

Shawna Senko

From: Greg Harris <rgregharris@gmail.com>
Sent: Thursday, April 10, 2014 3:33 PM
To: Filings@psc.state.fl.us
Cc: Kelley Corbari
Subject: Service of Court Document in Docket No. 140031-WS
Attachments: Response to Order to Show Cause and Petition for a Hearing.pdf

1. R. Greg Harris, President
Country Club Utilities, Inc
3035 Wynstone Drive
Sebring, FL 33875
863-385-6330
rgregharris@gmail.com
2. 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
3. Filed on behalf of Country Club Utilities, Inc., Respondent.
4. This document is 18 pages long.
5. Attached is the respondent's Response to Order to Show Cause and Petition for a Hearing, with related exhibits.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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.

Docket No. 140031-WS

Electronically Filed: April 10, 2014

RESPONSE TO ORDER TO SHOW CAUSE AND PETITION FOR A HEARING

Pursuant to Florida Public Service Commission (“Commission”) Order No. PSC-14-0131-SC-WS and Rule 28-106.2015, Florida Administrative Code (“F.A.C.”), Country Club Utilities, Inc. (“CCU” or “Respondent” or “Utility”), files this Response to Order to Show Cause and Requiring Payment of Delinquent Regulatory Assessment Fees, and Petition for a Hearing, and states as follows:

1. The name, address, any e-mail address, telephone number, and facsimile number, if any, of the respondent, if the respondent is not represented by an attorney or qualified representative is as follows:

Country Club Utilities, Inc.
Attn: R. Greg Harris
3035 Wynstone Drive
Sebring, FL 33875
rgregharris@gmail.com
(863) 385-6330

2. The name, address, e-mail address, telephone number, and facsimile number of the attorney or qualified representative of the respondent, if any, upon whom service of pleadings and other papers shall be made:

Not applicable as CCU does not have legal representation.

3. Respondent received a copy of ORDER NO. PSC-14-0131-SC-WS via certified mail on March 20, 2014.

4. CCU requests a formal proceeding because this matter involves disputed issues of material fact which must be determined on the basis of an evidentiary record before a final order can be entered in this matter. Known disputed issues of material fact include the following:

a. Commission alleges CCU has violated Sections 350.113, 367.145, and 367.161 of Florida Statutes and Rule 25-30.120, F.A.C., for failing to remit payment of its annual Regulatory Assessment Fees (RAFs) for the years 2010, 2011 and 2012, and also alleges that CCU has an obligation to remit payment in the amount of \$46,836.91, as and for the delinquent RAFs, plus statutory penalties and interest, for the years 2010, 2011 and 2012.

b. CCU has and is currently experiencing extreme financial hardship due to a series of extreme unforeseen events affecting the utility as well as a long history of inadequate rates thus resulting in an inability to fully comply with the aforementioned rules and statutes. (See attached **Exhibit A** – timeline of events of unforeseen and extraordinary circumstances affecting CCU and estimated costs associated with same prepared by R. Greg Harris). Pursuant to Section 367.145(1), F.S. and Rule 25-30.120(1), F.A.C., a utility's RAF is 4.5 percent of its gross revenue derived from intrastate business. The Commission does not believe that the assertion of inadequate rates justifies CCU's delinquent RAFs because the amount of RAFs owed by a utility is included in a utility's rates as CCU has already collected the allocated 2010, 2011 and 2012 RAF amounts owed to the Commission. CCU vehemently disputes this.

c. While the Commission recognizes in its findings CCU's total gross revenues for 2010 (\$144,853 for water and \$93,993 for wastewater); 2011 (\$149,425 for water and \$101,000 for wastewater); and 2012 (\$151,060 for water and \$99,897 for wastewater), it fails to consider or even mention that CCU has been operating at a significant loss for each of the aforementioned years. Specifically, CCU's net income loss for 2010 was \$83,490.00; for 2011 was \$7,327.00;

and for 2012 was \$52,241.00; and for 2013 was \$38,653.00. (See attached **Exhibit B** – CCU’s F-3 Income Statements for 2010, 2011, 2012, and 2013). As such, CCU did not willfully violate any rules, laws or statutes; it simply does not have the ability to fully comply with them.

d. The Commission failed to consider CCU’s inability to remit payment of the delinquent Regulatory Assessment Fees, plus statutory penalties and interest. The Commission also failed to consider or recognize any and all mitigating factors and/or good faith efforts made by CCU to come into compliance. The facts surrounding this issue clearly do not support a finding that CCU acted with purpose to violate or disregard the requirements of the law. Inability does not equate to willfulness. In fact, CCU has and continues to make reasonable and substantial efforts to comply with Florida Statutes and Commission rules and regulations despite an obvious inability to do so.

e. Pursuant to Section 367.161(1), F.S., the Commission only has the authority to impose penalties if an entity is found to have refused to comply with or to have willfully violated any lawful rule or orders of the Commission, or provision of Chapter 367, F.S. against an entity if a finding is made that the entity for violations upon any entity of any lawful rule or order of the Commission or any provision of Chapter 367, F.S. CCU has not refused to comply with such rules, orders, or statutory provisions - in fact, CCU has been trying to comply with them. As such, CCU's actions are not "willful violations."

f. CCU proposed a payment plan of \$500 per month for past-due RAFs via email on March 6, 2013, as well as offered to pay in full any remaining balance at closing if and when the City of Sebring purchased CCU. (See Document No. 00682-14, in Docket No. 140031-WS). CCU also attempted to borrow additional funds from investors but was unsuccessful. Said

conduct in no way evinces a “pattern of disregard for regulatory compliance...” as Commission so alleges on page 5 of the Order to Show Cause.

g. In Spade Engineering Co. v. DEP, 697 So. 2d 974 (Fla. 2nd DCA 1997), Rookery Bay, the contemnor, attempted to comply with certain DEP standards under a consent order. Rookery Bay had unsuccessfully attempted to obtain financing from commercial lenders. Rookery Bay did hire an engineer who took steps required by the consent order. There was conflicting testimony as to whether the plant was then in compliance with DEP standards. The court found that Rookery Bay had made *an effort to comply*. (emphasis added). Accordingly, the court did not believe that Rookery Bay’s failure to meet the DEP standards was willful.

h. The Commission also fails to consider that, while CCU’s rates have remained unchanged since 1992 when it first came under the jurisdiction of the Commission, CCU’s operating and maintenance costs (to name a few) have increased over the past 22 years. The Commission acknowledges that CCU’s current rates have remain unchanged since 1992, but seemingly places the blame for that entirely on CCU by stating that CCU did not contact the Commission regarding a rate increase until 2011, when it filed its first Staff Assisted Rate Case (“SARC”) application. CCU disputes this assertion as the Commission fails to acknowledge the four price index increases CCU has applied for over the years, the fourth of which was denied due to a pending SARC, as well as CCU’s request for a conservation rate plan in 2002, which was also denied.(See attached **Exhibit C** – letter from PSC dated Oct. 10, 2002). It should also be noted that there is a significant filing fee associated with a SARC application of approximately \$2,000, which CCU has at all times lacked the financial ability to pay.

i. In January 2014, CCU made further efforts to resolve the issues with the

Commission by seeking the assistance of legal counsel, John “Bart” Allen of the law firm of Peterson & Myers, in Lake Wales, Florida, to aid CCU in exploring and effectuating a possible settlement with the Commission based on the sale of the utility to the City of Sebring. CCU’s good faith intention of working with the Commission prior to the initiation of a show cause proceeding was seemingly negated by the fact that Mr. Allen failed to submit CCU’s written request for additional time pursuant to staff counsel’s request; and Mr. Allen failed to return staff counsel’s telephone calls regarding CCU. CCU was not made aware of any of this until February 27, 2014, when it received notice from the Commission that docket number 140031-WS had been opened to initiate show cause proceedings against Country Club Utilities, Inc. (See Attached **Exhibit D** – email to Bart Allen on behalf of CCU and R. Greg Harris). CCU does not have legal representation and would request that Mr. Allen’s actions, or lack thereof, not be attributed to CCU.

j. Imposition of \$46,836.91 for delinquent Regulatory Assessment Fees, plus statutory penalties and interest, for the years 2010, 2011 and 2012 against CCU would only serve to increase the operating losses of CCU, absorb funds needed to keep CCU operational, and create further substantial hardship on CCU’s operations. Penalizing CCU is grossly inappropriate given the current financial state of the utility. See Parisi v. Broward County, 2000 WL966708, (Fla. 2000) (“the trial court erred in failing to consider evidence of petitioner’s financial resources before assessing the amount of the bonded fine.”) Further, assessment against CCU of same is unlikely to further efforts to bring CCU into compliance as CCU is currently negotiating in good faith a settlement offer with staff counsel for the Commission.

k. CCU alleges that it has not violated the rules, orders of the Commission, or

Florida Statutes as Commission alleges in the Order to Show Cause and, therefore, CCU should not be fined or otherwise penalized.

1. CCU requests a formal proceeding because this matter involves disputed issues of material fact which must be determined on the basis of an evidentiary record before a final order can be entered in this matter.

5. As such, please consider this CCU's formal Response to Order No. PSC-14-0131-SC-WS and Petition for Hearing in Docket No. 140031-WS.

Respectfully submitted this 10th day of April 10th, 2014.

/s/ R. Greg Harris
President, Country Club Utilities, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been electronically filed at filings@psc.state.fl.us and furnished by electronic delivery on this 10th of April 2014 to the following:

Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
filings@psc.state.fl.us

Kelley F. Corbari, Esquire
Staff Attorney – Regulatory Analysis Section
Office of the General Counsel
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
kcorbari@psc.state.fl.us

/s/ R. Greg Harris
President, Country Club Utilities, Inc.
3035 Wynstone Drive
Sebring, Florida 33875
rgregharris@gmail.com

Exhibit A

Time Line		
3/30/2012 Quarterly	Primary Well Collapsed	54187
	Four Well tests	18000
	New 75 HP Motor	5600
	10" Casing	5500
	Repair 75 HP motor for spare	3500
	Concrete, electrical, connect to existing, craine, etc	27678
12/25/2013	New motor hit by lightning	2500
3/11/2014	Pump & Motor fell to bottom of well	2000
	New Pump and motor	12000
		130965

New Well Time Line

3/30/2012	Primary Well Collasp
4/2/2012	Camera & Pull pump
13-May	First rig on site
6/22/2012	Drilling Complete
6/23/2012	Pump not ready
6/24/2012	Pump installed
6/30/2012	ran out of water pump not deep enough
7/9/2012	ran out of water pump not deep enough
7/16/2012	pump not big enough
7/19/2012	pump ordered, not on shelf
8/13/2012	new 50 hp installed, waiting for pump start & breaker
8/24/2012	started daily test
9/7/2012	brought on line two weeks early due to back up pump damaged by lightning down, out 6 hrs, no drink
9/21/2012	water cleared for consumption
9/22/2012	motor fell to bottom of well, brought on back up system with new casing and shaft (150') and back up motor
10/1/2012	motor & pump retrieved from well
10/2/2012	sent out for evaluation
10/4/2012	not repairable had to order new
10/6/2012	customer meeting 10:00 am
10/10/2012	Tests complete, all have cleared to date
10/12/2012	New 50hp pump and motor installed into new well
10/15/2012	new 75 hp installed for back up system
12/25/2013	Motor stopped
1/7/2014	Pulled pump & motor, hit by lightning
2/21/2014	Installed new motor
3/21/2014	Motor stopped
3/25/2014	Motor & Pump at bottom of well
4/2/2014	Video well

Exhibit B

UTILITY NAME: COUNTRY CLUB UTILITIES, INC.

YEAR OF REPORT
DECEMBER 31, 2010

INCOME STATEMENT

Account Name	Ref. Page	Water	Wastewater	Other	Total Company
Gross Revenue:					
Residential -----		\$ 94,857	\$ 81,649	\$ -----	\$ 176,506
Commercial -----		5,580	3,500	-----	9,080
Industrial -----		-----	-----	-----	-----
Multiple Family -----		11,160	8,844	-----	20,004
Guaranteed Revenues -----		-----	-----	-----	-----
Other (Specify) <i>L/C</i> -----		1,194	-----	-----	1,194
<i>LIABILITIES</i> -----		32,062	-----	-----	32,062
Total Gross Revenue -----		\$ 144,853	\$ 93,993	\$ -----	\$ 238,846
Operation Expense (Must tie to pages W-3 and S-3)	W-3 S-3	\$ 155,216	\$ 74,525	\$ -----	\$ 229,741
Depreciation Expense -----	F-5	37,353	15,956	-----	53,309
CIAC Amortization Expense -----	F-8	< 25,250 >	< 11,113 >	-----	< 36,363 >
Taxes Other Than Income -----	F-7	13,665	9,311	-----	22,976
Income Taxes -----	F-7	0	0	-----	0
Total Operating Expense -----		\$ 180,994	88,679	-----	\$ 269,673
Net Operating Income (Loss)		\$ < 36,131 >	\$ 5,314	\$ -----	\$ < 30,817 >
Other Income:					
Nonutility Income -----		\$ -----	\$ -----	\$ -----	\$ -----
-----		-----	-----	-----	-----
-----		-----	-----	-----	-----
Other Deductions:					
Miscellaneous Nonutility Expenses -----		\$ -----	\$ -----	\$ -----	\$ -----
Interest Expense -----		-----	-----	< 48,782 >	< 48,782 >
<i>AMORT / PRG APT</i> -----		< 441 >	< 20 >	-----	< 461 >
<i>AMORT / ACQUISITION</i> -----		< 1,221 >	-----	-----	< 1,221 >
<i>AMORT / LOANS</i> -----		-----	-----	< 2,209 >	< 2,209 >
Net Income (Loss)		\$ < 37,793 >	\$ 5,294	\$ < 50,991 >	\$ < 83,490 >

UTILITY NAME: COUNTRY CLUB UTILITIES, INC.

YEAR OF REPORT DECEMBER 31, 2011

INCOME STATEMENT

Account Name	Ref. Page	Water	Wastewater	Other	Total Company
Gross Revenue:					
Residential_-----		\$ 129,431	\$ 88,535	\$ _____	\$ 217,966
Commercial_-----		6,850	3,450	_____	10,300
Industrial_-----		0	0	_____	0
Multiple Family_-----		12,085	9,015	_____	21,100
Guaranteed Revenues_-----		_____	_____	_____	0
Other (Specil LATE CHGS)		1,059	_____	_____	1,059
		_____	_____	_____	0
Total Gross Revenue_--		\$ 149,425	\$ 101,000	\$ _____	\$ 250,425
Operation Expense (Must tie to pages W-3 and S-3)	W-3 S-3	\$ 101,546	\$ 70,548	\$ _____	\$ 172,094
Depreciation Expense_--	F-5	36,981	15,956	_____	52,937
CIAC Amortization Expense_	F-8	-25,250	-11,113	_____	-36,362
Taxes Other Than Income_--	F-7	13,226	8,110	_____	21,337
Income Taxes_-----	F-7	0	0	_____	0
Total Operating Expense		\$ 126,503	83,502	_____	\$ 210,005
Net Operating Income (Loss)		\$ 22,922	\$ 17,498	\$ _____	\$ 40,420
Other Income:					
Nonutility Income_-----		\$ _____	\$ _____	\$ _____	\$ _____
_____		_____	_____	_____	_____
Other Deductions:					
Miscellaneous Nonutility Expenses_-----		\$ _____	\$ _____	\$ _____	\$ _____
Interest Expense_-----		_____	_____	44,318	44,318
AMORTIZATION OF COSTS		_____	_____	3,429	3,429
_____		_____	_____	_____	_____
_____		_____	_____	_____	_____
Net Income (Loss)		\$ 22,922	\$ 17,498	\$ -47,747	\$ -7,327

UTILITY NAME: COUNTRY CLUB UTILITIES, INC.

YEAR OF REPORT DECEMBER 31, 2012

INCOME STATEMENT

Account Name	Ref. Page	Water	Wastewater	Other	Total Company
Gross Revenue:					
Residential_____		\$ 133,987	\$ 88,659	\$ _____	\$ 222,646
Commercial_____		6,905	4,569	_____	11,474
Industrial_____		0	0	_____	0
Multiple Family_____		10,079	6,669	_____	16,748
Guaranteed Revenues__		_____	_____	_____	0
Other (Specif LATE CHGS		89	_____	_____	89
		_____	_____	_____	0
Total Gross Revenue___		\$ 151,060	\$ 99,897	\$ _____	\$ 250,957
Operation Expense (Must tie to pages W-3 and S-3)	W-3 S-3	\$ 113,020	\$ 99,083	\$ _____	\$ 212,103
Depreciation Expense____	F-5	38,070	15,956	_____	54,026
CIAC Amortization Expense__	F-8	-25,249	-11,113	_____	-36,362
Taxes Other Than Income__	F-7	13,644	8,182	_____	21,826
Income Taxes_____	F-7	0	0	_____	0
Total Operating Expense		\$ 139,485	112,108	_____	\$ 251,593
Net Operating Income (Loss)		\$ 11,575	\$ -12,211	\$ _____	\$ -636
Other Income:					
Nonutility Income_____		\$ _____	\$ _____	\$ _____	\$ _____
_____		_____	_____	_____	_____
_____		_____	_____	_____	_____
Other Deductions:					
Miscellaneous Nonutility Expenses_____		\$ _____	\$ _____	\$ _____	\$ _____
Interest Expense_____		_____	_____	49,096	49,096
AMORTIZATION OF COSTS		_____	_____	2,509	2,509
_____		_____	_____	_____	_____
_____		_____	_____	_____	_____
Net Income (Loss)		\$ 11,575	\$ -12,211	\$ -51,605	\$ -52,241

UTILITY NAME: COUNTRY CLUB UTILITIES, INC.

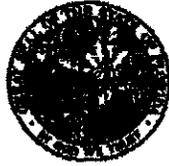
YEAR OF REPORT DECEMBER 31, 2013

INCOME STATEMENT

Account Name	Ref. Page	Water	Wastewater	Other	Total Company
Gross Revenue:					
Residential_____		\$ 125,138	\$ 81,691	\$ _____	\$ 206,828
Commercial_____		7,642	2,867	_____	10,509
Industrial_____		0	0	_____	0
Multiple Family_____		10,235	13,609	_____	23,844
Guaranteed Revenues__		_____	_____	_____	0
Other (Specif LATE CHGS		1,065	_____	_____	1,065
		_____	_____	_____	0
Total Gross Revenue__		\$ 144,079	\$ 98,167	\$ _____	\$ 242,246
Operation Expense (Must tie to pages W-3 and S-3)	W-3 S-3	\$ 126,236	\$ 76,104	\$ _____	\$ 202,340
Depreciation Expense____	F-5	38,070	15,956	_____	54,026
CIAC Amortization Expense__	F-8	-25,311	-11,139	_____	-36,450
Taxes Other Than Income__	F-7	12,173	7,116	_____	19,289
Income Taxes_____	F-7	0	0	_____	0
Total Operating Expense		\$ 151,167	88,037	_____	\$ 239,204
Net Operating Income (Loss)		\$ -7,088	\$ 10,130	\$ _____	\$ 3,042
Other Income:					
Nonutility Income_____		\$ _____	\$ _____	\$ _____	\$ _____
_____		_____	_____	_____	_____
_____		_____	_____	_____	_____
Other Deductions:					
Miscellaneous Nonutility Expenses_____		\$ _____	\$ _____	\$ _____	\$ _____
Interest Expense_____		_____	_____	40,474	40,474
AMORTIZATION OF COSTS		_____	_____	1,221	1,221
_____		_____	_____	_____	_____
_____		_____	_____	_____	_____
Net Income (Loss)		\$ -7,088	\$ 10,130	\$ -41,695	\$ -38,653

Exhibit C

FLORIDA PUBLIC SERVICE COMMISSION



GUNTER BUILDING
2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL 32399-0873

FACSIMILE TRANSMITTAL COVER SHEET

PRIORITY TO TRANSMIT:

DATE: Oct. 10, 2002 TIME: 4:15 pm NOT TO EXCEED 2 HOURS
XX NOT TO EXCEED 30 MIN.

TO: NAME: Mr. Greg Harris

OFFICE/BUSINESS: Country Club of Sebring Utility

FACSIMILE SPEED NO. IF AVAILABLE, OR FAC. NO.: (863) 386-1817

TELEPHONE NO.: (863) 385-6330

Docket # 00329

FROM: NAME: Jennie Lingo

OFFICE/DIVISION: Division of Economic Regulation

FACSIMILE NO.: (850) 413-6965

TELEPHONE NO.: (850) 413-6964

COMMENTS: Hi, Mr. Harris ==> We have been in contact with the Southwest Florida Water Management District (the District) regarding your Water Use Permit (WUP) renewal. Neither we nor the District believe that a rate structure change alone will bring your utility into compliance. The District has informed us that they are requiring you to implement an aggressive conservation program. Therefore, we do not believe that a rate restructuring is appropriate at this time. As a result, we request that you withdraw your pending application no later than October 16, 2002. You may submit the request by fax and follow with the original hard copy. Once a decision is made regarding your conservation programs, we suggest that you apply for a staff-assisted rate case. Rate restructuring and conservation program expenses will be evaluated at that time. If you have any questions, please contact Ms. Jennie Lingo at (850) 413-6964 or Ms. Sonica Bruce at (850) 413-6994. We will follow this fax message up with a formal letter.

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 1

Exhibit D



Caitlin Harris

Greg Harris/Country Club Utilities

1 message

Caitlin Harris

Wed, Mar 5, 2014 at 6:48 PM

To: Jack Brandon <JBrandon@petersonmyers.com>, Bart Allen <BAllen@petersonmyers.com>, <rgregharris@gmail.com>

Bcc:

Mr. Brandon and Mr. Allen:

Please be advised that on February 27, 2014, my father, Greg Harris, received notice from the Public Service Commission that docket number 140031-WS had been opened to initiate show cause proceedings against Country Club Utilities, Inc. It was my understanding from our meeting with you on January 14, 2014, that you would be communicating with both SWFWMD and the PSC on behalf of my father and CCU and representing their interests as it (most importantly) related to the pressing issues with the PSC. While I have attached to this email a copy of the February 27, 2014, Memorandum from the PSC, I would direct your attention to the following paragraph, which can be found at the top of page four (4):

On January 16, 2014, staff counsel was contacted by John "Bart" Allen with the law firm of Peterson & Myers, in Lake Wales, Florida, on behalf of Country Club. Mr. Allen advised staff that Country Club was seeking to negotiate the possible sale of the utility to the City of Sebring. Mr. Allen inquired whether the Commission would extend Country Club additional time prior to initiating show cause proceeding in order to allow the utility to negotiate a possible sale. Staff requested that Mr. Allen submit Country Club's request for additional time in writing to staff for consideration. Mr. Allen advised staff he would submit the written request for additional time the next day. **To date, staff has neither received any correspondence from Mr. Allen or Country Club, nor has Mr. Allen returned staff counsel's telephone calls.**

By certified letter dated February 11, 2014, the Commission's Office of the General Counsel notified Country Club of the Commission's intent to initiate a show cause proceeding for the Utility's apparent statute and rule violations.10

This has obviously created even more issues for both my father and CCU, and we are requesting a phone conference with your office immediately.

Please advise.

Caitlin Harris

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l
l
c

 **Show Cause Proceedings FPSC.pdf**
606K