

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

**DATE:** October 26, 2000

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

**FROM:** DIVISION OF LEGAL SERVICES (VAN LEUVEN)  
DIVISION OF REGULATORY OVERSIGHT (JOHNSON, REDEMANN)  
DIVISION OF ECONOMIC REGULATION (DAVIS)

**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:** 11/7/2000 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\990975.RCM

*Handwritten notes:* PS, DTW, RWR, b3m, J, DM, BL, Gmf, 192

CASE 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. BCCU's facilities consisted of two systems: one wastewater collection system and one wastewater treatment plant.

On February 29, 2000, RealNor Hallandale, Inc.'s (RealNor or utility) application on behalf of BCCU for the transfer of Certificate No. 281-S to RealNor was approved by Order No. PSC-00-0579-PAA-SU, issued March 22, 2000, in this docket. 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. following its mortgage foreclosure. Prior to the

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transfer being approved, RealNor was operating the utility as required by Section 367.071(6), Florida Statutes.

In Order No. PSC-00-0579-PAA-SU, the Commission ordered BCCU to show cause for its failure to file a 1998 annual report. However, as an incentive, the Commission allowed BCCU to have an additional 30 days to pay the penalties and interest due for failing to timely remit its 1998 regulatory assessment fees (RAFs). On May 9, 2000, the Commission received a letter from BCCU protesting Order No. PSC-00-0579-PAA-SU. However the protest was dismissed as untimely by Order No. PSC-00-1279-FOF-SU, issued July 13, 2000, in this docket. After BCCU failed to respond to the show cause order, staff sent letters dated April 28, 2000, July 14, 2000, and September 28, 2000 in attempts to obtain BCCU's 1998 annual report and the associated penalties. In addition, staff's July 14, 2000 letter addressed BCCU's untimely RAF penalties and interest by stating that a show cause recommendation would be brought before the Commission unless BCCU remitted the penalties and interest. To date, the Commission's records indicate that BCCU has failed to submit a 1998 annual report or remit any of the above-mentioned penalties and interest.

The purposes of this recommendation are to address BCCU's failure to remit the statutory penalties and interest for failing to timely pay 1998 RAFs and BCCU's failure to submit a 1998 annual report and to respond to the Commission's show cause order.

DISCUSSION OF ISSUES

**ISSUE 1:** 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 \$986.86, for its failure to timely pay RAFs for 1998, in apparent violation of Section 350.113, Florida Statutes, and Rule 25-30.120(7)(a), 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 statutory penalty in the amount of \$2,466.44 and interest in the amount of \$986.58 for its failure to timely remit RAFs for 1998, in apparent violation of Section 350.113, Florida Statutes, and Rule 25-30.120(7), Florida Administrative Code. Staff recommends that the show cause order should incorporate the conditions stated below in the staff analysis. (VAN LEUVEN)

**STAFF ANALYSIS:** Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7), 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 RAFs in a timely manner.

Notices of delinquency for failure to remit the utility's RAFs 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 RAFs. As of February 29, 2000, staff estimated that BCCU owed the following: \$0.00 in outstanding RAFs, \$2,466.44

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in penalties and \$986.58 in interest for a total of \$3,453.02 for 1998. However, staff has been unable to verify the exact RAFs owed because BCCU has yet to file its 1998 annual report. Staff calculated the penalties and interest based on the amount of RAFs paid and number of days elapsed from the date the RAFs were due until the date the RAFs were paid. See Rule 25-30.120, Florida Administrative Code.

By Order No. PSC-00-0579-PAA-WS, issued March 22, 2000, in this docket, the Commission ordered BCCU to remit the penalties and interest owed for its failure to timely remit 1998 RAFs by March 30, 2000. The Commission also stated that if BCCU failed to remit penalties and interest by March 30, 2000, staff would bring a show cause recommendation. The Commission reasoned that the additional time should be allowed as an incentive for BCCU to remit its penalties and interest. As of October 26, 2000, the date of filing this recommendation, BCCU has failed to remit any of the penalties and interest due. Thus, staff recommends that 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 \$986.86, for its failure to timely pay RAFs for 1998 in apparent violation of Section 350.113, Florida Statutes, and Rule 25-30.120(7)(a), Florida Administrative Code.

It should be noted that BCCU failed to show cause for its failure to file a 1998 annual report as required by Order No. PSC-00-0579-PAA-SU. As a result of BCCU's failure to respond, staff sent three certified letters dated April 28, 2000, July 14, 2000, and September 28, 2000 in an attempt to obtain the 1998 annual report and penalties. On May 9, 2000, the Commission received a letter from BCCU protesting Order No. PSC-00-0579-PAA-SU, but BCCU's letter was dismissed as untimely by Order No. PSC-00-1276-FOF-SU, issued July 13, 2000, in this docket. Issue 2 will address BCCU's 1998 annual report in more depth.

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

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a hearing. In the event BCCU fails to file a timely response to the show cause order, the penalties and interest are 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 and interest should be referred to the Comptroller's Office for further collection efforts. Reasonable collection efforts should consist of two certified letters requesting payment. The referral to the Comptroller's Office should be based on the conclusion that further collection efforts by this Commission would not be cost effective.

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**ISSUE 2:** Should the show cause proceeding against BCCU for its failure to submit a 1998 annual report be abated?

**RECOMMENDATION:** Staff recommends that the Commission should abate its actions with respect to the portion of the show cause proceeding requiring BCCU to notify the Commission of a reasonable time frame for filing its 1998 annual report. In addition, staff recommends that the Commission should abate any further attempts to obtain BCCU's 1998 annual report. Staff recommends that the \$4,117.50 penalty for failing to submit a 1998 annual report should be referred to the Comptroller's Office for permission to write off the account as uncollectible. (VAN LEUVEN)

**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 an extension of time must be in writing and filed before March 31. However, one extension of 30 days is automatically granted upon request and a further extension may be granted upon the showing of good cause.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to timely file a complete annual report is subject to penalties, absent a demonstration of good cause. The Commission has the discretion to impose penalties for noncompliance that are greater or lesser than those provided by Rule. See Rule 25-30.110(6)(c), Florida Administrative Code. The penalty set out in Rule 25-30.110(7), Florida Administrative Code, for Class B utilities is \$13.50 per day. In Order No. PSC-00-0579-PAA-SU, issued March 27, 2000, in this docket, the show cause order, the Commission put BCCU on notice that the penalties would continue to accrue until BCCU filed its 1998 annual report. As of February 29, 2000, the total penalty was \$4,117.50, but since then an additional \$3,240 (240 days x \$13.50) in penalties has accrued. Therefore, as of October 26, 2000, BCCU has accrued a penalty in the amount of \$7,357.50 for its failure to submit a 1998 annual report.

Prior to ordering BCCU to show cause, staff sent letters dated August 27, 1999 and October 12, 1999 notifying BCCU that its failure to file a 1998 annual report was in apparent violation of Rule 25-30.110, Florida Administrative Code. In addition, after the Commission ordered BCCU to show cause for failing to submit a 1998 annual report, staff sent certified letters dated April 28, 2000, July 14, 2000, and September 28, 2000 asking BCCU to submit

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the delinquent report and penalties. As of the date of this recommendation, BCCU's 1998 annual report had still not been filed.

Based upon four factors, staff has concluded that BCCU may never submit its 1998 annual report. First, BCCU no longer has any facilities because 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. following its mortgage foreclosure. Second, by Order No. PSC-00-0579-PAA-WS, BCCU's authority to operate a utility was removed when Certificate No. 281-S was transferred to RealNor. Third, on five separate occasions, staff has sent notice to BCCU that its 1998 annual report was due. Lastly, BCCU stated in its untimely protest of Order No. PSC-00-1276-FOF-WS that it had no money to hire an accountant to prepare the annual report or pay the penalties associated with it. Therefore, Staff believes that BCCU has no intention of providing the Commission with its 1998 annual report. Staff recommends that the Commission should abate any further attempts to obtain BCCU's 1998 annual report.

Staff recommends that the Commission should abate any further attempts to collect penalties for BCCU's failure to submit a 1998 annual report. It is staff's position that the \$4,117.50 penalty assessed on February 29, 2000 should be referred to the Comptroller's Office for permission to write off as uncollectible because it appears that BCCU will never be brought into compliance. The Commission uses fines and show cause proceedings to increase compliance and to bring a utility into compliance with the Commission's rules, orders and statutes. See Orders Nos. PSC-00-1389-PAA-WU, issued July 31, 2000, in Docket No. 991001-WU and PSC-00-0105-FOF-WU, issued January 11, 2000, in Docket No. 990872-WU. One of the principle functions of the annual report is to monitor a company's earnings and to identify companies possibly overearning. In this case, overearnings do not appear to be a concern because the new certificate holder, RealNor, has filed the 1999 annual report. As stated above, BCCU has failed to respond to the Commission's attempts to achieve compliance. Therefore, since BCCU is no longer in the utility business, staff recommends that the Commission should abate any further attempts to achieve compliance because BCCU is in no position to harm the utility's customers.

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**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** If BCCU responds to the show cause order by remitting the penalties and interest for failing to timely remit its 1998 RAFs, this docket should be closed administratively. If BCCU fails to respond to the show cause order, the penalties and interest should be deemed assessed and further collection efforts should be made by Commission Staff as discussed in issue 1. If such further collection efforts should fail, the collection of the penalties and interest should be referred to the Comptroller's Office for further collection efforts, after which time, the docket should be closed administratively. If BCCU responds to the show cause order and requests a hearing, this docket should remain open for a final disposition. (VAN LEUVEN)

**STAFF ANALYSIS:** If BCCU responds to the show cause order by remitting the penalties and interest for failing to timely remit its 1998 RAFs, this docket should be closed administratively. If BCCU fails to respond to the show cause order, the penalties and interest should be deemed assessed and further collection efforts should be made by Commission Staff as discussed in issue 1. If such further collection efforts should fail, the collection of the penalties and interest should be referred to the Comptroller's Office for further collection efforts, after which time, the docket should be closed administratively. If BCCU responds to the show cause order and requests a hearing, this docket should remain open for a final disposition.