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Reply to: Tallahassee Office

September 28, 2001

Ms. Blanca Bayo
Public Service Commission
Division of the Commission Clerk
and Administration Services
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

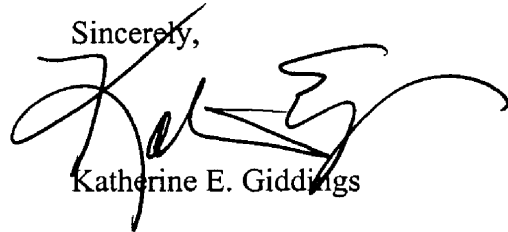
Re: Application of Kings Point Utilities, Inc. for Water and Waste Water certificates
in Osceola County – Docket No. 010941WS

Dear Ms. Bayo:

As promised at the recent informal conference, enclosed is a copy of the alternatives for terminating the Receivership over the Kings Point water and wastewater system. We understand that a copy of that document will be distributed to appropriate PSC staff.

Issues involving termination of the Receivership will be mediated at 9:30, October 8, 2001, at Kissimmee City Hall, in Kissimmee, Florida. As discussed at the informal conference, we encourage a representative of the PSC to attend.

Sincerely,



Katherine E. Giddings

- APP _____
- CAF _____
- CMP _____
- COM _____cc:
- CTR _____
- ECR _____
- LEG _____
- OPC _____
- PAI _____
- RGO _____
- REC _____
- SER _____
- OTH _____

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DOCUMENT NUMBER-DATE

12315 SEP 28 01

FPSC-COMMISSION CLERK

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

STATE OF FLORIDA, DEPARTMENT
OF ENVIRONMENTAL REGULATION,

Plaintiff,

vs.

Case No. CI 89-1764

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

Defendants.

vs.

ASH CHEMICAL, INC.,

Intervenor,

CITY OF KISSIMMEE,

Receiver.

STATUS REPORT AND ALTERNATIVES
FOR TERMINATING RECEIVERSHIP

Pursuant to this Court's directive, the Receiver, City of Kissimmee, files this Status Report and Alternatives for Terminating Receivership, and states:

1. At the hearing on June 28, 2001, this Court directed the Receiver to provide it with a status report and list of alternatives for terminating the Receivership and returning Kings Point Utility, Inc. (the "Utility") to its current or new owners. This document responds to that directive.

2. **Status Report.** The current status of the Receivership is as follows:

a. **PSC Application.** The Utility has filed applications for Florida Public Service Commission ("PSC") certificates to operate the water and wastewater systems. The

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applications are currently under review by the PSC. A number of the Utility's customers have filed objections to the applications and the Office of Public Counsel, which represents consumers before the PSC, has moved to intervene in the proceeding.

Unfortunately, the City of Kissimmee has had to file an objection with the PSC to a portion of the service area being requested by the Utility. The service area for which the Utility is seeking approval extends beyond the Utility's original service area. The service area the Utility now proposes includes an extended service area that is within the City's existing service area, as provided in the City's and County's comprehensive planning. Moreover, the contested area was previously assigned to the City under the City's Interlocal Agreement with Osceola County for provision of water and wastewater service within Osceola County. Thus, the City, in its independent capacity (and not as Receiver) has filed an objection to the certificate applications **but only as to the extended service area**. A copy of the City's objection is attached as Exhibit A to this report. **The City has made it clear that it has no objection to the certificate applications as they apply to the Utility's original service area.**

Counsel for the Utility and the Receiver met on August 30, 2001, with representatives of the PSC to define any issues as to the application. The PSC Public Counsel, who represents interested customers of the Utility, appeared and opposed the application on behalf of those customers. One basis for his objection is his assertion that the original sale of the Utility to Kings Point was never approved by the PSC as required by law, and, therefore, that sale is void.

The PSC staff has set forth a schedule for reviewing the application, setting the final hearing for April 17, 2002. The staff anticipates that the application process will not be resolved until September 27, 2002.

b. **Mediation.** Under this heading, we report the status of mediation of this case. The Utility and Receiver have stipulated to having the Receivership issues mediated. A Stipulated Order for Mediation has been submitted for this Court's signature and mediation is scheduled for October 8, 2001. The citizens currently receiving service have been invited to send a representative to attend the mediation. The PSC staff have also been invited to be present.

c. **Status Hearing.** A status hearing has been scheduled before this Court for October 11, 2001, at which time the Court will be advised regarding the outcome of mediation and the status of the Utility's PSC application.

3. Alternatives for Terminating the Receivership. As directed by the Court, the Receiver is recommending alternatives that will allow the Court to return the Utility to its current or new owners. Each of the alternatives set forth hereinafter honors this Court's concern that the Utility customers receive uninterrupted and adequate water and waste water service but allows immediate withdrawal by the City as Receiver. Under each of these alternatives, the City (individually and not as Receiver) will agree to continue providing service to the Utility customers on an emergency basis. The City will provide this service as a bulk provider (and not as a Receiver) and shall bill and collect monies for that service under a fee schedule approved the Court. Any profit shall be deposited in a trust account, where such funds shall be held until further order of the Court. The alternatives are as follows:

- a. **Kings Point Utility, Inc. Regains Operation of the System.** If the Utility is willing to reacquire and regain operation of the System and can establish that it will be able to obtain a PSC certificate to do so, the Court can return the System to the Utility. The Utility and its rates will be regulated by the PSC. The reasonableness of any

present or past lease payments will be subject to PSC jurisdiction.

- b. Sale Utility at Public Auction:** Alternatively, this Court can direct that the System be immediately noticed and auctioned for sale. Any sale proceeds shall be used, as prioritized by the Court, to pay any outstanding judgments against the Utility, including any costs awarded to the Receiver for costs incurred by the Receiver during the course of the Receivership. Any outstanding judgment not satisfied by the sale of the System would remain the responsibility of Utility owners and would not flow with the sale of the System. Upon sale of the System, the City, individually, will continue to provide service as set forth above until the PSC approves a contract between the purchaser and the City (or other provider) for the provision of bulk service to the System customers. Possible entities that could purchase the system would be a homeowner's cooperative or an authorized business entity. The customers of the Utility can establish a non-profit cooperative that could purchase the System. Various business entities in Florida also purchase and operate abandoned water and waste water facilities. Such a business entity could purchase the system and obtain a valid PSC certificate. In any case, unless the Utility is purchased by a governmental entity, the sale would be contingent upon the purchaser's obtaining a valid PSC certificate or obtaining an exemption from PSC regulation.
- c. Transfer Utility to Ash Chemical, Inc. as Judgment Creditor.** If Ash Chemical desires to acquire the System and can establish that it will be able to obtain a PSC certificate, this Court can turn the System over to Ash Chemical. Final approval would be subject to PSC certification. The transfer of the Utility to Ash Chemical's

judgments would act to satisfy Ash Chemical's outstanding judgments against the Utility. Ash Chemical would accept the Utility subject to cost and expenses awarded to the Receiver, which would be repaid by Ash Chemical through Utility revenue. Because Ash Chemical is the leaseholder, the lease and the debt involving the lease would be extinguished. If Ash Chemical is unable to obtain a valid PSC certificate within a specified period of time, the Utility would be resold pursuant to Court-Ordered auction.¹

- d. **Abandonment:** If the Utility or Ash Chemical cannot or is unwilling to acquire the System, then this Court should direct the Receiver to file a notice of abandonment under section 367.165, Florida Statutes. Under that Statute, Osceola County would be required to petition a court for a new receivership action designed solely for the purpose of disposing of the System in a manner designed to guarantee continued service to the customers of the Utility.

4. Issues That Must Be Resolved Pending Winding Up Affairs of Receivership. To assist this court in finalizing the alternatives set forth in Section 3 above, the following actions should be immediately taken by this Court:

- a. **Immediate Withdrawal.** The receiver respectfully requests that it be relieved of its obligation to continue to serve as Receiver. This Court should immediately grant the Receiver's motion to withdraw as Receiver. The Receiver believes the process of returning the Utility to its former or new owners can continue to completion without a receiver. Should the Court prefer to continue this process with a receiver, then another receiver should

¹ We call to the court's attention the argument posited by Public Counsel relative to the validity of the acquisition of the Utility by its current owners which is referenced above.

be appointed. The withdrawal of the City as receiver can be accomplished without damage to the process because this Court can condition the withdrawal on the City's (individually and not as Receiver) agreement to continue providing service to the Utility customers on an emergency basis as set forth above. As part of this process, the Court should ask the PSC to immediately reassert jurisdiction over the Utility. Additionally, this Court should direct that the Receiver file a final financial report, which the Court will review to determine the amount of costs and expenses incurred by the Receiver during the course of the Receivership. The Court should then award such costs and expenses to the City as Receiver. Collection of any judgment against the Utility, by the City as Receiver or otherwise, will be governed by general law controlling judgment collection procedures.

b. Treatment of Lease: Under each of the alternatives listed above for terminating the receivership, this Court must address treatment of the current and past lease payments. **Currently, the City, as Receiver, has been paying Ash Chemical more than \$5,000 per month towards the current and past amounts due under the Lease from its own funds.** Regardless of how this Court treats the lease payments, it should immediately direct that the Receiver **shall pay no further monies for any Utility indebtedness from the City's individual funds.** The following are suggestions for treatment of the Lease under each of the above alternatives:

(i) Kings Point Utility, Inc. Regains Operation of the System: If the Utility desires to reacquire the System and establishes that it will be able to obtain a PSC certificate, this Court should immediately abate any lease payments currently being made by the Receiver or direct that the Utility itself begin making those

payments to Ash Chemical since the judgment is accruing against the Utility (and not the City as Receiver).

(ii) Sell Utility at Public Auction: If no sale occurs, the rent should be immediately abated. If the Utility is sold, the sale would be subject to the Lease and the new owner would have to renegotiate the Lease or obtain a new piece of property for the System. In either event, as noted, the Receiver should pay no further payments for the Lease from its own funds.

(iii) Transfer Utility to Ash Chemical, Inc. as Judgment Creditor: If the System is turned over to Ash Chemical, this Court should immediately abate any lease payments currently being made by the Receiver since the Lease would then be extinguished.

(iv) Abandonment. If the Court directs the Receiver to initiate an abandonment proceeding, this Court should immediately abate the Lease. Once the County petitions for a new Receivership proceeding, a new lease could be negotiated, the property could be condemned, or new property for the System could be purchased.

(v) If No Abandonment. Should this Court determine that it will not permit the Receiver to initiate an abandonment proceeding, this Court should immediately exercise its equitable powers to protect the health, safety, and welfare of Florida citizens by reforming the Lease held by Ash Chemical, Inc. to encompass a reasonable lease payment. The Court could request the PSC to provide it with an opinion regarding a reasonable lease payment and then reform the Lease accordingly.

5. **Conclusion.** The City is committed to providing reliable and reasonably priced utility services to the Kings Point homeowners. The City will also continue to work in whatever way possible to assist the Court in expediting the termination of the Receivership. However, the City is unwilling to continue expending its own administrative, legal, and financial resources in support of the Utility and to continue acting as Receiver. The City, as Receiver, has fully complied with this Court's mandate to restore viable water and waste water service to the Kings Point homeowners. This Court should terminate the Receivership under the terms and conditions set forth above. As noted above, if none of the alternatives are acceptable or possible, this Court should allow the Receiver to give notice of abandonment as provided in Section 367.165, Florida Statutes, which will allow this Court to appoint a new Receiver and replace the Utility under PSC jurisdiction.

Respectfully submitted,



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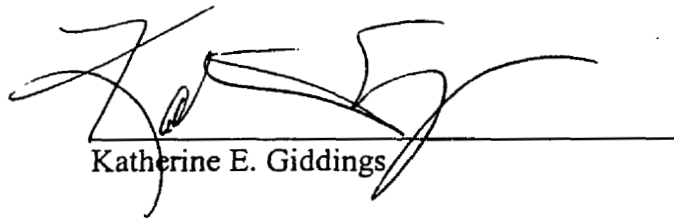
And

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Attorneys for the City of Kissimmee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U. S. Mail to Martin S. Friedman, Esquire at Rose, Sundstrom & Bentley, LLP, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301, Trina L. Vielhauer, Senior Assistant General Counsel, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000, Ronald M. Hand, Esquire, Hoequist, Hand & Sparks, 921 W. Emmett Street, Kissimmee, Florida 34741, and James M. Spoonhour, 215 North Eola Drive, Orlando, Florida 32801 on this 19 day of September, 2001.


Katherine E. Giddings