

BEFORE THE-FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 020707-SU  
ORDER NO. PSC-03-0388-FOF-SU  
ISSUED: March 20, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

ORDER GRANTING TRANSFER OF CERTIFICATE NO. 281-S  
FROM REALNOR HALLANDALE, INC. TO BONITA SPRINGS UTILITIES,  
A NOT-FOR-PROFIT CORPORATION

BY THE COMMISSION:

I. 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.

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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.

We have jurisdiction to consider this matter pursuant to Section 367.071, Florida Statutes.

## II. Application

As stated in the 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 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 our approval as required by Section 367.071, Florida Statutes.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. As stated above, 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.

Pursuant to Rule 25-30.037(2)(g), (h), (i), and (k), Florida Administrative Code, the application contains documentation regarding the 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 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. Additionally, 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 calendar year 2001, was approximately 100,580 gpd, with the treated effluent sent to percolation ponds or used for on site irrigation. We contacted the Department of Environmental Protection (DEP) and verified that there are no outstanding notices of violation for RealNor.

According to Rule 25-30.037(2)(q), Florida Administrative Code, the utility is 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.

Pursuant to Rule 25-30.110(3), Florida Administrative Code, an annual report must be filed for any year a utility is jurisdictional as of December 31st. We have 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 regulatory assessment fee (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, we have no need for the 2002 annual report. Therefore, we find that the utility shall not be required to file a 2002 annual report, except for Schedule S-9 to support the 2002 RAFs.

We have 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. Accordingly, we find that there are no further requirements for RealNor with respect to RAFs.

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

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of facilities from RealNor Hallandale, Inc. to Bonita Springs Utility, Inc. is hereby approved. It is further

ORDERED that Certificate No. 281-S held by RealNor Hallandale, Inc. shall be cancelled as of January 7, 2003. It is further

ORDERED that RealNor Hallandale, Inc. shall not be required to file a 2002 annual report, except for Schedule S-9 to support the 2002 RAFs. It is further

ORDERED that there are no further requirements for RealNor Hallandale, Inc. with respect to regulatory assessment fees. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 20th day of March, 2003.

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

By: Marcia Sharma  
Marcia Sharma, Assistant 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.