

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-00-2264-SC-SU  
ISSUED: November 29, 2000

The following Commissioners participated in the disposition of  
this matter:

J. TERRY DEASON, Chairman  
E. LEON JACOBS, JR.  
LILA A. JABER

ORDER INITIATING SHOW CAUSE PROCEEDING AND  
ABATING FURTHER ATTEMPTS TO OBTAIN 1998 ANNUAL REPORT

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

By Order No. PSC-00-0579-PAA-SU, we also ordered BCCU to show  
cause for its failure to file a 1998 annual report. However, as an

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incentive, we allowed BCCU 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, our Division of Records and Reporting 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. After BCCU failed to respond to the show cause order, our 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, the July 14, 2000 letter addressed BCCU's unpaid 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, our records indicate that BCCU has failed to submit a 1998 annual report or remit any of the above-mentioned penalties and interest.

SHOW CAUSE

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. Five percent of the fee if the failure is for not more than 30 days, with an additional five 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 one percent 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 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, we estimated

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that BCCU owed the following: \$0.00 in outstanding RAFs, \$2,466.44 in penalties and \$986.58 in interest for a total of \$3,453.02 for 1998. However, we have been unable to verify the exact RAFs owed because BCCU has yet to file its 1998 annual report. However, we 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.

As previously stated, by Order No. PSC-00-0579-PAA-WS, we ordered BCCU to remit the penalties and interest owed for its failure to timely remit 1998 RAFs by March 30, 2000. We also stated that if BCCU failed to remit penalties and interest by March 30, 2000, our staff would bring a show cause recommendation. We allowed the additional time as an incentive for BCCU to remit its penalties and interest. As of October 26, 2000, BCCU had failed to remit any of the penalties and interest due. Thus, we find it appropriate to require BCCU 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.

BCCU's response to this 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 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 shall 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 shall be based on the conclusion that further collection efforts by this Commission would not be cost effective.

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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 previously stated, our staff sent three certified letters in attempts to obtain the 1998 annual report and penalties. On May 9, 2000, we received a letter from BCCU protesting Order No. PSC-00-0579-PAA-SU. However, BCCU's letter was dismissed as untimely by Order No. PSC-00-1276-FOF-SU, issued July 13, 2000.

ABATEMENT OF FURTHER ATTEMPTS TO OBTAIN BCCU'S 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 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. We have 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, the show cause order, we 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. However, 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, our 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 we ordered BCCU to show cause for failing to submit a 1998 annual report, our staff sent certified letters dated April 28, 2000, July 14, 2000, and September 28, 2000 asking BCCU to submit the

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delinquent report and penalties. As of October 26, 2000, BCCU's 1998 annual report had still not been filed.

Based upon four factors, we conclude 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, our 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, we find that BCCU has no intention of providing this Commission with its 1998 annual report.

Accordingly, any further attempts to obtain BCCU's 1998 annual report shall be abated. Further, the \$4,117.50 penalty assessed on February 29, 2000 shall 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. One of the principle functions of the annual report is to monitor a company's earnings and to identify companies that are 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 our attempts to achieve compliance. Since BCCU is no longer in the utility business, any further attempts to achieve compliance shall be abated because BCCU is in no position to harm the utility's customers.

DOCKET CLOSURE

If BCCU responds to the show cause portion of this Order by remitting the penalties and interest for failing to timely remit its 1998 RAFs, this docket shall be closed administratively. If BCCU fails to respond to the show cause order, the penalties and interest are deemed assessed and further collection efforts shall be made by Commission Staff as discussed in the Show Cause portion of this Order. If such further collection efforts shall fail, the collection of the penalties and interest should be referred to the

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Comptroller's Office for further collection efforts, after which time, the docket shall be closed administratively. If BCCU responds to the show cause order and requests a hearing, this docket shall remain open for final disposition.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Bonita County Club Utilities, Inc. shall 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 regulatory assessment fees for 1998 in apparent violation of Section 350.113, Florida Statutes, and Rule 25-30.120(7)(a), Florida Administrative Code. It is further

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, Inc.'s penalty shall be forwarded to the Comptroller's Office for further collection efforts. It is further

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

ORDERED that any further attempts to obtain BCCU's 1998 annual report shall be abated. It is further

ORDERED that the \$4,117.50 penalty assessed on February 29, 2000 for BCCU's failure to submit a 1998 annual report shall be referred to the Comptroller's Office for permission to write off as uncollectible.

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

By ORDER of the Florida Public Service Commission this 29th day of November, 2000.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

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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.

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.

The show cause portion of this order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 20, 2000.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

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, 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 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



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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.