



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-

RECEIVED-PPSC
FEB 17 11:54 AM '00
RECORDS AND REPORTING

DATE: FEBRUARY 17, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF WATER AND WASTEWATER (JOHNSON, REDEMANN)
DIVISION OF LEGAL SERVICES (VAN LEUVEN) *DTV*

RE: DOCKET NO. 990975-SU - APPLICATION FOR TRANSFER OF
CERTIFICATE NO. 281-S IN LEE COUNTY FROM BONITA COUNTRY
CLUB UTILITIES, INC. TO REALNOR HALLANDALE, INC.
COUNTY: LEE

AGENDA: FEBRUARY 29, 2000 - REGULAR AGENDA - PROPOSED AGENCY
ACTION FOR ISSUES 4, 5 AND 6 - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\990975D.RCM

BSM

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 1997 annual report, it's operating revenues were \$209,946, with a net operating loss of \$50,184. The utility's facilities consist of two systems: one wastewater collection system and one wastewater treatment plant.

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 transferor's 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, Michael J. Miceli, as president of

DOCUMENT NUMBER-DATE

02355 FEB 21 8

FPSC-RECORDS/REPORTING

BCCU, filed a letter objecting to the application for transfer. Mr. Miceli's objection letter states that Realnor is not entitled to the entire utility as requested in Realnor's application. Accordingly, this matter is currently 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 entire wastewater system conveyed in the Certificate of Title. The BCCU did not appeal the Order of Clarification and Replevin and the time for filing such expired on December 23, 1999. 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, 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. By that Order, 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 Court approved Joint Stipulation for July and August 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. However, the 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 Hallandale 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. On February 1, 2000, the Commission granted Realnor's Motion for Summary Final Order and disposed of Mr. Miceli's objection.

The application states that the transfer is in the public interest because the prior owner of the utility is financially

DOCKET NO. 990975-SU
DATE: FEBRUARY 29, 2000

irresponsible. The Bank held the mortgage on the utility's property, and foreclosed on the property due to nonpayment on the loan. The Bank then assigned its interest in the utility to Realnor. Realnor has no experience in operating a wastewater utility. However, Realnor is a wholly owned subsidiary of the Bank and it has the financial resources to provide the utility service.

As mentioned above, there is no contract for sale for the utility. Because the utility's facilities were foreclosed upon by the Bank. The Bank assigned its interest in the utility to Realnor, prior to obtaining the Commission's approval. The purpose of this recommendation is to consider Realnor's application for transfer of Certificate No. 281-S from BCCU, and the proper disbursement of funds from the escrow account.

DISCUSSION OF ISSUES

ISSUE 1: Should BCCU be ordered to show cause, in writing, within 21 days, why it should not remit a penalty in the amount of \$4117.50 for its failure to file an annual report for 1998 in apparent violation of Rule 25-30.110, Florida Administrative Code?

RECOMMENDATION: Yes. Staff recommends that BCCU should be 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 annual report for 1998, in apparent violation of Rule 25-30.110, Florida Administrative Code. The show cause order should incorporate the conditions stated below in the staff analysis. Further, BCCU should notify the Commission within 21 days of the issuance date of this order of a reasonable time frame for filing its 1998 annual report, and should be put on notice that penalties will continue to accrue until the annual report is filed. (VAN LEUVEN, JOHNSON)

STAFF ANALYSIS: 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. Staff calculated the penalty based on the number of days elapsed since April 30, 1999, and the date of this agenda because BCCU timely filed a written request for an extension, which expired on April 30, 1999. The date of this agenda is included in computing the number of days elapsed. The total penalty is \$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. Staff notes that the penalty will continue to accrue until such time as BCCU files its 1998 annual report. The Commission 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, staff 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. The 1998 annual report has still not been filed, as of the filing of this recommendation.

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, staff recommends that BCCU be 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. Staff also recommends that BCCU should notify the Commission within 21 days of the issuance date of this order of a reasonable time frame for filing its 1998 annual report, and should be put on notice that penalties will continue to accrue until the annual report is filed.

Staff recommends that the show cause order 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

DOCKET NO. 990975-SU
DATE: FEBRUARY 29, 2000

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.

ISSUE 2: Should BCCU be ordered to show cause, in writing, within 21 days why it should not remit a statutory penalty in the amount of \$2,466.44 and interest in the amount of \$986.58, for its failure to timely pay regulatory assessment fees for 1998, in apparent violation of Section 350.113(4), Florida Statutes, and Rule 25-30.120(7)(a), Florida Administrative Code?

RECOMMENDATION: No. Staff recommends that BCCU should not be ordered to show cause at this time. Staff recommends that BCCU be given until March 30, 2000, to remit a statutory penalty in the amount of \$2466.44 and \$986.58 in interest, for its failure to timely pay regulatory assessment fees for 1998, in apparent violation of Section 350.113(4), Florida Statutes, and Rule 25-30.120(7)(a), Florida Administrative Code. Should BCCU fail to remit its penalties and interest payment by March 30, 2000, staff will bring a show cause recommendation at that time. (VAN LEUVEN, JOHNSON)

STAFF ANALYSIS: 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, the Commission may impose an additional penalty upon a utility for 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 as well as \$2,466.44 in penalties and \$986.58 in interest for a total of \$3453.02 for 1998. Staff calculated the penalty and interest based on the number of

DOCKET NO. 990975-SU
DATE: FEBRUARY 29, 2000

days elapsed since the regulatory assessment fees were due and the date the regulatory assessment fees were paid.

Thus, staff recommends that BCCU should 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, staff will bring a show cause recommendation at that time. Staff believes that the additional 30 day period will provide an incentive for BCCU to remit its penalties and interest.

ISSUE 3: Should the transfer of Wastewater Certificate No. 281-S from Bonita Country Club Utilities, Inc. to Realnor Hallandale, Inc. be granted?

RECOMMENDATION: Yes, the transfer of Certificates No. 281-S from BCCU to Realnor should be approved. Realnor is responsible for the 1999 annual report and rafs. Realnor should be ordered to provide warranty deeds in the name of the utility for the land upon which the facilities are located within 60 days of the date the order is issued. In addition, Realnor should be required to provide service to customers who have prepaid BCCU for service but are not connected to the system. (JOHNSON)

STAFF ANALYSIS: As stated in the case background, Realnor applied for a transfer of Certificate No. 281-S in Lee County from Bonita Country Club Utilities, Inc. on July 28, 1999. 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, F.A.C.

Rule 25-30.037(2)(q), F.A.C., requires a utility to provide proof of ownership of the land upon which its facilities are located. The application contained a copy of the Order of Clarification and Replevin, issued November 23, 1999, by the Circuit Court of Florida 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, the specific parcels of land where the utility's facilities are located are assigned to Realnor. Therefore, Realnor should be required to provide copies of recorded deeds for the land upon which the utility facilities are located in the name of the utility as proof that it owns the land upon which the facilities are located. The deeds should be submitted within 60 days of the date of the order issued as a result of action taken at this agenda conference.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C., including Notice to the customers of the system being transferred. A description of the territory requested by the applicant is appended to this memorandum as Attachment A.

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 hired Severn Trent Environmental Services, Inc. which does have the experience.

Severn Trent Environmental Services, Inc. is an experienced contract operator of utilities that will manage and operate the utility. Realnor is retaining the same engineer of record used by the prior owner, TKW Engineering, and has also hired Frank Seidman of Management and Regulatory Consultants, Inc. to assist in the management and operation of the utility. Realnor Hallandale Inc. is a wholly-owned subsidiary of Northern Trust Bank of Florida N.A. According to the application the bank is financially capable of providing the utility service.

The application states that the utility's representative has 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 (DEP). However, according to the affidavit of Michael Angel the treatment plant and liftstations are in need of numerous repairs. A list of emergency repairs totaling over \$155,300 was included in the affidavit. According to the affidavit, the repairs are due to the prior owners neglect for general maintenance. Staff contacted DEP and learned that there are numerous outstanding notices of violation against the utility. Realnor will make the necessary repairs to bring the utility in compliance with DEP once the transfer is complete. Only emergency items have been taken care of at this time. Realnor believes that most items should be completed within two months after the transfer, and all items within six months after the transfer. However, some items such as the sludge drying bed refurbishment will require more time because it requires engineer drawings and approval by the DEP 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. It is BCCU's responsibility to file the remaining penalties and interest associated with both the rafs and the 1998 annual report as discussed in issues 1 and 2. Therefore, Realnor is responsible for remitting the annual report and payment of the rafs for 1999. Realnor is aware that the transferor remains liable for outstanding rafs. However, according to Realnor, it will pay the outstanding rafs if required to do so, in order to facilitate the transfer. On May 13, 1999 Realnor foreclosed on the utility and became the owner of the utility. Pursuant to Rule 25-30.120(2), F.A.C., Realnor is responsible for remitting rafs for the year that it took possession of the facilities.

Staff became aware during a site visit with the parties, that there existed the potential for a 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 these customers that prepaid CIAC is an obligation that comes with owning the system. To assist in establishing who the customers are, staff informally requested that a listing of such persons be made by both parties. However, staff has not received the requested information. Therefore, it remains a concern of staff's that a customer may have paid the CIAC fees, and not be recognized by Realnor as having satisfied the criteria to receive service. Because the courts have ruled that Realnor is now the owner of the utility system, it will be required to provide service to those customers of BCCU that prepaid CIAC to BCCU, but haven't yet connected for service to BCCU.

Based on the above information, staff believes the transfer of BCCU Wastewater Certificate No. 281-S is in the public interest and should be approved. Realnor is responsible for the 1999 annual report and rafs. Realnor should be ordered to provide warranty deeds in the name of the utility within 60 days of the date of the order is issued. In addition, Realnor should be required to provide service to customers who have prepaid BCCU for service but are not yet connected to the system.

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

DOCKET NO. 990975-SU
DATE: FEBRUARY 29, 2000

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.

ISSUE 4: What is the rate base of Bonita Country Club Utilities, at the time of transfer?

RECOMMENDATION: The rate base, which for transfer purposes reflects the net book value, is \$564,991 for the wastewater system as of July 31, 1999. (JOHNSON)

STAFF ANALYSIS: According to the application, the applicant could not establish the net book value of the system as of July 1999, which is the date it took possession of the utility. However, the applicant provided it's best estimate of \$752,340 as of December 31, 1997. This estimate doesn't 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. In Order No. 15549, in Docket No. 840050-SU, issued January 14, 1986, the Commission set rate base at \$71,195, as of 12/31/83.

Staff conducted an audit of the books and records of the utility to determine the rate base (net book value) as of July 31, 1999. The rate base was determined by staff from company provided financial statements as of December 31, 1997, and supporting source documentation. The audit report contained six exceptions. The utility did not file a response to the audit report. The following adjustments were made by staff as a result of the rate base audit.

UTILITY PLANT IN SERVICE

Staff used the company provided financial statements ending December 31, 1997 as the beginning balances. The beginning plant-in-service balance is \$1,476,801. Staff is recommending that wastewater plant-in-service be decreased by a total of \$283,525. The total decrease to the related accumulated depreciation is \$231,908. Staff recommends that the following adjustments be made.

The first adjustment involves the retirement of an old treatment plant, and the depreciation of plant at 4% and the recording of a 1998 overhauled liftstation. 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 should be retired by reducing the plant account and accumulated depreciation by \$243,663.

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 staff calculated

depreciation at 4% for three years and removed that amount, which is \$29,240. Therefore, staff reduced the accumulated depreciation account by \$29,240.

In addition, the plant account should be increased by \$11,549 for a liftstation that was overhauled in 1998. The related depreciation is reflected in adjustment five. 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 the affiliate 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. According to BCCU it lost all of its old record in a fire. Rule 25-30.110(1)(a), F.A.C. states "each utility shall preserve its records in accordance with 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 this document, on page 5, requires "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." The staff engineer did a site visit of the work performed, but could not verify the costs of the walkways and BCCU nor Platinum had evidence of the costs. Therefore, the plant account should be reduce by \$17,800 and \$2,661 should be removed from the accumulated depreciation account.

The third adjustment involves the overstatement of the plant account. In 1984 to 1991, the utility recorded plant additions totaling \$29,120. The utility had no supporting documentation for these additions. The utility claims the invoices were destroyed in a fire. Because there is no supporting documentation for the plant, the collection system plant account should be reduced by \$8,751 and pumping plant account should be reduced by \$20,369 and the related accumulated depreciation account should 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 the Order for the year ending December 31, 1983 were different from the beginning balances used by the utility. The Order balances should be used. To reflect the Order balances the plant account should be reduced by \$4,491, the accumulated depreciation account by \$450 and the accumulated amortization account by \$403. Based upon these adjustments the plant account should be decreased by \$283,525 to reflect a plant balance of \$1,193,276, and the accumulated depreciation account should be decreased by \$231,908 to reflect a balance of \$285,455.

CONTRIBUTION-IN-AID-OF-CONSTRUCTION

The utility used a consultant to prepare its 1997 financial statements and annual report. The fifth adjustment is due to the utility not having knowledgeable staff capable of completing the financial records for 1998 and 1999. Because of the lack of staff the utility did not record contributions-in-aid-of-construction (CIAC) or depreciation for 1998 and 1999. According to BCCU, it didn't have the funds to hire a consultant to prepare the financial records. In 1998 and 1999 BCCU collected \$55,250 in CIAC receipts and recorded it as Other Revenue. Because these revenues are CIAC, the CIAC account must be adjusted to reflect the receipts. The CIAC account should be increased by \$55,250 and the related accumulated amortization increased by \$29,268. 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.

The utility had not adjusted its books for 1998 and 1999 for accumulated depreciation. Therefore, staff calculated accumulated depreciation by using the utility's plant balances from its 1997 financial statements and the increase for a plant addition in 1998. The depreciation rates used are pursuant to Rule 25-30.140, F.A.C. The related increase to accumulated depreciation for 1998 (\$36,294) and 1999 (\$21,359) is \$57,653.

The sixth adjustment is necessary because the consultant 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. The number of connections did not agree with the amount in the Other Revenue account. Therefore, CIAC should be increased by \$57,027 and the accumulated amortization account should be increased by \$5,506.

Based upon these adjustments, staff has determined CIAC should be increased by \$112,277 to reflect a balance of \$666,858, and

accumulated amortization of CIAC should be increased by \$23,360 to reflect a accumulated amortization of CIAC balance of \$264,028.

LAND

The utility's general ledger reports a land balance of \$60,000. In the last rate case \$60,000 was allocated from the total purchase price of \$1,026,000 for the utility 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, and the club house along with the 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 Michael Miceli (prior owner) to the affiliate company Platinum Coast Financial Corporation. In 1995, Platinum Coast Financial Corporation 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 include the old treatment plant, the new treatment plant, and one perc 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, staff is using the original \$60,000 as the cost of land.

RATE BASE

Staff's calculation of rate base is shown on Schedule No. 1 for the system. Adjustments to rate base are itemized on Schedule No. 2. Based on the adjustments set forth herein, Staff recommends that rate base for BCCU be established as \$564,991 for the wastewater system as of July 31, 1999. This rate base calculation is used purely 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.

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>STAFF ADJUSTMENTS</u>	<u>BALANCE PER STAFF</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	\$ 705,525 =====	(\$140,534) =====	\$ 564,991 =====

BONITA COUNTRY CLUB UTILITIES
SCHEDULE OF WASTEWATER RATE BASE

<u>EXPLANATION</u>	<u>ADJUSTMENT</u>
Utility Plant in Service	
1) To retire old treatment plant	(\$243,663)
1) To add overhauled liftstation	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 plt.	\$243,663
1) Adjustment to 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 the Order 15549 balance	450
5) To reflect 1998 and 1999 unrecorded depr.	(57,653)
Total	<u>\$231,908</u>
CIAC	
5) Adjustment related to 1998 & 1999 collections	(\$ 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>

ISSUE 5: Should a acquisition adjustment be approved?

RECOMMENDATION: No, an acquisition adjustment should not be included in the calculation of rate base for transfer purposes. (JOHNSON)

STAFF ANALYSIS: An acquisition adjustment results when the cost of the utility assets acquired differs from original cost. However this utility was acquired through a foreclosure. According to Realnor, to obtain the authorization to operate the utility has cost \$689,481. Realnor's total purchase price of \$689,481 is based on the outstanding loan balance of \$478,013; legal costs incurred to obtain the property through foreclosure totaled \$120,616; and another \$90,852 was spent for consultants and legal advisors to process the transfer application.

Realnor did not provide staff with invoices detailing the services and hours spent for legal and consultant costs, as requested by staff. Realnor did not submit this information because of concerns for confidentiality of the information. Generally, in a rate case analysis, the legal costs incurred in the foreclosure are considered unusual and nonrecurring expenses, which should be amortized. Since support documentation was not provided, staff could not verify the reasonableness or prudence of the legal and consultants costs incurred and therefore, removed all legal and transfer costs from the purchase price. To determine the purchase price in a foreclosure, staff included 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 the auction. Therefore, staff believes the purchase price is \$546,004. Based upon staff's calculation of ratebase of \$564,991, there appears to be a negative acquisition adjustment. The acquisition adjustment resulting from the transfer of BCCU would be calculated as follows:

Purchase Price:	\$546,004
Staff Calculated 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. Pursuant to Order No. 25584, issued January 8, 1992, in Docket No. 910672-WS (transfer of Hideaway Service, Inc. to FIMC Hideaway, Inc.), Commission policy is that a foreclosure isn't an

DOCKET NO. 990975-SU
DATE: FEBRUARY 29, 2000

extraordinary circumstance. Also, the applicant will not be pursuing an acquisition adjustment. Therefore, Staff recommends that no acquisition adjustment be included in the calculation of rate base.

ISSUE 6: Should the funds in the escrow account be disbursed and the account closed?

RECOMMENDATION: Yes, the escrow account that was established for the collection of general revenues and CIAC collections should be closed after the disbursement of \$4,707 to BCCU and the remaining funds to are to be distributed to Realnor. (JOHNSON, VAN LEUVEN)

STAFF ANALYSIS: While the pendency of the ownership matter was being resolved, an escrow account agreement was established in Order No. PSC-99-2107-PCO-SU, issued October 25, 1999. The agreement required all general and CIAC revenues to be deposited into the escrow account. The order further required BCCU to provide the billing services and allowed BCCU monthly compensation of \$3,522. The \$3,522 a month was reimbursement for two staff employees, office rent, and rent for the percolation ponds. However, on October 11, 1999, staff did a detailed review of both party's books and records, and the audit revealed that BCCU's monthly compensation of \$3,522 wasn't sufficient to cover the entire cost of the billing services and other operation 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, the funds should be disbursed to BCCU and Realnor. Therefore, the service costs that were deferred for the last four months should be paid to BCCU from the escrow account. The disbursement to BCCU includes an amount to pay for a consultant to compile and file the outstanding 1998 Annual Report, as ordered in Issue 1. The remaining funds should be distributed to Realnor. BCCU should receive funds for the following billing expenses which are summarized on Schedule 1. All of the annual expenses were prorated to compensate BCCU for the four month period from October 1999 to January 2000:

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. Therefore, staff has included 25% of the President of BCCU (25% x \$10,803) salary. The salary for the President is (\$225 x 4 months) \$900 for the months he worked without compensation. It is recommended that a reasonable and appropriate amount for the President salary expense is \$900.

2) Employee Pension and Benefits (Acct. 704) - Based upon the actual 1998 health insurance rate of 2.44% and the salaries and wages ($2.44\% \times \$23,449$), the annual amount of health insurance is \$572. Therefore, staff is recommending 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. Staff used 1.77%, a computation of square footage and percentage of total space to determine the cost for purchased power. This common base percentage is necessary because there are several other businesses housed in the same facility as the utility. Staff has 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. The entire building is a total of 6000 square feet and the percentage of the utility being used by the utility is 1.77% ($106.13/6000$). Staff used 1.77% to determine the utility's share of the electric expense. The total annual electricity expense is \$12,331. The utility's annual share of the electric expense is \$218 ($1.77\% \times \$12,331$). BCCU should receive \$73 as reimbursement for electric expense incurred while performing the billing services over the last four months.

Staff used 1.77% to determine the utility's share of the garbage expense. The total annual garbage expense is \$2,683. The utility's annual share of the garbage expense is \$48 ($1.77\% \times 2683$) and for a four month period the expense is \$16.

Staff used 1.77% to determine the utility's share of the wastewater expense. The total annual wastewater expense is \$2,863. The utility's annual share of the wastewater expense is \$51 ($1.77\% \times \$2,863$) and for a four month period the expense is \$17.

Staff used 1.77% to determine the utility's share of the water expense. The total annual water expense is \$654. The utility's annual share of the wastewater expense is ($1.77\% \times \$654$) \$12. For a four month period the expense is \$4.

The total telephone expense incurred was \$9,705 for two phone lines. The total telephone expense included \$6,642 for directory advertising. One of the telephone lines and the directory advertising was for an affiliated business. Therefore, staff reduced the total telephone expense by \$6,642, and divided the remaining cost of \$3,063 between the two lines. Staff allocated

\$1,531 as annual telephone expense. For a four month period the expense is \$510.

The summation of each of these items provides a total of \$1,860 for purchased power expense. Because BCCU is only being compensated for four months of services, staff recommends BCCU receive \$620 for purchased power expense.

4) Materials and Supplies (Acct. 720) - BCCU has been doing the billing services for the utility. Staff has included \$248 for office supplies, \$1,644 for postage and \$345 for bank charges. Therefore, staff has calculated an annual total of \$2,237 for the materials and supplies for performing the billing services. BCCU provided billing services for four months without compensation for materials and supplies, while the ownership matter was being resolved. Staff recommends that BCCU be paid \$746 for materials and supplies used for the billing services for that four month period.

5) Contractual Services Accounting (Acct. 732) - BCCU was operating the utility for part of 1998, before the foreclosure. Therefore, as discussed in issue 1 and 2 BCCU should submit the required annual report for 1998, along with the required penalties and interest for the late filing of the (1998) annual report and regulatory assessment fees. BCCU has stated that it is delinquent in filing its 1998 report because it doesn't have knowledgeable staff capable of completing the annual reports. Since the certificate still remains with BCCU, it is responsible for filing the annual reports for 1998. Therefore, staff is allocating \$2,250 to BCCU to hire a outside accounting consultant to complete the required annual reports. This \$2,250 allocation is based on the charges of a prior consultant, which previously prepared the annual reports for BCCU. BCCU should submit the 1998 annual report and delinquent fees without further delay.

STAFF'S RECOMMENDED MONTHLY
EXPENDITURES FOR THE OPERATIONS OF BCCU

SCHEDULE 1

	<u>BCCU</u>
<u>COST FOR PROVIDING BILLING SERVICES</u>	
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 Accting	<u>2,250.00</u>
TOTAL FOR FOUR MONTHS	<u>\$ 4,707.00</u>

ISSUE 7: Should Realnor continue to charge the rates and charges approved in BCCU tariffs?

RECOMMENDATION: Yes, Realnor should continue to charge the rates and charges approved in BCCU tariffs. Staff will approve the tariff filing effective for services rendered or connections made on or after the stamped approval date. (JOHNSON)

STAFF ANALYSIS: The utility's approved rates and charges were effective October 20, 1998, in an administrative price index proceeding. The utility's current miscellaneous service charges and service availability schedule charges were effective May 14, 1992 pursuant to Order No. 14441, in Docket No. 840050-SU, issued June 5, 1985,. The utility'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)	\$10.00

Plant Capacity Charge

Wastewater

Residential: Per Unit \$400

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

In cases 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 staff sees no reason to change them at this time. Accordingly, Staff recommends that the utility continue operations under the existing tariff and apply the approved rates and charges. The utility has filed a revised tariff reflecting the change in issuing officer due to the transfer. Staff will approve the tariff filing effective for services rendered or connections made on or after the stamped approval date.

ISSUE 8: Should this docket be closed?

RECOMMENDATION: This docket should remain open 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 should be closed administratively if BCCU remits penalties and interest for its failure to timely pay its 1998 regulatory assessment fees, and responds to the show cause order by filing its 1998 annual report and paying the associated penalties and interest. If there are no timely protests filed by a substantially affected person to the proposed agency action issues (Issues Nos. 4, 5 and 6), no further action will be required. (VAN LEUVEN)

STAFF ANALYSIS: This docket should remain open 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 should be closed administratively if BCCU remits penalties and interest for its failure to timely pay its 1998 regulatory assessment fees, and responds to the show cause order by filing its 1998 annual report and paying the associated penalties and interest.

If BCCU fails to remit penalties and interest within 30 days for its failure to timely pay its 1998 regulatory assessment fees, then this docket should remain open to order BCCU to show cause in accordance with Issue 2. If there are no timely protests filed by a substantially affected person to the proposed agency action issues (Issues Nos. 4, 5 and 6), no further action will be required.