

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-01-1584-FOF-SU  
ISSUED: July 31, 2001

The following Commissioners participated in the disposition of  
this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

ORDER GRANTING PETITION TO ACCEPT CERTIFICATE OF TITLE  
IN LIEU OF WARRANTY DEED AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Bonita County Club Utilities, Inc. (BCCU) was a Class B utility which provided 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.

By Order No. PSC-00-0579-PAA-SU, issued March 22, 2000, in this docket, we approved RealNor Hallandale, Inc.'s (RealNor or utility) application on behalf of BCCU for the transfer of Certificate No. 281-S to RealNor. RealNor obtained the rights to BCCU's facilities by an Assignment of Interest in the Certificate of Title from Northern Trust Bank of Florida N.A. at the conclusion of a mortgage foreclosure proceeding against BCCU. Prior to the transfer being approved, RealNor was operating the utility as required by Section 367.071(6), Florida Statutes.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

CERTIFICATE OF TITLE AS PROOF OF OWNERSHIP

Section 367.1213, Florida Statutes, requires that a utility own or have the right to continued use of the land upon which its facilities are located. In addition, Rule 25-30.037(2)(q), Florida Administrative Code, requires a utility to provide evidence that the utility owns the land upon which its treatment facilities are located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. We may consider a written easement or other cost-effective alternative as proof of continued use of the land.

Along with its application for transfer, as evidence of its ownership of the wastewater treatment plant land, RealNor provided a Certificate of Title, executed July 14, 1999, and a copy of the Order of Clarification and Replevin, issued November 23, 1999, by the Circuit Court, Twentieth Judicial Circuit, in and for Lee County (Circuit Court), which gave RealNor possession of the wastewater treatment plant 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.

Nevertheless, by Order No. PSC-00-0579-PAA-SU, RealNor was required to provide copies of recorded deeds for the land upon which its facilities are located within 60 days of the issuance date of the Order. On November 30, 2000, RealNor filed a Petition to Accept Certificate of Title in Lieu of Warranty Deed as proof of ownership of the wastewater treatment plant land transferred to RealNor by the Circuit Court after the foreclosure against the property of BCCU. RealNor states that there is no warranty deed for the wastewater treatment plant land, and that title to the property was transferred to RealNor by the Clerk of the Circuit Court at the conclusion of the mortgage foreclosure against BCCU. Consequently, RealNor requested that we accept its Certificate of Title in lieu of a warranty deed as proof of ownership of the land.

We find that the Certificate of Title is adequate proof of ownership of the land upon which the wastewater treatment plant is located. Due to the fact that the land was obtained through foreclosure action, there is no warranty or other deed to the property, and in fact, the correct legal instrument establishing

ownership is the Clerk of Court's Certificate of Title. Further, Rule 25-30.037(2)(q) simply requires proof of ownership of land, or the right to continued use. The Certificate of Title is adequate proof, and is hereby accepted as such. As RealNor has provided proof of ownership of land, RealNor's Petition to Accept Certificate of Title in Lieu of Warranty Deed shall be granted.

OUTSTANDING ISSUES AND CLOSURE OF DOCKET


Pursuant to Order No. PSC-00-2264-SC-SU, issued November 29, 2000, in this docket, all show cause issues against BCCU have been resolved and all outstanding penalties and interest have been referred to the Comptroller's Office for resolution. Therefore, all outstanding issues from Order No. PSC-00-2264-SC-SU have been resolved. As no further action is necessary, this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that RealNor Hallandale, Inc.'s Petition to Accept Certificate of Title in Lieu of Warranty Deed is granted. It is further

ORDERED that this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 31st day of July, 2001.

  
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BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

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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.

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.