

State of Florida



Public Service Commission

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

-M-E-M-O-R-A-N-D-U-M-

DATE: June 27, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Wooten, Watts) *N POE TB*
Division of Accounting and Finance (Andrews, Fletcher, Norris) *Boj*
Division of Economics (Sibley) *M SH GS*
Office of the General Counsel (Crawford, Janjic) *RT JC*

RE: Docket No. 20170246-SU – Application for authority to transfer facilities and Certificate No. 515-S in Polk County from West Lakeland Wastewater, Inc. to West Lakeland Wastewater, LLC. *ALM*

AGENDA: 07/10/18 – Regular Agenda – Proposed Agency Action for Issues 2 and 3 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On November 16, 2017, West Lakeland Wastewater, LLC (West Lakeland, LLC) filed an application for a transfer of Certificate No. 515-S from West Lakeland Wastewater, Inc. (WLWI or Utility) in Polk County. According to the Utility's 2017 Annual Report, WLWI is a Class C utility serving approximately 310 wastewater customers, with an operating loss of \$7,104. Customers receive water from the City of Lakeland.

The Utility, previously known as ABCA, Inc., has been providing service to customers in Polk County since 1972. On January 9, 1990, the Polk County Commission granted a franchise to Ameribanc Investors Group for a system known as Village Lakeland. Polk County came under

the Florida Public Service Commission's (Commission) jurisdiction on July 11, 1996. In 1998, the Commission granted the Utility its grandfather Certificate No. 515-S for wastewater.¹ ABCA's Certificate was transferred to WLWI in 2001.²

By letter dated March 26, 2009, WLWI gave notice of abandonment effective June 30, 2009. On May 13, 2009, the Polk County attorney filed a Petition for Appointment of Receiver for WLWI in the Circuit Court of the Tenth Judicial Circuit which subsequently appointed Mr. Mike Smallridge as receiver for the wastewater system. On September 8, 2009, the Commission acknowledged WLWI's abandonment and the Court's appointment of Mr. Smallridge as receiver.³

On March 19, 2013, WLWI filed an application for transfer of Certificate No. 515-S from WLWI to West Lakeland, LLC.⁴ A deficiency was noted that the Utility did not have ownership or rights to long-term use of land upon which a portion of the wastewater treatment plant was located. On September 11, 2014, WLWI withdrew its application to transfer to West Lakeland, LLC.⁵ As referenced above, a subsequent transfer application was filed on November 16, 2017.

This recommendation addresses the transfer of the wastewater system, the net book value of the wastewater system at the time of the transfer and the need for an acquisition adjustment. The Commission has jurisdiction pursuant to Sections 367.071 and 367.091, Florida Statutes (F.S.)

¹Order No. PSC-98-0752-FOF-SU, issued June 1, 1998, in Docket No. 19971531-SU, *In re: Application for grandfather certificate to operate wastewater utility in Polk County by ABCA, Inc.*

²Order No. PSC-01-1576-FOF-SU, issued July 30, 2001, in Docket No. 20010382-SU, *In re: Application for transfer of Certificate No. 515-S in Polk County from ABCA, Inc. to West Lakeland Wastewater, Inc.*

³Order No. PSC-09-0607-FOF-SU, as amended by PSC-09-0607A-FOF-SU, issued February 16, 2010, in Docket No. 20090154-SU, *In re: Notice of abandonment of wastewater system for The Village of Lakeland Mobile Home Park in Polk County, by West Lakeland Wastewater, Inc.*

⁴Document No. 01362-13, filed March 19, 2013, in Docket No. 20130065-SU.

⁵Document No. 05141-14, filed September 11, 2014, in Docket No. 20130065-SU.

Discussion of Issues

Issue 1: Should the transfer of Certificate No. 515-S in Polk County from West Lakeland, Inc. to West Lakeland, LLC be approved?

Recommendation: Yes. The transfer of the wastewater system and Certificate No. 515-S is in the public interest and should be approved effective the date of the Commission vote. The resultant order should serve as the Buyer's certificate and should be retained by the Buyer. The existing rates and charges should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariffs reflecting the transfer should be effective for services rendered or connections made on or after the stamped approval date on the tariffs, pursuant to Rule 25-30.475, Florida Administrative Code (F.A.C.) West Lakeland, LLC should be responsible for filing the 2018 Annual Report, all future annual reports, and Regulatory Assessment Fees (RAFs) subsequent to the date of closing. (Wooten, Andrews, Sibley)

Staff Analysis: On November 16, 2017, West Lakeland, LLC filed an application for a transfer of Certificate No. 515-S from WLWI to West Lakeland in Polk County. The application is in compliance with Section 367.071, F.S., and Commission rules concerning applications for transfer of certificates. The application contains a description of the wastewater service territory which is appended to this recommendation as Attachment A.

Noticing, Territory, and Land Ownership

West Lakeland provided notice of the application pursuant to Section 367.071, F.S., and Rule 25-30.030, F.A.C. No objections to the transfer were filed, and the time for doing so has expired. The application contains a description of the wastewater service territory which is appended to this recommendation as Attachment A. The application contains a copy of a long term lease agreement that was executed on July 1, 2017, as evidence that the Applicant owns or has rights to long-term use of the land upon which the wastewater treatment facilities are located pursuant to Rule 25-30.037(2)(s), F.A.C.

Purchase Agreement and Financing

Pursuant to Rule 25-30.037(2)(i), and (j), F.A.C., the application contains a statement regarding financing and a copy of the Purchase Agreement, which includes the purchase price, terms of payment, and a list of the assets purchased. There are no customer deposits, guaranteed revenue contracts, developer agreements, customer advances, leases, or debt of West Lakeland that must be disposed of with regard to the transfer. According to the Purchase Agreement, the total purchase price for the assets is \$0. According to the Buyer, the sale took place on December 13, 2011, subject to Commission approval, pursuant to Section 367.071(1), F.S.

Facility Description and Compliance

The wastewater treatment plant is a Type III contact stabilization plant and is permitted by the DEP at 70,000 gallons per day based on the three-month rolling average daily flow. Chlorine disinfection is applied prior to wastewater effluent flowing into the percolation ponds and spray field. The collection system is composed of four and six inch polyvinyl chloride (PVC) pipes and there are three lift stations in the service area. The last compliance evaluation inspection of the facility was conducted on March 4, 2016 on by the Florida Department of Environmental

Protection (DEP). There were three deficiencies noted, which have been corrected. Therefore, the system appears to be in compliance with the DEP rules.

Technical and Financial Ability

Pursuant to Rule 25-30.037(2)(1), F.A.C., the application contains statements describing the technical and financial ability of West Lakeland, LLC to provide service to the proposed service area. The application states that the owner was appointed to the Citrus County Water and Wastewater Authority, the local regulatory body for Citrus County, where he served for seven years. The owner also served as the “Class C” representative for the Governors Study Committee for Investor Owned Water and Wastewater Utility Systems in 2013. He attends yearly training classes through the Florida Rural Water Association and completed the National Association of Regulatory Utility Commissioners Utility Rate School in 2001. He owns, is the receiver of, or is the manager of, a total of seven Class C water and wastewater facilities that are regulated by the Commission.

According to the application, West Lakeland, LLC has acquired the assets of WLWI. Staff also reviewed the financial statements of West Lakeland, LLC. Based on the above, staff recommends West Lakeland, LLC has demonstrated the financial ability to provide service to the existing service territory.

Rates and Charges

The Utility’s rates were last approved in a limited proceeding rate case in 2014.⁶ The rates were subsequently amended by several price indexes and a four-year rate reduction, as required by Section 367.0816, F.S., in 2017. The Utility’s service availability charges were established in 2000.⁷ In 2014, the Commission approved the Utility’s request for a convenience charge.⁸ The Utility’s existing rates and charges are shown on Schedule No. 1. Rule 25-9.044(1), F.A.C., provides that, in the case of a change of ownership or control of a utility, the rates, classifications, and regulations of the former owner must continue unless authorized to change by this Commission. Therefore, staff recommends that the Utility’s existing rates and charges remain in effect until a change is authorized by this Commission in a subsequent proceeding.

Regulatory Assessment Fees and Annual Reports

Staff has verified that the Utility is current on the filing of annual reports and RAFs through December 31, 2017. West Lakeland, LLC will be responsible for filing all future annual reports and RAFs.

⁶Order No. PSC-14-0679-PAA-SU issued December 9, 2014, in Docket No. 20140106-SU, *In re: Application for limited proceeding rate case in Polk County by West Lakeland Wastewater, LLC*. The SARC was filed by the buyer in his capacity as receiver for the Utility.

⁷Order No. PSC-00-1163-PAA-SU issued June 26, 2000, in Docket No. 19990937-SU, *In re: Application for staff-assisted rate case in Polk County by ABCA, Inc*. These rate changes were requested by the buyer in his capacity as receiver for the Utility.

⁸Order No. PSC-13-0426-TRF-SU, issued September 19, 2013, in Docket No. 20120289-SU, *In re: Request for approval of amendment to tariff sheets for miscellaneous service charges in Polk County by West Lakeland Wastewater, LLC*. The request was filed by the buyer in his capacity as receiver of the Utility.

Conclusion

Staff recommends the transfer of the wastewater system and Certificate No. 515-S is in the public interest and should be approved effective the date of the Commission vote. The resultant order should serve as the Buyer's certificate and should be retained by the Buyer. The existing rates and charges should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariffs reflecting the transfer should be effective for services rendered or connections made on or after the stamped approval date on the tariffs, pursuant to Rule 25-30.475, F.A.C. West Lakeland, LLC should be responsible for filing the 2018 Annual Report, all future annual reports, and RAFs subsequent to the date of closing.

Issue 2: What is the appropriate net book value for the West Lakeland Wastewater, LLC's wastewater system for transfer purposes?

Recommendation: The net book value of the wastewater system for transfer purposes is negative \$68,857, as established by Order No. PSC-13-0327-PAA-SU. An acquisition adjustment should not be included in rate base. (Andrews)

Staff Analysis: In transfer cases, staff normally establishes the net book value (NBV) of a utility as of the date of the sale. In this case that would have been as of December 13, 2011. However, rate base was established for West Lakeland, LLC as of the test year ending September 30, 2012, which was subsequent to the transfer date of December 13, 2011. Therefore, the components of rate base, as of the transfer date, were reflected in rate base approved by Order No. PSC-13-0327-PAA-SU.⁹ Staff would note that the use of an established rate base in a staff assisted rate case (SARC) for transfer purposes has been done previously for this certificate. In a prior 2001 transfer of this certificate, the rate base established in a SARC completed in 2000 was used for transfer purposes.¹⁰ As such, staff recommends adopting the rate base set during the 2013 SARC for transfer purposes.

Net Book Value

In the 2013 SARC, the rate base approved by the Commission was negative \$68,857. The purpose of establishing NBV for transfers is to determine whether an acquisition adjustment should be approved. As such, staff recommends using the rate base established by the 2013 SARC Order for purposes of evaluating an acquisition adjustment.

Acquisition Adjustment

An acquisition adjustment results when the purchase price differs from the NBV of the assets at the time of the acquisition. However, the Utility and its assets were purchased for \$0. Additionally, staff recommends that rate base for evaluating the acquisition adjustment is negative \$68,857. Therefore, no acquisition adjustment should be approved.

Conclusion

Staff recommends that the NBV of the wastewater system for transfer purposes is negative \$68,857, as established by Order No. PSC-13-0327-PAA-SU. An acquisition adjustment should not be included in rate base.

⁹Order No. PSC-13-0327-PAA-SU issued July 16, 2013, in Docket No. 20120270-SU, *In re: Application for staff-assisted rate case in Polk County by West Lakeland Wastewater, LLC.*

¹⁰Order No. PSC-01-1271-PAA-SU issued June 6, 2001, in Docket No. 20010382-SU, *In re: Application for transfer of Certificate No. 515-S in Polk County from ABCA, Inc. to West Lakeland Utilities, Inc.*

Issue 3: Should the Utility's service availability charges be discontinued?

Recommendation: Yes. WLWI's service availability charges should be discontinued. West Lakeland, LLC should provide notice to customers who have requested service within 12 calendar months prior to the month the application was filed to the present pursuant to Rule 25-30.4345, F.A.C. In the event there is new development in the Utility's service territory, the Utility should file an application for new service availability charges. (Sibley)

Staff Analysis: The Utility's current service availability charges consist of a main extension charge of \$450 and a plant capacity charge of \$430. As discussed in Issue 2, the Utility has a negative rate base; therefore, the service availability charges should be discontinued. Staff's recommended charges are shown below in Table 3-A. WLWI was determined to be completely built out by Order No. PSC-13-0327-PAA-SU;¹¹ in order to serve new customers, the Utility would need to install additional facilities.

**Table 3-A
Service Availability Charges**

	Current Rates	Staff Recommended Rates
Main Extension Charge	\$450.00	N/A
Plant Capacity Charge	\$430.00	N/A

Source: Utility's tariff

Based on the above, staff recommends the Utility's service availability charges should be discontinued. In the event there is new development in the service territory, the Utility should file an application for new service availability charges.

Conclusion

Staff recommends that WLWI's service availability charges should be discontinued. West Lakeland, LLC should provide notice to customers who have requested service within 12 calendar months prior to the month the application was filed to the present pursuant to Rule 25-30.4345, F.A.C. In the event there is new development in the Utility's service territory, the Utility should file an application for new service availability charges.

¹¹Order No. PSC-13-0327-PAA-SU, issued July 16, 2013, in Docket No. 20120270-SU, *In re: Application for a staff-assisted rate case in Polk County by West Lakeland Wastewater, LLC.*

Issue 4: Should this docket be closed?

Recommendation: If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the order, a consummating order should be issued and the docket should be closed administratively upon Commission staff's verification that the revised tariff sheets have been filed, the Buyer has notified the Commission in writing that it has adjusted its books in accordance with the Commission's decision, and proof that appropriate noticing has been done pursuant to Rule 25-30.4345, F.A.C. (Crawford)

Staff Analysis: If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the order, a consummating order should be issued and the docket should be closed administratively upon Commission staff's verification that the revised tariff sheets have been filed, the Buyer has notified the Commission in writing that it has adjusted its books in accordance with the Commission's decision and proof that appropriate noticing has been done pursuant to Rule 25-30.4345, F.A.C.

West Lakeland Wastewater, LLC
Wastewater Territory Description
Polk County

Polk County, Florida, Village Lakeland

Sections 14 and 23, Township 28 South, Range 24 East

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.

FLORIDA PUBLIC SERVICE COMMISSION

**Authorizes
West Lakeland Wastewater, LLC
Pursuant to
Certificate Number 515-S**

To provide wastewater service in Polk 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>
PSC-98-0752-FOF-SU	06/01/1998	971531-SU	Grandfather Certificate
PSC-01-1271-PAA-SU	06/06/2001	010382-SU	Transfer of Certificate
PSC-01-1576-FOF-SU	07/30/2001	010382-SU	Name Change
PSC-09-0607-FOF-SU	09/08/2009	090154-SU	Receiver Appointed
*	*	20170246-SU	Transfer of Certificate

*** Order Numbers and dates to be provided at time of issuance**

West Lakeland Wastewater, LLC

Monthly Wastewater Rates

Residential Service

Base Facility Charge – All Meter Sizes	\$15.62
Charge Per 1,000 gallons 6,000 gallon cap	\$5.80

General Service

Base Facility Charge by Meter Size	
5/8" x 3/4"	\$15.62
1"	\$39.04
1 1/2"	\$78.09
2"	\$124.95
3"	\$249.90
4"	\$390.46
6"	\$780.94
8"	\$1,249.50
Charge Per 1,000 gallons	\$6.96

Initial Customer Deposits

Residential – 5/8" X 3/4"	\$40.00
General Service – 5/8" X 3/4"	\$40.00
All over 5/8" X 3/4"	2x average estimated bill

Miscellaneous Service Charges

Initial Connection Charge	\$15.00
Normal Reconnection Charge	\$15.00
Violation Reconnection Charge	Actual Cost
Premises Visit Charge (in lieu of disconnection)	\$10.00
Late Payment Charge	\$7.00
Convenience Charge	\$2.50