



Public Service Commission

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RECORDS AND REPORTING
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DATE: JUNE 28, 2001

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

FROM: DIVISION OF LEGAL SERVICES (GERVASI) *RES*
DIVISION OF REGULATORY OVERSIGHT (JOHNSON) *RFR* REDEMANN) *33m / d*

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: 07/10/2001 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

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

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.

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

DOCUMENT NUMBER-DATE

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FFSC-RECORDS/REPORTING

By Order No. PSC-00-0579-PAA-SU, the Commission required RealNor to provide copies of recorded deeds as proof that it owns the land upon which its facilities are located within 60 days of the issuance date of that Order. On November 30, 2000, Realnor filed a Petition to Accept Certificate of Title in Lieu of Warranty Deed for the wastewater treatment plant land. The purpose of this recommendation is to address the Petition. The Commission has jurisdiction pursuant to Section 367.1213, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should Realnor's Petition to Accept Certificate of Title in Lieu of Warranty Deed be granted?

RECOMMENDATION: Yes, Realnor's Petition to Accept Certificate of Title in Lieu of Warranty Deed should be granted and the docket should be closed. (GERVASI, JOHNSON, REDEMANN)

STAFF ANALYSIS: Rule 25-30.037(2)(q), Florida Administrative Code, requires a utility to provide proof of ownership of the land upon which its treatment facilities are located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. The Commission may consider a written easement or other cost-effective alternative as proof of continued use of the land.

Along with its application for transfer, as evidence of its ownership of the wastewater treatment plant land, RealNor provided a Certificate of Title, executed July 14, 1999, and a copy of the Order of Clarification and Replevin, issued November 23, 1999, by the Circuit Court, Twentieth Judicial Circuit, in and for Lee County (Circuit Court), which gave RealNor possession of the wastewater treatment plant conveyed in the Certificate of Title. According to the Order of Clarification and Replevin and the Certificate of Title, RealNor has been assigned the specific parcels of land where the utility's facilities are located.

Nevertheless, by Order No. PSC-00-0579-PAA-SU, RealNor was required to provide copies of recorded deeds for the land upon which its facilities are located within 60 days of the issuance date of the Order. On November 30, 2000, RealNor filed a Petition to Accept Certificate of Title in Lieu of Warranty Deed as proof of ownership of the wastewater treatment plant land transferred to

RealNor by the Circuit Court after the foreclosure against the property of BCCU. RealNor states that there is no warranty deed for the wastewater treatment plant land, and that title to the property was transferred to RealNor by the Clerk of the Circuit Court at the conclusion of the mortgage foreclosure against BCCU. Consequently, RealNor requests that the Commission accept its Certificate of Title in lieu of a warranty deed as proof of ownership of the land.

The Certificate of Title is adequate proof of ownership of the land upon which the wastewater treatment plant is located. Therefore, staff recommends that RealNor's Petition to Accept Certificate of Title in Lieu of Warranty Deed should be granted. Moreover, pursuant to Order No. PSC-00-2264-SC-SU, issued November 29, 2000, in this docket, because all show cause issues against BCCU have been resolved and all outstanding penalties and interest have been referred to the Comptroller's Office, no further action is necessary and this docket should be closed.