

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of KING'S POINT)	DOCKET NO. 891323-WS
UTILITIES for transfer of majority)	
organizational control of Certificates)	ORDER NO. 23120
Nos. 437-W and 368-S in Osceola County)	
from Charles E. and Martha D. Barkley)	ISSUED: 6-26-90
and Sidney D. and Marcia Bronson to)	
Walter D. Medlin)	
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING TRANSFER OF MAJORITY ORGANIZATIONAL
 CONTROL, SUBJECT TO CONDITIONS, AND REQUIRING
 CONTINUED USE OF APPROVED RATES AND CHARGES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Kings Point Utilities (Kings Point) is a Class C utility, providing water and wastewater service under Certificates Nos. 437-W and 368-S to approximately 155 single family homes in Osceola County. Kings Point has not filed its 1988 or 1989 annual reports; however, according to its 1987 annual report, it collected operating revenues of \$43,969 and experienced a net operating loss of \$7,220.

On November 22, 1989, Kings Point filed an application for transfer of majority organizational control from Charles and Martha Barkley, and Sidney and Marcia Bronson, to Walter

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ORDER NO. 23120
DOCKET NO. 891323-WS
PAGE 2

Medlin. The transaction actually took place in September, 1988; however, we did not learn of the transfer until September 13, 1989, when Kings Point filed a notice of its intent to abandon its wastewater system. Kings Point was advised of the need to file an application for transfer in October, 1989. It filed its application in November, 1989.

According to Kings Point, it was unaware that it was required to obtain our approval prior to closing on the purchase, and was not advised of any such requirement by the seller. Kings Point argues that its delay in filing its application was, therefore, inadvertent, and that it was not done with the intent to circumvent our authority over such matters. Since it appears that Kings Point was unaware that it was required to file an application for transfer prior to closing and did, in fact, file its application soon after being so informed, we do not believe that it is necessary to require it to show cause why it should not be fined for violating Section 367.071, Florida Statutes.

Although Kings Point has been in operation since 1974, we did not certificate it until August 3, 1984 when, by Order No. 13565, we granted Certificates Nos. 437-W and 368-S to William C. and Pearl Godwin, who had purchased the utility out of receivership. By Order No. 18027, issued August 24, 1987, we approved the transfer to Charles E. and Martha D. Barkley, the current holders of Certificates Nos. 437-W and 368-S.

Since the transfer to the Barkleys, Kings Point has been in almost constant violation of the rules and regulations of the Department of Environmental Regulation (DER). In fact, both the water and wastewater systems are currently in violation of DER requirements. Since taking the system over in late 1988, Mr. Medlin states that he has attempted to upgrade the systems, but that it appears that it may be quite costly to make the required improvements.

TRANSFER

Application for Transfer

Except as previously indicated, the application is in compliance with Florida Statutes, and Rules 25-30.020 through 25-30.040, Florida Administrative Code. In particular, the notarized application contains:

ORDER NO. 23120
DOCKET NO. 891323-WS
PAGE 3

- 1) a check in the amount of \$300.00 which, upon calculation, equates to the correct filing fee as prescribed by Rule 25-30.020, Florida Administrative Code;
- 2) proof of notice to all interested governmental and regulatory agencies, and all utilities within a four-mile radius of the service territory, proof of advertisement in a newspaper of general circulation in Osceola County, and proof of notice to all customers of record, as prescribed by Rule 25-30.030, Florida Administrative Code; and
- 3) evidence that Kings Point has entered into a long term lease which gives it continuous use of the property upon which the utility plants are located. The lease is for a term of 40 years commencing on February 1, 1990 and terminating on January 31, 2030. This land was owned by Kings Point but conveyed in the sales transaction to Wilson R. Wright as security for having provided funds necessary to close the transaction.

A legal description of the territory served by the utility is appended to this Order as Attachment A.

Quality of Service

As already noted, Kings Point's water system is not in compliance with DER regulations. On February 12, 1990, a temporary injunction was entered which required Kings Point to resolve certain problems regarding insufficient chlorination. This problem has led to frequent boil water notices. Kings Point thereupon hired a professional engineer, who recommended that a gas chlorination system be installed and that the water distribution system be looped. The gas chlorination system has been installed, but Kings Point has not submitted a construction permit application to loop the water distribution system. The deadline for submitting the application to DER was May 7, 1990. In addition to the above, DER has filed a complaint against Kings Point for numerous deficiencies in its water system.

We are also informed that DER and Kings Point entered into a consent order approximately one year ago, which required

ORDER NO. 23120
DOCKET NO. 891323-WS
PAGE 4

Kings Point to upgrade its wastewater plant and effluent disposal system. In the consent order, Kings Point agreed to submit a report evaluating the existing hydrogeology of the reclaimed water discharge area, to provide an acceptable proposal to increase the capacity of its effluent disposal, and to generally bring its wastewater treatment facilities into compliance with DER standards. As of May 21, 1990, Kings Point had not complied with the consent order. In February, 1990, DER amended the above-mentioned complaint to include the wastewater violations.

It appears to us that it will take substantial investment to bring the water and wastewater systems into compliance with DER's standards. Kings Point has expressed an interest in obtaining a rate increase to recover the costs of improvement. We are concerned about passing the costs of these improvements, which may be considerable, onto the ratepayers. We believe that it may not be in the public interest to allow these costs in rate base if Kings Point has other viable options available to it. We are informed that the City of Kissimmee has expressed an interest in acquiring this utility. In fact, we note that the City was appointed as receiver in case Kings Point actually abandoned the wastewater system. At this time, the City does not have water or wastewater lines near Kings Point's service area, so an interconnection is not possible. However, a sale to the City or the interconnection to an existing system might be a viable option in the future. Another option might be for Kings Point to work with both the City and Osceola County to become designated as a regional utility, thus increasing its customer base.

We do not feign to know what would be the best long-range plan for Kings Point. However, unless Kings Point submits some long-range plan and some assurance that it will bring the systems into compliance with DER standards, it would be difficult for us to find that the transfer is in the public interest. We, therefore, find it appropriate to require Kings Point to explore all of its options including, but not limited to, those options discussed above, and come back before this Commission within 90 days with a long-range plan that will assure us that it will either become a viable utility at some point in the future or become part of another viable utility. We also find it appropriate to require Kings Point to provide some tangible assurance of its intent to make the necessary improvements to bring its water and wastewater systems into

ORDER NO. 23120
DOCKET NO. 891323-WS
PAGE 5

compliance with DER requirements. Accordingly, Kings Point shall file an application for a construction permit to upgrade its wastewater plant and effluent disposal system within 90 days of the date of this Order. Kings Point shall file a copy of its application with this Commission no later than the date that it is filed with DER. Finally, we also find it appropriate to require Kings Point to file a schedule for making the necessary water system improvements within 90 days of the date of this Order.

Application for Increased
Rates and Charges

Although the options of interconnecting or selling its systems to the City of Kissimmee are probably the least costly of all the alternatives available to it, and two we strongly urge Kings Point to consider, should it elect to make the necessary system improvements, it may need to file a staff-assisted rate case; however, as noted above, it has not filed its 1988 or 1989 annual reports. In addition, we note that Kings Point has not paid its regulatory assessment fees for 1989. Before it may be eligible for staff assistance, Kings Point must resolve these deficiencies.

Conditional Approval of Transfer

We are informed that the transferors in this case are not interested in being in the utility business and, by their own admission, are not capable of providing nor making arrangements for the necessary funds to maintain, repair and upgrade the utility systems in accordance with state and local requirements. It appears that the transferee has the financial ability to arrange the funds necessary to bring the plant into compliance as well as to employ competent licensed individuals to operate the plants.

Based upon the discussion above, and with a certain amount of reluctance, we find that the transfer of majority organizational control is in the public interest. However, our approval is expressly conditioned upon Kings Point's providing a long-range utility plan, an application for a wastewater construction permit, and a schedule of water system improvements, as discussed above, within 90 days of the date of this Order. Should Kings Point fail to meet any of these requirements, we shall reevaluate whether the transfer is, in fact, in the public interest.

ORDER NO. 23120
 DOCKET NO. 891323-WS
 PAGE 6

RATE BASE

The sale of common stock does not alter a utility's asset and liability accounts. Accordingly, this transfer of majority organizational control does not change any of the rate base balances. It is, therefore, unnecessary to establish levels of rate base as of the date of the transfer.

RATES AND CHARGES

Kings Point's current rates and charges are as follows:

Monthly Water Rates

Residential and General Service

0 - 3,000 gallons	\$6.00 (minimum charge)
All consumption over 3,000 gallons	\$1.15 per 1,000 gallons

Monthly Wastewater Rates

Residential and General service

0 - 3,000 gallons	\$7.75 (minimum charge)
All consumption over 3,000 gallons	\$1.45 per 1,000 gallons

In addition to the above, Kings Point presently collects fees of \$350 for each initial water and wastewater connection. It does not collect any customer deposits or miscellaneous service charges.

The rates and charges set forth above are those that were approved by this Commission by Order No. 13565, issued August 3, 1984. Kings Point has not had a rate change since that time. We believe that Kings Point should continue to collect these rates and charges until such time as it resolves its annual report and regulatory assessment fee deficiencies and applies for a staff-assisted rate case. However, it should file a tariff reflecting the change in ownership within thirty days of the date of this Order.

ORDER NO. 23120
DOCKET NO. 891323-WS
PAGE 7

PROPOSED AGENCY ACTION

Finally, we note that there was an objection, by the City of Kissimmee, to Kings Point's application for transfer. Since the objection has never been withdrawn, but was, inadvertently, never processed, this Order is issued as proposed agency action. Both Kings Point and the City have been informed of this and neither has any objection to such a procedure.

Upon consideration, it is

ORDERED by the Florida Public Service Commission that this Order is issued as proposed agency action and will become final unless an appropriate petition is received by the Director of the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0850, by the close of business on the date specified in the Notice of Further Proceedings or Judicial Review. It is further

ORDERED that the application for transfer of majority organizational control of Kings Point Utilities from Charles E. and Martha D. Barkley, and Sidney D. and Marcia Bronson, to Walter D. Medlin, is hereby approved, subject to the conditions set forth below. It is further

ORDERED that Kings Point Utilities shall file an acceptable long-range plan, which shall include a timetable, either: to make Kings Point a viable utility capable of serving both current and future customers; to sell the utility to an entity, such as the City of Kissimmee, which is capable of serving current and future customers; or to interconnect its systems with other, more viable systems, such as those of the City of Kissimmee. Kings Point shall submit its plan to this Commission within ninety (90) days of the date of this Order. It is further

ORDERED that Kings Point Utilities shall file an application with DER for a construction permit to upgrade its wastewater plant and effluent disposal system within ninety (90) days of the date of this Order. A copy of its application shall also be filed with this Commission no later than the date that it is filed with DER. It is further

ORDERED that Kings Point Utilities shall file a schedule for making the DER-required improvements to its water system

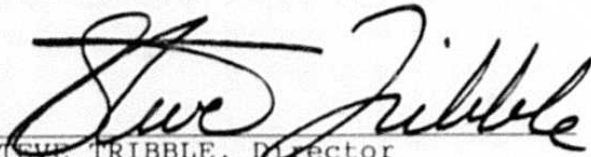
ORDER NO. 23120
DOCKET NO. 891323-WS
PAGE 8

with both DER and this Commission within ninety (90) days of the date of this Order. It is further

ORDERED that, if Kings Point Utilities does not submit the information required herein, we shall reevaluate our approval of the transfer. It is further

ORDERED that this docket shall remain open until we have received and approved the information required herein.

By ORDER of the Florida Public Service Commission, this 26th day of JUNE, 1990.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as

ORDER NO. 23120
DOCKET NO. 891323-WS
PAGE 9

provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on July 17, 1990.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ORDER NO. 23120
DOCKET NO. 891323-WS
PAGE 10

ATTACHMENT A

KINGS POINT UTILITY, INC.

TERRITORIAL DESCRIPTION

Township 26 South, Range 29 East, Osceola County

Section 1:

Beginning at the intersection of the Eastern R-O-W of Kings Road and the Southern R-O-W of Pine Island Road; thence South along said Eastern R-O-W of Kings Road a distance of 1,630.21 feet to a point; thence South 89 degrees, 49 minutes, 30 seconds East a distance of 629.78 feet to a point; thence South 00 degrees, 00 minutes, 40 seconds West a distance of 809.41 feet to a point; thence South 63 degrees, 21 minutes, 00 seconds East a distance of 129.17 feet to a point; thence South 72 degrees, 23 minutes, 00 seconds East a distance of 145.65 feet to a point; thence South 78 degrees, 40 minutes, 00 seconds East a distance of 66 feet to a point; thence North 16 degrees, 00 minutes, 00 seconds East a distance of 19.44 feet to a point; thence North 00 degrees, 00 minutes, 40 seconds East a distance of 452.90 feet to a point; thence South 89 degrees, 55 minutes, 00 seconds East a distance of 200 feet to a point; thence South 00 degrees, 00 minutes, 40 seconds West a distance of 649 feet to a point; thence North 89 degrees, 55 minutes, 00 seconds West a distance of 140 feet to a point; thence South 00 degrees, 00 minutes, 40 seconds West a distance of 422.66 feet to a point; thence North 88 degrees, 50 minutes, 29 seconds East a distance of 330.07 feet to a point; thence North 00 degrees, 00 minutes, 40 seconds East a distance of 1,533.14 feet to a point; thence North 89 degrees, 55 minutes, 10 seconds West a distance of 330.10 feet to a point thence North 00 degrees, 00 minutes, 40 seconds East a distance of 1,624.36 feet to a point; thence North 89 degrees, 39 minutes, 10 seconds West a distance of 1,289.87 feet to the Point of Beginning.