

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

**DATE:** JANUARY 20, 2000

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

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

**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 *of AMB*

**AGENDA:** FEBRUARY 1, 2000 - 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) is a Class B utility which provides wastewater service in Lee County to 859 customers. According to BCCU's 1997 annual report, its operating revenues were \$209,946 with a net operating loss of \$50,184.

On July 28, 1999, Realnor Hallandale, Inc. (Realnor or utility) 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 BCCU, filed a letter objecting to the application for transfer. Mr. Miceli's objection letter states

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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. However, on November 23, 1999, the Circuit Court, Florida issued an Order of Clarification and Replevin (Attachment A) which gave Realnor the right to possession of entire wastewater system conveyed in the Certificate of Title. 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. The Purpose of this recommendation is to dispose of Realnor Hallandale's motion.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should Realnor Hallandale's Motion for Summary Final Order be approved?

**RECOMMENDATION:** Yes. Realnor Hallandale's Motion for Summary Final Order should be approved, and thus the objection of Mr. Miceli, President of BCCU, should be dismissed. (VAN LEUVEN)

**STAFF ANALYSIS:**

Realnor's Motion for Summary Final Order

Realnor moves for the issuance of a summary final order pursuant to Rule 28-106.204, Florida Administrative Code. Realnor argues that the factual basis for BCCU's objection to its transfer application has been resolved in the Circuit Court (Circuit Court Case No. 98-6169-CA-WCM). Thus, Realnor reasons that since no factual matter remains to be resolved in an administrative hearing, the Commission should issue a summary final order.

In support of its claim that there is no genuine issue as to any material fact, Realnor attached a certified copy of the Order of Clarification and Replevin, issued by the Circuit Court on November 23, 1999. (Attachment A). Realnor cites to portions of the Order of Clarification and Replevin which state that the assets listed in the Certificate of Title include the collection system and that Realnor has the right to possession of the entire wastewater treatment system conveyed in the Certificate of Title. Therefore, Realnor requests that the transfer of Certificate No. 281-S from BCCU to Realnor be approved.

BCCU's Response

BCCU filed a timely response to Realnor's motion on January 10, 2000. In its response, BCCU argues that the factual basis for the objection has not been resolved because "the land and all of the plant and equipment that was built and put into public service, was no longer owned by anyone, except the people in its service area being served by the equipment." BCCU argues that the Circuit Court's Order of Clarification and Replevin only gave Northern Trust the right to property belonging to BCCU and not property which BCCU had dedicated to public service. BCCU reasons that once property is dedicated to serving the public it is owned by the persons being served.

In its response, BCCU also argues that it is not in the public interest for Realnor's transfer application to be approved because it is currently under Orders by the Florida Department of Environmental Protection (FDEP) for numerous violations. In Support of its public interest argument, BCCU attached an letter addressed to Realnor from FDEP. Additionally, BCCU argues that the transfer is not in the public interest because Realnor wants to sell the Certificate of Authorization once it owns it.

Therefore, BCCU's response is based upon the idea that since BCCU's assets had been dedicated to public service, they could no longer be owned by anybody except the public being served by such assets.

#### Staff Discussion

Realnor Hallandale has moved for the issuance of a Summary Final Order pursuant to Rule 28-106.204(4), Florida Administrative Code. Rule 28-106.204(4), Florida Administrative Code, states that "Any party may move for summary final order whenever there is no genuine issue as to any material fact. The Motion may be accompanied by supporting affidavits. All other parties may, within seven days of service, file a response in opposition, with or without supporting affidavits." A summary final order shall be rendered if it is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final summary order. Section 120.57(1)(h), Florida Statutes (1999).

Under Florida Law "the party moving for summary judgment is required to conclusively demonstrate the nonexistence of an issue of material fact, and . . . every possible inference must be drawn in favor of the party against who a summary judgement is sought." Green v. CSX Transportation, Inc., 626 So. 2d 974 (Fla. 1st DCA 1993)(citing Wills v. Sears, Roebuck & Co., 351 So. 2d 29 (Fla. 1977)). Furthermore, "A summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law." Moore v. Morris, 475 So. 2d 666 (Fla. 1985).

On September 7, 1999, Mr. Michael Miceli, as president of BCCU, filed a timely letter objecting to the application for transfer. Mr. Miceli's objection letter states that Realnor is not entitled to the entire utility. In particular, Mr. Miceli claims that BCCU is the owner of the collection system because "[t]he mortgage did not encompass the sewer lines, lift stations, lift

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pumps, office equipment, etc." Therefore, the material fact in dispute pertains to the ownership of the utility and its assets.

In order to determine whether any genuine issue of material fact exists with regards to Realnor's ownership of the entire system, staff has reviewed the certified copy of the Order of Clarification and Replevin, issued on November 23, 1999, by the Circuit Court and the docket file. After reviewing these documents staff believes that no genuine issue of material fact exists as to the ownership issue. The Circuit Court has clearly stated that the Certificate of Title conveyed Title in Realnor to all of BCCU's assets which include the following:

All sewer lines, lift stations, and lift pumps owned or previously titled in BCCU transmitting effluent to the property because all such equipment is 'Personal Property' within the purview of the Mortgage and Security Agreement foreclosed in this action because such equipment benefits and serves the real property where the wastewater treatment plant is located . . . .

Order of Clarification and Replevin, para. 3-4.

Therefore, staff believes that the Circuit Court has resolved any and all questions pertaining to the ownership of BCCU and its assets.

Next, it is necessary to address BCCU's argument that property dedicated to public service is not owned by the utility but rather is owned by the persons being served by it. BCCU has not provided any statutory or case law precedent in support of this argument and staff is unaware of any. Moreover, if BCCU's public dedication argument were to be considered valid, it would have a serious impact upon a utility's property rights. The impact would be to divest utilities which provide service to the public of their ownership rights in utility property without due process of law. Staff believes that this is a flawed argument.

As to BCCU's public interest argument, staff will address the merits of the transfer in a subsequent recommendation. In particular, staff will fully explore any FDEP violations that may exist as part of the public interest analysis.

Staff recommends that the Motion for Summary Final Order be granted only to the extent that BCCU's objection should be dismissed since the underlying basis of the objection, the disputed ownership of the assets has been resolved by the Circuit Court.

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Staff will bring another recommendation to an upcoming Agenda Conference on the merits of Realnor's application for the transfer of Certificate No. 281-S from BCCU to Realnor.

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**ISSUE 2:** If the Commission denies staff on Issue 1, what are the appropriate monthly expenses to be released from the escrow account for the purpose of operating Bonita Country Club Utilities, pending final resolution of the ownership interest?

**RECOMMENDATION:** While the issue of ownership is being determined, the terms of the escrow agreement established in Order No. PSC-99-2107-PCO-SU should be modified to ensure the continued operation of the utility. The modified escrow agreement should result in BCCU compensating Realnor Hallandale in the amount of \$9,383 each month from the escrow account for the monthly operations of the utility. In addition, after BCCU has compensated Realnor Hallandale for the monthly operations of the utility, BCCU should be compensated in the amount of \$5,703 each month for the billing services provided. BCCU should submit the 1998 annual report and regulatory assessment fee along with the required penalty and interest without further delay. (JOHNSON, REDEMANN)

**STAFF ANALYSIS:** On October 12, 1999, staff met with BCCU and Realnor to review the services being provided and the expenses incurred for providing services to the customers of BCCU. BCCU is providing the billing services for the utility and Realnor is collecting and treating the wastewater. Because BCCU is the holder of the certificate and to alleviate customer confusion, staff believes it is appropriate for BCCU to continue providing the billing services for the utility. This arrangement is consistent with the approved stipulation from the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Case No. 98-6169-CA-WCM. Commission Order No. PSC-99-2107-PCO-SU granted BCCU compensation for its billing services and ordered BCCU to establish an escrow account for the remaining revenues.

Realnor obtained the rights to the utility by an Assignment of Interest in the Certificate of Title from Northern Trust Bank of Florida N.A. (Bank), following a mortgage foreclosure. Realnor hired Severn Trent Environmental Services, Inc. (Severn Trent) to manage the wastewater facilities and to make repairs to the facilities as needed. The contract with Severn Trent requires them to provide three hours of service a day operating the wastewater facility, in addition to the repair and maintenance of the facilities and equipment, testing and laboratory service, emergency response service, ground maintenance services, disposal of process residue, and odor and noise control services at an annual fee of \$93,727. This annual fee is payable in equal monthly installments of \$7,810.58. Any major repairs outside the normal wear are billed separately by Severn Trent. As of today, Realnor has been billed

\$32,396 for repairs not covered under the standard contract with Severn Trent.

The annual fee of \$93,727 includes the costs for billing services being provided by BCCU. Staff is recommending that services which are a duplication of BCCU services, should be removed from the contracted amount. Therefore, since BCCU is providing the billing services, staff has reduced Severn Trent's annual fee by \$29,707, for duplicated services.

In order to develop estimates of the appropriate amount for each party to receive from the escrow account, staff reviewed the yearly operating expenses, including operation and maintenance expenses and taxes other than income. Staff evaluated data collected from the twelve-month period between January 1, 1998 and December 31, 1998 from BCCU and 1999 data from Realnor. The operation and maintenance expenses incurred during that time were reviewed for prudence and reasonableness, in addition to being essential to the immediate operations of the utility. Adjustments have been made to remove non-recurring expenses and to allow reasonable interim expenses.

The utility's expenses have been allocated based on the utility's general ledger, invoices and the staff engineer's recommendation for operator allowance and management/maintenance service expense. Expenses that would be capitalized have not been included in this analysis. The following items are summarized on Schedule 1 at the end of this issue. It is staff's opinion that the necessary appropriations for utility operation are:

BCCU  
Operation and Maintenance Expenses

1) Salaries and Wages (Acct. 701) - BCCU has three employees, but only one person works full time. 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) and the bookkeeper salaries (25% x \$54,953); and the cost for one full time staff person (\$7,010). The cost for these three workers are \$23,449 for salaries and wage expenses. It is recommended that a reasonable and appropriate amount for this expense is an annual amount of \$23,449.

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% x \$23,449) annual amount of health insurance is \$572.



Therefore, staff is recommending an annual health insurance expense of \$572 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% x \$12,331) for BCCU.

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% x 2683).

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% x \$2,863).

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% x \$654) \$12.

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 telephone expense.

The summation of each of these items provides a total of \$1,860 for purchased power expense. Therefore, staff recommends BCCU receive an annual amount of \$1,860 for purchased power expense.

4) Materials and Supplies (Acct. 720) - BCCU is 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 allowed an annual total of \$2,237 for the materials and supplies for performing the billing services.

5) Contractual Services Accounting (Acct. 732) - BCCU was the recipient of the operating revenues for the years 1998 and 1999. Therefore, BCCU should submit the required annual reports and regulatory assessment fees, along with the required penalty 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, staff believed that it should still be responsible for filing the annual report. Therefore, staff is allocating \$2,250 to BCCU to hire a outside accounting consultant to complete the required annual reports.

If the issue of ownership is resolved before the end of the year 1999, Realnor Hallandale, will pay any outstanding regulatory assessment fees or fines if required by law and/or the Public Service Commission in order to facilitate the transfer of Certificate of Authorization. However, the continued delinquency of the 1998 annual report and RAFs will result in show cause actions, if not addressed by the parties. Therefore, BCCU should submit the 1998 annual report and delinquent fees without further delay.

6) Rental of Building/Real Property (Acct. 741) - The utility's rental expenses include the cost for office space and percolation ponds. The office space rent of \$1,590 is calculated based upon 106 square feet at \$15 per square feet. The percolation pond rent is \$13,698 for two ponds. It is recommended that a reasonable and appropriate amount for this expense is \$15,288. BCCU should be allocated an annual amount of \$15,288 for rental expense.

7) Taxes Other Than Income - Because BCCU is collecting the revenues, it will also have the responsibility for submitting the regulatory assessment fees and the property taxes to Lee County. Based upon the utility's 1998 records staff estimates the property taxes in Lee County to be \$12,930, and the gross receipt taxes to be \$9,854, for a total annual expense of \$22,784.

Realnor Hallandale  
Operation and Maintenance Expenses

8) Contractual Services Management (Acct. 734) - As mentioned earlier, Realnor Hallandale hired Severn Trent as the operator of the wastewater facilities. Staff removed the cost of billing that was a duplication of services being provided by BCCU. Contractual services are reduced by \$29,707 to reflect the amount of \$64,020 for the services of Severn Trent as the operator of the wastewater facilities. Therefore a total of \$5,335 would be compensation on a monthly basis from the escrow account to Realnor Hallandale.

9) Emergency Repair Expense (Acct. 734) - This category has been included by the staff to attempt to respond to the need for repairs to the system that are required in order for service to be maintained to the customers. In addition to the monthly contractual amount billed to Realnor Hallandale by Severn Trent, there have been numerous repairs to the treatment plant, lift stations and the lines, which have totaled \$32,396. Most of these repairs have been necessitated by a delay or lack of repair by the former owner. Realnor Hallandale has assumed responsibility for these repairs, since it believes itself to be the owner of the lines.

In addition, Severn Trent developed a list of other repairs and improvements that it believed should be made to this system, which totaled \$155,300. Some of these are to respond to the Florida Department of Environmental Protection (FDEP), some are current problems that need to be fixed soon (to prevent further problems), and some are more long-term improvements. On October 13, 1999, a joint inspection of the plant and collection system was made by a representative of the FDEP, Severn Trent staff and the PSC staff engineer. The purpose of the inspection was to view the actual facilities and discuss the time frames and necessity for the repair items that had been listed by Severn Trent.

Under normal circumstances, many of these items would be considered capital improvements to plant, to be recovered through rates. Other items would be considered nonrecurring expenses, which a utility is normally assumed to handle within its annual budget. In this case, staff was faced with the dilemma of whether it was appropriate to consider an additional reimbursement amount from the escrow account to provide some offset to the expenses incurred by Realnor Hallandale that are necessitated by the declining state of some of the facilities and lack of preventive maintenance by BCCU, even though the expenditures were for items

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that would not normally be considered part of the "normal" expenditures necessary to operate the utility.

The staff recognizes that this is a very sensitive area for Realnor Hallandale, since the expenses have been sudden and substantial. In an effort to try and provide some type of compensation for repairs pending the ownership dispute, the staff performed two types of analysis.

In the first analysis, the staff reviewed the bills that comprised the additional \$33,396 expense recently incurred by Realnor Hallandale and attempted to determine which items would be expensed versus capitalized. The idea was that this amount might represent a ballpark of expenses that should be considered in a monthly escrow draw. The result was the inclusion in expenses of lift station repairs in the amount of \$19,205 (which reflects a downward adjustment of \$11,549 from the original total), line repair costs of \$216, as well as expenses of \$1,426 for wastewater plant repairs. This analysis results in a annual repair expense of \$20,847.

The second analysis reviewed the various repairs identified by Severn Trent that were required for the system (Attachment B), and used the information from the site visit to prioritize the list. The staff used an informal time line of expenses that should be made within the next six months, versus a larger time frame, as well as separated out items that would be considered capital investment. For repairs and maintenance of the treatment plant, the staff believes that a reasonable amount is \$14,500 per year. Staff derived \$14,500 by adding items 1, 2, 4, 5, 6, 7, 9, 10, 11, 14, 18 and 19, plus allowing \$2,000 for item 12 and amortizing the cost of item three over three years and using one year's expense.

There are approximately 14 lift stations that transmit wastewater to the wastewater treatment plant. Some lift stations are in need of immediate repair such as Wood Ibis, Fenner Circle and Sandy Hollow. A major break down has already occurred at Sandy Hollow this year. Some lift stations had pumps missing and many need extensive electrical and receiving well rehabilitation. For the collection system, the staff recognized the most expensive and expansive renovation required to the Sandy Hollow lift station, and allowed an amount of \$6,000, which was half of the estimated repair. Therefore, the total amount under this analysis was \$20,500 per year.

Regardless of which estimate is used with respect to plant repairs, the staff also believes that the operation of the system

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will require more onsite time than the three hours currently allocated by the contract of Severn Trent. This is due to the plant and collection system's deteriorated condition, which may also involve the possibility of after hours plant emergencies, which have already occurred. Therefore, the staff is also recommending an additional \$28,078 for operation and maintenance and emergency repairs. In the previous year, Bonita Country Club had a full time operator.

Again staff recognizes that the plant and collection system have not been maintained in the best condition. Staff is recommending an annual expense compensation of \$20,500 for plant repairs and \$28,078, which may also involve the possibility of after hours plant emergencies for a total of \$48,578 annually. Therefore a total of \$4,048 would be compensation on a monthly basis from the escrow account to Realnor Hallandale, for responding to repairs beyond the terms of the standard contract.

The staff is concerned about the improper allocation of resources. Therefore, in an effort to insure that Realnor Hallandale receives compensation as detailed above, and since the only entity the Commission has jurisdiction over at this time is BCCU, the staff is recommending that BCCU be ordered to pay the total monthly amount of \$9,383 each month to Realnor Hallandale **before** distributing monies to itself in the amount of \$5,703 each month. The prior escrow agreement should be modified, and the modified agreement with the above distributions should be established by BCCU. The actual escrow account that was previously established should continue to be used for the purposes of collecting general revenues as follows:

1. All monies taken in by BCCU, for wastewater service payments, shall be deposited by BCCU in an escrow account, in order to maintain the status quo of the billing of the BCCU accounts.
2. BCCU will be compensated for its billing services only after compensating Realnor for services provided for in paragraph 4.
3. BCCU shall be compensated \$5,703 monthly from the escrow account.
4. BCCU shall compensate Realnor \$9,383 monthly from the escrow account for Realnor's operation and maintenance of the treatment facilities and collection system:

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5. BCCU employee, Pamela Pass, shall be the only one allowed to make any disbursements. Before any disbursements are made, Ms. Pass shall send a statement or some other indication of what the disbursement is to the Commission for authorization to disburse.
6. All correspondence concerning the escrow account shall be copied to the designated representative of Realnor Hallandale.

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STAFF'S RECOMMENDED MONTHLY  
EXPENDITURES FOR THE OPERATIONS OF BCCU

SCHEDULE 1

	<u>BCCU</u>	<u>REALNOR</u>
<u>OPERATION AND MAINTENANCE</u>		
1 Salaries & Wages	\$ 23,449.00	
2 Employee Pension & Benefits	572.00	
3 Purchase Power:		
Electricity	218.00	
Garbage	48.00	
Water	51.00	
Wastewater	12.00	
Telephone	1,531.00	
4 Materials & Supplies	2,237.00	
5 Contractual Services Accting	2,250.00	
6 Rental of Building/Real Prop.	15,288.00	
7 Taxes Other Than Income	<u>22,784.00</u>	
8 Contractual Services Mgmt.		\$ 64,020.00
9 Emergency Repair Expense		<u>48,578.00</u>
TOTAL ANNUAL	<u>\$ 68,440.00</u>	<u>\$ 112,598.00</u>
TOTAL MONTHLY	<u>\$ 5,703.00</u>	<u>\$ 9,383.00</u>

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**ISSUE 3:** If the Commission denies staff on Issue 1, should a separate escrow account be established for the purpose of collecting Contributions In Aid of Construction (CIAC)?

**RECOMMENDATION:** Yes, a separate escrow account should be established for the purpose of CIAC collections. All CIAC monies currently being held in escrow pursuant to Commission Order No. PSC-99-2107-PCO-SU should be deposited in the CIAC escrow account to be established. Any other CIAC received by BCCU should be deposited within seven days of its receipt in the CIAC escrow account to be established. BCCU should be put on notice that failure to comply with these requirements will result in the initiation of a show cause proceeding. (JOHNSON, VAN LEUVEN)

**STAFF ANALYSIS:** The staff became aware during the on 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. Staff informally requested that a listing of such persons be made by both parties. However, staff has not received the requested information and will be pursuing the matter by formal discovery. Therefore, it remains a concern of staff's that a customer may have paid the CIAC fees, and not be recognized by BCCU and Realnor Hallandale as having satisfied the criteria to receive service.

Therefore, staff is recommending that a separate escrow account be established for the deposit of all CIAC revenues. Currently, all revenues are combined into one escrow account. This escrow account agreement was established in Order No. PSC-99-2107-PCO-SU, issued October 25, 1999. The escrow account established by Order No. PSC-99-2107-PCO-SU will capture all general revenue receipts, now that a separate account has been established for CIAC receipts. All CIAC monies currently being held in escrow pursuant to Commission Order No. PSC-99-2107-PCO-SU should be deposited in the CIAC escrow account to be established. Effective from the October 19, 1999, agenda all disbursements for operating the facilities are based upon staff's review of each party's books and records, and staff will specifically address each party's entitlement to escrowed funds for expenses during the pendency of the ownership matter. Staff believes that a separate escrow account will assist in tracking collections and eliminate potential disputes over a customer's CIAC payment status.



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Staff recommends that an escrow agreement be established for the collection of CIAC, and it should be entered into by BCCU with the following provisions:

1. The Commission should be a party to the written escrow agreement and a signatory to the escrow account.
2. The written escrow agreement should state that:
  - a. The account is established at the direction of this Commission for the purpose set forth above;
  - b. No withdrawals of funds shall occur until the pending issue of ownership is resolved;
  - c. Information concerning that escrow account shall be available from the institution to the Commission or its representative at all times;
  - d. The amount of CIAC revenues received shall be deposited in the escrow account within seven days of receipt; and
  - e. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla 3d. DCA 1972), escrow accounts are not subject to garnishments.
3. All monies taken in by BCCU, that are for impact fees, shall be deposited by BCCU in an escrow account within seven days of receipt.

Therefore, staff recommends that BCCU establish a second escrow agreement in which it deposits all CIAC monies received, as specified in the staff analysis. BCCU should be put on notice that failure to comply with these requirements will result in the initiation of a show cause proceeding.

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**ISSUE 4:** Should this docket be closed?

**RECOMMENDATION:** No. This docket should remain open pending the final disposition of the transfer application. (VAN LEUVEN)

**STAFF ANALYSIS:** This docket should remain open pending the final disposition of the transfer application.

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL ACTION

NORTHERN TRUST BANK OF FLORIDA, N.A.  
a National Banking Association

Plaintiff,

v.

CASE NO. 98-6169-CA-WCM

BONITA COUNTRY CLUB UTILITIES, INC.  
a Florida Corporation, THOMAS HEIDKAMP,  
CHAPTER 7, TRUSTEE, and all persons having  
or claiming by, through, under, or against any of  
the above parties and all parties having any right,  
title or interest in the subject property.

FILED  
NOV 23 AM 10:34  
BY [Signature]  
B.C.C.

Defendants.

OF CLARIFICATION AND REPLEVIN  
ORDER

*WCM*

THIS CAUSE having come before the Court on Plaintiff's Third Amended Emergency Motion For Supplemental Relief on November 23, 1999, the Court having heard the evidence, having heard argument of counsel, and being otherwise fully advised in the premises, the Court finds the following:

1. On April 6, 1999, this Court entered an Amended Summary Final Judgment of Foreclosure ("Final Judgment"). In paragraph 12 of the Final Judgment, this Court retained jurisdiction to make all other orders and judgments as may be necessary and proper.
2. The Defendant, Bonita Country Club Utilities, Inc., ("BCCU") did not exercise its right of redemption, and the Clerk of the Court issued a Certificate of Title on

July 15, 1999. Northern Trust assigned title to RealNor Hallandale, Inc., on June 24, 1999.

3. The Certificate of Title conveyed title to RealNor Hallandale to, among other things, the following:

All permits and licenses for maintaining and using the premises, any easements benefiting or serving the property... and the rents, issues and profits thereof....

All rents, issues, profits, revenues, royalties, rights and benefits derived from the premises...

Together with any and all improvements (collectively the "Improvements") now or hereafter attached to . . . the real property ("Property"); all fixtures, furnishings, equipment, inventory, and other articles of personal property (collectively the "Personal Property") that are now or hereafter attached to or . . . that are necessary or useful for the complete . . . use and occupancy of the Improvements for the purposes for which they were or are to be attached, . . . or that are or may be used in or related to the . . . operation of the Improvements ....

All permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property, the Improvements or the Personal Property....

All deposits . . . bank accounts, accounts receivable . . .

All right, title and interest of Bonita Country Club Utilities, Inc. in and to all streets, roads, public places, easements and rights-of-way, existing or proposed, public or private, adjacent to or used in connection with, belonging or pertaining to the Property...

Other interests of every kind and character that Bonita Country Club Utilities, Inc. now has or at any time hereafter acquires in and to the Property, Improvements, and Personal property described herein and all property that is used or useful in connection therewith . . .

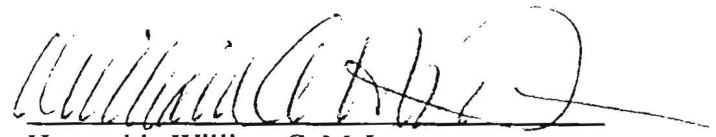
4. This Court finds that the above assets include and encompass all equipment of BCCU, including but not limited to, all sewer lines, lift stations, and lift pumps

owned or previously titled in BCCU transmitting effluent to the Property because all such equipment is "Personal Property" within the purview of the Mortgage and Security Agreement foreclosed in this action because such equipment benefits and serves the real property (the "Property") where the wastewater treatment plant (the "Improvements") is located, and are "attached to", and "necessary" for the "complete" use of the Improvements.

Accordingly, it is ORDERED AND ADJUDGED that:

A Writ of Replevin hereby issues in favor of RealNor Hallandale finding that RealNor Hallandale has the right to possession of the entire wastewater treatment system conveyed in the Certificate of Title, specifically including all equipment, [REDACTED] of BCCU.

DONE AND ORDERED in Chambers, Lee County, Florida, this 23<sup>rd</sup> day of November, 1999.

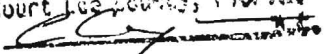
  
Honorable William C. McIver  
Circuit Court Judge

Conformed Copies to:  
Wayde Seidensticker, Esq.  
Michael Brundage, Esq.  
D. Keith Wickenden, Esq.

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I CERTIFY THIS DOCUMENT TO BE A TRUE & CORRECT COPY OF THE ORIGINAL ON FILE WITH MY OFFICE

NOV 30 1999

Charita Green, Clerk Circuit Court, Lee County, Florida  
By: 

Wastewater Treatment Plant and related facilities:		Estimated Costs	Severn Trent's Rankings #1 #2 #3	Staff's Comments	NARUC for Class B Waste water utility
1	Blower belts (6)	\$300	#1	Done	720.5
2	Blower filter (2)	200	#1	Done	720.5
3	Generator	8,000	#1	According to FDEP not required for this size plant. The generator has been refurbished for a cost of \$5,068.75.	720.5
4	Pressure gauges (2)	150	#2		720.5
5	Voltage Monitor	500	#1	Done	720.5
6	Photo Cell for lighting	150	#2		720.6
7	2" ball valves	300	#3		720.5
8	Boom #1 tracking	500	#2	US filter is working on part and is believed to be covered under the warranty.	
9	Boom instrument bulbs	50	#3		720.6

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10	Winch (2) for digester	300	#3		720.5
11	Solids in chlorine contact tank	1,000	#1	Removed	711.6
12	Bar screen	5,000	#3	FDEP required a lid to be placed on the Bar screen due to complaints of nearby residents. The lid was missing.	720.5
13	Pressure wash, prime and paint new wastewater plant.	7,000	#3	Will be needed, but not an immediate concern.	720.5
14	Sandblast, prime and paint Chlorine Contact Tank (CCT)	2,000	#3	Staff believes this is needed immediately, or a new CCT will be required.	720.5
15	Diesel containment - containment area	2,000	#1	The staff recognizes this need to be done, but this costs would be capitalized.	355.4
16	Drying bed drainage and controls	5,000	#2	FDEP has requested this item previously, and FDEP would like this to be completed shortly. The cost will be capitalized.	380-12 Sludge System

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17	Pond berm restructuring, cleaning and hydraulics	40,000	#2	Staff and FDEP believe that the ponds should be cleaned. However, if major plant work is needed, staff recommends the cost be capitalized.	380-8 720.6
18	Backflow preventor	350	#1	Needed	720.5
19	Solids Removed	3,000	#2	There is a large amount of solids that need to be removed.	711.5
		70,800			

Collection System	Estimated Cost	Severn Trent's Rankings #1 #2 #3	Staff's Comments	NARUC for Class B Waste water utility
1 Cleaning, televising and smoke testing	20,000	#3	#3	
2 Manhole rehabilitation	5,000	#3	#3	
3 Lift station coating and rehabilitation	8,000	#3	#3	



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4	Wild turkey lift station	4,000	#1	Pump missing. Need to fix quickly.	371 720
5	Enoch Lane lift station	1,500	#3	#3	371 720
6	Wood Ibis lift station	6,500	#1	Pump is missing. Needs to be fixed quickly.	371 720
7	Carnie Circle lift station	1,500	#3	#3	720
8	Fenner Circle lift station	8,500	#1	Pump is missing.	371 720
9	Cypress Planation lift station	2,000	#2	#2	371 720
10	Bonita Pines lift station	10,000	#2	#2	371 720
11	Eagle Point lift station	4000	#3	#3	371 720
12	Sandy Hollow lift station	12,000	#1	Pump is missing. Floods in the area.	371 720
13	Carnutsie Court lift station	1,500	#3	#3	371 720
		84,500			