

State of Florida



## 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-

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**DATE:** January 22, 2015

**TO:** Office of Commission Clerk (Stauffer) *BS*

**FROM:** Division of Accounting and Finance (Fletcher, Norris) *ALM*  
Division of Economics (Bruce, Daniel, Hudson) *AK*  
Division of Engineering (Lewis) *CK*  
Office of the General Counsel (Mapp, Corbani) *JSC AT YFC*

**RE:** Docket No. 120172-WS – Application for staff-assisted rate case in Highlands County by Country Club Utilities, Inc.

Docket No. 140208-WS – Notice of abandonment of water and wastewater systems in Highlands County by Country Club Utilities, Inc.

**AGENDA:** 02/03/15 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Patronis (120172-WS)  
Brown (140208-WS)

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

Country Club Utilities, Inc. (Country Club or Utility) is a Class C utility serving approximately 404 water and 401 wastewater customers in Highlands County. The Utility's service territory is located in the Southern Water Use Caution Area of the Southwest Florida Water Management District. Water and wastewater rates were last established for this Utility in

an original certificate case initiated in 1991. The Utility was granted Certificate Nos. 540-W and 468-S.<sup>1</sup>

Abandonment (Docket No. 140208-WS)

On October 22, 2014, Country Club gave notice that the Utility will be abandoned effective sixty-five days from the date of the notice, pursuant to Section 367.165, Florida Statutes (F.S.). On November 6, 2014, Highlands County petitioned the Tenth Judicial Court in Highlands County to appoint a receiver pursuant to Section 367.165, F.S. A hearing was held on December 17, 2014, and the City of Sebring was appointed Receiver by the court.

Staff Assisted Rate Case (Docket No. 120172-WS)

On June 13, 2012, Country Club filed an application for a staff-assisted rate case (SARC) and Docket No. 120172-WS was opened to process the application. On July 13, 2012, the Utility was notified that it was eligible for a SARC, and August 11, 2012 was established as the official filing date. On March 6, 2013, the Utility requested a six-month abatement of the SARC and waiver of the statutory clock to allow the Utility and the City of Sebring time to complete due diligence and enter into a sale agreement. The agreement to sell the Utility to the City of Sebring subsequently fell through, and on August 13, 2013, staff resumed Country Club's SARC. On March 20, 2014, Country Club formally waived the 15 month deadline provided in Section 367.0814(2), F.S.

Show Cause Proceedings (Docket No. 140031-WS)

During the processing of Country Club's SARC application, staff learned that Country Club failed to remit payment of its regulatory assessment fees (RAFs) for the years 2010, 2011, 2012, and 2013, as required by Sections 350.113 and 367.145, F.S., and Rule 25-30.120, Florida Administrative Code. (F.A.C.) On February 10, 2014, staff opened Docket No. 140031-WS to initiate show cause proceedings against Country Club Utilities, Inc. (Country Club or Utility) for apparent violations of Florida Statutes and Commission rules and regulations in failing to remit payment of its annual RAFs.

On May 12, 2014, the Commission approved a Settlement Agreement proposed by Country Club that addressed the Utility's delinquent RAFs and finalized the show cause. Within the Settlement Agreement Country Club agreed to make a one-time payment of \$19,517.27, by May 14, 2014, to satisfy the principal balance of the RAF amounts Country Club owed for 2010 and 2011. Additionally, beginning on September 15, 2014, Country Club began making monthly payments, by the fifteenth of each month, in the amount of \$1,000.00, in an effort to pay off the balance of its 2012 and 2013 RAFs, as well as penalties and interest for 2010, 2011, 2012, and 2013. Country Club's last payment was received on October 16, 2014.

The Commission has jurisdiction pursuant to Chapters 367.0814 and 367.165, F.S.

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<sup>1</sup> Order No. 25788, issued February 24, 1992, in Docket No. 910792-WS, In re: Application for water and sewer certificates in Highlands County by Country Club of Sebring.

### **Discussion of Issues**

**Issue 1:** Should the Commission acknowledge the abandonment and subsequent receivership of Country Club Utilities, Inc. by the City of Sebring, and cancel Certificate Nos. 540-W and 468-S?

**Recommendation:** Yes. The Commission should acknowledge the abandonment and subsequent appointment of the City of Sebring as receiver for Country Club, and cancel Certificate Nos. 540-W and 468-S effective December 22, 2014. (Mapp, Lewis)

**Staff Analysis:** On October 22, 2014, pursuant to Section 367.165, F.S., and Rule 25-30.090, Florida Administrative Code (F.A.C.), the Utility filed its Notice of Abandonment with Highlands County and the Commission effective sixty-five (65) days from the date of the notice. When a utility is abandoned, Section 367.165(2), F.S., requires the county to petition the circuit court for the appointment of a receiver. The responsibility of the receiver is to operate the utility efficiently and effectively from the date of abandonment until disposition of the property. By Order dated December 17, 2014, the Tenth Circuit Court acknowledged Highlands County's petition to appoint a receiver, and appointed the City of Sebring as receiver of the Utility in Case No. GC14-611. Highlands County notified the Commission of the appointment on December 19, 2014, and provided a copy of the Agreed Order Appointing Receiver and Authorized Sale.

Section 367.022(2), F.S., states that utility systems owned, operated, managed, or controlled by governmental authorities are exempt from Commission regulation.

Pursuant to Rule 25-30.110(3), F.A.C., a water or wastewater utility which is subject to the Commission's jurisdiction as of December 31 of that year, shall file an annual report. Because the Utility was not jurisdictional as of December 31, 2014, no annual report needs to be filed for 2014. However, the abandonment and subsequent cancellation of Country Club's certificates does not relieve the Utility's obligation for delinquent Regulatory Assessment Fees (RAFs) or to remit RAFs for the period the Utility operated prior to abandonment.<sup>2</sup> As of January 20, 2015, Country Club owes a total of \$41,490.62 in delinquent RAFs, and statutory penalties and interest, for the years 2010, 2011, 2012, and 2013. In addition, because Country Club was a utility subject to Commission jurisdiction and operated more than six months during 2014, Country Club is obligated to submit RAFs based on its 2014 revenues, pursuant to Section 350.113, F.S., and Rule 25-30.120, F.A.C., by March 31, 2015. At this time, staff estimates the amount of Country Club's 2014 RAFs to be approximately \$11,208.23.<sup>3</sup>

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<sup>2</sup> Order No. PSC-12-0344-FOF-WS, issued July 5, 2012, in Docket Nos. 120042-WS, In re: Notice of abandonment of water and wastewater systems in Okeechobee County by Pine Ridge Management Corporation.; and Order No. PSC-10-0197-FOF-SU, issued March 30, 2010, in Docket Nos. 080236-SU, In re: Notice of abandonment of wastewater system in Highlands County by Landmark Utilities, Inc.

<sup>3</sup> Staff's estimate is based on an average of Country Club's reported revenues for the years 2011, 2012, and 2013.

On January 22, 2015, pursuant to Order No. PSC-14-0225-AS-WS,<sup>4</sup> the Commission's Office of the General Counsel filed a Motion to Intervene and a Petition For Enforcement of Agency Action, Declaratory Judgment, and For Relief of Judgment, on behalf of the Commission in the receivership proceeding, pending in the Highlands County Circuit Court for the purposes of securing the Utility's outstanding RAF obligation.

Staff therefore recommends that the Commission acknowledge the appointment of the City of Sebring as receiver for the Utility, and cancel Certificate Nos. 540-W and 468-S effective December 22, 2014.<sup>5</sup> The disposition of the outstanding RAFs, penalties, fees, and interest associated with Country Club are not the subject of either docket at issue here.

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<sup>4</sup> Order No. PSC-14-0225-AS-WS, issued May 12, 2014, in Docket No. 140031-WS, In re: Initiation of show cause proceedings against Country Club Utilities, Inc. in Highlands County for violations of Rule 25-30.120, FAC, Regulatory Assessment Fees; Water and Wastewater Utilities.

<sup>5</sup> On December 16, 2014 during its regularly scheduled council meeting, the City Council for the City of Sebring voted to approve the purchase of the Utility and assume operation effective December 22, 2014.

**Issue 2:** Should Country Club Utilities, Inc.'s staff-assisted rate case be dismissed and Docket 120172-WS closed?

**Recommendation:** Yes. Pursuant to Section 367.022(2), F.S., utility systems owned, operated, managed, or controlled by governmental authorities are exempt from Commission regulation. With the abandonment of Country Club Utilities, Inc., and the subsequent appointment of the City of Sebring as receiver, the Commission no longer retains jurisdiction over the Utility's rates. (Corbari)

**Staff Analysis:** Pursuant to Section 367.022(2), F.S., utility systems owned, operated, managed, or controlled by governmental authorities are exempt from Commission regulation. As outlined in Issue 1, the City of Sebring was appointed as receiver of Country Club Utilities, Inc. by the Circuit Court in Highland County following the Utility's abandonment. With the abandonment of Country Club Utilities, Inc., and the subsequent appointment of the City of Sebring as receiver, the Commission no longer retains jurisdiction over the Utility's rates.

**Issue 3:** Should these dockets be closed?

**Recommendation:** Yes. If the Commission approves staff's recommendations in Issues 1 and 2, these dockets should be closed because no further action is necessary. (Corbari, Mapp)

**Staff Analysis:** If the Commission approves staff's recommendation in Issues 1 and 2, these dockets should be closed because no further action is necessary.