

COMMISSIONERS:  
MATTHEW M. CARTER II, CHAIRMAN  
LISA POLAK EDGAR  
KATRINA J. MCMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

STATE OF FLORIDA



TIMOTHY DEVLIN, DIRECTOR  
DIVISION OF ECONOMIC REGULATION  
(850) 413-6900

# Public Service Commission

September 25, 2009

090000-07

Mr. David Meadows, President  
Bimini Bay Utilities Corporation  
101 Golden Malay Palm Way  
Davenport, FL 33897-8602

Mr. Terry Blackmon, Operations Manager  
Four Points Utility Corporation  
101 Golden Malay Palm Way  
Davenport, Florida 33897-8602

Ms. Denna Meixner, Manager  
Four Points Utility Corporation  
101 Golden Malay Palm Way  
Davenport, Florida 33897-8602

RECEIVED-FPSC  
09 SEP 25 PM 1:53  
COMMISSION  
CLERK

**Re: Apparent violations of Sections 350.113, 350.117, 366.06, 367.031, 367.081, and 367.091, Florida Statutes, and Rules 25-30.034, 25-30.110, 25-30.120, 25-30.135, 25-30.335, and 25-6.049(9)(b), Florida Administrative Code, and possible implementation of show cause proceedings against Four Points Utility Corporation, Bimini Bay Utilities Corporation and Narcossee Utility, LLC pursuant to Sections 366.095 and 367.161, Florida Statutes.**

Dear Mr. Meadows, Mr. Blackmon, and Ms. Meixner:

Pursuant to Section 367.031, Florida Statutes (F.S.), "Each utility subject to the jurisdiction of the commission must obtain from the commission a certificate of operation to provide water or wastewater service." Also, Section 367.081, F.S., states that a "utility may only charge rates and charges that have been approved by the commission," and Section 367.091(3), F.S., states: "Each utility's rates, charges, and customer service policies must be contained in a tariff approved by and on file with the commission." Pursuant to Rule 25-30.034, Florida Administrative Code (F.A.C.), an existing utility currently charging for service must file an application for a certificate in accordance with that rule. Further, Sections 350.113 and 350.117, F.S., provide for the payment of fees and filing of reports, respectively. Finally, in regards to electric service, Section 366.06, F.S., states in pertinent part: "A public utility shall not . . . charge or receive any rate not on file with the commission . . . ."

A review of the operations of Four Points Utility Corporation (Four Points), Bimini Bay Utilities Corporation (Bimini Bay), and Narcossee Utility, LLC (Narcossee Utility) show that these utilities may be violating one or more of the above-noted statutes and related rules. For water and wastewater utilities, Section 367.161, F.S., provides in pertinent part:

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-0850

An Affirmative Action / Equal Opportunity Employer

PSC Website: <http://www.floridapsc.com>

Internet E-mail: [contact@psc.state.fl.us](mailto:contact@psc.state.fl.us)

DATE RECEIVED  
09 SEP 25 09 09:53  
FPSC-COMMISSION CLERK

- (1) If any utility, by any authorized officer, agent, or employee, knowingly refuses to comply with, or willfully violates, any provision of this chapter or any lawful rule or order of the commission, such utility shall incur a penalty for each such offense of not more than \$5,000, to be fixed, imposed, and collected by the commission. . . . Each day that such refusal or violation continues constitutes a separate offense. . . .
- (2) The commission has the power to impose upon any entity that is subject to its jurisdiction under this chapter and that is found to have refused to comply with, or to have willfully violated, any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$5,000, which penalty shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate of authorization issued by it. . . .

Similarly, for electric operations, Section 366.095, F.S., provides in pertinent part:

The commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter that is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$5,000, which penalty shall be fixed, imposed, and collected by the commission. Each day that such refusal or violation continues shall constitute a separate offense. . . .

The operations of each of Four Points, Bimini Bay, and Narcossee Utility (utilities, collectively) and their apparent violations of the various rules and statutes will be discussed below.

### I. Four Points

#### A. Annual Reports

Four Points did not timely submit its 2008 Annual Report and did not request an extension to late file its annual report. Although staff sent a delinquent notice on April 16, 2009, Four Points did not submit the annual report until August 20, 2009 (some 142 days late). Based on the above, it appears that Four Points has failed to timely file an annual report or request an extension of time in apparent violation of Section 350.117, F.S., and Rule 25-30.110, F.A.C.<sup>1</sup> Moreover, Rules 25-30.110(6) and (7), F.A.C., provide for penalties in the event of untimely filing of the annual report. Because Four Points is a Class C utility, the normal penalty pursuant to Rule 25-33.110(7), F.A.C., would be \$3 per day for each day the report is late (142 x \$3 = \$426). By letter dated August 26, 2009, staff requested that Four Points pay the penalty of \$426. However, Rule 25-30.110(6), F.A.C., provides in pertinent part that “The Commission may, in its discretion, impose penalties for noncompliance that are greater . . . than provided herein; such as in cases involving a flagrant disregard for the requirements of this rule or repeated violations of this rule.”

---

<sup>1</sup> As stated previously, Section 350.117, F.S., provides for the filing of reports. Rule 25-30.110(3)(a) and (c), F.A.C., requires that annual reports be filed by March 31<sup>st</sup> for operations for the preceding year, and also provides for extensions of time in which to file the reports.

### B. Regulatory Assessment Fees

Rule 25-30.120, F.A.C., requires that utilities pay a regulatory assessment fee (RAF) of 4.5 percent of its gross revenues derived from in-state business, or a minimum of \$25 if there are no revenues or if revenues are insufficient to generate above the \$25 minimum. It appears that Four Points has not remitted the appropriate amount of RAFs for the year 2008.<sup>2</sup> Section 350.113(4), F.S., provides for a penalty of five percent for the first thirty days, and an additional penalty of “5 percent for each additional 30 days or fraction thereof during the time in which the failure continues, not to exceed a total penalty of 25 percent,” and states that “the commission shall collect the fee and penalty, plus interest and all costs of collection, from the regulated company.” Further, Rule 25-30.120(7)(b), F.A.C., provides:

In addition to the penalties and interest otherwise provided, the Commission may impose an additional penalty upon a utility for failure to pay regulatory assessment fees in a timely manner in accordance with Section 367.161, F.S.

### C. Unauthorized Charges

Although Four Points had been in operation since 2001, it did not apply for and was not granted Certificate Nos. 634-W and 544-S until 2007. The certificate case was initiated when it was brought to the Commission’s attention by a customer complaint filed in April 2005 that Four Points was operating as a utility.<sup>3</sup> At that time, sixteen different complaints were filed with the Commission in reference to the poor service, billing problems and the unauthorized charging of rates. Four Points billed for electric, telephone, cable, county tax, state tax, water and wastewater services. In addition, the Utility imposed a “set up fee” of \$195, and if the customer refused to pay this fee, Four Points would disconnect services. Moreover, the Utility received four deficiency letters from the Commission during this case, for not responding. Based on all the above, the Commission issued a Show Cause Order why Four Points should not be fined \$5,000, and Four Points, in lieu of responding, paid the penalty of \$5,000 on September 27, 2006. Since that case, Progress Energy has taken over the electric and Four Points canceled their telecommunications certificate and shared tenant service certificate effective May 5, 2009.

Recently, customers have again complained to the Commission about billing problems to include unauthorized or unspecified charges, meter reading problems, and poor service. The customers state Four Points is charging outside of its tariff by demanding a five-dollar charge from customers who pay their bill without the invoice attached and is also charging a five-dollar late charge without that charge being noted on the bill. The customers’ statements appear to be supported by copies of billing statements which reflect this non-tariffed charge. In addition, it appears that Four Points is charging a meter cleaning fee to its customers if the utility worker has to clean the meter to read it. Also, Customers assert that the Utility is still charging the \$200 utility activation fee and is still trying to collect past bills that the Commission heard about in the certification case. Customers

---

<sup>2</sup> See letter dated August 26, 2009, whereby staff requests that Four Points pay additional RAFs, penalties and interest in the total amount of \$2,488.21 for water, and \$5,16.79 for wastewater, by September 9, 2009.

<sup>3</sup> See Order No. PSC-07-0280-PAA-WS, issued April 2, 2007, and Order No. PSC-06-0753-SC-WS, issued September 6, 2006, in Docket No. 050595-WS, In Re: Application for certificates to provide water and wastewater service in Polk County by Four Points Utility Corporation.

also state that the Utility is taking water and wastewater charges and applying it to old debt which has to do with electric charges that the customers feel were unjust charges to begin with.

The above-noted charges would appear to be in violation of Sections 367.081 and 367.091, F.S., cited earlier in this letter. Further, it would appear that Four Points has already been warned in the Show Cause Order mentioned in the preceding paragraph that such charges would not be appropriate or tolerated. Also, the charges would appear to be in violation of Rules 25-30.135(2), F.A.C., which states:

No utility may modify or revise its rules or regulations or its schedules of rates and charges until the utility files and receives approval from the Commission for any such modification or revision.

Finally, the late charge of five dollars would appear to be in violation of Rule 25-30.335(1), F.A.C., which states in pertinent part:

[A] utility shall render bills to customers at regular intervals, and each bill shall indicate: . . . the delinquent date or the date after which the bill becomes past due; and any late payment charge.

(emphasis added) The bills reviewed by staff do not appear to indicate any late payment charge. Therefore, it would appear that a late payment charge would be inappropriate and in violation of this rule.

#### D. Inappropriate Electric Bills and Liens

The customers are stating that Four Points is still demanding that the customers pay back bills that include the disallowed electric bills for electricity that the Utility was reselling. Customers state that the Utility is taking water and wastewater charges and applying it to old debt which has to do with electric charges that the customers feel were unjust charges to begin with. Based on these inappropriate electric bills, it appears that the Utility is requesting that the customers sign a debt settlement agreement, a lien of property, so that Four Points will work with their customers in a payment plan to avoid water and wastewater service interruption. Resolution of any dispute between Four Points and the customers regarding these past debts may be sought in a court of competent jurisdiction. However, as regards current water and wastewater service, staff believes that this threat of discontinuance of service and requirement to enter into a debt settlement or lien agreement is in violation of Rule 25-30.320, F.A.C., which governs discontinuance of service.

In Docket No. 050595-WS,<sup>4</sup> Commission staff determined that the Utility was improperly charging for the resell of electric services in violation of Section 366.06, F.S., and Rule 25-6.049(9)(b), F.A.C.<sup>5</sup> The Utility and Commission staff reached a resolution of this issue whereby it was agreed that Progress Energy would be the provider of electric service.

---

<sup>4</sup> In re: Application for certificates to provide water and wastewater service in Polk County by Four Points Utility Corporation.

<sup>5</sup> Four Points was acting as a reseller of electricity but was charging the customers for more than the customers' actual cost of electricity in apparent violation of the rule.

## II. Bimini Bay

Although the Utility has now applied for certificates for Bimini Bay and Docket No. 090424-WS has been opened, the Utility has apparently operated Bimini Bay since August 23, 2007. This would appear to be in violation of Sections 367.031, 367.081, and 367.091, F.S. Further, because Bimini Bay has neither filed annual reports nor paid RAFs for this period, it would appear that Bimini Bay violated Sections 350.113 and 350.117, F.S., and Rules 25-30.110 and 25-30.120, F.A.C.

## III. Narcossee Utility

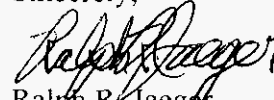
Although the Utility apparently incorporated Narcossee Utility as of December 7, 2006, it has never applied for water or wastewater certificates for this entity. If Narcossee Utility does intend to operate as a utility, i.e., receive compensation for the provision of water or wastewater service, it must apply for a certificate pursuant to either Rule 25-30.033<sup>6</sup> or Rule 25-30.034,<sup>7</sup> F.A.C., whichever is applicable. Any such application, pursuant to Rule 25-30.030, F.A.C., would require that Narcossee Utility obtain a list of governmental entities and private utilities from staff that would have to be notified of the application. Any of these entities could protest the application and request a hearing as to who would be best able to serve the territory requested.

If the Utility has already began charging for water and wastewater service, this would appear to be in violation of Sections 367.031, 367.081, and 367.091, F.S. Further, because Narcossee Utility has neither filed annual reports nor paid RAFs for this period, it would appear that Narcossee Utility would be in violation of Sections 350.113 and 350.117, F.S., and Rules 25-30.110 and 25-30.120, F.A.C.

## IV. Conclusion

If Four Points, Bimini Bay, and Narcossee Utilities do not correct the above-noted apparent violations, and if the above utilities continue to charge unauthorized charges, staff will be forced to open dockets for the initiation of show cause proceedings against the utilities. Pursuant to Sections 366.095 and 367.161, F.S., the utilities are subject to a \$5,000 fine for each violation, and for each day that the violation continues. If the utilities have not taken appropriate actions by October 19, 2009, staff will be forced to begin such show cause proceedings.

Sincerely,

  
Ralph R. Jaeger  
Senior Attorney

cc: Division of Economic Regulation (Roberts, Fletcher, Bulecza-Banks, Willis)  
Division of Regulatory Compliance and Consumer Assistance (Hicks)  
Office of the General Counsel (Bennett, Brubaker)  
Office of Commission Clerk

<sup>6</sup> Application for an Original Certificate of Authorization and Initial Rates and Charges.

<sup>7</sup> Application for Certificate of Authorization for Existing Utility Currently Charging for Service.