



Public Service Commission

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DATE: FEBRUARY 20, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (CLAPP, BASS) JSC DM JDJ
OFFICE OF THE GENERAL COUNSEL (ECHTERNACHT) KNE MUA

RE: DOCKET NO. 020707-SU - APPLICATION FOR TRANSFER OF
CERTIFICATE NO. 281-S FROM REALNOR HALLANDALE, INC. IN LEE
COUNTY TO BONITA SPRINGS UTILITIES, A NOT-FOR-PROFIT
CORPORATION, AND FOR CANCELLATION OF CERTIFICATE NO.
281-S.
COUNTY: LEE

AGENDA: 03/04/03 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\020707SU.RCM

CASE BACKGROUND

RealNor Hallandale, Inc., (RealNor or utility) is a Class B utility serving approximately 865 wastewater customers in Lee County. Water service is provided by Bonita Springs Utilities, Inc. (BSU). The South Florida Water Management District (SFWMD) does not consider this area a water resource caution area. The utility's 2001 annual report shows total operating revenue of \$230,180 and a net operating income of \$4,992.

Bonita Springs Golf and Country Club was granted Wastewater Certificate No. 281-S pursuant to Order No. 9544, issued September 16, 1980, in Docket No. 790915-S(AP). The certificate was transferred to Bonita Country Club Utilities, Inc. (BCCU), pursuant to Order No. 14441, issued June 5, 1985, in Docket No. 840050-SU.

DOCUMENT NUMBER-DATE

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The certificate was amended pursuant to Order No. PSC-96-1086-FOF-SU, issued August 22, 1996, in Docket No. 960803-SU. The certificate was transferred to RealNor pursuant to Order No. PSC-00-0579-PAA-SU, issued March 22, 2000, in Docket No. 990975-SU.

On July 12, 2002, RealNor submitted an application to the Commission for transfer of the utility to BSU. BSU is a nonprofit exempt utility pursuant to Section 367.022(7), Florida Statutes. (See Order No 24921, issued August 16, 1991, in Docket No. 910604-SU)

Pursuant to the requirements of Section 367.071, Florida Statutes, and Rule 25-30.030, Florida Administrative Code, RealNor issued notices of its application for transfer of facilities to BSU on July 12, 2002. Five letters objecting to the proposed transfer were received within the protest period. The letter writers were contacted by telephone as follow-up to the objection letters. The letter writers were informed of the formal hearing process. Follow-up letters were mailed to each letter writer acknowledging receipt of the objection letter, restating the formal hearing process, and requesting that if the writer wanted a formal hearing to file a letter so stating by September 16, 2002. No letters requesting a formal hearing were received.

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

DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of facilities from RealNor to BSU and the cancellation of Certificate No. 281-S be approved?

RECOMMENDATION: Yes. The transfer of facilities from RealNor to BSU and the cancellation of Certificate No. 281-S as of January 7, 2003, should be approved. (CLAPP, BASS)

STAFF ANALYSIS: As stated in the case background, RealNor applied for a transfer of Wastewater Certificate No. 281-S in Lee County from RealNor to BSU on July 12, 2002. The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer. The utility provides service to approximately 865 wastewater customers. The application contains a check in the amount of \$1,500, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

Section 367.071, Florida Statutes, requires that no utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without prior approval of the Commission unless such sale, assignment, or transfer is made contingent upon Commission approval. The closing on the transfer of the utility facilities and purchase of the land upon which the utility facilities are located took place on January 7, 2003. According to the agreement for purchase and sale, closing of the transfer is contingent upon Commission approval in compliance with the statute.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. As stated in the Case Background, five letters of objection were received, but none of the writers requested a formal hearing. No other objections to the application were received, and the time for the filing of such objections has expired.

The application contains documentation to comply with Rule 25-30.037(2)(g), (h), (i), and (k), Florida Administrative Code, regarding terms of the sale and financing of the purchase. The application contains a copy of the agreement for purchase and sale of wastewater assets which includes the sales price, terms of payment, and a list of the assets purchased and liabilities assumed

of RealNor. The purchase price for the utility and land is \$500,000. The sale was a cash transaction.

The application also contains a statement, pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, regarding how the transfer is in the public interest. RealNor indicated that the transfer is in the public interest because BSU is a member owned, not-for-profit water and wastewater utility providing and service to approximately 27,000 water and 22,000 wastewater equivalent residential connections (ERCs). In 1991, BSU embarked on a wastewater expansion program for the primary purpose of eliminating package wastewater plants and septic tanks. To date BSU has eliminated over 40 package wastewater plants and septic tanks. Based upon BSU's experience, it is more than qualified to successfully own and operate the RealNor wastewater facility and provide the residents safe and reliable service. The utility stated that the transferring customers would not have to pay service availability fees nor membership fees to receive service from and to have membership in BSU.

The application states that the buyer has not performed a reasonable investigation of the utility system as required by Rule 25-30.037(3)(p), Florida Administrative Code. However, the application states that the current treatment plant will be dismantled when the system is interconnected with BSU.

According to the utility's annual report, the current permitted wastewater treatment capacity is 250,000 gallons per day (gpd). The average daily flows for the calender year 2001, was approximately 100,580 gpd, with the treated effluent sent to percolation ponds or used for on site irrigation. Staff contacted the Department of Environmental Protection (DEP) and verified that there are no outstanding notices of violation for RealNor.

Rule 25-30.037(2)(q), Florida Administrative Code, requires the utility to provide proof of ownership or agreement for long term use of the land upon which its facilities are located. The application contains a copy of a recorded special warranty deed transferring the facilities from RealNor to BSU.

Rule 25-30.110(3), Florida Administrative Code, requires an annual report be filed for any year a utility is jurisdictional as of December 31st. Staff has verified that RealNor is current on its annual reports through 2001 and has until March 31, 2003, in

which to file its 2002 annual report. In a letter dated January 10, 2003, the utility requested that it not be required to file its 2002 annual report, except for Schedule S-9, Wastewater Operating Revenue, which shall accompany the RAF filing for 2002 and 2003. On January 7, 2003, the utility's assets were sold to an exempt entity that is not jurisdictional. Since the utility is no longer jurisdictional, the Commission has no need for the 2002 annual report. Therefore, staff recommends that the utility should not be required to file a 2002 annual report, except for Schedule S-9 to support the 2002 RAFs.

Staff has also verified that RealNor has paid RAFs up through the transfer date of January 7, 2003, and there are no penalties, interest or refunds due. Therefore, staff recommends that there are no further requirements for RealNor with respect to RAFs.

Based on the above, staff recommends that the transfer of facilities of RealNor to BSU is in the public interest and should be approved. Certificate No. 281-S, held by RealNor, should be cancelled as of January 7, 2003.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed. (ECHTERNACHT)

STAFF ANALYSIS: No further action is required; therefore, this docket should be closed.