Paul Bieber, was contacted to determine feasibility of meter installation. A schematic of the location of lines within park was available, and the estimate to purchase the meters would be \$11,000, based on 110 customers and \$100 per meter, not including installation. Mr. Bieber indicated that he is aware of the excessive usage, and that it is his intention to file for a staff assisted rate case as soon as the grandfather certificate process is completed in order to have charges approved to recover the cost of installing meters. At this time, he cannot afford to install meters.

Although the system is not located in a sensitive water area, Mr. Bieber is hereby placed on notice that Breeze Hill will be required to install meters and implement a base facility and gallonage charge rate structure in its next filing with the Commission.

Based on the foregoing, we find it appropriate to approve Breeze Hill's existing rates and charges, as set forth above. Breeze Hill shall continue to charge these rates and charges until

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authorized to change by this Commission in a subsequent proceeding. Breeze Hill has filed a tariff which reflects the rates and charges approved herein. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

Upon proof of notification and if no timely protests are filed to the proposed agency action portion of this Order, no further action shall be required and the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities, 152 Breeze Hill, Lake Wales, Florida 33853, is hereby granted Certificates Nos. 598-W and 513-S. The territory Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities is authorized to serve is shown on Attachment A, which by reference is incorporated herein. It is further

ORDERED that the Agreement for Deed filed by Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities is accepted as sufficient, in this instance, to meet the requirements of Rule 25-30.035(6), Florida Administrative Code. It is further

ORDERED that Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities shall provide notice of the action taken herein by providing a copy of this Order within seven days of the date of its issuance to the Office of Public Counsel, the Polk County Commission, and to the utility's customers, as set forth in the body of this Order. It is further

ORDERED that Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities shall provide notice of the action taken herein once in a newspaper of general circulation in the service area approved by this Order. The notice to be published is shown on Attachment B of this Order, which by reference is incorporated herein. The notice shall be published within seven days of the issuance date of this Order. It is further

ORDERED that upon completion of the noticing, Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities shall provide the Commission with proof of notification within 20 days of the issuance date of the Order. It is further

ORDERED that Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities' current rates and charges, as set forth in the body of

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this Order, are hereby approved. Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities shall continue to charge these rates and charges until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that the tariff filed by Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities, which reflects the rates and charges approved herein, 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 the provisions of this Order, issued as proposed agency action, shall become final and effective 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 or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of November, 1998.

/s/ Kay Flynn

KAY FLYNN, Chief  
Bureau of Records

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

( 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 granting grandfather certificates 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 December 14, 1998. 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 on the date subsequent to the above date.

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.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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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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.



**ATTACHMENT A**

BIEBER ENTERPRISES, INC. d/b/a BREEZE HILL UTILITIES  
Polk County

Water and Wastewater Service Area

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°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 Walk in the Water Road, thence continue North 89°22'30.49" East a 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 1907.0 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 44°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.

(Revised 10/22/98)  
**ATTACHMENT B**

**APPLICATION FOR ORIGINAL CERTIFICATE  
(FOR A UTILITY IN EXISTENCE AND CHARGING RATES)**

**(Section 367.045, Florida Statutes)**

**LEGAL NOTICE**

Notice is hereby given on     (Date)    , pursuant to Section 367.045, Florida Statutes, of the application of Bieber Enterprises, Inc. D/B/A Breeze Hill Utilities to operate a water and wastewater utility to provide service to the following described territory in Polk County, Florida as follows:

**Water and Wastewater Service Area**

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 Walk in the Water Road, thence continue North  $89^{\circ}22'30.49''$  East a 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 1907.0 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  $44^{\circ}30'$  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.

Any objection to the said application must be made in writing and filed with the Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within thirty (30) days from the date of this notice. At the same time, a copy of said objection should be mailed to the applicant whose address is set forth below. The objection must state the grounds for the objection with particularity.

Mr. Paul E. Bieber  
Bieber Enterprises, Inc.  
152 Breeze Hill  
Lake Wales, Florida 33853

### **25-22.033 Communications Between Commission Employees and Parties.**

The Commission recognizes that Commission employees must exchange information with parties who have an interest in Commission proceedings. However, the Commission also recognizes that all parties to adjudicatory proceedings need to be notified and given an opportunity to participate in certain communications. The intent of this rule is not to prevent or hinder in any way the exchange of information, but to provide all parties to adjudicatory proceedings notification of and the opportunity to participate in certain communications.

(1) This rule shall govern communications between Commission employees and parties to docketed proceedings before the Commission. This rule shall not apply in proceedings under sections 120.54, 120.565, 367.0814, Fla. Stat., proposed agency action proceedings before the Commission has voted to issue a proposed agency action order, non-rate case tariffs, workshops or internal affairs meetings. Also exempted are docketed and undocketed audits, telephone service evaluations, and electric and gas safety inspections. Nothing in this rule is intended to modify or supersede the procedural requirements for formal discovery under the Commission's rules and applicable provisions of the Florida Rules of Civil Procedure, or affect communications regarding discovery requests, procedure, or other matters not concerned with the merits of a case.

(2) Written Communications -- Notice of any written communication between Commission employees and parties shall be transmitted to all other parties at the same time as the written communication, whether by U.S. Mail or other means.

(3) Scheduled Meetings and Conference Calls -- All parties to the proceeding shall be given reasonable notice of the time and place of any scheduled meeting or conference call between Commission employees and parties. For purposes of this subsection, a conference call is defined as a telephone call involving three or more persons.

(4) Response to Communications -- Any party to a proceeding may prepare a written response to any communication between a Commission employee and another party. Notice of any such response shall be transmitted to all parties.

(5) Prohibited Communications -- No Commission employee shall directly or indirectly relay to a Commissioner any communication from a party or an interested person which would otherwise be a prohibited ex parte communication under section 350.042, Fla. Stat. Nothing in this subsection shall preclude non-testifying advisory staff members from discussing the merits of a pending case with a Commissioner, provided the communication is not otherwise prohibited by law. However, a staff member who testifies in a case shall not discuss the merits of that case with any Commissioner during the pendency of that case.

*Specific Authority 120.53 FS.*

*Law Implemented 120.53 FS.*

*History--New 3-24-93.*

*Library References: Murphy, Public Service Commission Practice, 69 Fla. B. J. 30 (Jan. 1995).*

STATE OF FLORIDA

Commissioners:  
JOE GARCIA, CHAIRMAN  
J. TERRY DEASON  
SUSAN F. CLARK  
JULIA L. JOHNSON  
E. LEON JACOBS, JR.



CAPITAL CIRCLE OFFICE CENTER  
2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FL 32399-0850

**Public Service Commission**

January 20, 1999

**RECEIVED**

JAN 20 1999

Florida Public Service Commission  
Division of Water and Wastewater

Mr. Kenneth J. Wankowski  
147 Breeze Hill  
Lake Wales, Florida 33853-7300

Mr. Phillip Bradford  
125 Breeze Hill  
Lake Wales, Florida 33853-7349

RE: Docket No. 971192-WS - Application for grandfather certificates to operate a water and wastewater utility in Polk County by Bieber Enterprises, Inc. d/b/a Breeze Hill Utilities.

Dear Messrs. Wankowski and Bradford:

Your letter dated December 30, 1998, addressed to Chairman Julia L. Johnson has been referred to this office for response. Each of your concerns is addressed below.

Please be advised that prior to May 14, 1996, the Commission had no jurisdiction in Polk County. Therefore, any previous efforts on the part of Mr. Ricardo Pines to sell the utility cannot be addressed by this Commission. When the Commission obtains jurisdiction over privately-held water and wastewater utilities within a County, efforts are made to educate existing utilities regarding our regulation. Mr. Paul E. Bieber originally filed an application for grandfather certificates. Neither the Statutes nor rules require notification of grandfather certificate applications, because, pursuant to Florida Law, when the Commission receives jurisdiction from a county, existing privately-owned water and wastewater utilities receive certificates as a matter of right. However, because the utility was owned by Ricardo Pines and not Mr. Bieber when this Commission received jurisdiction in Polk County, this Commission decided that notice of the application should be provided to the customers.

Order No. PSC-98-1550-FOF-WS issued on November 23, 1998, required Mr. Bieber to provide a copy of the Order within seven days of its issuance to the Office of Public Counsel, the Polk County Commission, and to the utility's customers. The Order also required Mr. Bieber to publish the notice once in a newspaper of general circulation in the service area. Mr. Bieber provided proof of publication of the notice in The Ledger published in Lakeland, Polk County, Florida. According to the affidavit from The Ledger, the notice was published on December 4. He also provided an affidavit that notice was given to the Office of Public Counsel and the Polk County Commission.

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Mr. Phillip Bradford  
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By affidavit dated December 14, 1998, Mr. Bieber indicated that he had misunderstood the requirement to provide a copy of the Order to the customers. He further stated that he read the Order to the customers at an association meeting, about a week before the deadline for filing objections. The deadline was December 14, 1998.

With regard to the Agreement for Deed provided by Breeze Hill, the Commission found the Agreement for Deed to be sufficient to meet the requirements of Rule 25-30.035(6), Florida Administrative Code. Because the agreement is for the purchase of the utility and the sewerage drainage beds mentioned in your letter are a part of the utility, the agreement covers the drainage beds.

Your letter also made reference to Department of Environmental Protection (DEP) violations against Breeze Hill. Mr. Bieber and DEP have been contacted regarding the violations. The violation mentioned in your letter involved the requirement to obtain a Sovereignty Submerged Lands Lease by Breeze Hill. According to DEP and Mr. Bieber, the requirement does not affect the utility. The violation is against Breeze Hill Subdivision.

As stated in the Order, in grandfather certificate cases, the existing rates and rate structure of the utility, previously approved by the County are "grandfathered." However, Rule 25-30.255, Florida Administrative Code, requires utilities to implement metered rates unless otherwise approved by the Commission and in certain circumstances. The specifics in each case are reviewed to determine whether it is appropriate to require a utility to implement metered rates or maintain the existing rate structure until ordered to change in a limited proceeding or rate case. In the instant case, the Commission found it appropriate to approve the existing rates. Mr. Bieber was, however, placed on notice that Breeze Hill will be required to install meters and implement base facility and gallonage charges in its next filing with the Commission. Usage, total gallons pumped, fire-flow requirements, and appropriate "profit" will also be addressed in that filing.

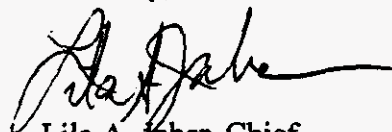
With regard to the water tank, we have a copy of a letter from W. A. Read, Jr. & Associates (an engineering firm) to Mr. Eugene Jeffers of the Polk County Public Health Department, which states that they found the water treatment plant to be in good condition and that the tank and supports had been repaired and painted. They further stated that the premises were clean and sanitary. Mr. Eugene Jeffers was contacted to determine if the system is in good condition or if the tank needs to be replaced. According to Mr. Jeffers, an inspector was sent to reinspect Breeze Hill after they received the letter from the engineering firm. The inspector confirmed the engineering firm's findings.

From our review of the filing, conversations with the Health Department, and various individuals at DEP, it appears that Mr. Bieber is making every effort to assure that Breeze Hill is in good condition and provides continued and satisfactory service to its customers.

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I hope this letter addresses your concerns. Regrettably, you did not receive confirmation of the Agenda Conference when this item was considered. If this letter does not satisfy your concerns and you continue to have a complaint about this utility, you may file a complaint pursuant to Rule 25-22.032, Florida Administrative Code. Rule 25-22.032 is enclosed for your convenience. If you have any additional questions, please contact me at (850) 413-6199.

Sincerely,



Lila A. Jaber, Chief  
Bureau of Water and Wastewater  
Division of Legal Services

LAJ/ALC/dr

Enclosure

cc: Mr. Paul E. Bieber, Breeze Hill Utilities  
Division of Records and Reporting  
Division of Water and Wastewater (Messer, Johnson)  
Division of Legal Services (Crosby)



(5) Any person who receives notice and who fails to file a timely request for a \$120.57 hearing shall have waived his or her right to request a hearing on the decision.

(6) In the absence of a timely request for a \$120.57 hearing, and unless otherwise provided by a Commission order, the proposed action shall become effective upon the expiration of the time within which to request a hearing.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: New 12/21/81, formerly 25-22.29, Amended 7/8/92.

25-22.030 Reserved.

25-22.031 Reserved.

25-22.032 Customer Complaints.

(1) Any customer of a utility regulated by this Commission may file a complaint with the Division of Consumer Affairs whenever he has an unresolved dispute with the utility regarding his electric, gas, telephone, water, or wastewater service. The complaint may be communicated orally or in writing. Upon receipt of the complaint a staff member designated by the Director of the Division shall notify the utility of the complaint and request a response. The response should explain the utility's actions in the disputed matter and the extent to which those actions were consistent with the utility's tariffs and procedures, applicable state laws, and Commission rules, regulations, and orders.

(2) The designated staff member shall investigate the complaint and attempt to resolve the dispute informally. To that end, the staff member may request the parties to provide copies of bills, billing statements, field reports, written documents, or other information in their possession which may be necessary to resolve the dispute. The staff member may perform such tests, on-site inspections, and reviews of utility records as he considers appropriate and may request the utility to collect data and to perform tests which are necessary to aid in the resolution of the dispute.

(3) As soon as possible the staff member shall propose a resolution of the complaint based on his findings, applicable state laws, the utility's tariffs, and Commission rules, regulations, and orders. The proposed resolution may be communicated to the parties orally or in writing. Upon request, either party shall be entitled to a written copy of the proposed resolution, which shall be delivered by first-class mail.

(4) If a party objects to the proposed resolution, he may file a request for an informal conference on the complaint. The request shall be in writing and should be filed with the Division of Consumer Affairs within 30 days after the proposed resolution is mailed or personally communicated to the parties. Upon receipt of the request the Director of the Division may appoint a staff member to conduct the informal conference or the Director may make a recommendation to the Commission for dismissal based on a finding that the complaint states no basis for relief under the Florida Statutes, Commission rules or orders, or the applicable tariffs. If a conference is granted the appointed staff member shall have had no prior contact with the complaint. After consulting with the parties, the appointed staff member shall issue a written notice to the parties setting forth the procedures to be employed, the dates by which written materials are to be filed, and the time and place for the informal conference, which shall be held in the service area, or such other convenient location to which the parties agree, no sooner than 10 days following the notice.

(5) In conjunction with conducting the informal conference, the appointed staff member may:

(a) Require the utility to provide any information in its possession which may be relevant to the complaint and may specify the form in which such information is to be provided;

(b) Request a customer to provide any information in the customer's possession which is necessary to prove any facts the customer may assert in support of his position;

(c) Direct the utility to conduct meter tests and inspections, diversion of service inspections, and other tests the appointed staff member deems necessary or appropriate;

(d) Question the parties directly regarding all matters related to the case.

(6) At the conference, the parties shall have the opportunity to present information, orally or in writing, in support of their positions. During the conference, the appointed staff member may encourage the parties to discuss and resolve their dispute. The Commission shall be responsible for tape-recording, but not transcribing, the informal conference. A party may arrange for transcription at his own expense.

(7) The appointed staff member may permit any party to file, following the conference, further information, documentation, or arguments. The opposing party shall have an opportunity to file a response.

(8) If a settlement is not reached, then within 20 days following the informal conference or the last post-conference filing, the appointed staff member shall submit a recommendation to the Commission and shall mail copies of the recommendation to the parties. The Commission shall dispose of the matter at the next available agenda conference by issuing a notice of proposed agency action or by setting the matter for hearing pursuant to section 120.57, Florida Statutes. The Commission may permit the parties to respond to the recommendation at the agenda conference.

(9) At any point during the complaint proceedings, a party has the right to be represented by an attorney or other qualified representative. For purposes of this rule a qualified representative may be any person the party chooses, unless the Commission sets the matter for hearing. At such hearing the parties must be represented by an attorney or Class B practitioner as provided for in Rule 25-22.008 or may represent themselves. Each party shall be responsible for his own expenses in the handling of the complaint.

(10) During the pendency of the complaint proceedings, a utility shall not discontinue service to a customer because of an unpaid disputed bill. However, the utility may require the customer to pay that part of a bill which is not in dispute. If the parties cannot agree as to the amount in dispute, the staff member will make a reasonable estimate to establish an interim disputed amount until the complaint is resolved. If the customer fails to pay the undisputed portion of the bill the utility may discontinue the customer's service pursuant to Commission rules.

(11) At any time the parties may agree to settle their dispute. If a settlement is reached, the parties or their representatives shall file with the Division of Consumer Affairs a written statement to that effect. The statement shall indicate that the settlement is binding on both parties and that the parties waive any right to further review or action by the Commission. The Division shall, if the complaint has been docketed, submit the statement to the Commission for approval. If the complaint has not been docketed, then the Division shall acknowledge the statement of settlement by letter to the parties.

Specific Authority: 120.53(1), 350.127(2), F.S.

Law Implemented: 120.53(1), 120.57, 120.59(4), F.S.

History: New 1/3/89, Amended 10/28/93.

Rule 25-22.033 - Communications Between Commission Employees and Parties - The Commission recognizes that Commission employees must exchange information with parties who have an interest in Commission proceedings. However, the Commission also recognizes that all parties to adjudicatory proceedings need to be notified and given an opportunity to participate in certain communications. The intent of this rule is not to prevent or hinder in any way the exchange of information, but to provide all parties to adjudicatory proceedings notification of and the