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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of KINGS POINT) DOCKET NO. 891323-WS
UTILITIES for transfer of majority)
organizational control of Certificates) ORDER NO. 24414
Nos. 437-W and 386-S in Osceola County)
from Charles E. and Martha D. Barkley) 25 ISSUED: 4/22/91
and Sidney D. and Marcia Bronson to)
Walter D. Medlin)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
J. TERRY DEASON
BETTY EASLEY
GERALD L. GUNTER
MICHAEL MCK. WILSON

ORDER RESCINDING CONDITIONAL APPROVAL OF
TRANSFER AND INITIATING PROCEEDINGS TO
REVOKE CERTIFICATES NOS. 437-W AND 386-S

BY THE COMMISSION:

Kings Point Utilities (Kings Point) is a Class C utility which provides water and wastewater service, under Certificates Nos. 437-W and 368-S, to approximately 155 single family homes in Osceola County. On November 22, 1989, Kings Point filed an application for transfer of majority organizational control from Charles E. and Martha D. Barkley, and Sidney D. and Marcia Bronson, to Walter D. Medlin.

Since the Department of Environmental Regulation (DER) had been attempting to get Kings Point to improve its facilities for some time, by Order No. 23120, issued June 26, 1990, we approved the transfer on a provisional basis, conditioned upon Kings Point making the DER-required improvements. We also noted that the current and prior owners of Kings Point had allowed the utility systems to deteriorate to such an extent that substantial investment would be required in order to bring them into compliance with DER standards. We, therefore, ordered Kings Point to submit a long-range viability plan. Finally, we indicated that if Kings Point did not meet these conditions within the required time

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Barkleys, the previous holders of the certificates, are neither willing nor capable of satisfactorily operating the utility systems. Since August of 1987, when the systems were transferred to them, Kings Point has been in virtually constant violation of DER's rules and regulations.

Kings Point also failed to satisfy the monetary portion of the judgment, which makes DER a judgment creditor. DER has informed us that it intends to seize the utility and conduct a judicial sale of assets. DER has also informed us that it intends to move for an order of contempt against Kings Point and petition the Court to appoint the City of Kissimmee as receiver of the water and wastewater systems. We note that the City of Kissimmee was appointed receiver in 1989 when Kings Point filed a notice of its intention to abandon the wastewater system. However, the City never actually operated as receiver, since Kings Point extended the date of abandonment several times and eventually withdrew its notice. Nevertheless, the City has advised both this Commission and DER that it is willing to be appointed receiver of both the water and wastewater systems.

Since we have found that the transfer is not in the public interest, and since we also find that it would not be in the public interest for the certificates to revert to the prior certificate holders, we believe that it is appropriate to initiate proceedings to cancel Certificates Nos. 437-W and 386-S. In so doing, it is our intention to revoke Kings Point's authority to charge for water and wastewater service. This action is taken in coordination with DER only as a last resort. Normally, we would order a utility to show cause why it should not be fined for failure to comply with our orders, statutes, and rules. The purpose of such proceedings is to persuade a utility to bring itself into compliance with such orders, statutes, and rules, and do what is necessary to improve the quality of service to an acceptable level. As we have already indicated, we do not believe that this utility has evidenced any willingness to cooperate with regulatory agencies regardless of the incentive.

It is, therefore,

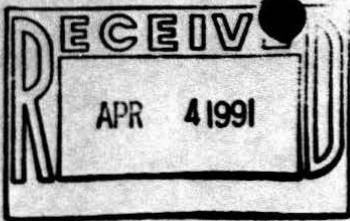
ORDERED by the Florida Public Service Commission that our conditional approval of the transfer of Certificates Nos. 437-W and 386-S, as authorized by this Commission by Order No. 23120 is

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or 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 after the issuance 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.



IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN
AND FOR OSCEOLA COUNTY,
FLORIDA

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL REGULATION,

Plaintiff,

Case No. CI89-1764

vs.

KINGS POINT UTILITY, INC.,
WALTER LEE MEDLIN, and
WILLIAM R. WRIGHT, as Trustee,

Defendants.

ORDER

THIS CAUSE came to be heard in Osceola County on April 1, 1991 upon Plaintiff, State of Florida Department of Environmental Regulation's ("DER"), Amended Motion for Contempt. Both parties being represented by counsel and the Court being fully advised in the premises, the Court hereby FINDS:

1. Defendant, Kings Point Utility, Inc., currently operates the water and sewer systems serving the Kings Point subdivision, Kings Highway, Kissimmee, Osceola County, Florida.

2. This Court entered a Final Judgment on January 11, 1991 requiring Defendant, Kings Point Utility, Inc., inter alia, to perform the following corrective actions to the Kings Point water and sewer systems within the specified time periods:

(a) Within 45 days of entry of this Final Judgment, Defendant, Kings Point Utility, Inc., shall install and place into service a minimum two drinking water supply wells at the Kings Point water system, in accordance with Florida Administrative Code ("FAC") Rule 17-555.315(1). [¶II(a) of Final Judgment].

(b) Within 45 days of entry of this Final Judgment, Defendant, Kings Point Utility, Inc., shall install and place into service a source of adequate auxiliary power equipped with an automatic start-up device to the Kings Point water system, in accordance with FAC Rule 17-555.320(6). [¶II(b) of Final Judgment].

(c) Within 45 days of entry of this Final Judgment, Defendant, Kings Point Utility, Inc., shall maintain the pressure tank at the Kings Point water system in good operating condition, in accordance with FAC Rule 17-555.350(1), through removal of the rust. [¶II(c) of Final Judgment].

(d) Within 45 days of entry of this Final Judgment, Defendant, Kings Point Utility, Inc., shall establish a routine cross-connection control program for the Kings Point water system, in accordance with FAC Rule 17-555.360(2). [¶II(d) of Final Judgment].

(e) Within 45 days of entry of this Final Judgment, Defendant, Kings Point Utility, Inc., shall complete construction

and place into service the looping of the Kings Point water distribution lines, as approved by DER, as well as complete satisfactory bacteriological and pressure testing in accordance with DER rules, provide an engineer's certification of completion, and receive a DER letter of clearance with respect to these modifications in accordance with FAC Rule 17-555.345. [II(e) of Final Judgment].

(f) Within 60 days of entry of this Final Judgment, Defendant, Kings Point Utility, Inc., shall submit a complete construction permit application to DER for bringing the Kings Point sewer system into compliance with FAC Chapters 17-4 and 17-600. The modifications encompassed within the application shall include but not be limited to all modifications necessary to ensure: (i) the effective treatment of effluent entering the treatment plant in accordance with the treatment standards in FAC Chapter 17-600, including but not limited to standards for BOD and TSS effluent pursuant to FAC Rule 17-600.420(1); and (ii) no more unpermitted overflows from the system's percolation ponds or other unpermitted disposals or discharges of wastewater. [II(f) of Final Judgment].

(g) As an interim measure prior to implementation of the permitted modifications to the Kings Point sewer system, and within 35 days of entry of this Final Judgment, Defendant, Kings Point Utility, Inc. shall (i) keep the percolation ponds clear of

vegetation; (ii) install a staff gauge at each percolation pond, record the daily pond levels, and provide the levels with the monthly operating reports to DER; and (iii) with a licensed hauler, transport and dispose in accordance with state regulations any wastewater in the percolation ponds which is at a higher level than one foot below the lowest discharge point of each pond, and notify DER within 24 hours of all such episodes of wastewater at or above this level and each such transportation and disposal of wastewater, including the name of the hauler, the quantity hauled, and the method and place of disposal. [¶II(i) of Final Judgment].

3. Defendant, Kings Point Utility, Inc. has failed to complete the above-stated requirements of this Court's Final Judgment within the specified time periods.

4. DER inspection of the Kings Point water and sewer system and DER records visually confirms lack of compliance with subparagraphs 2(a)-(c), (f), and (g) above.

5. With respect to subparagraph 2(d) above, although Defendant's current president, director and owner, Walter Lee Medlin, claims that he implemented a routine cross connection control program substantially prior to the entry of the Final Judgment, he has no written record establishing any such program. The president of the Kings Point residents' committee, Fred Smolensky, testified that he never received anything in writing

concerning a routine cross connection control program for Kings Point from Defendant or any other person or entity. The person who provides on-site operational services for the Kings Point water system, Lynn Todd, has also never seen any routine cross connection control program for the system. Based on the weight of the evidence presented, no routine cross connection control program has been established for the Kings Point subdivision.

6. With respect to subparagraph 2(e) above, although Defendant has indicated looping has been installed, Defendant has failed to submit engineer's certification indicating completion of the approved looping and to receive a DER letter of clearance with respect to these modifications in accordance with FAC Rule 17-555.345.

7. Defendant does not have the present financial ability to complete the required corrective actions under the Final Judgment. Although Defendant's president, director and owner, Walter Lee Medlin, suggests that he personally intends to arrange for the corrective actions to be completed when he can afford it, he is not willing to be personally liable for these corrective actions.

8. This is the fourth time DER has moved for contempt based on Defendant's failure to complete corrective actions required by this Court. The three previous motions came prior to the Final

Judgment and resulted in two stipulated orders of contempt and additional relief in the Final Judgment based on violation of the stipulated orders. Based on the evidence presented, Defendant cannot be relied on to complete the required corrective actions under the Final Judgment in a timely and effective manner.

9. In September 1989, Defendant gave notice of abandonment of the Kings Point sewer system. Defendant never followed through with the abandonment proceedings and currently remains in control of the Kings Point water and sewer systems.

10. Previously, after Defendant gave its notice of abandonment, the City of Kissimmee petitioned to be appointed receiver for the Kings Point sewer system. The City of Kissimmee is presently willing to be the receiver for the Kings Point water and sewer systems in accordance with the requirements of this Order.

11. It is in the best interests of the public health, safety, and welfare and the environment that a receiver be appointed to ensure compliance with the Final Judgment and/or to arrange for provision of water and sewer service to the residents of the Kings Point subdivision through another viable utility(ies).

Based on the foregoing, it is hereby ORDERED AND ADJUDGED:

A. The City of Kissimmee is hereby appointed receiver of the Kings Point water and sewer systems. This receivership shall

continue from the date of entry of this order until such time as this Court and any appropriate regulatory agencies shall approve of the permanent transfer of ownership of the utility systems to a ^{potential} ~~new~~ owner. *or back to the Defendant, Kings Point Utilities.*

B. As receiver, the City of Kissimmee shall:

(i) operate, manage and control the Kings Point water and sewer systems;

(ii) maintain and control the books and records relating to the Kings Point water and sewer systems;

(iii) charge, collect and receive the payments and other moneys arising from the operation of the Kings Point water and sewer systems and expend these moneys as necessary for the operation, management, and control of the systems;

(iv) keep accurate records of the amounts collected and expended with respect to the operation, management, and control of the Kings Point water and sewer systems;

(v) be authorized to apply to the Florida Public Service Commission for such rate adjustments as are appropriate for the effective operation, management, and control of the Kings Point water and sewer systems;

(vi) be reimbursed for all costs and expenses incurred in the operation, management, and control of the Kings Point water and sewer systems; to the extent costs and expenses are not covered by the amounts charged, collected, and received from

the operation of the systems, any such deficiency shall constitute a lien on the systems' assets upon approval by the Court;

(vii) within 90 days from the date of entry of this Order, file with the Court and serve upon DER a proposed schedule for bringing the systems into compliance with this Court's Final Judgment entered January 11, 1991 and/or providing service to the residents of the Kings Point subdivision through tying the residents into another/other utility facility(ies);

(viii) in the interim prior to Court approval of a proposed schedule pursuant to the foregoing subparagraph, operate the utility systems in accordance with paragraph II (i) of the Final Judgment and, in all other respects, as much as possible without additional construction, in accordance with Chapter 403, Florida Statutes, and DER rules and regulations.

C. Defendant, Kings Point Utility, Inc., shall:

(i) turn over to the City of Kissimmee within five days of entry of this Order all books, records, and keys pertaining to the Kings Point water and sewer systems;

(ii) not obstruct or interfere with the City of Kissimmee in the exercise of the powers and duties which it is receiving pursuant to this Order.

~~(iii) within five days of entry of this Order, give notice of abandonment of the Kings Point water and sewer systems~~

~~to the Florida Public Service Commission.~~

D. The City of Kissimmee, being a municipality appointed as a receiver on the motion of the state, shall not be required to post a bond pertaining to this receivership.

E. Nothing in this Order or the receivership designated hereunder shall prohibit any property which is the subject of this receivership from being reached by execution or similar process, provided that, in order to ensure continuous and effective utility service, no disposition of property which is the subject of this receivership shall be final and effective until approved by the Court and any appropriate regulatory agencies.

F. The Court reserves jurisdiction to enforce the terms of the Final Judgment and this Order and to enter such further orders as are necessary to bring the Kings Point water and sewer systems into compliance with Chapter 403, Florida Statutes, and DER rules and regulations.

DONE AND ORDERED in Osceola County, Florida, this 12th day of April, 1991.


Circuit Judge

conformed copies furnished to:

Steven A. Medina, Esq.

Martin Friedman, Esq.

R. Stephen Miles, Esq.

Walter Lee Medlin

William R. Wright

Donald Smallwood, Esq.

John Marks, Esq.

Neal D. Bowen, Esq.

Noreen S. Davis, Esq.

Des **John Marks, III**

DATE **7/31/91**

RE: Docket No. **910813-WS**

This will acknowledge receipt of

**Petition for exemption from Florida
Public Service Commission regulation
as a utility by City of Kissimmee as
Receiver for KINGS POINT UTILITIES, INC.
in Osceola County.**

which has been filed as of this date. Appropriate staff members will be advised.

STEVE TRIBBLE, Clerk

BY: **tb**