

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 23, 2012

TO: Dorothy E. Menasco, Commission Deputy Clerk II, Office of Commission Clerk

FROM: James E. *McRoy*, Utility System/Engineering Specialist, Division of Economic Regulation

RE: Docket No. 120104-WU, Notice of abandonment of water system in Lee County by Bayshore Utilities, Inc.

RECEIVED FPSC
 12 MAY 23 AM 8:35
 COMMISSION CLERK

Please add the attached Circuit Court Order Appointing Receiver that appointed Lee County as Receiver of Bayshore Utilities, Inc. effective May 7, 2012.

Thank you.

Attachment

DOCUMENT NUMBER DATE
 03264 MAY 23 2012
 FPSC-COMMISSION CLERK

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

LEE COUNTY, FLORIDA, a political subdivision of the
State of Florida,

Petitioner,

vs.

Case No. 12CA-1245
Judge: Joseph Fuller, Jr.

BAYSHORE UTILITIES, INC.,
a/k/a BAYSHORE UTILITY COMPANY,

Respondents.

ORDER APPOINTING RECEIVER

THIS MATTER having come before the Court upon the Petition of Lee County and the Court after receiving the advice and recommendation of counsel, and being fully advised in the premises, hereby finds:

Respondents own and operate a water treatment plant within the jurisdictional boundaries of Lee County, Florida. On or about April 5, 2012, Judge Keith R. Kyle found that the Respondent had constructively abandoned the water treatment plant and that his order was to serve as notice of abandonment pursuant to Section 367.165, Florida Statutes. Subsequently, Lee County filed its Emergency Petition to Appoint Receiver (the "Petition") to take possession of and operate Respondent's water treatment plant.

On May 7, 2012, this Court heard the County's Petition and being fully advised in the premises, it is

HEREBY ORDERED AND ADJUDGED:

- A. Lee County's Petition is hereby GRANTED.
- B. Section 1. Appointment of Receiver and Term. Lee County is hereby appointed to

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act as Receiver for the Respondent's water treatment plant. The term of this receivership shall begin on May 7, 2012 and shall terminate as follows:

(1) The Receiver shall have ninety (90) days to sell or otherwise dispose of the real and personal property of the Respondent's water treatment plant assets. For purposes of this Order, the connection of these facilities, and/or the customers receiving service from these facilities, to a regional or central water utility, upon the availability of same, shall constitute a disposition of the property. Should the term of Receiver terminate and expire due to a sale of the Respondent's water treatment plant or interconnection of the water treatment plant to a regional or central water utility, then the obligations and responsibilities of the Receiver shall terminate and expire as of the date of the closing of any such sale or interconnection; or

(2) If the Receiver does not sell or otherwise dispose of the real and personal property of the Respondent's water treatment plant assets within ninety (90) days of the entry of this Order, the Receiver shall transfer all ownership interests in such property to Lee County.

(3) It is expressly understood that in light of the Respondent's abandonment of the water treatment plant, none of the Respondent's are, or will be, entitled to any benefits or proceeds, specifically including any disposition of property or distribution of monies, that result in, and /or are associated with, the disposal of all, or a part of, the water treatment plant by the Receiver.

Upon termination and expiration of the receivership as provided herein, the Receiver shall be released from all further obligations to operate and maintain the water treatment plant.

Section 2. Surrender of Property, Assets, Documents and Facilities. All property, assets, documents, and facilities compromising and necessary to the water treatment plant shall be turned

over to the Receiver after entry of this Order. Bayshore Utilities, Inc. a/k/a Bayshore Utility Company (Bayshore Utilities, Inc.) to any extent that they may not have already done so, shall: (1) turn over and produce to the receiver all customer account records, contracts, agreements, non-privileged correspondence, business records, easements, construction drawings, records drawings, O&M manuals, permits, operating protocol, and any other documents related to the water treatment plant, to include the property, assets and liabilities associated herewith in order that the Receiver may then operate and maintain the water treatment plant, and (2) surrender all real personal property comprising and necessary to the water treatment plant to the Receiver. Upon entry of this Order, Bayshore Utilities Inc. shall turn over and produce all bank accounts, bank account records, customer deposits, cash, and accounts receivable balances to the Receiver, which relate to the subject abandoned property and franchise. Upon not less than ninety (90) days prior to written notice to Respondent, the Receiver may dispose of the above described records in its possession. However, the Receiver shall maintain all documents in accordance with its record retention policy and subject to all applicable federal, state or local laws. At Respondent's cost and expense, Respondent may retain, or make arrangements for the retention of, records in the possession of the Receiver to be disposed. To the extent that the Bayshore Utilities, Inc. is sold or otherwise disposed of, the Receiver shall include a provision in the instrument effectuating the transfer for the maintenance of records as provided herein. Notwithstanding the foregoing, nothing in this Section shall affect whatever legal claims Respondent may or may not have had or owned prior to the date the receivership begins, as set forth in Section 1 herein, and nothing in this Section shall in any way determine whether or not any such claims have themselves been abandoned.

Section 3. Receiver Powers. Once the documents from the Bayshore Utilities, Inc. and the real and personal property associated therewith are surrendered to the Receiver in accordance with

Section 2 above, the Receiver shall send written notice of receipt thereof to this Court, and shall cause the operation of the Bayshore Utilities Inc. until such time as provided for in Section 1, and shall continue the lawful operation and maintenance of the utility service to the customers of Bayshore Utilities, Inc. In order to effectively carry out its responsibilities under this Order, the Receiver shall have the following powers and authority:

- (1) To provide and maintain water service within the designated service area, in compliance with all applicable permits, regulations, local laws, and statutes;
- (2) To make extensions, expansions, repairs, replacements, and improvements to the Bayshore Utilities, Inc. as appropriate and necessary;
- (3) To collect rates, fees and charges, and deposits for all services provided for the Bayshore Utilities, Inc. in accordance with all applicable state and local laws;
- (4) To collect rates, fees and charges, and deposits for the establishment of a Municipal Services Benefit Unit (MSBU) in accordance with all applicable state and local laws;
- (5) To collect rates, fees and charges for the service provided to the customers of Bayshore Utilities, Inc. by Lee County from the date of the finding of constructive abandonment for the maintenance of Bayshore Utilities, Inc. and construction of the temporary connection to Lee County Utility's water lines;
- (6) To borrow money, and to pledge or encumber the facilities, assets and revenues of the Bayshore Utilities, Inc. for the repayment thereof;
- (7) To enter into contracts or agreements with any other public agency or private entity providing for or relating to the operation and maintenance of the Bayshore Utilities, Inc. or the connection of the customers to any other public or private sewer system;
- (8) To accept any gifts, grants, or contributions in kind in connection with the

management, operation, and maintenance of the Bayshore Utilities, Inc.;

(9) To retain and pay the fees, costs, and salaries of accountants, architects, engineers, attorneys, employees, or other professional consultants as necessary or desirable in the management, operation, or maintenance of the Bayshore Utilities, Inc., and to ensure compliance with all provisions of this Order for the rates, fees and charges authorized under this Section 3;

(10) To pay from the revenues collected from the customers of the Bayshore Utilities, Inc., all necessary and reasonable operating expenses (including the costs and expenses contemplated in this Section 3) in a manner designed to continue the efficient, effective and environmentally sound operation of said Bayshore Utilities, Inc. However, to the extent said revenues are insufficient to allow the Receiver to continue the efficient, effective, and environmentally sound operation of the Bayshore Utilities, Inc.; the Receiver shall timely petition the appropriate regulatory entity for an adjustment of its rates sufficient to meet such responsibilities. Furthermore, Receiver may expend such reasonable amounts as prudent, necessary, and advisable, in the professional judgment of Receiver, in order to effectuate the efficient, effective, and environmentally sound operation of the Bayshore Utilities, Inc. To the extent that the reasonable costs of the receivership are not recouped from Respondent pursuant to Section 6 herein, the Bayshore Utilities, Inc. and its successors and assigns, including any party who purchases or acquires said Bayshore Utilities, Inc., shall be indebted to Receiver for the full extent of such reasonable costs and shall pay Receiver for such reasonable costs out of the first monies available or at any closing on the transfer or acquisition of the Bayshore Utilities, Inc., whichever comes first.

(11) To connect the customers of the Bayshore Utilities, Inc. to any other public or private water system with adequate water service capacity to accept said customers in accordance with and subject to applicable requirements and payment of fees to said public or private water systems;

the responsibility for the continued operation and maintenance of Bayshore Utilities, Inc., the Receiver and its agents and employees are hereby declared to be held harmless and not legally responsible for any or all claims, liability, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including attorneys' fees, that have arisen or may arise out of (or be the result of) the past design, construction, operation, and maintenance of Bayshore Utilities, Inc. This immunity shall include but not be limited to: immunity from injury to persons, damage to property or property rights, or violation of any governmental law, rule, regulation or requirement that may arise from the design, construction, operation, or maintenance of Bayshore Utilities, Inc. prior to the date of appointment of the Receiver, or during the period of receivership, if such injury, damage, or violation is the direct result of prior design, construction, operation or maintenance of Bayshore Utilities, Inc.

Section 6. Respondent's Liability. The Respondent shall remain liable under all applicable laws for any claims, violations, demands, penalties, suits, proceedings, actions or fees occurring prior to the appointment of any Receiver. To the extent that any such claim violation, demand, penalty, suit, proceeding, action, or fee is presented, Receiver, or its successors or assigns, shall make available to Respondent all documents surrendered pursuant to Section 2 herein. To the extent that the revenues of the Bayshore Utilities, Inc. are insufficient to fund the reasonable costs of the receivership, Respondent shall be liable for the reasonable costs of the receivership during the Term of the receivership, as set forth in Section 1 herein; and specifically including any, and all costs and/or fees associated with this action/proceedings, including, but not limited to court costs. However, notwithstanding any other provision contained in this Order, Respondent shall have the right to challenge whether any such costs were reasonable and necessary.

Section 7. Receiver's Separation of Funds. Lee County, as Receiver, is hereby directed by

this Court to maintain separate accounts and records for the management of the Respondent's system. Additionally, this Court hereby directs that the revenues from the Bayshore Utilities, Inc. are not to be considered the revenues of the Receiver, nor are the revenues of the Receiver to be considered those of the Respondent.

Section 8. Receiver's Accounting to the Court. At the end of the Term of the receivership, as set forth in Section 1, the Receiver shall submit to the Court and Respondent financial and operational reports for the Bayshore Utilities, Inc. for the duration of its receivership.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida this 7th day of May, 2012.

S/JOSEPH C. FULLER

JOSEPH C. FULLER, JR.
Circuit Judge

Copies furnished to:

Ashley Roberts, Esquire, Lee County Attorney's Office
Wayne Wampler, owner/agent Bayshore Utilities, Inc.