

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer
of Certificate No. 281-S in Lee
County from Bonita Country Club
Utilities, Inc. to RealNor
Hallandale, Inc.

DOCKET NO. 990975-SU
ORDER NO. PSC-00-0579-PAA-SU
ISSUED: March 22, 2000

The following Commissioners participated in the disposition of
this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
E. LEON JACOBS, JR.

ORDER APPROVING TRANSFER AND INITIATING SHOW CAUSE
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER ESTABLISHING RATE BASE, DECLINING TO INCLUDE A NEGATIVE
ACQUISITION ADJUSTMENT IN THE CALCULATION OF RATE BASE FOR
TRANSFER PURPOSES, AND CLOSING ESCROW ACCOUNT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the actions discussed herein establishing rate base, declining to include a negative acquisition adjustment in the calculation of rate base for transfer purposes, and closing escrow account are 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.

CASE BACKGROUND

Bonita County Club Utilities, Inc. (BCCU or utility) is a Class B utility which provides wastewater service in Lee County to 859 customers. According to the BCCU's 1997 annual report, its operating revenues were \$209,946, with a net operating loss of \$50,184. The utility's facilities consist of a wastewater collection system and a treatment plant.

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FPSC-RECORDS/REPORTING

On July 28, 1999, RealNor Hallandale, Inc. (RealNor) filed an application on behalf of BCCU for the transfer of Certificate No. 281-S to RealNor. RealNor, the transferee, obtained rights to the utility by an Assignment of Interest in the Certificate of Title from Northern Trust Bank of Florida N.A. (Bank), following its mortgage foreclosure. RealNor is currently operating the utility as required by Section 367.071(6), Florida Statutes. On September 7, 1999, Mr. Michael J. Miceli, as president of BCCU, filed a letter objecting to the application for transfer. Mr. Miceli's objection letter stated that RealNor is not entitled to the entire utility as requested in RealNor's application. Accordingly, this matter was set for an administrative hearing.

On October 25, 1999, the Twentieth Judicial Circuit in and for Lee County, Florida (Circuit Court) held a hearing to clarify the Certificate of Title, but issued a continuance until November 23, 1999. On November 23, 1999, the Circuit Court issued an Order of Clarification and Replevin which gave RealNor the right to possession of the entire wastewater system conveyed in the Certificate of Title. BCCU did not appeal the Order of Clarification and Replevin and the time for filing such expired on December 23, 1999. In addition, prior to the Commission's involvement, the parties filed a Joint Stipulation in the Circuit Court to escrow certain revenues for the months of July and August, 1999, which the Court approved.

On September 17, 1999, RealNor filed a Motion to Expedite Application for Transfer or in the Alternate to Take Other Specified Action for the Benefit of Customers. BCCU filed no response to the motion and the time for filing such expired on September 29, 1999. On October 12, 1999, our staff met with BCCU and RealNor to discuss and obtain information on each party's monthly operating and maintenance expenses. The Commission disposed of RealNor's motion by Order No. PSC-99-2107-PCO-SU, issued October 25, 1999, in this docket. By Order No. PSC-99-2107-PCO-SU, the Commission denied RealNor's first and second requests for relief and granted its third request as modified in the body of the Order. The third request was modified to reflect the essential terms of the Circuit Court-approved Joint Stipulation for July and August, 1999, with some additional modifications. BCCU was granted compensation for its billing services, and the remaining monies were to be deposited into an escrow account. RealNor was notified that it must provide continued service without interruption and compensation. Additionally, an escrow account was established to

protect the revenues so that compensation for services provided would be available upon resolution of the ownership matter.

On December 28, 1999, RealNor filed a Motion for Summary Final Order, and on January 10, 2000, BCCU filed its timely response in opposition to RealNor's Motion for Summary Final Order. By Order No. PSC-00-0341-PCO-SU, issued February 18, 2000, in this docket, we granted RealNor's Motion for Summary Final Order and disposed of Mr. Miceli's objection.

The purpose of this order is to dispose of RealNor's application for transfer of Certificate No. 281-S from BCCU, and to properly disburse funds from the escrow account.

SHOW CAUSE

1998 Annual Report

Rule 25-30.110, Florida Administrative Code, requires utilities subject to the Commission's jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Requests for extension of time must be in writing and must be filed before March 31. One extension of 30 days is automatically granted. A further extension may be granted upon showing of good cause. Incomplete or incorrect reports are considered delinquent, with a 30 day grace period in which to supply the missing information.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set out in Rule 25-30.110(7), Florida Administrative Code, for Class B utilities is \$13.50 per day. We calculated the penalty based on the number of days elapsed since April 30, 1999, and the February 29, 2000, agenda conference because BCCU timely filed a written request for an extension, which expired on April 30, 1999. As of February 29, 2000, the total penalty was \$4,117.50 calculated as follows: \$3,307.50 for 245 days x \$13.50 per day for 1999; \$810.00 for 60 days x \$13.50 per day for 2000. The penalty will continue to accrue until such time as BCCU files its 1998 annual report. However, we may impose lesser or greater penalties, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code.

By letters dated August 27, 1999, and October 12, 1999, we notified BCCU that since it had not filed its annual report for 1998, it was in apparent violation of Rule 25-30.110, Florida Administrative Code. BCCU's 1998 annual report has still not been filed, as of the February 29, 2000, agenda conference.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's failure to timely file its annual report, would meet the standard for a "willful violation." 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

In consideration of the foregoing, BCCU is ordered to show cause, in writing, within 21 days, why it should not remit a penalty in the amount of \$4,117.50 (\$3,307.50 for 245 days x \$13.50 per day for 1999; \$810.00 for 60 days x \$13.50 per day for 2000) for failure to file its 1998 annual report, in apparent violation of Rule 25-30.110, Florida Administrative Code. BCCU shall also notify us within 21 days of the issuance date of this order of a reasonable time frame for filing its 1998 annual report, and is put on notice that penalties will continue to accrue until the annual report is filed.

Additionally, we incorporate the following conditions: BCCU's response to the show cause order must contain specific allegations of fact and law. Should BCCU file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings will be scheduled before a final determination on this matter is made. A failure to file a timely written response to the show cause order shall constitute an admission of the facts herein alleged and a waiver of the right to a hearing. In the event BCCU fails to file a timely response to the show cause order, the penalty is deemed assessed with no further action required by the Commission. In that event, if BCCU fails to respond to reasonable

collection efforts by Commission staff, the collection of penalties should be referred to the Comptroller's Office for further collection efforts. Reasonable collection efforts shall consist of two certified letters requesting payment. The referral to the Comptroller's Office would be based on the conclusion that further collection efforts by this Commission would not be cost effective.

Failure to Timely Remit Regulatory Assessment Fees

Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7)(a), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its regulatory assessment fees, in the following manner:

1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25 percent.
2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% annum.

In addition, pursuant to Sections 367.145(1)(b) and 367.161, Florida Statutes, and Rule 25-30.120(7)(b), Florida Administrative Code, we may impose an additional penalty upon a utility for its failure to pay regulatory assessment fees in a timely manner.

Notices of delinquency for failure to remit the utility's regulatory assessment fees were mailed to BCCU on May 10, 1999, and October 15, 1999. On January 4, 2000, BCCU remitted a check in the amount of \$9,865.76 to satisfy its 1998 regulatory assessment fees. As of February 29, 2000, BCCU owes the following: \$0.00 in outstanding regulatory assessment fees, \$2,466.44 in penalties, and \$986.58 in interest for a total of \$3,453.02 for 1998. We calculated the penalty and interest based on the number of days elapsed since the regulatory assessment fees were due and the date the regulatory assessment fees were paid.

Thus, BCCU will be given until March 30, 2000, to remit the penalties and interest owed the Commission. However, should BCCU fail to remit its penalties and interest payment by March 30, 2000, Commission staff will bring a show cause recommendation at that

time. We believe that the additional 30 day period provides an incentive for BCCU to remit its penalties and interest.

APPLICATION

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 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.

Rule 25-30.037(2)(q), Florida Administrative Code, requires a utility to provide proof of ownership of the land upon which its facilities are located. As evidence of its ownership, RealNor provided a copy of the Order of Clarification and Replevin, issued November 23, 1999, by the Circuit Court which gave RealNor possession of the wastewater system conveyed in the Certificate of Title. According to the Order of Clarification and Replevin and the Certificate of Title, RealNor has been assigned the specific parcels of land where the utility's facilities are located. Therefore, RealNor shall provide copies of recorded deeds for the land upon which its facilities are located within 60 days of the issuance date of this Order.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. On September 7, 1999, Mr. Miceli filed an objection to the application. However, by Order No. PSC-00-0341-PCO-SU, issued February 18, 2000, in this docket we dismissed Mr. Miceli's objection. A description of the territory served by the utility is in Attachment A of this Order, which by reference is incorporated herein.

RealNor has shown sufficient technical and financial ability to operate the system. Although, RealNor doesn't have years of experience in the wastewater utility industry, it has hired Severn Trent Environmental Services, Inc. an experienced contract operator of utilities to manage and operate the utility. In addition, RealNor has retained TKW Engineering the same engineer of record used by the prior owner, and has also hired Frank Seidman of Management and Regulatory Consultants, Inc. to assist in the management and operation of the utility. As to its financial ability, RealNor is a wholly-owned subsidiary of Northern Trust

Bank of Florida N.A. which is financially capable of providing the utility service.

RealNor's application states that its representative performed a reasonable investigation of BCCU. According to the application, the wastewater treatment plant appears to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (FDEP). However, according to the affidavit of Mr. Michael Angel the treatment plant and lift stations are in need of numerous repairs. A list of emergency repairs totaling over \$155,300 was included in Mr. Angel's affidavit. According to Mr. Angel's affidavit, the needed repairs are due to the prior owner's neglect for general maintenance. We contacted FDEP and learned that there are numerous outstanding Notices of Violation against the utility. RealNor has agreed to make the necessary repairs to bring the utility in compliance with FDEP once the transfer is complete. Currently, only the emergency items have been repaired. However, RealNor believes that most of the needed repairs will be completed within two to six months of the transfer, but some items will require more time because they require engineer drawings and approval by the FDEP to construct the necessary repairs.

Based on the application, RealNor will fulfill all commitments, obligations, and representations of the prior owner with respect to utility matters. There are no customer deposits or guaranteed revenues. However, BCCU remains responsible for the penalties and interest associated with the untimely payment of its 1998 regulatory assessment fees and to file the 1998 annual report as required in the show cause portion of this Order. According to RealNor's application, it will pay the outstanding regulatory assessment fees if required to do so, in order to facilitate the transfer. On May 13, 1999, RealNor foreclosed on the utility's assets and became the owner of the utility. Pursuant to Rule 25-30.120(2), F.A.C., RealNor is responsible for remitting regulatory assessment fees for the year that it took possession of the facilities.

We next must address a potential dispute over whether individuals who had prepaid CIAC to BCCU would be recognized as having paid this money to the appropriate entity and receive service upon request. The obligation to provide services to customers that prepaid CIAC is an obligation that comes with owning the system. To assist in establishing who the customers are, we informally requested that a listing of such persons be made by both

parties. However, we never received the requested information and it remains a concern of our's that customers who have paid CIAC fees will not be recognized by RealNor as having satisfied the criteria to receive service. Because RealNor is the owner of the utility system, it is required to provide service to those customers of BCCU that prepaid CIAC to BCCU, but have not yet been connected to the system.

Based on the foregoing, we find the transfer of Certificate No. 281-S from BCCU to RealNor to be in the public interest and it is approved. RealNor is responsible for the 1999 annual report and regulatory assessment fees. Moreover, RealNor shall provide warranty deeds in the name of the utility within 60 days from the issuance date of this Order. Additionally, RealNor is required to provide service to customers who have prepaid CIAC to BCCU, but have not yet been connected to the system.

RATE BASE

In its application, RealNor stated that it could not establish the net book value of the system as of July 15, 1999, which is the date it took possession of the utility. However, RealNor provided its best estimate of \$752,340 as of December 31, 1997. This estimate does not include plant added since December 31, 1997. RealNor could not establish the net book value with certainty due to the lack of original cost documents and books and records. By Order No. 15549, issued January 14, 1986, in Docket No. 840050-SU, we set rate base at \$71,195, as of 12/31/83.

We conducted an audit of the books and records of the utility to determine the rate base (net book value) as of July 31, 1999. We calculated rate base from company-provided financial statements as of December 31, 1997, and supporting source documentation. The audit report contained six exceptions. However, the utility did not file a response to the audit report. Therefore, we make the following adjustments as a result of the rate base audit.

Utility Plant in Service

We used the company-provided financial statements ending December 31, 1997 as the beginning balances. The beginning plant-in-service balance is \$1,476,801. However, we find that the wastewater plant-in-service balance needed to be decreased by a total of \$283,525. The total decrease to the related accumulated

depreciation is \$231,908. We hereby make the following adjustments:

The first adjustment involves the retirement of an old treatment plant, the depreciation of plant at 4%, and the recording of a 1998 overhauled lift station. The old plant was no longer structurally safe. Therefore, BCCU built a new treatment plant and placed it in service in 1995. Because the old plant is not being used it shall be retired by reducing the plant account and accumulated depreciation by \$243,663. However, BCCU continued depreciating the old plant at 4% each year through 1997, even when it wasn't in service. This overstated accumulated depreciation, and to correct it we calculated depreciation at 4% for three years and removed that amount, which is \$29,240. Therefore, we reduced the accumulated depreciation account by \$29,240.

In addition, the plant account shall be increased by \$11,549 for a lift station that was overhauled in 1998. The related depreciation is reflected in adjustment five of the July 31, 1999 audit report. According to BCCU, it did not have a consultant at the time of the overhaul, and the plant account was never updated to reflect the costs.

The second adjustment entails an affiliate transaction that had no supporting documentation. In 1995, the utility recorded \$17,800 as plant additions for walkways to the new plant. The walkways were built by an affiliate company, Platinum Coast Financial Corporation (Platinum Coast). BCCU claims it could not provide documentation for the costs incurred by Platinum Coast or the labor hours because the records were destroyed in a fire. Rule 25-30.110(1)(a), Florida Administrative Code, states that "Each utility shall preserve its records in accordance with the 'Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities' as issued by the National Association of Regulatory Utility Commissions as revised May 1985." Instruction I of the regulations governing the preservation of utility records requires that

When any records are destroyed before the expiration of the prescribed period of retention, a certified statement listing, as far as may be determined, the records destroyed and describing the circumstances of accidental or other premature destruction shall be filed with the Commission within 90 days from the date of discovery of such destruction. Discovery of loss of records is to be

treated in the same manner as in the case of premature destruction.

Our engineer visited the site of the walkway additions, but could not verify the costs of the walkways. Because BCCU nor Platinum Coast proffered any evidence of the costs, the plant account shall be reduced by \$17,800 and accumulated depreciation account shall be reduced by \$2,661.

The third adjustment involves the overstatement of the plant account. From 1984 to 1991, the utility recorded plant additions totaling \$29,120. The utility presented no supporting documentation for these additions because apparently the invoices were destroyed in a fire. Because there is no supporting documentation for these additions to plant, the collection system plant account shall be reduced by \$8,751 and the pumping plant account shall be reduced by \$20,369 and the related accumulated depreciation account shall be reduced by \$13,547.

The fourth adjustment is for the difference between Order No. 15549, issued January 14, 1986, in Docket No. 840054-SU and the utility's books. The balances in Order No. 15549 for the year ending December 31, 1983 are different from the beginning balances used by the utility. The balances contained in Order No. 15549 are the correct balances to be used. Therefore, to reflect Order No. 15549's balances, the plant account shall be reduced by \$4,491, the accumulated depreciation account shall be reduced by \$450, and the accumulated amortization account shall be reduced by \$403.

Based upon these adjustments, the plant account shall be decreased by \$283,525 to reflect a plant balance of \$1,193,276, and the accumulated depreciation account shall be decreased by \$231,908 to reflect a balance of \$285,455.

Contributions-In-Aid-of-Construction

The utility used a consultant to prepare its 1997 financial statements and annual report. The fifth adjustment is attributable to the utility not having staff capable of completing the financial records for 1998 and 1999. Because of its lack of knowledgeable staff, the utility did not record contributions-in-aid-of-construction (CIAC) or depreciation for 1998 and 1999. According to BCCU, it did not have the necessary funds to hire a consultant to prepare its financial records. In 1998 and 1999, BCCU collected \$55,250 in CIAC receipts and recorded them as Other Revenue.

Because these revenues are CIAC, the CIAC account must be adjusted to reflect such receipts. The CIAC account shall be increased by \$55,250 and the related accumulated amortization account shall be increased by \$29,269. The accumulated amortization was determined by using a composite rate. The accumulated amortization adjustment amount is for 1998, 1999, and the amortization associated with adjustment number six.

In addition, the utility had not adjusted its books to account for the related 1998 and 1999 accumulated depreciation. We calculated accumulated depreciation by using the utility's plant balances from its 1997 financial statements and the increase for a plant addition in 1998. Therefore, by applying the depreciation rates contained within Rule 25-30.140, Florida Administrative Code, we find that the related accumulated depreciation shall be increased by \$57,653. The \$57,653 in accumulated depreciation increase is attributable to \$36,294 in 1998 and \$21,359 in 1999.

The sixth adjustment is necessary because the consultant hired by the utility used incorrect information in computing CIAC in 1997. The consultant used the increase in the number of customers and multiplied it by the CIAC rate to determine the CIAC. However, the number of connections did not agree with the amount in the Other Revenue account. Therefore, CIAC shall be increased by \$57,027 and the accumulated amortization account shall be decreased by \$5,506.

Based upon these adjustments, we have determined that CIAC shall be increased by \$112,277 to reflect a balance of \$666,858, and accumulated amortization of CIAC shall be increased by \$23,360 to reflect a balance of \$264,028.

Land

The utility's general ledger reports a land balance of \$60,000. In the utility's last rate case, \$60,000 was allocated from the total purchase price of \$1,026,000 for the utility's plant land. There was no description of the land and no deed was prepared during this time. The purchase agreement described several parcels of land along with the wastewater system, the maintenance building, the club house, furniture, and fixtures. One of the parcels of land was described as "Unit 2, parcel 1, 10.4 acres for wastewater disposal system and maintenance building". There is no documentation on file that confirms that all 10.4 acres were included for \$60,000 or whether a portion of the 10.4 acres

were included. However, in 1991 the 10.4 acres of wastewater plant property, the driving range, and a vacant parcel of land across from Golf Villas was sold by Mr. Miceli to Platinum Coast. In 1995, Platinum Coast sold 2.54 acres of land to BCCU for \$60,000 which is the amount recorded in the last rate Order. The 2.54 acres included the old treatment plant, the new treatment plant, and one percolation pond. Because there was no deed made in 1993 or documentation in the rate case, the amount of land included in the last rate case could not be determined. Order No. 15549, issued January 14, 1986, in Docket No. 840050, established the land value as \$60,000. Therefore, we have used the original \$60,000 as the cost of land.

The rate base calculations are shown on Schedule No. 1 for the system and adjustments to the rate base are itemized on Schedule No. 2, which by reference are incorporated herein.

Conclusion

Based on the adjustments set forth herein, rate base for BCCU shall be established at \$564,991 as of July 31, 1999. This rate base calculation is used solely to establish the net book value of the property being transferred and does not include the normal rate making adjustments of working capital calculations and used and useful adjustments.

ACQUISITION ADJUSTMENT

An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. However, this utility was acquired through a foreclosure. According to RealNor, it has spent \$689,481 to obtain the Certificate of Authorization to operate the utility. RealNor's total purchase price of \$689,481 is based on the following: an outstanding loan balance of \$478,013; legal costs in the amount of \$120,616 to obtain the property through foreclosure; and \$90,852 spent for consultants and legal advisors to process the transfer application.

RealNor did not provide us with invoices detailing the services and hours spent for legal and consultant costs, as requested. Apparently, RealNor did not submit this information because of confidentiality concerns. Generally, in a rate case analysis, the legal costs incurred in the foreclosure are considered unusual and nonrecurring expenses, which should be

amortized. Since supporting documentation was not provided, we could not verify the reasonableness or prudence of the legal and consulting costs. Therefore, we removed all the legal and consulting costs associated with this transfer from the purchase price. As a result, the foreclosure purchase price shall be \$546,004 which consists of the outstanding debt amount of \$478,013, late fees of \$2,061, unpaid interest of \$64,930, and the \$1,000 bid cost made by the Bank at auction. Based upon our calculations of the rate base and the purchase price, there appears to be a negative acquisition adjustment. The acquisition adjustment resulting from the transfer of BCCU would be calculated as follows:

Adjusted Purchase Price:	\$546,004
Less Adjusted Rate Base:	<u>(564,991)</u>
Negative Acquisition Adjustment:	<u>\$ 18,987</u>

In the absence of extraordinary circumstances, it has been Commission practice that a subsequent purchase of a utility system at a premium or discount shall not affect the rate base calculation. It is Commission practice that a foreclosure is not an extraordinary circumstance. In re: Application for transfer of Certificates Nos. 426-W and 362-S from Hideaway Service, Inc. to FIMC Hideaway, Inc. in Levy County, 92 FPSC 1:124 (1992). Additionally, RealNor has not requested an acquisition adjustment. Therefore, no acquisition adjustment shall be included in the calculation of rate base.

ESCROW ACCOUNT DISBURSEMENTS AND CLOSURE

While the pendency of the ownership matter was being resolved, an escrow account was established by Order No. PSC-99-2107-PCO-SU, issued October 25, 1999, in this docket. The agreement required all general and CIAC revenues to be deposited into an escrow account. Order No. PSC-99-2107-PCO-SU further required BCCU to provide the monthly billing services during the pendency of this matter and allowed BCCU to receive a monthly compensation in the amount of \$3,522 for such services. The \$3,522 per month was for reimbursement for two staff employees, office rental, and the percolation ponds rental. However, on October 11, 1999, we conducted a detailed review of both party's books and records, and the audit revealed that BCCU's monthly compensation of \$3,522 was not sufficient to cover the entire cost of its billing services, nor its other operating and maintenance expenses.

The escrow account was established at the Colonial Bank of Bonita Springs, Florida. Based on the current bank statement, the account had \$61,257.13, as of February 8, 2000. Now that the ownership matter has been resolved and the transfer approved, the funds shall be disbursed to BCCU and RealNor. Therefore, the service costs that were deferred for the last four months shall be paid to BCCU from the escrow account. BCCU's disbursement from the escrow account includes an amount to pay for a consultant to compile and file its outstanding 1998 Annual Report. The funds not disbursed to BCCU shall be distributed to RealNor. BCCU shall receive funds for the following billing expenses which are summarized on Schedule No. 3, incorporated by reference herein. All of the annual expenses are prorated to compensate BCCU for the four month period from October 1999 to January 2000 as follows:

1) Salaries and Wages (Acct. 701) - BCCU has three employees, but only two employees were paid while the ownership matter was being resolved. The President of BCCU and the bookkeeper both spent about 25% of their time doing utility business. So, we included 25% of the President of BCCU's \$10,803 salary to get \$2,700 or \$225 a month. Therefore, the President's salary is \$900 (\$225 x 4 months) for the months he worked without compensation. We find that \$900 is a reasonable and appropriate amount for the President's salary expense.

2) Employee Pension and Benefits (Acct. 704) - Based upon the actual 1998 health insurance rate of 2.44% and BCCU's salaries and wages of \$23,449, the annual amount of health insurance is \$572. Therefore, we hereby approve a four month expense of \$191 for BCCU.

3) Purchased power expense (Acct. 715) - The purchased power costs include all utility expenses such as electric, garbage, wastewater, water, and telephone costs. In order to find costs attributable to the utility's expenses, we used a common base percentage of 1.77%. By using a common base percentage we calculated the purchased power expense allocations based on the percentage of square feet used to the total square feet of the facilities. The total office space is 424.5 square feet. The utility uses 25% of the total office space, which is 106.13 square feet of the total office space and the entire building has a total of 6000 square feet. Therefore, the percentage of the building being used by the utility is 1.77% (106.13/6000). The common base percentage of 1.77% is necessary because there are several other businesses housed in the same facility as the utility.

The total annual electricity expense is \$12,331 and the utility's annual share of the electric expense is \$218 (1.77% x \$12,331). Therefore, BCCU shall receive the prorated amount of \$73 as reimbursement for electric expenses associated with the billing services during the last four months.

The total annual garbage expense is \$2,683. We used 1.77% to determine the utility's portion of the garbage expense. The utility's annual share of the garbage expense is \$48 (1.77% x \$2,683). Therefore, BCCU shall receive the prorated amount of \$16 as reimbursement for garbage expenses incurred during the last four months.

The total annual wastewater expense is \$2,863. We used 1.77% to determine the utility's share of the wastewater expense. The utility's annual share of the wastewater expense is \$51 (1.77% x \$2,863). Therefore, BCCU shall receive the prorated amount of \$17 as reimbursement for wastewater expenses incurred during the last four months.

The total annual water expense is \$654. We used 1.77% to determine the utility's share of the water expense. The utility's annual share of the wastewater expense is \$12 (1.77% x \$654). Therefore, BCCU shall receive the prorated amount of \$4 as reimbursement for water expenses incurred during the last four months.

The total annual telephone expense incurred was \$9,705 for two phone lines. Of the \$9,705, \$6,642 is attributable to directory advertising for an affiliated business. Additionally, one of the two telephone lines was for an affiliated business. Therefore, we reduced the total telephone expense by \$6,642, and divided the remaining cost of \$3,063 between the two lines. As a result, we calculated that BCCU's annual telephone expense is \$1,531. Therefore, BCCU shall receive the prorated amount of \$510 as reimbursement for telephone expenses incurred during the last four months.

The summation of each of these items provides a total of \$1,860 for purchased power expense. Therefore, because BCCU's expenses are being prorated for four months of services, BCCU shall be reimbursed in the amount of \$620 for its purchased power expenses.

4) Materials and Supplies (Acct. 720) - In calculating expenses attributable to materials and supplies, we included \$248 for office supplies, \$1,644 for postage, and \$345 for bank charges. BCCU's annual total for the materials and supplies for performing the billing services is \$2,237. Because BCCU provided billing services for four months without compensation for materials and supplies, BCCU shall be reimbursed \$746 for materials and supplies.

5) Contractual Services Accounting (Acct. 732) - BCCU was operating the utility for part of 1999, before the foreclosure. Therefore, as previously discussed, BCCU shall submit an annual report for 1998, along with the required penalties and interest for its failure to timely file its 1998 annual report and regulatory assessment fees. BCCU stated that it is delinquent in filing its 1998 annual report because its staff is incapable of completing the annual report. Since the certificate still remained with BCCU in 1998, BCCU is responsible for filing the 1998 annual report. Therefore, we allocated \$2,250 to BCCU to hire a outside accounting consultant to complete the required 1998 annual report. We based the \$2,250 allocation upon the charges of a prior consultant to prepare previous annual reports for BCCU. BCCU should submit the 1998 annual report along with penalties and interest.

Conclusion

Based on the above, the escrow account shall be closed and BCCU shall receive \$4,707 from the escrow account for costs incurred since October 1999, in providing the billing services. Additionally, RealNor shall receive the remaining escrowed funds.

RATES AND CHARGES

The utility's approved rates and charges were effective October 20, 1998, in a administrative price index proceeding. The utility's current miscellaneous service charges and service availability schedule charges were effective May 14, 1992, by Order No. 14441, issued June 5, 1985, in Docket No. 840050-SU. The BCCU's approved rates and charges are as follows:

Monthly Service Rates

Wastewater:

Residential Service:

Flat Rate: Single Family Homes and
Individually Metered Apartments
or Multi-Residential Units \$27.78

General Service:

Flat Rate: \$80.91

Multi-Residential Service:

Flat Rate: Per Unit for Master-Metered
Residential Customers Including
Condominiums, Apartments, and
Mobile Home Parks \$18.52

Miscellaneous Service Charges

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

Plant Capacity Charge

	<u>Wastewater</u>
Residential: Per Unit	\$400.00

Rule 25-9.044(1), F.A.C., provides that:

In case of change of ownership or control of a utility which places the operation under a different or new utility . . . the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission).

. . . .

RealNor has not requested a change in the basic rates and charges of the utility and we see no reason to change them at this time. Accordingly, RealNor shall continue charging the rates and charges approved for BCCU until authorized to change by the commission in a subsequent proceeding. RealNor has filed a revised tariff reflecting the change in ownership due to the transfer. The tariff shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

DOCKET CLOSURE

This docket shall remain open an additional 30 days for BCCU to remit penalties and interest for its failure to timely pay its 1998 regulatory assessment fees and to allow for the resolution of the show cause proceeding pertaining to BCCU's 1998 annual report. However, this docket shall be closed administratively if BCCU remits penalties and interest for its failure to timely pay its 1998 regulatory assessment fees; responds to the show cause order by filing its 1998 annual report and paying the associated penalties and interest; and submits a recorded deed.

If BCCU fails to remit penalties and interest within 30 days for its failure to timely pay its 1998 regulatory assessment fees, this docket shall remain open to order BCCU to show cause. This docket shall remain open to allow our staff to verify that RealNor has submitted a recorded deed. If no timely protest is received to the proposed agency action issues, upon expiration of the protest period, this Order shall become final and effective upon the issuance of a Consummating Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Bonita Country Club Utilities, Inc. show cause, in writing, within 21 days of the date of issuance of this Order, why it should not remit a penalty in the amount of \$4117.50 for apparent violation of Rule No. 25-30.110, Florida Statutes, by failing to file its 1998 annual report. It is further

ORDERED that Bonita Country Club Utilities, Inc. shall notify the Commission, within 21 days of the issuance of this Order, of a reasonable time frame for filing its 1998 annual report. Bonita Country Club Utilities, Inc. is hereby put on notice that penalties will continue to accrue until the annual report is filed. It is further

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ORDERED that any response to the show cause portion of this Order must contain specific allegations of fact and law. It is further

ORDERED that any response to the show cause portion of this Order be filed with the Director of the Division of Records and Reporting within 21 days of the date of issuance of this Order. It is further

ORDERED that in the event Bonita Country Club Utilities, Inc. files a written response to the show cause portion of this Order that raises material questions of fact and requests a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings shall be scheduled before a final determination on this matter is made, and this docket shall remain open pending the outcome of the hearing. It is further

ORDERED that if Bonita Country Club Utilities, Inc. fails to file a timely response to the show cause portion of this Order, such failure shall constitute a waiver of any right to a hearing, the penalties shall be deemed assessed, and the facts alleged in the body of this Order shall be deemed admitted. It is further

ORDERED that if reasonable collection efforts are unsuccessful, the collection of Bonita Country Club Utilities' penalty shall be forwarded to the Comptroller's Office for further collection efforts. It is further

ORDERED that any payment of penalties shall be forwarded to the Comptroller's Office for deposit in the State General Revenue Fund.

ORDERED that Bonita Country Club Utilities, Inc. shall remit a statutory penalty in the amount of \$2,466.44 and interest in the amount of \$986.58 for apparent violation of Section 367.113(4), Florida Statutes, and Rule No. 25-30.110, Florida Statutes, by March 30, 2000, for its failure to timely pay regulatory assessment fees for 1998. However, should Bonita Country Club Utilities, Inc. fail to remit its penalties and interest payment by March 30, 2000, Commission staff will bring a show cause recommendation at that time. It is further

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ORDERED that the transfer of Certificate No. 281-S from Bonita Country Club Utilities, Inc., 10200 Maddox Lane, Bonita Springs, Florida 34135, to RealNor Hallandale, Inc., 700 Brickell Avenue, Miami, Florida 33131, is hereby approved. It is further

ORDERED that the rate base for the wastewater system at the time of transfer shall be \$564,991, as of July 31, 1999. It is further

ORDERED that the \$18,987 negative acquisition adjustment shall not be included in the calculation of rate base for transfer purposes. It is further

ORDERED that the escrow account established by Order No. PSC-99-2107-PCO-SU, issued October 25, 1999, in this docket shall be closed by disbursing \$4,707 to Bonita Country Club Utilities, Inc. and the remaining funds to RealNor Hallandale, Inc. It is further

ORDERED that RealNor Hallandale, Inc., shall continue to charge the rates and charges approved for Bonita Country Club Utilities, Inc., until authorized to change by the Commission in a subsequent proceeding. It is further

ORDERED that the tariff reflecting the change in ownership shall be effective for services 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 upon the issuance of a Consummating Order 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" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall remain open to dispose of the show cause issues and to allow 60 days for RealNor Hallandale, Inc. to provide warranty deeds in the name of the utility.

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By ORDER of the Florida Public Service Commission this 22nd
day of March, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

DTV

DISSENT

Commissioner J. Terry Deason dissented from the Commission's decision not to include a negative acquisition adjustment in the rate base determination.

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 actions establishing rate base, declining to include a negative acquisition adjustment in the calculation of rate base for transfer purposes,

and closing escrow account are 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 April 12, 2000. 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 and final upon the issuance of a Consummating Order.

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.

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

REALNOR HALLANDALE, INC.

WASTEWATER SERVICE AREA

LEE COUNTY

(From Orders Nos. 9544 and PSC-96-1086-FOR-SU)

IN TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA:

Section 14

The Southwest 1/4 less and except the North 330 feet.

Section 22

Area C:

Beginning at the Southeast corner of Section 22, Township 47 South, Range 25 East, run west along the South line of said Section 22 for 192.31 feet to an intersection with the northeasterly right-of-way line of State Road 45 (Tamiami Trail); thence run northwesterly along said northeasterly right-of-way line (50 feet from the center line) for 550.0 feet; thence run northeasterly perpendicular to said northeasterly right-of-way line for 806.62 feet to the east line of said Section 22; thence run south along said east line for 932.28 feet to said southeast corner of said Section 22 and the point of beginning;

Section 23

The West 1/2 of the Northwest 1/4 and the Northeast 1/4 of the Northwest 1/4, the Northwest 1/4 of the Northeast 1/4, the North 1/2 of the Southwest 1/4 of the Northeast 1/4, and the Northwest 1/4 of the Southwest 1/4, and the North 1/2 of the Southwest 1/4 of the Southwest 1/4.

Section 26

Area D: Sandy Hollow

A tract or parcel of land lying in Section 26, Township 47 South, Range 25 East, Lee County, Florida. Being Lot 1 of Helfenstein Estate, Plat Book 8, Page 40 of the Public Records of Lee County, Florida., more particularly described as follows:

From the Northwest corner of Section 26, Township 47 South, Range 25 East, run South 0°30'00" East a distance of 173.32 feet to the Northerly right-of-way line of State Road 45 (US. 41); thence

run South 44°29'16" East along said right-of-way line a distance of 36.00 feet to the point of beginning; thence run South 44°29'16" East along said right-of-way line a distance of 1301.00 feet; thence run North 45°30'44" East a distance of 1971.40 feet to the Southerly right-of-way boundary of Shangrila Road; thence run South 83°07'00" West a distance of 2336.43 feet along said Southerly right-of-way boundary; thence run South 0°30'00" East a distance of 173.32 feet to the point of beginning;

Section 26

Area G

A tract or parcel of land lying in Lot 2 of Helfenstein Estate, according to a map or plat thereof recorded in Plat Book 8, Page 40, Public Records of Lee County, Florida, Section 26, Township 47 South, Range 25 East, Lee County, Florida, more particularly described as follows:

All that portion of said Lot 2 lying Northwesterly of the following described line: From the corner common to Lots 2 and 3 of said Helfenstein Estate run Northwesterly on a line parallel with and 1489.08 feet, more or less, Northeasterly of the Southwesterly line of said Lot 2 to an intersection with a line 305 feet Northwesterly of, and parallel with, the Southeasterly line of said Lot 2; thence run Southwesterly along said parallel line to an intersection with a line 1059.69 feet Northeasterly of the Southwesterly line of said Lot 2; thence run Northwesterly along said parallel line to an intersection with the Northwesterly line of said Lot 2 and the terminus of the herein described line,

AND; a tract or parcel of land lying in Lot 2 of Helfenstein Estate (according to a map or plat thereof recorded in Plat Book 8; Page 40, Public Records of Lee County, Florida), Section 26, Township 47 South, Range 25 East, Lee County, Florida, more particularly described as follows:

All that portion of said Lot 2, lying Southwesterly of a line 1059.69 feet Northeasterly of, and parallel with, the Southwesterly line of said Lot 2 and lying Northwesterly of a line 305 feet Northwesterly of, and parallel with, the Southeasterly line of said Lot 2.

SCHEDULE NO. 1

BONITA COUNTRY CLUB UTILITIES
SCHEDULE OF WASTEWATER RATE BASE
AS OF JULY 31, 1999

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>COMMISSION- APPROVED ADJUSTMENTS</u>	<u>BALANCE PER COMMISSION</u>
Utility Plant in Service	\$1,476,801	(\$283,525)	\$1,193,276
Land	\$ 60,000		\$ 60,000
Accumulated Depreciation	(\$ 517,363)	\$231,908	(\$ 285,455)
Contributions-in aid-of-construction	(\$ 554,581)	(\$112,277)	(\$ 666,858)
Amortization of Accumulated CIAC	<u>\$ 240,668</u>	<u>\$ 23,360</u>	<u>\$ 264,028</u>
TOTAL	<u>\$ 705,525</u>	<u>(\$140,534)</u>	<u>\$ 564,991</u>

SCHEDULE NO. 2

BONITA COUNTRY CLUB UTILITIES
SCHEDULE OF WASTEWATER RATE BASE

<u>AUDIT</u>		
<u>EXCEPTION NO.</u>	<u>EXPLANATION</u>	<u>ADJUSTMENT</u>
Utility Plant in Service		
1)	To retire old treatment plant	(\$243,663)
1)	To add overhauled lift station	11,549
2)	To remove costs for walkways additions	(17,800)
3)	To remove unsupported plant	(29,120)
4)	To reflect the Order 15549 balance	(4,491)
	Total	<u>(\$283,525)</u>
Accumulated Depreciation		
1)	Adjustment related to retire treatment plant	\$243,663
1)	Adjustment related to new plant at the 4% depreciation rate	29,240
2)	Adjustment related to walkways	2,661
3)	Adjustment related to unsupported plant	13,547
4)	To reflect Order No. 15549 balance	450
5)	To reflect 1998 and 1999 unrecorded depreciation	(57,653)
	Total	<u>\$231,908</u>
CIAC		
5)	Adjustment related to 1998 & 1999 collection	(\$55,250)
6)	Adjustment related to ledger collections recorded as other revenues	(57,027)
	Total	<u>(\$112,277)</u>
Accumulated Amortization of CIAC		
4)	Adjustment to reflect Order 15549 balance	(\$403)
5)	To reflect unrecorded entries for 1998-99	29,269
6)	Adjustment related to the ledger collections	(5,506)
	Total	<u>\$ 23,360</u>

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SCHEDULE NO. 3

COMMISSION-APPROVED MONTHLY
EXPENDITURES FOR THE OPERATIONS OF BCCU

BCCU

COST FOR PROVIDING BILLING SERVICES

1	Salaries & Wages	\$ 900.00
2	Employee Pension & Benefits	191.00
3	Purchase Power:	
	Electricity	73.00
	Garbage	16.00
	Water	17.00
	Wastewater	4.00
	Telephone	510.00
4	Materials & Supplies	746.00
5	Contractual Services Accounting	<u>2,250.00</u>
	TOTAL FOR FOUR MONTHS	<u>\$ 4,707.00</u>