

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-

DATE: May 5, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Corbari, Teitzman) *MT + KFC*
Office of Telecommunications – RAF Technical Analyst (Earnhart) *RE*

RE: Docket No. 140031-WS – 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.

AGENDA: 05/09/14 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

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 Regulatory Assessment Fees (RAFs) for the years 2010, 2011 and 2012.

On March 17, 2014, the Commission issued Order No. PSC-14-0131-SC-WS¹ (Show Cause Order), ordering Country Club to remit payment of its delinquent RAFs, in the amount of \$30,810.28, plus penalties and interest in the amount of \$16,026.63, by April 17, 2014 or show cause, in writing, why it was not obligated to remit payment for its delinquent RAFs, plus statutory penalties and interest, for the years 2010, 2011 and 2012. On April 10, 2014, Country Club filed its Response to Order to Show Cause and Petition for a Hearing.

2013 Regulatory Assessment Fees

On February 26, 2014, the Commission received Country Club’s 2013 RAF returns for water and wastewater, wherein Country Club reported a total gross revenue of \$147,666.39 for water and \$98,166.94 for wastewater. On April 3, 2014, Country Club filed its annual report for 2013, reporting a total gross revenue of \$144,079 for water and \$98,167 for wastewater. Based on its annual report filing, Country Club was required to remit a RAF payment in the amount of \$6,483.60 for water and \$4,417.51 for wastewater, by March 31, 2013. As of the date of filing this recommendation Country Club has not remitted payment of its 2013 RAFs.

Accordingly as of May 14, 2014, the amounts owed by Country Club for delinquent RAFs plus statutory penalty and interest, for the years 2010, 2011, 2012, and 2013, are as follows:

| YEAR | REVENUES | RAFs (4.5%) | PAYMENTS | PENALTY 5 - 25% (THRU 05/14/14) | INTEREST 1% (THRU 05/14/14) | TOTAL DUE |
|-------------------------|---------------------|------------------------|-------------------|--|--|----------------------|
| 2010 | \$238,846.00 | \$10,748.08 | \$2,500.00 | \$2,687.02 | \$3,886.75 | \$14,821.85 |
| 2011 | \$250,425.00 | \$11,269.13 | \$0.00 | \$2,817.28 | \$2,929.97 | \$17,016.38 |
| 2012 | \$250,957.00 | \$11,293.07 | \$0.00 | \$2,823.27 | \$1,581.03 | \$15,697.37 |
| 2013² | \$242,247.00 | \$10,901.11 | \$0.00 | \$1,090.11 | \$218.02 | \$12,209.24 |
| TOTALS | \$982,475.00 | \$44,211.39 | \$2,500.00 | \$9,417.68 | \$8,615.77 | \$59,744.84 |

¹ See Order No. PSC-14-0131-SC-WS, issued March 17, 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.

² Although the Show Cause Order did not include the failure to remit 2013 RAFs, Country Club’s proposed Settlement Agreement acknowledges the obligation to remit payment of its 2013 RAFs, plus penalty and interest, and includes a payment plan for satisfying the obligation.

Settlement Discussions

On March 24, 2014, staff participated in a telephone conference with Country Club's owner, Greg Harris, and Mr. Harris' accountant Rob Reed, to discuss a possible settlement. Although a settlement was not reached on that date, the parties agreed to a second telephone conference for the purpose of continuing settlement discussions. On April 2, 2014, staff and Mr. Harris participated in a second telephone conference, where the staff and Mr. Harris tentatively agreed on the terms for a proposed settlement in this docket. After the second telephone conference, staff and Mr. Harris exchanged several drafts of the proposed Settlement Agreement. On May 2, 2014, Country Club filed a letter requesting the Commission approve its proposed Settlement Agreement, which is attached hereto as Attachment 1.

The Commission has jurisdiction pursuant to Sections 120.57, 350.113, 367.121, 367.145, 367.161, F.S., and Rule 25-30.120, F.A.C.

Discussion of Issues

Issue 1: Should the Commission accept the Settlement Agreement proposed by Country Club Utilities, Inc., to resolve the apparent violations of Rule 25-30.120, F.A.C., Regulatory Assessment Fees; Water and Wastewater Utilities?

Recommendation: Yes. The Commission should accept the Settlement Agreement proposed by Country Club Utilities, Inc., to resolve the apparent violations of Rule 25-30.120, F.A.C., Regulatory Assessment Fees; Water and Wastewater Utilities, and to pay its delinquent Regulatory Assessment Fees, plus statutory penalties and interest, for the years 2010, 2011, 2012, and 2013. (Corbari, Teitzman, Earnhart)

Staff Analysis:

On May 2, 2014, Country Club filed a letter with the attached proposed Settlement Agreement, in an effort to fully resolve its apparent violations of Rule 25-30.120, FAC, Regulatory Assessment Fees; Water and Wastewater Utilities and delinquent RAFs, penalties and interest. The goal of any show cause proceeding, is to ensure compliance with Florida law and the Commission's rules and orders. Staff is recommending approval of the proposed Settlement Agreement, in full, as attached hereto. Staff believes the Settlement Offer accomplishes this goal, as well as providing a remedy for apparent past violations. Highlights of specific provisions of the settlement offer are as follows:

- Country Club acknowledges its obligation, pursuant to Sections 367.145 and 350.113, F.S., and Rule 25-30.120, F.A.C., to remit payment of its Regulatory Assessment Fees, plus statutory penalties and interest, for the years 2010, 2011, 2012, and 2013.
- Country Club will make a one-time payment of \$19,517.27, by May 14, 2014, to satisfy the principal balance of the RAF amounts Country Club owes for 2010 and 2011.
- Beginning on September 15, 2014, Country Club will begin 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 will submit payment of its 2014 and future RAFs to the Commission, timely and in full.
- Country Club agrees to waive its right to an administrative formal hearing pursuant to Sections 120.569 and 120.57, F.S., and will withdraw its petition for formal hearing filed on April 10, 2014, in this docket, within ten (10) days of approval of the Settlement Agreement.

- The Commission conditionally waives its right to seek civil remedies against Country Club for failing to remit payment of RAFs, penalties and interest, provided that Country Club complies with all of the terms of this Settlement Agreement and any final Commission order approving the agreement.
- Country Club will notify the Commission prior to any sale, conveyance, or abandonment of the utility or the property it is located upon, and/or the initiation of any bankruptcy proceedings involving the utility or its property. In addition, Country Club will provide a copy of the Settlement Agreement and Commission order approving the agreement to any purchaser, operator, or person assuming control of Country Club and/or any court presiding over any abandonment or bankruptcy proceeding involving Country Club.
- The agreement does not prevent a Party from filing suit to specifically enforce any of the terms of the agreement; and the Commission reserves the right to initiate appropriate legal action to address any violations of Commission rules or statutes that are not specifically related to the agreement.
- Should Country Club fail to comply with any of the terms of the proposed Settlement Agreement, such failure would be considered a breach of the agreement and automatically accelerate the balance of any unpaid RAFs, penalties and interest, which would then become immediately due. In addition, the Commission would seek to enforce the terms of the Settlement Agreement and pursue all reasonable means necessary to collect the amounts owed, including, but not limited to, placing a lien on the real and personal property of Country Club.

Staff believes that, taken in its entirety, the Settlement Agreement provides a reasonable resolution of the outstanding issues in Docket No. 140031-WS. Staff further believes that the Commission's approval of the Settlement Agreement is in the public interest, as it provides for future compliance with Florida Statutes and Commission Rules. Staff believes that Commission approval of the Settlement Agreement will promote administrative efficiency and will avoid the time and expense of a hearing. Therefore, Staff recommends that the Commission approve the proposed Settlement Agreement submitted by Country Club.

Issue 2: Should this docket be closed?

Recommendation: No. If Issue 1 is approved, the Settlement Agreement would resolve all matters in Docket No. 140031-WS in accordance with Section 120.57(4), F.S., and Order No. PSC-14-0131-SC-WS should become final. Staff recommends the docket remain open to process the settlement payments and to monitor ongoing compliance with the terms of this Settlement Agreement. Once all the terms of the Settlement Agreement and outstanding amounts owed have been satisfied, the docket may be administratively closed. Should Country Club fail to comply with any of the terms of the proposed Settlement Agreement, the Commission will seek to enforce the terms of the Settlement Agreement and pursue all reasonable means necessary to collect the amounts owed by Country Club, pursuant to Sections 120.69 and 367.121(1)(g) and (j), F.S., including, but not limited to, the placement of a lien on the real and personal property of Country Club. (Corbari, Teitzman)

Staff Analysis: If Issue 1 is approved, the Settlement Agreement would resolve all matters in Docket No. 140031-WS in accordance with Section 120.57(4), F.S., and Order No. PSC-14-0131-SC-WS should become final. Staff recommends the docket remain open to process the settlement payments and to monitor ongoing compliance with the terms of this Settlement Agreement. Once all the terms of the Settlement Agreement and outstanding amounts owed have been satisfied, the docket may be administratively closed. Should Country Club fail to comply with any of the terms of the proposed Settlement Agreement, the Commission will seek to enforce the terms of the Settlement Agreement and pursue all reasonable means necessary to collect the amounts owed by Country Club, pursuant to Sections 120.69 and 367.121(1)(g) and (j), F.S., including, but not limited to, the placement of a lien on the real and personal property of Country Club.

FILED MAY 02, 2014
DOCUMENT NO. 02031-14
FPSC - COMMISSION CLERK

Country Club Utilities, Inc.

May 2, 2014

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

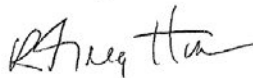
Re: Docket No. 140031-WS
Country Club Utilities Settlement Agreement

Dear Commissioners:

I respectfully ask that you consider approving the Settlement Agreement as prepared by staff and signed by me.

Staff has worked very closely with me to remedy this violation and I am grateful. I also appreciate your consideration previously and hope you will approve this current agreement.

Sincerely,



R. Greg Harris, President

3035 Wynstone Drive, Sebring, FL 33875
863-381-8201
rgregharris@gmail.com

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

SETTLEMENT AGREEMENT

Pursuant to Section 120.57(4), Florida Statutes (F.S.), Country Club Utilities, Inc. (Country Club) hereby files this Settlement Agreement to effect an informal disposition and binding resolution of any and all matters and issues that were, or might have been, addressed by the Florida Public Service Commission (Commission) in Docket No. 140031-WS. This Settlement Agreement avoids the time, expense and uncertainty associated with adversarial litigation. The terms of this Settlement Agreement are as follows:

1. Country Club acknowledges its obligation, pursuant to Sections 367.145 and 350.113, F.S., and Rule 25-30.120, Florida Administrative Code (F.A.C.), to remit payment of its Regulatory Assessment Fees, plus statutory penalties and interest, for the years 2010, 2011, 2012, and 2013, as shown in Exhibit A attached hereto.
2. In consideration of Country Club's complete and timely performance of all the obligations agreed to in this Settlement Agreement, the Commission conditionally waives its right to seek civil remedies against Country Club for failing to remit payment of RAFs, penalties and interest for the years 2010, 2011, 2012, and 2013, pursuant to Sections 367.145 and 350.113, F.S., and Rule 25-30.120, F.A.C. This waiver is conditioned upon Country Club's complete compliance with all of the terms of this Settlement Agreement and any final Commission order approving this agreement.

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Country Club Settlement Agreement

3. In lieu of the Commission pursuing all reasonable means necessary to collect the amounts owed by Country Club, including, initiating action in circuit court, Country Club will perform the following:
 - a. Submit payment to the Commission in the amount of \$19,517.21, by **May 14, 2014**, satisfying the principal balance of Country Club's 2010 and 2011 Regulatory Assessment Fees (RAFs);
 - b. Submit a monthly payment of \$1,000.00 to the Commission, by the **15TH** of every month, beginning on **September 15, 2014**, and continuing until the balance of any outstanding RAFs, penalties and interest has been paid; and
 - c. Submit payment of its 2014 and future RAFs to the Commission, timely and in full.

4. The Commission shall apply all payments made by Country Club under this Settlement Agreement in the following manner:
 - a. To the principal balance of any unpaid year's RAFs, beginning with the oldest year to the most recent year, until the principal balance of any year's unpaid RAFs has been satisfied; and
 - b. To the penalty and interest balance assessed to each year of delinquent RAFs, beginning with the oldest year to the most recent year, until the penalty and interest balance of each year's delinquent RAFs has been satisfied.

5. Failure by Country Club (i) to submit its initial payment of \$19,517.21 payment by May 15, 2014, (ii) to timely submit two (2) consecutive \$1,000.00 installment payments outlined above, or (iii) to abide by any of the other terms contained herein, shall be considered a breach of this Settlement Agreement, automatically accelerating the balance of any unpaid RAFs, penalties and interest, which will then become immediately due.

6. Additional Payment Terms:
 - a. All payments shall be made payable to the "Florida Public Service Commission," include Docket No. 140031-WS on the memo line, and be sent to "Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850, ATTENTION: Fiscal Services."

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Country Club Settlement Agreement

- b. Payment is considered “timely” if properly addressed, mailed with sufficient postage and postmarked no later than the due date.
 - c. Payment is considered “paid” on the date it is received and logged in by the Commission’s Division of Administrative and Information Technology Services in Tallahassee, Florida, or on the date the payment is postmarked by the United States Postal Service.
 - d. Payment that is returned by a financial institution for insufficient funds, or any other reason, is a failure to submit timely payment. Pursuant to Section 215.34(2), a service fee of \$15.00 or five percent (5%) of the amount of the payment returned, whichever is greater, shall be assessed to any payment returned by a financial institution for insufficient funds, or for any other reason. Two (2) returned payments shall be considered a breach of this Settlement Agreement, automatically accelerating the balance of any unpaid RAFs, penalties and interest, which will then become immediately due.
7. In the event Country Club, including the property upon which Country Club is located, becomes the subject of a sale, conveyance, abandonment, or bankruptcy and all of the terms of this Settlement Agreement have not been fully satisfied, Country Club shall:
 - a. Notify the Commission at least sixty (60) days prior to the sale, conveyance, abandonment or initiating bankruptcy proceedings;
 - b. Provide the name and address of the purchaser, operator, or person to assume or in control of Country Club;
 - c. Provide a copy of this Settlement Agreement, final Commission order approving the Settlement Agreement and all attachments to the purchaser, operator, or person assuming control of Country Club; and
 - d. Provide a copy of this Settlement Agreement, final Commission order approving the Settlement Agreement and all attachments to the court presiding over any abandonment or bankruptcy proceeding involving Country Club.
8. The submission of this Settlement Agreement by Country Club is in the nature of an offer to settle. This Settlement Agreement is contingent on the Commission accepting the entire Settlement Agreement. Consequently, if this Settlement Agreement is not accepted

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Country Club Settlement Agreement

and approved without modification, then the settlement proposal is rejected and the Settlement Agreement shall be considered null and void and of no further force or effect.

9. This Settlement Agreement will take effect the day after it is approved by the Commission. Country Club understands that the Commission's decision will be reflected in a final order.
10. Neither Party to this Settlement Agreement will request, support, or seek to impose a change in the application of any provision of this Settlement Agreement. Provided the Commission approves the Settlement Agreement, Country Club waives its right to request further administrative or judicial proceedings concerning any of the matters, which were, or might have been, addressed by the Commission in resolving Docket No. 140031-WS, except proceedings to enforce this Settlement Agreement. This waiver of the right to further administrative or judicial proceedings shall include, but not be limited to: a petition for a formal proceeding in the form provided by Rule 28-106.201 or 28-106.2015, F.A.C.; a motion for reconsideration of the decision in this matter in the form prescribed by Rule 25-22.060, F.A.C.; or a notice of appeal to initiate judicial review by the Florida First District Court of Appeal pursuant to Fla. R. App. P. 9.110, in the form specified in Fla. R. App. P. 9.900(a).
11. Nothing in this Settlement Agreement shall prevent the Parties from filing suit to specifically enforce any of the terms of this Settlement Agreement. The Commission reserves the right to initiate appropriate legal action to address any violations of rules or statutes administered by the Commission that are not specifically related to or resolved by this Settlement Agreement.

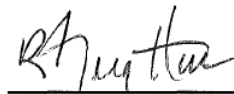
Docket No. 140031-WS

Country Club Settlement Agreement

12. In consideration for entering into this agreement, Country Club acknowledges, agrees, and waives its right to an administrative formal hearing pursuant to Sections 120.569 and 120.57, F.S., and shall withdraw its petition for formal hearing filed on April 10, 2014, in Docket 140031-WS, within ten (10) days of approval of this Settlement Agreement. Country Club further acknowledges, agrees, and waives its right to appeal the final order on this matter.
13. This Settlement Agreement resolves all matters in Docket No. 140031-WS in accordance with Section 120.57(4), F.S. Docket No. 140031-WS will continue to remain open until all the terms of this Settlement Agreement have been satisfied by Country Club.
14. This Settlement Agreement constitutes a single, integrated written contract expressing the entire agreement between the Parties and superseding all other agreements, representations, and understandings on the subject matter herein. There is no other agreement, oral or written, expressed or implied, between the Parties with respect to the subject-matter herein, except this Settlement Agreement.

Signed this 1st day of May, 2014.

BY:



R. Greg Harris, President
COUNTRY CLUB UTILITIES, INC.
3035 Wynstone Drive
Sebring, FL 33875
Telephone: (863) 385-6330
Email: rgregharris@gmail.com

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Settlement Agreement – Exhibit A

TOTAL RAFs, PENALTY & INTEREST OUTSTANDING

| YEAR | REVENUES | RAFs (4.5%) | PAYMENTS | PENALTY (5 - 25%) (THRU 05/14/14) | INTEREST (1%) (THRU 05/14/14) | TOTAL DUE |
|---------------|-----------------|------------------------|-----------------|--|--|----------------------|
| 2010 | \$238,846.00 | \$10,748.08 | \$2,500.00 | \$2,687.02 | \$3,886.75 | \$14,821.85 |
| 2011 | \$250,425.00 | \$11,269.13 | \$0.00 | \$2,817.28 | \$2,929.97 | \$17,016.38 |
| 2012 | \$250,957.00 | \$11,293.07 | \$0.00 | \$2,823.27 | \$1,581.03 | \$15,697.37 |
| 2013 | \$245,833.33 | \$11,293.06 | \$0.00 | \$1,129.31 | \$225.86 | \$12,648.23 |
| TOTALS | | \$44,603.34 | \$2,500 | \$9,456.88 | \$8,623.61 | \$60,183.83 |

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Settlement Agreement – Exhibit A

RAF BREAKDOWN BY SERVICE & YEAR

| 2010 | REVENUES | RAFs (4.5%) | PENALTY (25%) | INTEREST (1%) (THRU 05/14/14) | TOTAL DUE |
|-----------------|---------------------|------------------------|--------------------------|--|----------------------|
| WATER | \$144,853.00 | \$6,518.39 | \$1,629.60 | \$2,389.67 | \$10,537.66 |
| SEWER | \$93,993.00 | \$4,229.69 | \$1,057.42 | \$1,497.08 | \$6,784.19 |
| PAYMENTS | ---- | \$2,500.00 | \$0.00 | \$0.00 | \$2,500.00 |
| TOTALS | \$238,846.00 | \$8,248.08 | \$2,687.02 | \$1,581.03 | \$14,821.85 |

| 2011 | REVENUES | RAFs (4.5%) | PENALTY (25%) | INTEREST (1%) (THRU 05/14/14) | TOTAL DUE |
|-----------------|---------------------|------------------------|--------------------------|--|----------------------|
| WATER | \$149,425.00 | \$6,724.13 | \$1,681.03 | \$1,748.27 | \$10,153.43 |
| SEWER | \$101,000.00 | \$4,545.00 | \$1,136.25 | \$1,181.70 | \$6,862.95 |
| PAYMENTS | ---- | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| TOTALS | \$250,425.00 | \$11,269.13 | \$2,817.28 | \$2,929.97 | \$17,016.38 |

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Settlement Agreement – Exhibit A

RAF BREAKDOWN BY SERVICE & YEAR

| 2012 | REVENUES | RAFS (4.5%) | PENALTY (25%) | INTEREST (1%) (THRU 05/14/14) | TOTAL DUE |
|-----------------|---------------------|------------------------|--------------------------|--|----------------------|
| WATER | \$151,060.00 | \$6,797.70 | \$1,699.43 | \$951.68 | \$9,448.81 |
| SEWER | \$99,897.00 | \$4,495.37 | \$1,123.84 | \$629.35 | \$6,248.56 |
| PAYMENTS | ---- | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| TOTALS | \$250,957.00 | \$11,293.07 | \$2,823.27 | \$1,581.03 | \$15,697.37 |

| 2013 | REVENUES | RAFS (4.5%) | PENALTY (10%) (THRU 05/14/14) | INTEREST (1%) (THRU 05/14/14) | TOTAL DUE |
|-----------------|---------------------|------------------------|--|--|----------------------|
| WATER | \$144,080.00 | \$6,483.60 | \$648.36 | \$129.67 | \$7,261.63 |
| SEWER | \$98,167.00 | \$4,417.51 | \$441.75 | \$88.35 | \$4,947.61 |
| PAYMENTS | ---- | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| TOTALS | \$242,247.00 | \$10,901.11 | \$1,090.11 | \$218.02 | \$12,209.24 |