

State of Florida



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK

DATE: November 9, 2011

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Jones-Alexis, Mouring, Simpson)
Office of the General Counsel (Barrera)

Handwritten initials and signatures: MGA, M, JS, MB, JSC, and a signature.

RE: Docket No. 110255-WU – Application for approval of transfer of Brendenwood Water System, Inc., and application for certificate to operate water utility in Lake County, by Brendenwood Utilities, LLC.
County(ies): Lake

AGENDA: 11/22/11 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\110255.RCM.DOC

Case Background

On August 18, 2011, Brendenwood Utilities, LLC (applicant or buyer) filed an application for transfer of the water certificate and facilities in Lake County from Brendenwood Water System, Inc. (Brendenwood or Utility) to the applicant. Brendenwood is a Class C utility providing potable water service to approximately 58 customers (57 residential and 1 general service) in the Brendenwood and Jeremy Estates subdivisions, located south of County Road 44 adjacent to Lake Eustis. This service territory is in the St. Johns River Water Management District (SJRWMD) in a Water Resource Caution Area. The Utility’s customers utilize septic tanks. According to Brendenwood’s 2010 annual report, the Utility had gross revenues of \$30,569 and a net operating income of \$3,709.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

The Commission granted Brendenwood water Certificate No. 339-W in 1981.¹ Since its certification, the Utility has experienced two transfers of ownership, two amendments for expansion of its service territory, and one name change.²

The purpose of this recommendation is to address the buyer's application for transfer of Brendenwood's water certificate and facilities. The Commission has jurisdiction pursuant to Sections 367.045 and 367.071, Florida Statutes (F.S.).

¹ See Order No. 10184, issued August 5, 1981, in Docket No. 810079-WU, In re: Application of Brendenwood Water System for a certificate to operate a water Utility in Lake County, Florida, pursuant to section 367.041, F.S.

² See Order No. 22425, issued January 17, 1990, in Docket No. 891121-WU, In re: Application for transfer of ownership of Brendenwood Water System in Lake County from Robert S. Hanks, Jerry L. Rogers and Daniel H. Judy to Paul E. Day; Order No. 22398, issued January 10, 1990, in Docket No. 891122-WU, In re: Application of Brendenwood Water System for amendment of Certificate No. 339-W in Lake County; Order No. PSC-03-0118-FOF-WU, issued January 21, 2003, in Docket No. 020996-WU, In re: Application for name change on Certificate No. 339-W in Lake County from Brendenwood Water System to Brendenwood Water System, Inc.; Order No. PSC-04-1054-PAA-WU, issued October 27, 2004, in Docket No. 040276-WU, In re: Application for transfer of majority organizational control of Brendenwood Water System, Inc., holder of Certificate No. 339-W in Lake County, from Paul E. Day to Deborah J. Miller; Order No. PSC-05-0678-FOF-WU, issued June 20, 2005, in Docket No. 050255-WU, In re: Application for "quick take" amendment of Certificate No. 339-W in Lake County by Brendenwood Water System, Inc.

Discussion of Issues

Issue 1: Should the Commission approve the transfer of Brendenwood Water System, Inc.'s water Certificate No. 339-W and facilities to Brendenwood Utilities, LLC?

Recommendation: Yes. The transfer of Brendenwood's water Certificate No. 339-W and facilities to the applicant is in the public interest and should be approved, effective the date of the Commission's vote. The territory being transferred is described in Attachment A. The resultant order should serve as the buyer's water certificate and should be retained by the buyer as such. Within 30 days after the date of the order approving the transfer, the buyer should submit an executed and recorded copy of the warranty deed for the land on which the water treatment facilities are located, pursuant to Rule 25-30.033(1)(j), Florida Administrative Code (F.A.C.). No acquisition adjustment should be approved, pursuant to Rule 25-30.0371, F.A.C. Pursuant to Rule 25-9.044(1), F.A.C., the rates and charges approved for the Utility should be continued until authorized to change by the Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective for services provided or connections made on or after the stamped approval date on the tariff pages, pursuant to Rule 25-30.475, F.A.C. (Jones-Alexis, Mouring, Barrera)

Staff Analysis: As previously stated, the buyer filed a complete application for transfer of Brendenwood's water Certificate No. 339-W and facilities to the buyer on August 18, 2011. Pursuant to Section 367.071(1), F.S., a sale or transfer of a utility's certificate or facilities may occur prior to Commission approval if the contract for sale or transfer is made contingent upon Commission approval. As such, the closing on the sale of the utility facilities is scheduled to take place within 30 days following the Commission's approval of the transfer. The application is in compliance with the governing statutes, Sections 367.045 and 367.071, F.S., and other pertinent statutes and administrative rules concerning an application for the sale, assignment, or transfer of a certificate of authorization. The territory being transferred is described in Attachment A.

The application contains proof of compliance with the noticing provisions of Section 367.045, F.S., and Rule 25-30.030, F.A.C. No objections from any entities were received, and the time for filing such has expired.

The application contains a statement that the buyer has performed a detailed inspection of the utility system and found it to be in satisfactory condition and in compliance with all of the requirements of the Florida Department of Environmental Protection (DEP) and the SJRWMD. According to the buyer, the Utility has no outstanding DEP Consent Orders or Notices of Violation, and no major improvements to the system are required at this time. Staff confirmed with the DEP that there are currently no violations or enforcement actions against the Utility. Further, the DEP's report of Brendenwood's most recent compliance inspection, conducted on June 30, 2011, indicates that the Utility had no deficiencies and the overall operation of the water plant was good. Brendenwood's 2010 Annual Drinking Water Quality Report – also known as a Consumer Confidence Report (CCR) – was timely distributed to its customers and showed that the Utility was in compliance with established Maximum Contaminant Levels (MCLs). Staff confirmed with the SJRWMD that the Utility is in compliance with the SJRWMD's regulations. In addition, the SJRWMD approved the buyer's application for the transfer of the Utility's

Consumptive Use Permit (CUP) on September 19, 2011. The buyer's CUP will expire on January 10, 2025.

According to the application, the buyer has the necessary financial and technical ability to provide adequate, safe, and reliable water service to the Utility's customers. The buyer is an active limited liability corporation authorized to conduct business in Florida since July 21, 2011. The sole member and registered agent of the corporation is Gerard P. Connolly. Although the buyer does not currently own any other water or wastewater utilities, Mr. Connolly has been employed in the water and wastewater industry for the past 13 years and has managed public and private water and wastewater facilities for the past 8 years. Further, Mr. Connolly holds water and wastewater licenses and is a licensed Professional Engineer in Florida and Illinois. The buyer intends to employ the services of a former customer service manager with 25 years of experience in utility billing to perform customer service and billing functions. Mr. Connolly asserts that, with his knowledge and experience in managing and operating water and wastewater systems, the buyer has the resources available to comply with evolving water quality standards while providing excellent customer service. The buyer also states that it has sufficient resources, including the financial capability, to fulfill the commitments, obligations, and representations of the Utility. Staff believes that the buyer has the necessary technical ability to provide adequate, safe, and reliable water service. Staff reviewed the buyer's financial statement and determined that the buyer also appears to have the necessary financial ability to provide adequate, safe, and reliable water service. Furthermore, the current owner of Brendenwood is no longer interested in owning and operating this water system.

The purchase price for Brendenwood is \$50,000. Pursuant to Section 367.071, F.S., the Commission may set rate base in transfer dockets. Rate base was last set for the water system in 2010 at \$13,213.³ Pursuant to Rule 25-30.0371(2), F.A.C., a positive acquisition adjustment shall not be included in rate base unless there is proof of extraordinary circumstances. The buyer did not request a positive acquisition adjustment; therefore, staff recommends that a positive acquisition adjustment should not be approved.

The buyer included in the application a statement that it has obtained copies of the Utility's federal income tax returns from the date rate base was last established by the Commission, in accordance with Rule 25-30.037(2)(o), F.A.C. A copy of Brendenwood's 2010 corporate income tax return was filed with the application. The buyer understands the need to maintain its books and records according to the National Association of Regulatory Utility Commissioners' (NARUC) Uniform System of Accounts (USOA), pursuant to Rule 25-30.115, F.A.C. In addition, the buyer understands the need to maintain all records pertaining to utility plant in service and depreciation for the water system since rate base was last established so that the buyer will have supporting documentation for rate base in any future rate proceeding.

Brendenwood has paid regulatory assessment fees (RAFs) accrued through December 31, 2010, and all prior years, pursuant to Rule 25-30.120, F.A.C. As previously stated, the closing on the sale of the utility facilities is scheduled to take place within 30 days following the Commission's approval of the transfer. Therefore, the Utility will continue to be responsible for

³ See Order No. PSC-10-0167-PAA-WU, issued March 23, 2010, in Docket No. 090346-WU, In re: Application for staff-assisted rate case in Lake County by Brendenwood Water System, Inc.

all RAFs that accrue through such date. In accordance with Rule 25-30.110, F.A.C., Brendenwood has filed its annual reports for 2010 and all prior years. If the Commission approves the transfer, the buyer will be required to file a 2011 annual report, pursuant to Rule 25-30.110(3), F.A.C.

In accordance with Rule 25-9.044(1), F.A.C., the rates and charges approved for the Utility should be continued until authorized to change by the Commission in a subsequent proceeding. In 2010, Brendenwood's current water rates were established pursuant to Order No. PSC-10-0167-PAA-WU.⁴ The Utility's current miscellaneous service charges, approved in 2000,⁵ were unchanged by that Order. Brendenwood's existing rates and charges are shown on Attachment B.

Based on the foregoing, staff recommends that the transfer of Brendenwood's water Certificate No. 339-W and facilities to the applicant is in the public interest and should be approved, effective the date of the Commission's vote. The territory being transferred is described in Attachment A. The resultant order should serve as the buyer's water certificate and should be retained by the buyer as such. Within 30 days after the date of the order approving the transfer, the buyer should submit an executed and recorded copy of the warranty deed for the land on which the water treatment facilities are located, pursuant to Rule 25-30.033(1)(j), F.A.C. No acquisition adjustment should be approved, pursuant to Rule 25-30.0371, F.A.C. Pursuant to Rule 25-9.044(1), F.A.C., the rates and charges approved for the Utility should be continued until authorized to change by the Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective for services provided or connections made on or after the stamped approval date on the tariff pages, pursuant to Rule 25-30.475, F.A.C.

⁴ *Ibid.*

⁵ See Order No. PSC-00-0807-PAA-WU, issued April 25, 2000, in Docket No. 991290-WU, In re: Application for staff-assisted rate case in Lake County by Brendenwood Water System.

Docket No. 110255-WU
Date: November 9, 2011

Issue 2: Should this docket be closed?

Recommendation: No. If the Commission approves staff's recommendation in Issue 1, the buyer should file an executed and recorded copy of the warranty deed for the land on which the water treatment facilities are located within 30 days after the date of the order approving the transfer in this docket. Following receipt of the warranty deed, this docket should be closed administratively. (Barrera)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, the buyer should file an executed and recorded copy of the warranty deed for the land on which the water treatment facilities are located within 30 days after the date of the order approving the transfer in this docket. Following receipt of the warranty deed, this docket should be closed administratively.

Brendenwood Utilities, LLC
Brendenwood and Jeremy Estates Subdivisions
Lake County
Description of Water Territory

PER ORDER NO. 10184

The North 660 feet of the East 924 feet of the Northwest 1/4 of the Southeast 1/4 of Section 32, Township 18 South, Range 26 East, Lake County, Florida. Also described as: Begin at the Northeast corner of the Northwest 1/4 of the Southeast 1/4 of Section 32, Township 18 South, Range 26 East, Lake County, Florida, run thence S89°53'07" W along the North Line of the Northwest 1/4 of the Southeast 1/4 of Section 32, Township 18 South, Range 26 East a distance of 924.00 feet, then S0°36'29" E parallel to the East line of said Northwest 1/4 of the Southeast 1/4 of Section 32 a distance of 660.00 feet, thence N89°53'07" E parallel to the aforesaid North line of the Northwest 1/4 of the Southeast 1/4 of Section 32 a distance of 924.00 feet, thence N0°36'29" W 660.00 feet to the point of beginning.

PER ORDER NO. 22398

Township 18 South, Range 26 East
In Section 32

Jeremy Estates

From the Southeast corner of the Northwest 1/4 of the Southeast 1/4 of Section 32, Township 18 South, Range 26 East, Lake County, Florida. Run N 00°35'29"W along the East Line of said Northwest 1/4 of the Southeast 1/4 a distance of 369.20 feet; thence S 89°58'23"W, 25.00 feet to a point on the Westerly right-of-way line of Fish Camp Road and the POINT OF BEGINNING of this description; from said POINT OF BEGINNING run S 89°58'23"W, 508.92 feet; thence N 00°37'31"W, 297.73 feet; thence N 89°53'07"E, 509.09 feet to a point on the Westerly right-of-way line of Fish Camp Road; thence S 00°35'29"E along said Westerly right-of-way line, 298.51 feet to the POINT OF BEGINNING.

Grand Island Post Office

The East 275 feet of the Southwest 1/4 of the Northeast 1/4 all lying South of Highway No. 44 and West of Fish Camp Road.

PER ORDER NO. PSC-05-0678-FOF-WU

Township 18 South, Range 26 East, Lake County, Florida

Section 32: The East 278.35 feet of the North 156.50 feet of the South 369.2 feet of the Northwest 1/4 of the Southeast 1/4 of Section 32, Township 18 South, Range 26 East in Lake County, Florida
LESS the East 33 feet for Rd R/W.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Brendenwood Utilities, LLC
pursuant to
Certificate Number 339-W

to provide water service in Lake County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
10184	08/05/81	810079-W	Original Certificate
22398	01/10/90	891122-WU	Amendment
22425	01/17/90	891121-WU	Transfer of Majority Organizational Control
PSC-03-0118-FOF-WU	01/21/03	020996-WU	Name Change
PSC-04-1054-PAA-WU	10/27/04	040276-WU	Transfer of Majority Organizational Control
PSC-05-0678-FOF-WU	06/20/05	050255-WU	Amendment
*	*	110255-WU	Transfer of Certificate

***Order Number and date to be provided at time of issuance.**

**BRENDENWOOD UTILITIES, LLC
 WATER SYSTEM**

Monthly Residential Service Rates

<u>Meter Size</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 14.74
Full 3/4"	22.11
1"	36.85
1.5"	73.70
2"	117.92
3"	235.84
4"	368.50
6"	737.00
Charge per 1,000 gallons	
0-5,000 gallons	\$ 2.00
5,001-10,000 gallons	\$ 2.24
Over 10,000 gallons	\$ 4.48

Monthly General Service Rates

<u>Meter Size</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 14.74
Full 3/4"	22.11
1"	36.85
1.5"	73.70
2"	117.92
3"	235.84
4"	368.50
6"	737.00
Charge per 1,000 gallons	\$ 3.05

Comparison of Residential Service Bills – 5/8" x 3/4" Meter

3,000 gallons	\$ 20.74
5,000 gallons	\$ 24.74
10,000 gallons	\$ 37.14
15,000 gallons	\$ 81.94

**BRENDENWOOD UTILITIES, LLC
WATER SYSTEM**

Miscellaneous Service Charges

Description	Charge
Initial Connection Charge	\$ 15.00
Normal Reconnection Charge	\$ 15.00
Violation Reconnection Charge	\$ 15.00
Premises Visit in Lieu of Disconnection Charge	\$ 10.00
Late Payment Charge	\$ 3.00