



# Public Service Commission

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BRADY  
RIEGER  
CROSBY

**DATE:** DECEMBER 7, 2000

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF REGULATORY OVERSIGHT (BRADY, RIEGER)  
DIVISION OF LEGAL SERVICES (CROSBY)

**RE:** DOCKET NO. 000973-SU - APPLICATION FOR TRANSFER OF  
CERTIFICATE NO. 515-S IN POLK COUNTY FROM ABCA, INC. TO  
WEST LAKE LAND UTILITIES, INC.  
COUNTY: POLK

**AGENDA:** 12/19/00 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR  
ISSUES NOS. 2 AND 3 - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\RGO\WP\000973.RCM

### CASE BACKGROUND

ABCA, Inc. (ABCA, utility, or seller) is a Class C wastewater utility located in Polk County. It provides wastewater service to approximately 277 residential and two general service customers in a mobile home community formerly known as Village Lakeland. The utility is located in a water use caution area and receives its water service from the City of Lakeland. According to its 1999 Annual Report, the utility reported wastewater revenues of \$43,591 and a net operating loss of \$8,490.

The utility has been in existence since 1972. On January 9, 1990, the Polk County Commission granted a franchise to Ameribanc Investors Group (Ameribanc). Later Ameribanc was acquired by First Union Corporation (First Union) through merger and foreclosure proceedings. ABCA is currently a wholly-owned subsidiary of First Union. Polk County came under Commission jurisdiction on July 11, 1996. By Order No PSC-98-0752-FOF-SU, issued June 1, 1998, in

DOCUMENT NUMBER-DATE

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Docket No. 971531-SU, the Commission granted ABCA grandfather Certificate No. 515-S.

On July 19, 1999, the utility filed an application for a staff assisted rate case in Docket No. 990937-SU. Increased rates and charges were ultimately approved in that docket by Order No. PSC-00-1163-PAA-SU, issued June 26, 2000 (SARC Order). On April 4, 2000, ABCA entered into a Contract for Sale and Purchase (sales transaction) with DGB Properties, Inc., or its assigns, for the acquisition of the mobile home community along with the wastewater facilities. The parties are waiting to close on the sales transaction until after receiving Commission approval for transfer of the wastewater facilities.

On July 28, 2000, an application for transfer of Certificate No. 515-S from ABCA to West Lakeland Utilities, Inc. (West Lakeland, buyer) was filed with the Commission. West Lakeland is a Florida corporation established on July 27, 2000, for purposes of segregating the utility facilities and assets from the remainder of the assets acquired by DGB Properties, Inc., in the sales transaction.

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

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the transfer of Certificate No. 515-S from ABCA, Inc., to West Lakeland Utilities, Inc., be approved?

**RECOMMENDATION:** Yes. The transfer should be approved. ABCA should be responsible for filing the utility's 2000 Annual Report and remitting the resulting regulatory assessment fees (RAFs) in the time-frame and manner prescribed by Commission rules. ABCA should also be responsible for 2001 RAFs up to the closing on the sales transaction. West Lakeland should be responsible for Annual Reports and RAFs from the date of closing forward. Within 30 days of the closing, West Lakeland should provide a recorded warranty deed for the land upon which the utility facilities are located. (BRADY, RIEGER, CROSBY)

**STAFF ANALYSIS:** On July 28, 2000, an application was filed for approval of the transfer of wastewater facilities from ABCA to West Lakeland. The closing is contingent upon receiving prior Commission approval. The sales transaction was first executed on April 4, 2000. At the time of the filing, there were two addendums to the original sales transaction between ABCA and DGB Properties, Inc. At staff's request a third addendum to the sales transaction was filed with the Commission on November 21, 2000, completing the filing requirements. The third addendum provides for the separation, or assignment, of the real and personal wastewater facility properties to West Lakeland.

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 or utility facilities. The application contained the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. Pursuant to Rule 25-30.037(2)(t), Florida Administrative Code, ABCA's original Certificate No. 515-S was returned. A description of the territory being transferred is appended to this memorandum as Attachment A. In addition to these provisions, the application contained the following information regarding the remaining requirements for authority to transfer.

**Noticing.** Noticing pursuant to Rule 25-30.030, Florida Administrative Code, was given in the time-frame and manner prescribed by the rule. No objections to any of the notices were filed with the Commission within the time required for such filing. The Commission did receive one untimely response from a customer. Staff confirmed with the customer that the response represented

unresolved issues with the seller and not a protest to the transfer. The customer's issues were addressed by staff in a letter dated September 25, 2000. Had staff's letter not resolved the customer's concerns, the customer was asked to inform staff upon receipt of the letter. No further response was received. Nevertheless, staff followed up the letter with telephone confirmation that the customer's issues were resolved.

**Sales Contract and Financing.** As required by Rules 25-30.037(2)(g), (h), (i) and (K), Florida Administrative Code, the application contains a copy of the sales transaction and all auxiliary or supplemental agreements. As noted earlier, there are three addendums to the sales transaction. In one of the addendums, the purchase price changed from \$175,000 to \$225,000, which is the currently agreed upon purchase price for the mobile home community. The application indicates the purchase will be a cash transaction with no outside financing. However, the purchase is for the development rights to a mobile home community which includes the wastewater treatment facilities. Neither buyer nor seller contemplated a separate purchase price for the wastewater treatment facilities.

The sales transaction indicates that the transaction will be closed, and the purchase price paid, within five (5) business days after the approval of the transfer of wastewater treatment facilities by the Commission and the Florida Department of Environmental Protection (FDEP). Included in the sales transaction is the provision for transfer of customer accounts.

**Land Ownership.** Provided with the application was adequate proof that ABCA owns the land throughout the mobile home community. However, until the buyer and seller close on the sales transaction, the land upon which the wastewater facilities are located cannot be deeded to West Lakeland, as required by Rule 25-30.037(2)(q), Florida Administrative Code. Staff recommends that the Commission require such proof of ownership to be provided by West Lakeland within 30 days from the date of closing.

**Annual Reports and RAFs.** Staff has confirmed that the utility is current on its Annual Reports and RAFs through 1999 and that there are no penalties, interest or refunds due. ABCA should be responsible for filing the utility's 2000 Annual Report and RAFs with the Commission in the time-frame and manner prescribed by Commission rules. ABCA should also be responsible for 2001 RAFs up to the date of closing. From the date of closing forward, West Lakeland should be responsible for the utility's Annual Reports and RAFs.

**Financial and Technical Ability.** Pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, the application contains a statement of West Lakeland's experience in utility operations and financial ability to provide service. Since West Lakeland is a newly formed corporation, to which the utility facilities have not yet been transferred, it does not have financial statements. Instead, an irrevocable letter of credit in the amount of \$60,000 was provided by Platinum Bank in Brandon, Florida, for the purpose of providing funds for the operation and maintenance of the utility facilities. The amount chosen represents the total test year operating expenses for the utility of \$57,640 according to the SARC Order. The letter of credit became effective November 30, 2000 and has no expiration date. Also, as a newly formed utility, West Lakeland has no prior utility experience. However, for the time being, West Lakeland is retaining the current FDEP licensed operators.

**Environmental Compliance.** Pursuant to Rule 25-30.037(2)(p), Florida Administrative Code, the application contains a statement that the buyer had inspected the utility facilities and that they appeared to be in satisfactory condition. Staff verified that the utility was last inspected by the FDEP on August 11, 2000, and was certified to be in satisfactory condition.

However, it should be noted that in the SARC Order, the utility requested, and was granted, pro forma plant improvement costs for elevating manholes, rebuilding the main lift station, replacing the tank cover, and relining the spray field. Docket No. 990937-SU (the SARC docket) is to remain open for at least 12 months from date of issuance of the SARC order on June 26, 2000, to verify that the pro forma improvements have been satisfactorily made.

**Public Interest.** As required by Rule 25-30.037(2)(j), Florida Administrative Code, the buyer provided a statement indicating how the transfer is in the public interest. West Lakeland intends to draw on its real estate affiliate's management expertise and experience. Also, since West Lakeland's real estate and management affiliate is developing the community, there is a vested interest in continuing to provide satisfactory wastewater service. The buyer also indicated that it intends to fulfill all the commitments, obligations and representations of the seller with regard to utility matters.

Based on all the above, staff recommends that the transfer of wastewater facilities from ABCA, Inc., to West Lakeland Utilities, Inc., is in the public interest and should be approved. The

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description of the territory being transferred is appended to this memorandum as Attachment A. ABCA should be responsible for submitting the utility's 2000 Annual Report and resulting RAFs with the Commission in the time-frame and manner prescribed by Commission rules. In addition, ABCA should be responsible for 2001 RAFs up to the date of closing. From the closing date forward, West Lakeland should be responsible for filing Annual Reports and RAFs. West Lakeland should be required to provide proof of ownership of the land upon which the utility facilities are located within 30 days of the date of closing.

**ISSUE 2:** What is the rate base of ABCA, Inc., at the time of the transfer?

**RECOMMENDATION:** The rate base for the wastewater system as of June 30, 1999, was \$31,392 as established by Order No. PSC-00-1163-PAA-SU. (BRADY)

**STAFF ANALYSIS:** Since the contract to transfer the utility facilities was executed April 4, 2000, staff would normally request an audit to establish the net book value of the utility as March 31, 2000, excluding the normal ratemaking calculations of used and useful adjustments and working capital. However, rate base for the utility, as of June 30, 1999, had recently been established by the SARC Order issued June 26, 2000. As such, staff recommends adopting the rate base in the SARC Order for rate base at the time of the transfer.

It should be noted that the rate base in the SARC Order includes a negative adjustment of \$4,763 in non-used and useful plant along with a positive adjustment of \$6,241 in working capital allowance. The net of these two values is a positive \$1,478. In addition, a net pro forma adjustment of \$4,954 was added to utility plant in service for elevating manholes, rebuilding the main lift station, replacing the tank cover, and relining the spray field. According to the utility's unaudited 1999 Annual Report, it did not appear that any additional plant had been added by year-end 1999. As noted in the previous issue, the utility has until at least June 2001 to complete this work.

The rate base calculation approved in the SARC Order is attached as Schedule No. 1. Based on this schedule, the Commission established rate base for ABCA, as of June 30, 1999, at \$31,392. Staff recommends that rate base at the time the sales transaction on April 4, 2000, also be established as \$31,392.

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SCHEDULE 1

ABCA, INC.  
SCHEDULE OF WASTEWATER RATE BASE  
AS OF JUNE 30, 1999

BALANCE PER ORDER NO.  
PSC-00-1163-PAA-SU

UTILITY PLANT IN SERVICE	\$ 239,411
LAND/NON-DEPRECIABLE ASSETS	59,727
NON-USED AND USEFUL PLANT	( 4,763)
CONTRIBUTIONS IN AID OF CONSTRUCTION (CIAC)	(157,240)
ACCUMULATED DEPRECIATION	(185,726)
ACCUM. AMORTIZATION OF CIAC	73,742
WORKING CAPITAL ALLOWANCE	<u>6,241</u>
<b>WASTEWATER RATE BASE</b>	<b><u>\$ 31,392</u></b>



**ISSUE 3:** Should an acquisition adjustment be approved?

**RECOMMENDATION:** No. An 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. The buyer stated in the application that it was not seeking an acquisition adjustment. Also, as previously noted, the buyer acquired the utility facilities along with a mobile home community with land for nearly 1,000 lots at build out. The total mobile home community acquisition was valued at \$225,000. However, neither party to the overall sales transaction was able to place a separate value on the purchase of the wastewater facilities.

Further, in the absence of extraordinary circumstances, it has been Commission practice that a subsequent purchase of a utility system at a premium or discount should not affect the rate base calculation. There are no extraordinary circumstances regarding this purchase that would justify an acquisition adjustment to rate base. The treatment of the acquisition adjustment in this instance is consistent with previous Commission decisions. See Order No. PSC-00-1675-PAA-WS, issued September 19, 2000, in Docket No. 991984-WS; Order No. PSC-00-1659-PAA-WU, issued September 18, 2000, in Docket No. 000334-WU; Order No. PSC-00-1515-PAA-WU, issued August 21, 2000, in Docket No. 000333-WU; and Order No. PSC-00-1389-PAA-WU, issued July 31, 2000, in Docket No. 991001-WU.

In summary, the buyer is not requesting an acquisition adjustment. The buyer was unable to provide a separate purchase price for the utility's assets because the utility assets were included, non-specifically, in the overall sales transaction for the mobile home community. Further, there do not appear to be any extraordinary circumstances. Therefore, staff recommends that an acquisition adjustment should not be included in the calculation of rate base for transfer purposes.

**ISSUE 4:** Should the rates and charges approved for ABCA, Inc., be continued?

**RECOMMENDATION:** Yes. The rates and charges approved for the utility should be continued until authorized to change by the Commission in a subsequent proceeding. The tariff reflecting the transfer should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets. (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 wastewater service charges, schedule of customer deposits, and service availability fees and charges were implemented pursuant to the utility's recent SARC order and made effective August 1, 2000. The utility has the standard schedule of miscellaneous service charges.

**WASTEWATER TARIFF  
GENERAL SERVICES**

**Monthly Base Facility Charges**

<u>Meter Size</u>	<u>Charge</u>
5/8" x 3/4"	\$ 9.15
3/4"	13.72
1"	22.87
1 1/2"	45.74
2"	73.18
3"	146.36
4"	228.68
6"	457.36

**Gallonge Charge** \$ 3.63 per 1,000 gallons

**WASTEWATER TARIFF  
RESIDENTIAL SERVICE**

**Monthly Base Facility Charge**

All Meter Sizes	\$ 9.15
<b>Gallonge Charge</b>	\$ 3.03
per 1,000 gallons	
8,000 gallons maximum per month	

**WASTEWATER TARIFF  
CUSTOMER DEPOSITS**

	<u>Residential</u>	<u>General Service</u>
5/8" x 3/4"	\$ 40.00	\$ 40.00
Over 5/8" x 3/4"	<u>N/A</u>	<u>2 x average bill</u>

**WASTEWATER TARIFF  
SERVICE AVAILABILITY FEES AND CHARGES**

Main Extension Charge	\$ 450.00 per ERC
Plant Capacity Charge	\$ 430.00 per ERC

Staff recommends that West Lakeland continue to charge the utility's existing rates and charges until authorized to change by the Commission in a subsequent proceeding. West Lakeland has filed wastewater tariff sheets reflecting the transfer. The tariff sheets should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

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**ISSUE 5:** Should this docket be closed?

**RECOMMENDATION:** No. If no timely protest is received to the proposed agency action issues, upon the expiration of the protest period a Consummating Order should be issued and the docket should remain open for confirmation of closing and receipt of proof of ownership of the land upon which the utility facilities are located. Upon receipt of a recorded warranty deed in the name of West Lakeland Utilities, Inc., Certificate No. 515-S should be transferred effective the date of closing and the docket should be administratively closed. (CROSBY)

**STAFF ANALYSIS:** If no timely protest is received to the proposed agency action issues, upon the expiration of the protest period a Consummating Order should be issued and the docket should remain open for confirmation of closing and receipt of proof of ownership of the land upon which the utility facilities are located. Upon receipt of a recorded warranty deed in the name of West Lakeland Utilities, Inc., Certificate No. 515-S should be transferred effective the date of closing and the docket should be administratively closed.

ABCA, INC.

WASTEWATER SERVICE TERRITORY, ONLY  
POLK COUNTY

Township 28 South, Range 24 East  
Sections 14 and 23

Beginning at the SW corner of Section 14, Township 28 South, Range 24 East; run thence East along the South boundary of said Section 14 to the SE corner of the SW 1/4 of the SW 1/4 of said Section 14; thence North to the NW corner of the South 1/2 of the SE 1/4 of the SW 1/4 of said Section 14; thence East to the NE corner of said South 1/2 of the SE 1/4 of the SW 1/4; thence South along the East boundary of the West 1/2 of said Section 14 and the East boundary of the West 1/2 of Section 23 of said Township and Range to the SE corner of the NW 1/4 of said Section 23; thence East to the NE corner of the West 1/4 of the SE 1/4 of said Section 23; thence South to the SE corner of said West 1/4 of the SE 1/4; thence West along the South boundary of said Section 23 to a point 220 feet West of the SE corner of the SW 1/4 of said Section 23; thence North 1,247.05 feet, West 100 feet, North 600 feet, West 180 feet, North 500 feet, West to the West boundary of the East 1/2 of the SW 1/4 of said Section 23; thence North along said West boundary of said East 1/2 of said SW 1/4 and along the West boundary of the SE 1/4 of the NW 1/4 of said Section 23 to the NW corner of said SE 1/4 of the NW 1/4; thence West along the South boundary of the NW 1/4 of the NW 1/4 of said Section 23 to the West boundary of said Section 23; thence North along said West boundary to the point of beginning. All in Sections 14 and 23, Township 28 South, Range 24 East.