

State of Florida



Public Service Commission

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DATE: October 7, 2011

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Bennett, Jaeger) *JPB*
Division of Economic Regulation (Golden, Jones-Alexis, Marsh, Maurey, *JSC*
Mouring, Roberts, Walden) *MA* *MB* *CB*

RE: Docket No. 110254-WS – Initiation of show cause proceedings against Four Points Utility Corporation in Polk County for violation of Commission rules and regulations as outlined in the Florida Public Service Commission's management audit for Four Points Utility Corporation and Bimini Bay Utilities Corporation issued June 2011.

AGENDA: 10/18/11 – Regular Agenda – Initiation of Show Cause Proceedings -Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Please place on agenda before Docket No. 090424-WS

FILE NAME AND LOCATION: S:\PSC\GCL\WP\110254.RCM.DOC

Case Background

Four Points Utility Corporation (Four Points or Utility) is a Class C water and wastewater utility providing service in Polk County. The Utility serves approximately 255 customers in the Island Club West Resort and Spa (Island Club West) townhome development located in Davenport, Florida in the Southwest Florida Water Management District (SWFWMD). Four Point's 2009 Annual Report indicates that the Utility had gross operating revenues of \$153,833 and a net operating loss of \$122,655. The Utility has not filed a 2010 Annual Report.

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In June 2011, the Florida Public Service Commission's (Commission) Office of Auditing and Performance Analysis (APA) issued its *Management Audit of Four Points Utility Corporation and Bimini Bay Utilities Corporation* (Management Audit) report, which provides audit staff's findings with respect to operational issues, compliance with Commission rules, and management issues. In response to the Management Audit, staff opened the instant docket to initiate show cause proceedings against Four Points for apparent violations of Commission rules and regulations. The following information provides an historical overview of the Commission's activities related to Four Points.

Four Points' President and owner is Mr. David Meadows. He is the Utility's sole officer. He is also the developer of Island Club West which is served by Four Points.

Mr. Meadows is also the President and sole officer of Bimini Bay Utilities Corporation (Bimini Bay Utilities). Bimini Bay Utilities serves the development of Bimini Bay Resort and Spa (Bimini Bay), a townhome development also located in Davenport, Florida, in the SWFWMD. Bimini Bay was developed by Mr. Meadows and he serves as the President of the Bimini Bay Homeowners Association (Bimini Bay HOA). Mr. Meadows also owns and leases several units in Bimini Bay.

Four Points and Bimini Bay Utilities employ the same personnel, who are hired by Mr. Meadows. These employees are responsible for all operational functions of both Four Points and Bimini Bay Utilities. These employees also work for non-utility businesses owned by Mr. Meadows. This work includes billing, collections, payment processing, and maintenance of common areas for the Bimini Bay HOA, the 29 Bimini Bay units owned by Mr. Meadows, and other business enterprises.

Four Points has been in existence since 2001, but it was not brought to the Commission's attention until 2005 when the Commission received inquiries from customers regarding a variety of charges imposed by the Utility. Four Points subsequently filed an application for water and wastewater certificates on September 8, 2005. Sixteen customers filed letters with the Commission in objection to Four Points' application for certificates.

On September 6, 2006, the Commission issued an order (September 2006 Order) requiring Four Points to show cause why it should not be fined \$5,000 for its failure to obtain certificates prior to providing water and wastewater service to the public for compensation.¹ The September 2006 Order also determined that the Utility was not acting as a reseller because it was charging in excess of the actual purchase price for water and wastewater service that it resells.² Four Points paid the fine in lieu of filing a response to the show cause Order, and the Commission temporarily authorized the Utility to charge rates; with revenues held subject to refund, pending approval of final rates.

¹ See 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.

² Pursuant to Section 367.022(8), Florida Statutes, persons who resell water or wastewater service at a rate or charge which does not exceed the actual purchase price of the water or wastewater are exempt from Commission regulation (reseller exemption). Four Points purchases bulk water and wastewater from Polk County.

In April 2007, the Commission issued an order (April 2007 Order) granting Four Points water and wastewater certificates. The April 2007 Order also approved a November 2006 Settlement Agreement (Settlement Agreement) between the Utility and the Island Club West Homeowners Association (Island Club West HOA).³ The Settlement Agreement set forth several key conditions related to meters, communication between the Utility and its customers, customer billing, and the Utility's financial stability.

Per the April 2007 Order, the Commission also determined that Four Points erroneously increased its temporarily authorized rates from November 2006 to January 2007 to match an increase in Polk County's residential rates. The Utility failed to obtain Commission approval prior to increasing its rates. As a result, the Commission ordered the Utility to credit each customer's account for the amount of the unauthorized rates. The Commission declined to initiate a show cause proceeding but in so doing warned the utility "[h]owever, because this is the second time that Four Points has charged unauthorized rates, we admonish the utility that it must charge its Commission-approved rates and charges until authorized to change by this Commission, and that such apparent statutory and rule violations will not be tolerated in the future."

Following the issuance of the April 2007 Order, the Commission continued to receive complaints from customers regarding the Utility's billing and meter reading practices. By letter dated May 28, 2009, staff requested copies of meter reading logs and bills in response to 15 customer complaints. The Utility did not respond.

In August 2007, Four Point's owner began operating Bimini Bay Utilities to serve Bimini Bay. Bimini Bay Utilities operates as a reseller of water and wastewater services and currently claims to be exempt from Commission regulation, pursuant to Section 367.022(8), Florida Statutes (F.S.). On August 31, 2009, Bimini Bay Utilities filed an application for certificates to provide water and wastewater service and for authority to increase its rates and charges for water and wastewater services. This application is discussed in detail in staff's recommendation filed on October 6, 2011, in Docket No. 090424-WS.⁴

By letter dated September 25, 2009, Commission staff notified Four Points and Bimini Bay Utilities of apparent violations of Sections 350.113, 350.117, 366.06, 367.031, 367.081, and 367.091, F.S., 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 (F.A.C.), and possible implementation of show cause proceedings against Four Points, Bimini Bay Utilities, and Narcossee Utility, LLC.⁵ The violations pertained to operating without a certificate, charging unauthorized rates, failing to file an annual report, failing to pay regulatory assessment fees (RAF), and issuing inappropriate electric bills and liens. Four Points' owner, manager, and operations manager were advised by staff's September 25, 2009 letter that Section 367.161, F.S., provides in pertinent part:

³ See Order No. PSC-07-0280-PAA-WS, issued April 2, 2007, in Docket No. 050595-WS.

⁴ Docket No. 090424-WS, Application for certificates to provide water and wastewater service in Polk County by Bimini Bay Utilities Corporation.

⁵ The Utility later reported that the Narcossee project was an undeveloped piece of land and it would file an application for a certificate before providing service.

- (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. . . .

Four Points was advised that Commission staff would open a docket to initiate show cause proceedings if it did not correct the violations by October 19, 2009. Four Points' operations manager submitted a written response on October 7, 2009, indicating that Four Points had since filed the annual report, would pay the penalty for the late filing, and would pay the outstanding RAFs. The operations manager also discussed Four Points' unauthorized charges, claiming that the charges had either been discontinued in the past or never charged; and denying that there was anything to be fixed that had not already been fixed. Further, the response indicated that Bimini Bay Utilities was operating as a reseller and only charging its customers the cost of the water and wastewater from the County. Finally, as previously stated, the letter indicated that the Narcossee Utility, LLC project was an undeveloped piece of land, and that the utility would file an application for a certificate before providing service.

During 2010, Commission audit staff conducted specialized billing and financial audits of Four Points and Bimini Bay Utilities. The specialized billing audit of Four Points was conducted to investigate the Utility's billing, meter reading, and account reporting practices, for the eighteen months ended June 30, 2010. The Bimini Bay Utilities audit was conducted to assist staff with its review of Bimini Bay Utilities' certificate application; and covered the historical year ended June 30, 2010. APA issued its *Auditor's Report on Investigation into Billing, Meter Reading and Account Reporting Practices* (Billing Audit report) for Four Points on September 8, 2010. APA then issued its *Auditor's Report on Application to Receive Water and Wastewater Certificates* (Financial Audit report) for Bimini Bay Utilities on October 18, 2010.

On November 18 and 19, 2010, the Commission staff conducted noticed customer meetings at Island Club West. The purpose of the meetings was to provide customers with an opportunity to ask questions or offer comments regarding either Bimini Bay Utilities' application for certification or the quality of service provided by Bimini Bay Utilities and Four Points. At the customer meetings, the Commission staff heard from 21 Four Points and 7 Bimini Bay Utilities' customers who voiced their dissatisfaction with the services provided by both Four Points and Bimini Bay Utilities. Customers' were asked to identify which utility provided their water and wastewater services. Customer complaints alleged erroneous billing, inadequate

customer service, untimely processing of customer payments, improper service disconnections, incorrect meter readings, poorly constructed water and wastewater facilities, and inept management. The customers also complained about several issues outside of the Commission's jurisdiction such as building code violations and improper homeowners association charges.

On November 22, 2010, Commission staff initiated a compliance and management audit (Management Audit) of Four Points and Bimini Bay Utilities. The audit was triggered by a combination of the 30 complaints received at the November 2010 customer meetings, 54 additional formal complaints received by the Commission since 2007, and numerous informal complaints. On December 7, 2010, the Commission's Office of the General Counsel sent a letter to both Four Points and Bimini Bay Utilities notifying the utilities of apparent rule violations and stating APA's intent to investigate. As previously mentioned, APA reported audit staff's findings in the Management Audit report issued June 2011.

Prior to the release of the Management Audit report, Four Points' owner was given an opportunity to discuss the audit findings with audit staff in an exit interview. By letter dated May 31, 2011, the utilities' owner provided comments regarding some of the audit findings. The letter indicated that it was a partial response to the draft report and that the owner was working on additional responses to the remaining issues raised in the audit report. Neither Four Points nor Bimini Bay Utilities has since provided additional responses regarding the Management Audit. Commission staff does not believe the May 31, 2011 audit response letter adequately addresses the issues raised in the Management Audit report.

The following Issues 1-9 are staff's recommendation regarding Four Points' apparent violations of Commission rules and regulations and whether the Utility should be ordered to show cause why it should not be fined. Issue 10 discusses the comprehensive problem staff believes Four Points poses and staff's proposed solution to the problem. When evaluating staff's recommendation, a review of the Commission's authority regarding a utility's alleged violations of Commission rules, statutes, or orders is helpful.

Pursuant to Section 367.161(1), F.S., the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$5,000 for each such day a violation continues, if such entity 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 Chapter 367, F.S. Each day a violation continues is treated as a separate offense. Each penalty is a lien upon the real and personal property of the utility and is enforceable by the Commission as a statutory lien. If a penalty is also assessed by another state agency for the same violation, the Commission's penalty will be reduced by the amount of the other agency's penalty. As an alternative to the above remedies, Section 367.161(2), F.S., permits the Commission to amend, suspend, or revoke a utility's certificate for any such violation. Part of the determination the Commission must make in evaluating whether to penalize a utility is whether the utility willfully violated the rule, statute, or order. Section 367.161, F.S., does not define what it is to "willfully violate" a rule or order. In making similar decisions, the Commission has repeatedly held that utilities are charged

with the knowledge of the Commission's Rules and Statutes.⁶ In other words, a utility cannot excuse its violation because it "did not know."

Utilities are charged with the knowledge of the Commission's Rules and Statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled, In Re: Investigation into the Proper Application of Rule 25-14.003, Florida Administrative Code, Relating to Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and that this is distinct from an intent to violate a statute or rule."

The procedure followed by the Commission in dockets such as this is to consider the Commission staff's recommendation and determine whether or not the facts warrant requiring the utility to respond. If the Commission agrees with staff's recommendation, the Commission issues an Order to Show Cause (show cause order). A show cause order is considered an administrative complaint by the Commission against the utility. If the Commission issues a show cause order, the utility is required to file a written response, which response must contain specific allegations of disputed fact. If there are no disputed factual issues, the utility's response should so indicate. The response must be filed within 21 days of service of the show cause order on the respondent.

In recommending a penalty, staff reviews prior Commission orders. While Section 367.161, F.S., treats each day of each violation as a separate offense with penalties of up to \$5,000 per offense, staff believes that the general purpose of the show cause penalties is to obtain compliance with the Commission's rules, statutes, and orders. If a utility has a pattern of noncompliance with a particular rule or set of rules, staff believes that a higher penalty is warranted. If the rule violation adversely impacts the public health, safety, or welfare, staff believes that the sanction should be the most severe.

The utility has two options if a show cause order is issued. The utility may respond and request a hearing pursuant to Sections 120.569 and 120.57, F.S. If the utility requests a hearing, a further proceeding will be scheduled before the Commission makes a final determination on the matter. The utility may respond to the show cause order by remitting the fine. If the utility pays the fine, this show cause matter is considered resolved, and the docket closed.

In the event the utility fails to timely respond to the show cause order, the utility is deemed to have admitted the factual allegations contained in the show cause order. The utility's

⁶ See Order No. PSC-11-0250-FOF-WU, issued June 13, 2011, in Docket No. 100104-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.; Order No. PSC-07-0275-SC-SU, issued April 2, 2007, in Docket No. 060406-SU, In re: Application for staff-assisted rate case in Polk County by Crooked Lake Park Sewerage Company; and Order No. PSC-05-0104-SC-SU, issued January 26, 2005 in Docket Nos. 020439-SU and 020331-SU; In re: Application for staff-assisted rate case in Lee County by Sanibel Bayous Utility Corporation; In re: Investigation into alleged improper billing by Sanibel Bayous Utility Corporation in Lee County in violation of Section 367.091(4), Florida Statutes.

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failure to timely respond is also a waiver of its right to a hearing. If the utility does not timely respond, a final order will be issued imposing the sanctions set out in the show cause order. It should be noted that if the Commission commences revocation or suspension proceedings, the Commission must follow very specific noticing requirements set forth in Section 120.60, F.S., prior to revocation or suspension of a certificate.

Finally, staff notes that the Management Audit of Four Points included an audit of Bimini Bay Utilities. Certain Issues require discussion of findings that relate to both Bimini Bay Utilities and Four Points. Issue 6, in particular, draws upon the Management Audit's findings for both Bimini Bay Utilities and Four Points. However, any action the Commission takes in this docket must only be based upon Four Points' actions and not those of Bimini Bay Utilities. Any proposed action relating to audit findings regarding Bimini Bay Utilities is addressed by staff in its recommendation in Docket No. 090424-WS, filed for the October 18, 2011 Agenda Conference.

Discussion of Issues

Issue 1: Should Four Points Utility Corporation be ordered to show cause, in writing within 21 days, why it should not be fined for its apparent violation of Rule 25-30.145, F.A.C., regarding audit access to records?

Recommendation: Yes. Four Points Utility Corporation should be ordered to show cause, in writing within 21 days, why it should not be fined \$1,000 for failure to provide reasonable access to records for audit purposes as required by Rule 25-30.145, F.A.C. The show cause order should incorporate the conditions as set forth in staff's analysis. Further, the Utility should be warned and put on notice that failure to comply with Commission orders, rules, or statutes will again subject the Utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues or revocation of its certificate as set forth in Section 367.161, F.S. (Bennett, Jaeger, Golden)

Staff Analysis:

Rule Involved:

25-30.145 Audit Access to Records.

This rule addresses the reasonable access to utility and affiliate records provided for in Section 367.156(1), F.S., for the purposes of management and financial audits.

(1) The audit scope, audit program and objectives, and audit requests are not constrained by relevancy standards narrower than those provided by Section 367.156(1), F.S.

(2) Reasonable access means that company responses to audit requests for access to records shall be fully provided within the time frame established by the auditor. In establishing a due date, the auditor shall consider the location of the records, the volume of information requested, the number of pending requests, the amount of independent analysis required, and reasonable time for the utility to review its response for possible claims of confidentiality or privilege.

(3) In those instances where the utility disagrees with the auditor's assessment of a reasonable response time to the request, the utility shall first attempt to discuss the disagreement with the auditor and reach an acceptable revised date. If agreement cannot be reached, the utility shall discuss the issue with successive levels of supervisors at the Commission until an agreement is reached. If necessary, a final decision shall be made by the Prehearing Officer. If the audit is related to an undocketed case, the Chairman shall make the decision.

(4) The utility and its affiliates shall have the opportunity to safeguard their records by copying them or logging them out, provided, however, that safeguard measures shall not be used to prevent reasonable access by Commission auditors to utility or affiliate records.

(5) Reasonable access to records includes reasonable access to personnel to obtain testimonial evidence in response to inquiries or through interviews.

(6) Nothing in this rule shall preclude Commission auditors from making copies or taking notes. In the event these notes relate to documents for which the company has asserted confidential status, such notes shall also be given confidential status.

(7) Form PSC/APA 6 (2/95), entitled "Audit Document and Record Request/Notice of Intent" is incorporated by reference into this rule. This form is used by auditors when requests are formalized. This form documents audit requests, the due dates for responses, and all Notices of Intent to Seek Confidential Classification.

Factual Allegations

In January 2011, the Commission's Division of Auditing and Performance Analysis conducted its Management Audit of Four Points and Bimini Bay Utilities. In performing its audit, audit staff issued data requests for copies of completed customer complaint forms, customer complaint logs, customer bills, September 2010 disconnection notices, and a September 2010 disconnection list for Four Points. Audit staff made several unsuccessful attempts to obtain the information from the Utility's management. According to the Management Audit report, Four Points' management indicated that it had the records responsive to all data requests. Nonetheless, Four Points failed to provide documents responsive to those data requests.

The Commission audit staff also conducted its Billing Audit of Four Points. Billing Audit staff also reported problems with obtaining information from the Utility. According to the auditors, Four Points failed to respond to five audit requests made during the Commission's Billing Audit. Data Request numbers 25, 30, 33, 34, and 38 were made between July 27, 2010, and August 12, 2010. These included requests for complaints records, 2009 Annual Report explanations, the expected submission date of overdue RAFs, affiliate invoices, customer charges, and the status of certain credit card customer bill payments. Audit staff made a follow-up attempt via e-mail to obtain responses to the data requests. The Utility did not respond.

In its May 31, 2011 response letter to staff's Management Audit report, Four Points' owner claimed that responses to all of the issues raised in the Billing Audit had been provided, with the exception of the list of complaints, which could not be found, and Data Request 33.⁷ Furthermore, the letter stated that Data Request 33 was not included in the list the Utility received from the Commission. Staff disagrees with Four Points' claim.

Based upon these allegations, it is staff's opinion that Four Points has not complied with Rule 25-30.145, F.A.C., Audit Access to Records.

⁷ Data Request 33 asked the Utility when the RAF form would be completed and submitted.

Staff Recommendation

Pursuant to Rule 25-30.145, F.A.C., Commission staff is to have reasonable access to utility and affiliate records for the purposes of management and financial audits. Rule 25-30.145(2), F.A.C., states in part that "reasonable access means that company responses to audit requests for access to records shall be fully provided within the time frame established by the auditor." According to the Management Audit and Billing Audit reports, audit staff determined that Four Points has not complied with Rule 25-30.145, F.A.C., Audit Access to Records. Failure to cooperate with audit requests, whether intentional or not, handicaps the Commission's effectiveness and efficiency.

Utilities are charged with the knowledge of the Commission's Rules and Statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), F.S., authorizes the Commission to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S. By failing to provide the requested audit responses, Four Points' acts were "willful" in the sense intended by Section 367.161, F.S. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled, In Re: Investigation into the Proper Application of Rule 25-14.003, Florida Administrative Code, Relating to Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and that this is distinct from an intent to violate a statute or rule."

Accordingly, staff recommends that Four Points should be required to show cause, in writing within 21 days, why it should not be fined \$500 for its failure to provide responses to the Billing Audit staff's 2010 data requests and \$500 for its failure to provide responses to the Management Audit staff's 2011 data requests for a total of \$1,000 for its apparent failure to timely comply with the requirements of Rule 25-30.145, F.A.C. Staff recommends that the show cause order incorporate the following conditions:

1. This show cause order is an administrative complaint by the Florida Public Service Commission, as petitioner, against Four Points Utility Corporation, as respondent.
2. The Utility shall respond to the show cause order within 21 days of service on the Utility, and the response shall reference Docket No. 110254-WS, In re: Initiation of show cause proceedings against Four Points Utility Corporation in Polk County For violation of Commission rules and regulations as outlined in the Florida Public Service Commission's management audit for Four Points Utility Corporation and Bimini Bay Utilities Corporation issued June 2011.
3. The Utility has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, F.S., and to be represented by counsel or other qualified representative.
4. Requests for hearing shall comply with Rule 28-106.2015, F.A.C.

5. The Utility's response to the show cause order shall identify those material facts that are in dispute. If there are none, the petition must so indicate.
6. If Four Points files a timely written response and makes a request for a hearing pursuant to Sections 120.569 and 120.57, F.S., a further proceeding will be scheduled before a final determination of this matter is made.
7. A failure to file a timely written response to the show cause order will constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue.
8. In the event that Four Points fails to file a timely response to the show cause order, the fine will be deemed assessed and a final order will be issued.
9. If the Utility responds to the show cause order by remitting the fine, this show cause matter will be considered resolved, and the docket closed.

Furthermore, the Utility should be warned and put on notice that continued failure to comply with Commission orders, rules, or statutes will again subject the Utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues as set forth in Section 367.161, F.S. or revocation of its certificate as set forth in Section 367.161(2), F.S.

Issue 2: Should Four Points Utility Corporation be ordered to show cause, in writing within 21 days, why it should not be fined for failure to file annual reports, in apparent violation of Rule 25-30.110(3), F.A.C.?

Recommendation: Yes. Four Points should be ordered to show cause, in writing within 21 days, why it should not be fined in the amount of \$1,890 for failure to comply with Rule 25-30.110(3), F.A.C., regarding the filing of annual reports. The show cause order should incorporate the conditions as set forth in the staff's analysis. Additionally, Four Points should be required to pay a penalty of \$10 per additional day until the 2010 annual report is filed. (Bennett, Jaeger, Mouring)

Staff Analysis:

Rule Involved

Rule 25-30.110(3), F.A.C.

(3) ANNUAL REPORTS; FILING EXTENSIONS. Each utility shall file with the Commission annual reports on forms prescribed by the Commission. The obligation to file an annual report for any year shall apply to any utility which is subject to this Commission's jurisdiction as of December 31 of that year, whether or not the utility has actually applied for or been issued a certificate.

(a) The Commission shall, by January 15 of each year, send one blank copy of the appropriate annual report form to each utility company. The failure of a utility to receive a report form shall not excuse the utility from its obligation to timely file the annual report. An original and two copies of the annual reports shall be filed with the Commission on or before March 31 for the preceding year ending December 31. Annual reports are considered filed on the day they are postmarked or received and logged in by the Commission's Division of Economic Regulation in Tallahassee.

(b) An annual report is considered on file if it is properly addressed, with sufficient postage, and postmarked no later than the due date. If an annual report is sent by registered mail, the date of the registration is the postmark date. The registration is evidence that the annual report was delivered. If an annual report is sent by certified mail and the receipt is postmarked by a postal employee, the date on the receipt is the postmark date. The postmarked certified mail receipt is evidence that the return was delivered.

(c) A utility may file a written request for an extension of time with the Division of Economic Regulation no later than March 31. One extension of 30 days will be automatically granted upon request. A request for a longer extension must be accompanied by a statement of good cause and shall specify the date by which the report will be filed.

Factual Allegations

According to the Management Audit report, Four Points has demonstrated a history of failure to timely comply with Rule 25-30.110(3), F.A.C., Records and Reports; Annual Reports. The rule requires a utility to file its annual report or a request for extension of the filing time no later than March 31 for the preceding year ending December 31.

In 2009, Four Points failed to timely submit its 2008 Annual Report and did not request an extension for a late filing. The Commission notified Four Points of the delinquency on April 16, 2009. The Utility submitted the annual report on August 20, 2009 (142 days late), and remitted a late filing charge of \$426. In 2010, Four Points filed its 2009 Annual Report 6 days late in 2010 and failed to request an extension of the filing time. As a result, it was penalized \$18. The Utility's 2010 Annual Report was due March 31, 2011. To date, the Utility has not provided the required report. Commission staff notified the Utility by certified mail on April 13, 2011, and again on May 11, 2011, that it had failed to timely file its 2010 Annual Report. In its letter, Commission staff notified the Utility that continued failure to file the report may result in a show cause proceeding against the Utility and fines in addition to the \$3 per day fine established by rule.

Accordingly, Management Audit staff concluded that Four Points has not demonstrated timely compliance with Rule 25-30.110(3), F.A.C., Records and Reports; Annual Reports. Regulatory staff believes that Four Points has exhibited a history of disregard for regulatory compliance by filing annual reports late and by failing to file written requests with the Commission for extensions of filing time. The Utility owner's May 31, 2011 Management Audit response letter did not provide an explanation for the Utility's failure to timely file Four Points' annual reports.

Staff Recommendation

Utilities are charged with the knowledge of the Commission's Rules and Statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), F.S., authorizes the Commission to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S. By failing to timely file annual reports, Four Points' acts were "willful" in the sense intended by Section 367.161, F.S. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled, In Re: Investigation into the Proper Application of Rule 25-14.003, Florida Administrative Code, Relating to Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and that this is distinct from an intent to violate a statute or rule."

While Rule 25-30.110(7), F.A.C., establishes a \$3 per day penalty for failure to file an annual report by a Class C utility, subsection 25-30.110(6), F.A.C., provides the Commission with parameters to increase or decrease the penalty amount. Reasons provided by rule for increasing the penalty include flagrant disregard of the rule's requirements or repeated violations of the rule. The facts stated above indicate that the Utility has repeatedly violated the rule. Additionally, the Utility has been notified twice this year by Commission staff that the Utility is late in filing its annual report. The most recent certified letter was sent on May 11, 2011, and the Utility has not provided any response to staff's repeated requests. As of October 6, 2011, Four Points' 2010 annual report is 189 days late. While the penalty provided by Rule 25-30.110(7),

F.A.C., would result in a penalty of \$567, staff believes that the Utility's repeated violations and apparent flagrant disregard for the Commission's rules warrant an increase in the penalty to \$10 per day for failure to file an annual report. Therefore, staff recommends that Four Points be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$1,890 for failure to comply with Rule 25-30.110(3), F.A.C., regarding the filing of annual reports.

Staff recommends that the show cause order incorporate the following conditions:

1. This show cause order is an administrative complaint by the Florida Public Service Commission, as petitioner, against Four Points Utility Corporation, as respondent.
2. The Utility shall respond to the show cause order within 21 days of service on the Utility, and the response shall reference Docket No. 110254-WS, In re: Initiation of show cause proceedings against Four Points Utility Corporation in Polk County For violation of Commission rules and regulations as outlined in the Florida Public Service Commission's management audit for Four Points Utility Corporation and Bimini Bay Utilities Corporation issued June 2011.
3. The Utility has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, F.S., and to be represented by counsel or other qualified representative.
4. Requests for hearing shall comply with Rule 28-106.2015, F.A.C.
5. The Utility's response to the show cause order shall identify those material facts that are in dispute. If there are none, the petition must so indicate.
6. If Four Points files a timely written response and makes a request for a hearing pursuant to Sections 120.569 and 120.57, F.S., a further proceeding will be scheduled before a final determination of this matter is made.
7. A failure to file a timely written response to the show cause order will constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue.
8. In the event that Four Points fails to file a timely response to the show cause order, the fine will be deemed assessed and a final order will be issued.
9. If the Utility responds to the show cause order by remitting the fine, this show cause matter will be considered resolved, and the docket closed.

Additionally, Four Points should be required to pay \$10 per additional day until its 2010 annual report is filed.

Furthermore, the Utility should be warned and put on notice that continued failure to comply with Commission orders, rules, or statutes will again subject the Utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues, as set forth in Section 367.161, F.S., or revocation of its certificate as set forth in Section 367.161(2), F.S.

Issue 3: Should Four Points Utility Corporation be ordered to show cause, in writing within 21 days, as to why it should not be fined for its apparent violations of Rules 25-30.130, 25-30.355, and 25-22.032(3), F.A.C., regarding customer complaints?

Recommendation: Yes. Four Points should be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$21,750 for:

- failure to maintain a record of each signed, written customer complaint received by the Utility, as required by Rule 25-30.130, F.A.C.;
- failure to fully and promptly acknowledge and investigate all customer complaints and furnish replies to Commission staff's inquiries within 15 day from the date of the inquiry, as required by Rule 25-30.355, F.A.C.; and
- discontinuance of a customer's service because of an unpaid disputed amount before the complaint is closed by Commission staff, as prohibited by Rule 25-22.032(3), F.A.C.

The Order to show cause should incorporate the conditions as set forth in staff's analysis. Further, the Utility should be warned of the importance of complying with all Commission rules, statutes, and orders. (Bennett, Jaeger, Jones-Alexis)

Staff Analysis:

Rules Involved

25-30.130 Record of Complaints.

(1) Each utility shall maintain a record of each signed, written complaint received by the utility from any of that utility's customers.

(2) The record shall include the name and address of the complainant, the nature of the complaint, the date received, the result of the investigation, the disposition of the complaint and the date of the disposition of the complaint.

25-30.355 Complaints.

(1) A utility shall make a full and prompt acknowledgement and investigation of all customer complaints and shall respond fully and promptly to all customer requests.

(2) For the purpose of this rule the word "complaint" used in this rule shall mean an objection made to the utility by the customer as to the utility's charges, facilities or service, where the disposal of the complaint requires action on the part of the utility.

(3) Replies to inquiries by the Commission's staff shall be furnished within fifteen (15) days from the date of the inquiry and shall be in writing, if requested.

25-22.032 Customer Complaints.

(1) Intent; Application and Scope. It is the Commission's intent that disputes between regulated companies and their customers be resolved as quickly, effectively, and inexpensively

as possible. This rule establishes informal customer complaint procedures that are designed to address disputes, subject to the Commission's jurisdiction, that occur between regulated companies and individual customers. It provides for expedited processes for customer complaints that can be resolved quickly by the customer and the company. It also provides a process for informal Commission staff resolution of complaints that cannot be resolved by the company and the customer.

(2) Processing of Complaints.

(a) Any customer of a Commission regulated company may file a complaint with the Division of Service, Safety and Consumer Assistance whenever the customer has an unresolved dispute with the company regarding electric, gas, telephone, water, or wastewater service that is subject to the Commission's jurisdiction. The complaint may be communicated orally or in writing. The complaint shall include the name of the company against which the complaint is made, the name of the customer of record, and the customer's service address. Upon receipt of a complaint by telephone, Commission staff will determine if the customer has contacted the company.

(b) In the case of complaints made by telephone, if the customer agrees, Commission staff will put the customer in contact with the company for resolution of the complaint using the telephone transfer-connect system described in subsection (4), or by other appropriate means if the company does not subscribe to the telephone transfer-connect system. If the customer does not agree to be put in contact with the company, then, in the case of companies subscribing to the telephone transfer-connect system, staff will submit the complaint to the company for resolution in accordance with the provisions set forth in subsection (5).

(c) For those companies not subscribing to the telephone transfer-connect or to the E-mail transfer system described in subsection (4), staff will submit the complaint to the company for resolution in accordance with the provisions of subsection (6).

(3) Protection from Disconnection. During the complaint process described in subsections (5)-(9), a company shall not discontinue service to a customer because of any unpaid disputed amount until the complaint is closed by Commission staff. However, the company may require the customer to pay that part of a bill which is not in dispute. If the company and the customer cannot agree on the amount in dispute, Commission staff will make a reasonable estimate to establish an interim disputed amount until the complaint is closed by Commission staff. If the customer fails to pay the undisputed portion of the bill, the company may discontinue the customer's service pursuant to Commission rules.

Factual Allegations

History of Complaints

According to the Management Audit report, when compared on a per 100 customer basis, Four Points had more complaints during 2010 than any other Commission regulated water and wastewater utility. A comparison of the 5 water and wastewater utilities receiving the most complaints in 2010, showed that Four Points had the highest percentage of complaints per 100 customers, of 13.73 percent. Management Audit staff also analyzed complaints received and recorded in the Commission's Consumer Activity Tracking System (CATS) between 2007 and June 1, 2011 (see Attachment A). During this period, Four Points received 66 complaints, 54 of which have been closed by the Commission. The Utility failed to provide a response to the

Commission for 26 of the 54 closed complaints within 15 days, as required by Rule 25-30.355, F.A.C. During the period June 2 through September 30, 2011, the Commission received 10 additional complaints regarding Four Points. Six of those complaints have been closed by the Commission; one of which was closed because of the Utility's failure to respond to the Commission within 15 days, as required by rule.

Failure to Maintain Customer Complaint Records

Pursuant to Rule 25-30.130, F.A.C., each utility shall maintain a record of each signed, written complaint received by the utility from any of that utility's customers. By rule, the record is to include the name and address of the complainant, the nature of the complaint, the date received, the result of the investigation, the disposition of the complaint, and the date of the disposition.

According to the Management Audit report, Utility management acknowledged that inadequate attention was given to recording customer complaints, which were being recorded daily by Utility personnel in a complaint log. The log consisted of customer complaints received by Four Points by voicemail message. During Management Audit staff's December 2010 on-site visit, Utility management indicated that the Utility had recently implemented a new process to record and track the resolution of customer complaints. This new process, according to Utility management, entailed a customer completing a paper complaint form, of which the Utility intended to maintain a copy. In December 2010, Management Audit staff requested copies of customer complaint logs and completed customer complaint forms. However, Utility management did not provide copies of these records to Management Audit staff. (see Issue 1).

Staff believes Four Points has not demonstrated compliance with Rule 25-30.130, F.A.C. Regardless of Utility management's indication that a new complaint tracking process has been established, staff believes that the Utility has not demonstrated implementation of an effective formal process for recording and maintaining customer complaints.

Failure to Investigate and Respond to Complaints

Pursuant to Rule 25-30.355, F.A.C., a utility shall make a full and prompt acknowledgement and investigation of all customer complaints and shall respond fully and promptly to all customer requests. The rule also requires that replies to the Commission's inquiries shall be furnished within 15 days from the date of the inquiry.

The Management Audit report states that Four Points has no formal process for investigating and resolving customer complaints provided directly to the Utility. According to Utility management, a minimal amount of time is provided to personnel to resolve customer complaints each day. Furthermore, according to the Utility personnel's job descriptions, the manager is responsible for handling customer complaints received by both Four Points and Bimini Bay Utilities. The manager's job description indicates that he or she should spend an average of 20 minutes per complaint. Nevertheless, numerous customers have reported to Commission staff that days often pass before the Utility returns calls regarding complaints, if at all. This situation has led to an unusual degree of customer distrust and animosity toward Four Points. In addition, as evidenced by the extremely high number of complaints against the Utility

that the Commission has received, staff believes that the Utility's process for handling and responding to customer complaints is severely inadequate.

As previously mentioned, of the 54 closed complaints received and recorded in CATS between 2007 and June 1, 2011, Management Audit staff found that in 26 of the complaints the Utility failed to provide a response to the Commission within 15 days, pursuant to Rule 25-30.355, F.A.C. As previously stated, during the period June 2 through September 30, 2011, the Commission received 10 additional complaints regarding Four Points. Six of those complaints have been closed by the Commission, one of which was closed because of the Utility's failure to respond to the Commission within 15 days, as required by rule.

Staff believes Four Points has not demonstrated compliance with Rule 25-30.355, F.A.C. Staff believes the Utility has failed and continues to fail to make full and prompt investigations of all customer complaints. Additionally, staff believes the Utility has failed and continues to fail to provide a response to the Commission within 15 days for all customer complaints filed with the Commission.

Discontinuance of Service to Customers with Pending PSC Complaints

Pursuant to Rule 25-22.032(3), F.A.C., during the complaint process, a company shall not discontinue service to a customer because of any unpaid disputed amount until the complaint is closed by the Commission. However, the company may require the customer to pay that part of a bill which is not in dispute. If the company and the customer cannot agree on the amount in dispute, the Commission will make a reasonable estimate to establish an interim disputed amount until the complaint is closed by the Commission.

The Commission has received complaints from customers who have experienced discontinuance of service despite having filed a complaint with the PSC that was still in the process of being resolved by the Commission. Management Audit staff compared Four Points' open complaints to the limited number of disconnection lists that the Utility provided and found several examples of this occurrence, some of which concerned billing, additional deposits, and deposit refunds. In its report, Management Audit staff provided three specific examples of customers who were disconnected while a complaint was pending. Staff believes Four Points has not demonstrated compliance with Rule 25-22.032(3), F.A.C.

Staff Recommendation

Based on the above, staff believes Four Points is in violation of the following Commission rules:

- Rule 25-30.130, F.A.C., for failure to maintain a record of each signed, written customer complaint received by the Utility;
- Rule 25-30.355, F.A.C., for failure to fully and promptly acknowledge and investigate all customer complaints and furnish replies to Commission staff inquiries within 15 days from the date of the inquiry; and

- Rule 25-22.032(3), F.A.C., for discontinuance of a customer's service because of an unpaid disputed amount before the complaint is closed by Commission staff.

Utilities are charged with the knowledge of the Commission's Rules and Statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), F.S., authorizes the Commission to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S. By failing to maintain a record of each signed written complaint received, by failing to fully and promptly acknowledge and investigate customer complaints and reply to Commission staff, and by discontinuing a customer's service while a bill was disputed with the Commission, Four Points' acts were "willful" in the sense intended by Section 367.161, F.S. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled, In Re: Investigation into the Proper Application of Rule 25-14.003, Florida Administrative Code, Relating to Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and that this is distinct from an intent to violate a statute or rule."

Where available, staff looks to prior Commission Orders for guidance on the amount and type of fines for each violation. Order No. PSC-06-0349-SC-WS, issued April 25, 2006, in Docket No. 060057-WS, In re: Investigation into whether Lindrick Service Corporation should be ordered to show cause, involved a similar rule violation. The Commission penalized Lindrick for failure to properly handle customer complaints in violation of Rule 25-22.032, F.A.C. In the Lindrick docket, Commission staff conducted a study of Lindrick's practices. Staff issued a report, referred to as the 2005 report. Based in part on the report, the Commission found that Lindrick did not properly track its customer complaints and inquiries. The Commission also found that Lindrick did not accurately monitor and trend its customer complaints. In response, Lindrick argued that it did try to monitor and track the complaints, but then Lindrick agreed with the Commission that a more formal tracking system would be helpful. By the time of the issuance of the show cause order, Lindrick had taken several proactive steps to remedy the problems identified by staff in its 2005 report. Accordingly, the Commission fined Lindrick \$125 for its violations of Rule 25-22.032, F.A.C., which was a reduction of the original staff recommendation of \$250 for the violation.

Commission staff believes that there are significant distinctions between the Lindrick docket and this Four Points docket that warrant an increase of the \$125 penalty. Lindrick did not timely respond to 5 complaints. Four Points has not timely responded to 38 complaints (over 7 times the number of untimely responses as Lindrick). Lindrick worked with staff to establish a tracking system to correct its deficiencies, for which the Commission reduced the recommended penalty from \$250 to \$125. Four Points has not attempted to work with staff to correct its deficiencies. Rather Four Points has claimed it corrected the deficiencies but has not provided any proof of that correction, despite staff's requests for that proof (see Issue 1). Accordingly, staff believes that using prior Order No. PSC-06-0349-SC-WS, as a guide, Four Points should be

ordered to show cause, in writing within 21 days, why it should not be fined in the amount of \$1,750 (\$250 x 7) for failure to fully and promptly acknowledge and investigate all customer complaints and furnish replies to inquiries by Commission staff within 15 days from the date of the inquiry, as required by Rule 25-30.355, F.A.C.

Lindrick also found itself in difficulty with the Commission regarding its complaint logs. In its 1998 rate proceeding, the Commission found that Lindrick's quality of service was not satisfactory in part because of its failure to maintain adequate customer complaint logs.⁸ It should also be noted that Lindrick's quality of service was deemed unsatisfactory due to the operational condition of the utility's plant and facilities. The company's return on equity was reduced by 50 basis points for its failings in quality of service. The 50 basis point penalty on equity in that case translated to a \$1,092 reduction in the revenue requirement. Because Lindrick was in the process of making the required adjustments to its customer complaint logs during the pendency of the 1998 rate proceeding, the Commission required further monitoring of Lindrick's progress and required Lindrick to file an update within six months regarding complaint responsiveness (see Issue 10).

The Lindrick rate case is helpful for the Commission to understand its prior policy regarding the importance of the customer logs. However, the Lindrick rate case does not provide a monetary guide to the amount of any penalty to be assessed against the utility. This proceeding against Four Points is a show cause proceeding under Section 367.161, F.S., whereas Lindrick's was a rate case proceeding in which return on equity was at issue. Therefore, staff used a different show cause order in which the Commission penalized a utility for its failure to file interruption reports as required by Commission rule.

The Commission imposed a \$300 fine against Alturas Utilities, LLC in Order No. PSC-06-0532-SC-WU.⁹ On six different occasions over a one year period, Alturas failed to report water service interruptions to the Commission as required by Rule 25-30.251(2), F.A.C. Like Alturas, Four Points repeatedly violated a Commission reporting rule and claimed to have rectified the reporting problem. Unlike Alturas, Four Points has not demonstrated that it has in fact rectified its reporting failures.¹⁰ Accordingly, staff recommends that a higher penalty is appropriate to encourage the Utility to comply. The importance of a good complaint monitoring system and the significance of Four Points' failure to comply will become more apparent when this rule violation is considered in conjunction with the rule violations discussed in Issues 6 and 7, regarding customer billing problems and improper service disconnections.

In determining the amount of the penalty for violation of Rule 25-30.130, F.A.C., the Commission could start with the \$300 amount it established in the Alturas docket, and then, following the guidelines set forth in Section 367.161, F.S., consider each day the Utility violated the rule as a separate offense. The Commission could establish the date the violations

⁸ Order No. PSC-99-1883-PAA-SU, issued September 21, 1999, pp 26-27

⁹ Issued June 26, 2006, in Docket No. 060074-WU, In re: Initiation of show cause proceedings against Alturas Utilities, L.L.C. for apparent violation of Rule 25-30.251(2), F.A.C., Record and Report of Interruptions.

¹⁰ In December 2010, Commission auditors requested proof that the new system had been instituted. The auditors requested copies of customer complaints filed on the new forms. No copies were ever provided to the auditors. The auditors concluded that the new reporting system was not instituted.

commenced as the date the Utility failed to provide audit staff with the requested forms (December 15, 2010) and continue the penalty to the filing date of this recommendation. Using that methodology, Four Points would be ordered to show cause why it should not be fined in the amount of \$88,500 ($\300×295 days). Alternatively, the Commission could treat this as a one-time offense and set the penalty at \$5,000. Staff believes that the second alternative may be sufficient to gain Four Points' attention at this time, in light of the other fines staff is recommending in other issues. Accordingly, staff recommends that Four Points should be ordered to show cause, in writing within 21 days, why it should not be fined in the amount of \$5,000 for failure to maintain a record of each signed, written customer complaint received by the Utility, as required by Rule 25-30.130, F.A.C.

Finally, staff recommends that Four Points be ordered to show cause, in writing within 21 days, why it should not be fined in the amount of \$15,000 for discontinuance of service to three different customers because of an unpaid disputed amount before the complaint was closed by Commission staff, as prohibited by Rule 25-22.032(3), F.A.C. This represents the maximum statutorily-permitted fine for one day of each of three documented instances of violations. In recommending the maximum, staff is aware of a 1995 Commission decision in which a utility, Swiderski Utilities, was fined \$250 for improperly disconnecting a customer.¹¹ Commission staff believes that the 1995 docket is distinguishable from the instant docket. First, Swiderski Utilities believed the disconnected customer was outside of its service territory. Second, Swiderski Utilities sent the customer three separate certified letters requesting information prior to disconnection. Even with these mitigating circumstances, the Commission fined the utility for wrongfully disconnecting a customer. Commission staff believes that Four Points' disconnection of a customer when the customer has disputed a bill is a substantial violation, particularly in light of the problems customers have experienced with the Utility, as discussed above and in Issues 6 and 7. Therefore, staff is recommending a penalty of \$5,000 per customer to indicate to the Utility that it is imperative the Utility correct its procedure for the handling of customer complaints, disputes, as well as the Utility's interactions with the Commission.

In summation, staff recommends:

Four Points be ordered to show cause, in writing within 21 days, why it should not be fined in the amount of \$1,750 ($\250×7) for failure to fully and promptly acknowledge and investigate all customer complaints and furnish replies to inquiries by Commission staff within 15 days from the date of the inquiry, as required by Rule 25-30.355, F.A.C.

Four Points be ordered to show cause, in writing within 21 days, why it should not be fined in the amount of \$5,000 for failure to maintain a record of each signed, written customer complaint received by the Utility, as required by Rule 25-30.130, F.A.C.

Four Points be ordered to show cause, in writing within 21 days, why it should not be fined in the amount of \$15,000 for discontinuance of a customer's service because of an unpaid disputed amount before the complaint is closed by Commission staff, as prohibited by Rule 25-22.032(3), F.A.C.

¹¹ Order No. PSC-95-0510-FOF-WS, issued April 26, 1995, in Docket No. 940496-WS, In re: Application for staff assisted rate case in Lake County by J. Swiderski Utilities, Inc.

Staff recommends that the show cause order incorporate the following conditions:

1. This show cause order is an administrative complaint by the Florida Public Service Commission, as petitioner, against Four Points Utility Corporation, as respondent.
2. The Utility shall respond to the show cause order within 21 days of service on the Utility, and the response shall reference Docket No. 110254-WS, In re: Initiation of show cause proceedings against Four Points Utility Corporation in Polk County For violation of Commission rules and regulations as outlined in the Florida Public Service Commission's management audit for Four Points Utility Corporation and Bimini Bay Utilities Corporation issued June 2011.
3. The Utility has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, F.S., and to be represented by counsel or other qualified representative.
4. Requests for hearing shall comply with Rule 28-106.2015, F.A.C.
5. The Utility's response to the show cause order shall identify those material facts that are in dispute. If there are none, the petition must so indicate.
6. If Four Points files a timely written response and makes a request for a hearing pursuant to Sections 120.569 and 120.57, F.S., a further proceeding will be scheduled before a final determination of this matter is made.
7. A failure to file a timely written response to the show cause order will constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue.
8. In the event that Four Points fails to file a timely response to the show cause order, the fine will be deemed assessed and a final order will be issued.
9. If the Utility responds to the show cause order by remitting the fine, this show cause matter will be considered resolved, and the docket closed.

Furthermore, the Utility should be warned and put on notice that failure to comply with Commission orders, rules, or statutes will again subject the Utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues as set forth in Section 367.161, F.S., or revocation of its certificate as set forth in Section 367.161(2), F.S.

Issue 4: Should Four Points Utility Corporation be ordered to show cause, in writing, within 21 days, why it should not be fined for apparent violations of Rules 25-30.311(1), 25-30.311(4)(a)(b), 25-30.311(5) and (6), and 25-30.311(7), F.A.C., regarding customer deposits?

Recommendation: Yes. Four Points should be ordered to show cause, in writing within 21 days, why it should not be fined in the amount of \$30,375 for:

- failure to charge the tariffed rate for initial deposits, in violation of Sections 367.081(1) and 367.091(3), F.S.;
- failure to maintain a complete record of deposits, as required by Rule 25-30.311(3), F.A.C.;
- failure to pay a minimum interest on deposits of 6 percent per annum and maintain a record of such payments, as required by Rule 25-30.311(4)(a) and (b), F.A.C.;
- failure to refund deposits with accrued interest, as required by Rule 25-30.311(5) and (6), F.A.C.; and
- requiring additional deposits without reasonable written notice of not less than 30 days, as prohibited by Rule 25-30.311(7), F.A.C.

The show cause order should incorporate the conditions as set forth in staff's analysis. Further, the Utility should be warned of the importance of complying with all Commission rules, orders, and statutes. (Bennett, Jaeger, Jones-Alexis, Golden)

Staff Analysis:

Rule Involved

25-30.311 Customer Deposits.

(1) Deposit required; establishment of credit. Each company's tariff shall contain their specific criteria for determining the amount of initial deposit. Each utility may require an applicant for service to satisfactorily establish credit, but such establishment of credit shall not relieve the customer from complying with the utilities' rules for prompt payment of bills. Credit will be deemed so established if:

(a) The applicant for service furnishes a satisfactory guarantor to secure payment of bills for the service requested. A satisfactory guarantor shall, at a minimum, be a customer of the utility with a satisfactory payment record. A guarantor's liability shall be terminated when a residential customer whose payment of bills is secured by the guarantor meets the requirements of subsection (5) of this rule. Guarantors providing security for payment of residential customers' bills shall only be liable for bills contracted at the service address contained in the contract of guaranty.

(b) The applicant pays a cash deposit.

(c) The applicant for service furnishes an irrevocable letter of credit from a bank or a surety bond.

(2) Receipt for deposit. A non-transferrable certificate of deposit shall be issued to each customer and means provided so that the customer may claim the deposit if the certificate is lost.

(3) Record of deposits. Each utility having on hand deposits from customers shall keep records to show:

- (a) The name of each customer making the deposit;
 - (b) The premises occupied by the customer when the deposit was made;
 - (c) The date and amount of deposit; and
 - (d) A record of each transaction concerning such deposit.
- (4) Interest on deposit.

(a) Each public utility which requires deposits to be made by its customers shall pay a minimum interest on such deposits of 6 percent per annum. The utility shall pay an interest rate of 7 percent per annum on deposits of nonresidential customers qualifying under subsection (5) below when the utility elects not to refund such a deposit after 23 months.

(b) The deposit interest shall be simple interest in all cases and settlement shall be made annually, either in cash or by credit on the current bill. This does not prohibit any public utility paying a higher rate of interest than required by this rule. No customer depositor shall be entitled to receive interest on his deposit until and unless a customer relationship and the deposit have been in existence for a continuous period of six months, then he shall be entitled to receive interest from the day of the commencement of the customer relationship and the placement of deposit.

(5) Refund of deposits. After a customer has established a satisfactory payment record and has had continuous service for a period of 23 months, the utility shall refund the residential customer's deposits and shall, at its option, either refund or pay the higher rate of interest specified above for nonresidential deposits, providing the customer has not, in the preceding 12 months, (a) made more than one late payment of a bill (after the expiration of 20 days from the date of mailing or delivery by the utility), (b) paid with check refused by a bank, (c) been disconnected for nonpayment, or at any time, (d) tampered with the meter, or (e) used service in a fraudulent or unauthorized manner. Nothing in this rule shall prohibit the company from refunding at any time a deposit with any accrued interest.

(6) Refund of deposit when service is discontinued. Upon termination of service, the deposit and accrued interest may be credited against the final account and the balance, if any, shall be returned promptly to the customer but in no event later than fifteen (15) days after service is discontinued.

(7) New or additional deposits. A utility may require, upon reasonable written notice of not less than 30 days, such request or notice being separate and apart from any bill for service, a new deposit, where previously waived or returned, or an additional deposit, in order to secure payment of current bills; provided, however, that the total amount of the required deposit should not exceed an amount equal to the average actual charge for water and/or wastewater service for two billing periods for the 12-month period immediately prior to the date of notice. In the event the customer has had service less than 12 months, then the utility shall base its new or additional deposit upon the average monthly billing available.

Factual Allegations

Failure to Consistently Apply the Established Specific Criteria for Initial Deposits

Pursuant to Rule 25-30.311(1), F.A.C., a utility can require payment of an initial deposit for the satisfactory establishment of a customer's credit. By rule, a certificated utility's tariff shall contain the specific criteria for determining the amount of the initial deposit. Further, the rule states that credit will be deemed established if: (1) the applicant for service provides a satisfactory guarantor to secure payment of bills, which shall, at a minimum, be a customer of the utility with a satisfactory payment record; (2) the applicant pays a cash deposit; or (3) the applicant for service provides an irrevocable letter of credit from a bank or a surety bond.

Four Points' water tariff specifies that the Utility may charge an initial deposit equal to "two times the average bill for water." Similarly, the wastewater tariff allows an initial deposit equal to "two times the average bill for wastewater." It appears that Four Points may not have applied its tariff consistently among its customers, or calculated separate deposit amounts for water and wastewater services.

According to the Billing Audit report, customers were charged a combined initial deposit of \$50 for water and wastewater service beginning in September 2003, prior to the Utility's certification by the Commission in 2007. During May 2009, the Utility charged a \$35 initial deposit to some customers, but then changed the initial deposit amount to \$81. This resulted in some customers being charged an initial deposit that was approximately 131 percent higher than other customers' deposits within the exact same month. Effective February 2010, the Utility increased the initial deposit amount to \$120. Based upon a review of partial billing and usage records collected during the Billing and Management audits, staff has estimated the Utility's initial deposits to be approximately \$43 for water and \$71 for wastewater, for a combined deposit of \$114. Therefore, given a more detailed review of the Utility's billing records, we may find that an initial deposit of \$120 is reasonable and within the guidelines of the Utility's tariff. Nonetheless, it is troubling to staff that the Utility increased its initial deposits by nearly 243 percent within 10 months and charged customers significantly different initial deposit amounts within a single month. It should be noted that the Utility's last rate increase occurred in May 2008 due to a wastewater pass through rate adjustment, and therefore, does not appear to be directly linked to the Utility's May 2009 and February 2010 deposit increases.

For these reasons, it appears that during the four years since Four Points has been certificated by the Commission, the Utility has not been consistent in the amount of the initial deposit charged to new customers, and has not calculated separate deposits for water and wastewater service. Therefore, Four Points does not appear to be charging the deposits established in its tariff.

Maintaining a Complete Record of Deposits

Pursuant to Rule 25-30.311(3), F.A.C., a utility having customer deposits on hand shall keep records to show: (1) the name of each customer making the deposit; (2) the premises occupied by the customer when the deposit was made; (3) the date and amount of the deposit; and (4) a record of each transaction concerning such deposit.

Management Audit staff requested that Four Points provide a record of all current and refunded deposits as of December 2010. The Utility provided a record of its deposits and refunds from its billing system, QuickBooks. Management Audit staff found that the Utility's record contained customer names, addresses, dates of deposits, and amounts of deposits. However, Management Audit staff also determined that the record of deposits was incomplete, inaccurate, and, therefore, unreliable. For example, Four Points has been in existence since 2001, but the earliest transaction dates shown in the Utility's record of deposits and deposit refunds were in 2003.

Four Points appears to be in compliance with Rule 25-30.311(3), F.A.C., with respect to having deposit records, however, Management Audit staff questioned the adequacy and accuracy of those records. For purposes of this issue, therefore, regulatory staff is not recommending a show cause order for Rule 25-30.311(2) and (3), F.A.C. However, because of Management Audit staff's concern regarding the accuracy of those deposit records, regulatory staff recommends that if the Commission approves a Compliance Plan as addressed in Issue 10, Four Points should also give assurances that it will comply with subsections (2) and (3) of Rule 25-30.311, F.A.C.

Failure to Pay Interest on Deposits

Pursuant to Rule 25-30.311(4)(a), F.A.C., a public utility that requires deposits to be made by its customers shall pay a minimum interest on such deposits of 6 percent per annum. Furthermore, subsection (4)(b) requires that the deposit interest shall be simple interest in all cases and settlement shall be made annually, either in cash or by credit on the current bill.

Management Audit staff's review of Four Points' record of customer deposits revealed no entries that recorded interest on deposits and, subsequently, no annual interest payments or credits to customers' accounts. During Management Audit staff's on-site interviews with Utility personnel, Utility management acknowledged that interest on deposits has not been accrued.

Four Points has not demonstrated compliance with Rule 25-30.311(4)(a) and (b), F.A.C. Management Audit staff found no entries that recorded interest on deposits and no subsequent annual interest payments to customers. Additionally, Utility management acknowledged its failure to accrue interest on deposits.

Failure to Refund Deposits

Pursuant to Rule 25-30.311(5), F.A.C., after a customer has established a satisfactory payment record and has had continuous service for a period of 23 months, a utility shall refund a residential customer's deposits with accrued interest of 6 percent per annum. Subsection (6) of the rule states that upon termination of service, the deposit and accrued interest may be credited against the final account and the balance, if any, shall be returned promptly to the customer but in no event later than 15 days after service is discontinued.

During Management Audit staff's on-site interviews, Utility management acknowledged that deposits are not consistently being refunded to customers after 23 months of satisfactory payment record. Due to the multitude of errors that plague the Utility's billing system, as

discussed in Issue 7, Management Audit staff believes that the Utility cannot reliably determine whether a customer has established a satisfactory payment history. The Utility's billing-related errors include the use of incorrect formulas to calculate customer bills, the assignment of incorrect due dates on bills, and its failure to post or timely post customer payments.

Management Audit staff requested from Four Points records of all customer deposits on hand, retained more than 23 months, for customers with a satisfactory payment history. The Utility's records show that, as of December 2010, 83 customers are entitled to but have not been issued deposit refunds. Of these 83 customers, more than 75 percent of them should have received deposit refunds in 2009 or earlier. Some of these 83 should have received refunds in 2006 and 2007.

The deficient process whereby the Utility issues customer deposit refunds was also documented in the Billing Audit report, which contained schedules of customer deposits on hand as of December 31, 2008. The report also identified the following deficiencies and errors: (1) some deposit refunds were issued to customers but subsequent to the 23-month period; (2) some customers who have maintained service for over 23 months have not been issued deposit refunds; (3) some customers who terminated their service had been issued deposit refunds, although their accounts reflected outstanding balances; and (4) the Utility has neither accrued interest on deposits on hand nor paid interest upon refund of deposits.

The Billing Audit report recommended that Four Points comply with all provisions of Rule 25-30.311, F.A.C., including the requirement to refund customer deposits and pay interest on outstanding deposits at the authorized rate. The Utility indicated in December 2010 that it was still working toward the implementation of procedures to comply with Commission rules. As of the publication date of the Management Audit report, staff believes that little to no action has been taken to this end.

Four Points has not demonstrated compliance with Rule 25-30.311(5) and (6), F.A.C. The Utility has failed to refund deposits following 23 months of satisfactory payment record and has failed to pay customers a minimum interest of 6 percent per year. Furthermore, the Utility has not demonstrated that it has any formal policy or procedure that governs the process of refunding customer deposits.

Requiring Additional Deposits Without Reasonable Notice

Pursuant to Rule 25-30.311(7), F.A.C., a utility may require, upon reasonable written notice of not less than 30 days, such request or notice being separate and apart from any bill for service, a new deposit, where previously waived or returned, or an additional deposit, in order to secure payment of current bills. However, the total amount of the required deposit should not exceed an amount equal to the average actual charge for water and/or wastewater service for 2 billing periods for the 12-month period immediately prior to the date of notice. In the event the customer has had service less than 12 months, the utility shall base its additional deposit upon the average monthly billing available. While the rule does not describe specific conditions that may trigger the need for an additional deposit, it is generally accepted that additional deposits are only required if a customer has established a poor payment history or if high usage indicates that the utility is not adequately protected against nonpayment of bills for service.

According to the Billing Audit report, starting in February 2010 when the Utility increased its initial deposit to \$120, various amounts were collected from customers for additional deposits. Some of the amounts collected increased customers' existing deposits to the Utility's prior initial deposit amount of \$81, while others ranged from \$68 to \$197. It is permissible for a utility to charge varying amounts for additional deposits. Whereas an initial deposit is designed to reflect the average bills of the general body of ratepayers, an additional deposit is designed to be customer-specific, using that particular customer's average bills to calculate the additional deposit amount. However, because each additional deposit requires a specific calculation, the Utility should be able to produce documentation to support that there is a need for the additional deposit and how it was calculated.

According to the Management Audit report, audit staff analyzed customer complaints against Four Points regarding additional deposits and found several instances in which the Utility provided neither reasonable notice nor an explanation supporting the need for and calculation of the additional deposit. In most cases, the Utility specified that the additional deposit was due upon receipt of the invoice, rather than allowing at least 30 days as required by rule. Additionally, some customers were told that the Utility requires a customer to maintain a deposit which is equal to 1.5 times the average of 3 months of service, instead of 2 times the average of 12 months of service as specified in the rule. The complaints reviewed include the following:

- Complainant paid an initial deposit of \$200 in 2005, then was billed for and paid an additional deposit of \$86 in February 2010. Four Points provided no explanation as to why the additional deposit was required. The Utility subsequently credited the customer's account after the customer filed a complaint with the Commission.
- Complainant paid an initial deposit of an unknown amount in 2005. The customer was billed for an additional deposit of \$115 in February 2010, due upon receipt of the invoice. Four Points provided no explanation as to why the additional deposit was required. The Utility has yet to respond to the complaint and has exceeded the 15-day period in which to reply to the Commission's inquiry, as required by Rule 25-30.355, F.A.C. (see Issue 3)
- Complainant paid an initial deposit of \$200 in 2005, then was billed for an additional deposit of \$100 in February 2010, due upon receipt of the invoice. Four Points informed the customer that it has a policy of maintaining a deposit which is equal to 1.5 times the average of 3 months of service. This statement does not comply with the Utility's tariff, which states that the amount of the customer's initial deposit should be two times the average bill for water and wastewater services. The Utility claimed that it reviewed the customer's records and determined that there was a shortfall in the initial deposit amount. However, the Utility provided no specific explanation as to the alleged deposit shortfall. The Utility has yet to respond to the complaint and has exceeded the 15-day period in which to reply to the Commission's inquiry, as required by Rule 25-30.355, F.A.C. (see Issue 3).

- Complainant paid an initial deposit of \$35 in 2008, then was later billed for an additional deposit of \$74, due upon receipt of the invoice. Four Points informed the customer that it has a policy of maintaining a deposit which is equal to 1.5 times the average of 3 months of service. This statement does not comply with the Utility's tariff, which states that the amount of the customer's initial deposit should be two times the average bill for water and wastewater services. The Utility claimed that it reviewed the customer's records and determined that there was a shortfall in the initial deposit amount. However, the Utility provided no specific explanation as to the alleged deposit shortfall. Management Audit staff's examination of the Utility's customer balance report revealed an apparent retroactive credit to the customer's account to remove the additional deposit charge.

Staff believes that Four Points has not demonstrated compliance with Rule 25-30.311(7), F.A.C. It appears that when requiring additional deposits, the Utility has not provided customers with reasonable written notice of at least 30 days as required. Also, the Utility appears to have implemented a calculation methodology that is inconsistent with the Commission's methodology specified in the rule. In addition, when questioned regarding customer complaints, the Utility has failed to provide sufficient documentation to support the need for and calculation of the additional deposits, leading staff to further question whether the Utility has in fact conducted a customer-specific analysis prior to charging additional deposits.

Staff Recommendation

As indicated above, Four Points is in apparent violation of the following Commission statutes and rules:

- Sections 367.081(1) and 367.091(3), F.S., for failure to consistently charge the tariffed rate for initial deposit;
- Rule 25-30.311(4)(a) and (b), F.A.C., for failure to pay a minimum interest on deposits of 6 percent per annum and maintain a record of such payments;
- Rule 25-30.311(5) and (6), F.A.C., for failure to refund deposits with accrued interest; and
- Rule 25-30.311(7), F.A.C., for requiring additional deposits without reasonable written notice of at least 30 days.

Utilities are charged with the knowledge of the Commission's Rules and Statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), F.S., authorizes the Commission to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S. By failing to accurately handle customer deposits, Four Points' acts were "willful" in the sense intended by Section 367.161, F.S. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled, In Re:

Investigation into the Proper Application of Rule 25-14.003, Florida Administrative Code, Relating to Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that “[i]n our view, ‘willful’ implies an intent to do an act, and that this is distinct from an intent to violate a statute or rule.”

Failure to Consistently Apply the Established Specific Criteria for Initial Deposits

Section 367.091(3), F.S., requires “[e]ach utility's rates, charges, and customer service policies must be contained in a tariff approved by and on file with the commission.” While the utility has a tariff for initial deposits, Management Audit staff has documented numerous instances where the Utility has not correctly charged initial customer deposits as set out in its tariff. Further, the Billing Audit staff has documented that the Utility has been inconsistent in its initial deposits, increasing its initial deposits by nearly 243 percent in only 10 months, and charging different initial deposit amounts within a single month. Four Points has previously been fined \$5,000 for charging rates and charges not previously approved by the Commission.¹² In requiring Four Points to show cause why it should not be fined \$5,000 for violation of Section 367.091(3), F.S., the Commission stated “[w]e find this to be a reasonable sum which should serve to capture the utility’s attention and encourage the utility to comply with all Commission statutes and rules in the future.”¹³

The Utility has previously been warned in a prior show cause order to comply with Commission statutes and rules. More specifically, the Utility has been specifically put on notice that it may only charge the rates established in its tariff. Accordingly, staff believes that Four Points should be required to show cause, in writing within 21 days, as to why it should not be fined the amount of \$5,000 for its apparent violation of Section 367.091(3), F.S. for its failure to consistently apply the established specific criteria for initial deposits for water and wastewater set out in its tariff, as required by Sections 367.081(1) and 367.091(3), F.S.

Maintaining a Complete Record of Deposits

As stated above, Management Audit staff found no evidence that the Utility failed to maintain its deposit records as required by the rule, during the time the Utility has been certificated by the Commission. Accordingly, regulatory staff does not recommend that Four Points be required to show cause regarding its record keeping of deposits. However, if the Utility is required to file a Compliance Plan as discussed in Issue 10, staff recommends that the plan address compliance with Rule 25-30.311(3), F.A.C.

Failure to Pay Interest on Deposits and Failure to Refund Deposits

Also troubling is the Utility’s failure to pay interest to any customers since being granted certificates in March 2007, and its failure to return customer deposits. Staff has not been able to

¹² Order No. PSC-06-0753-SC-WS, issued September 6, 2006, in Docket No. 050595-WS, In re: Application to provide water and wastewater service in Polk County Florida by Four Points Utility Corporation.

¹³ Order No. PSC-06-0753-SC-WS, issued September 6, 2006, in Docket No. 050595-WS, p.4

find a Commission decision directly on point for these violations, but has found a similar set of facts where a utility failed to refund customer contributions-in-aid-of-construction as directed by the Commission. By Order No. PSC-00-1066-SC-WS,¹⁴ the Commission fined a utility \$400 per day for its failure to issue customer refunds. The total fine was \$26,000. The Commission subsequently accepted a settlement offer of \$21,000 payable to the customer.¹⁵ Similar to the JJ Mobile Homes docket, the Commission by rule requires all utilities to pay interest to customers on their deposits. That interest is customer money that is to be refunded to qualifying customers. Four Points has not accrued interests on deposits, has not credited the customers' accounts with interest, and when it does return customer deposits, has not paid the required interest. Therefore, like JJ's Mobile Homes, staff believes Four Points is failing to pay customers money as directed by the Commission. Commission staff also notes that the Utility has failed to timely return customer deposits. In many instances, the Utility has kept customer deposits well over the 23 month period prescribed by the rule. For one customer, the Utility did not return the deposit for five years.

If the Commission were to use Order No. PSC-00-1066-SC-WS as its guide to set the penalty for violations of subsections (4), (5), and (6) of Rule 25-30.311, F.A.C., at \$400 per day, Four Points' fine for these particular rule violations would well exceed \$700,000. Commission staff recommends that instead of \$400 per day, the fine be \$5,000 per year from 2007 to present for failing to provide interest on customer deposits and for failing to return customer deposits as required by this rule. Accordingly, staff recommends that Four Points be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$25,000 for its apparent violation of Rule 25-30.311(4)(a) and (b) requiring interest on customer deposits and refunds made annually and Rule 25-30.311(5) and (6) for failure to timely return customer deposits with interest.

Requiring Additional Deposits Without Reasonable Notice

Finally, Audit Staff tracked four complaints of customers who were charged additional deposits due upon receipt in apparent violation of Rule 25-30.311(7), F.A.C. The total deposit amount charged in violation of the rule was \$375. Accordingly, staff recommends that Four Points be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$375 for its apparent violation of Rule 25-30.311(7), F.A.C.

In summation, staff recommends that:

Four Points be required to show cause, in writing within 21 days, as to why it should not be fined the amount of \$5,000 for its apparent violation of Sections 367.081(1) and 367.091(3), F.S., for failure to consistently charge the tariffed rate for initial deposits.

Four Points be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$25,000 for its apparent violation of Rule 25-30.311(4)(a), and (b),

¹⁴ Order No. PSC-00-1066-SC-WS, issued June 5, 2000, in Docket No. 980954-WS, In re: Disposition of contributions-in-aid-of-construction (CIAC) gross-up funds collected during the years 12/31/92 through 12/31/96 by JJ's Mobile Homes, Inc. in Lake County.

¹⁵ Order No. PSC-00-1484-AS-WS, issued August 17, 2000, in Docket No. 980954-WS

F.A.C., requiring interest on customer deposits and refunds made annually and Rule 25-30.311(5) and (6), F.A.C., for failure to timely return customer deposits, with interest.

Four Points be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$375 for its apparent violation of Rule 25-30.311(7), F.A.C.

Staff recommends that the show cause order incorporate the following conditions:

1. This show cause order is an administrative complaint by the Florida Public Service Commission, as petitioner, against Four Points Utility Corporation, as respondent.
2. The Utility shall respond to the show cause order within 21 days of service on the Utility, and the response shall reference Docket No. 110254-WS, In re: Initiation of show cause proceedings against Four Points Utility Corporation in Polk County For violation of Commission rules and regulations as outlined in the Florida Public Service Commission's management audit for Four Points Utility Corporation and Bimini Bay Utilities Corporation issued June 2011.
3. The Utility has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, F.S., and to be represented by counsel or other qualified representative.
4. Requests for hearing shall comply with Rule 28-106.2015, F.A.C.
5. The Utility's response to the show cause order shall identify those material facts that are in dispute. If there are none, the petition must so indicate.
6. If Four Points files a timely written response and makes a request for a hearing pursuant to Sections 120.569 and 120.57, F.S., a further proceeding will be scheduled before a final determination of this matter is made.
7. A failure to file a timely written response to the show cause order will constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue.
8. In the event that Four Points fails to file a timely response to the show cause order, the fine will be deemed assessed and a final order will be issued.
9. If the Utility responds to the show cause order by remitting the fine, this show cause matter will be considered resolved, and the docket closed.

Additionally, staff recommends that the Utility be required to return all qualifying customers' deposits with interest in conformance to Rule 25-30.311(5) and (6), F.A.C., within 30 days of the date of this order. Further, staff recommends that within 45 days of the date of this order, the Utility should be required to provide supporting documentation to demonstrate that the refunds were completed, including documentation showing the Utility's analysis of its customer deposit records to determine which accounts were due a refund and which accounts were not; the name of each customer who was issued a deposit refund; each customer's service address; each customer's address where the refund was mailed if different than the service address; the date(s) each customer's initial and additional deposits were originally paid; the amount of the deposit refunded; the amount of interest included with the refund; the interest calculation including the interest rate and number of months used; the date the refund was issued; and form of payment used to issue the refunds. Commission staff also recommends that the Utility be directed,

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effective immediately, to accrue and pay interest on all remaining customer deposits as required by Rule 25-30.311(4), F.A.C., within 30 days of the date of this order, and to provide supporting documentation as discussed above, within 45 days of the date of this order.

Furthermore, the Utility should be warned and put on notice that failure to comply with Commission orders, rules, or statutes will again subject the Utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues as set forth in Section 367.161, F.S., or revocation of its certificate as set forth in Section 367.161(2), F.S.

Issue 5: Should Four Points Utility Corporation be ordered to show cause, in writing within 21 days, why it should not be fined for violating Rule 25-30.261, F.A.C., and Order No. PSC-07-0280-PAA-WS issued on April 2, 2007, in Docket No. 050595-WS, both regarding meter reading?

Recommendation: Although it does not appear that Four Points has violated Rule 25-30.261, F.A.C., regarding meter reading procedures; it does appear that Four Points has violated the meter reading requirements set forth in Order No. PSC-07-0280-PAA-WS, issued on April 2, 2007, in Docket No. 050595-WS. Four Points should be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$5,000 for failure to comply with the meter reading requirements set forth in Order No. PSC-07-0280-PAA-WS. The show cause order should incorporate the conditions as set forth in staff's analysis. In addition, Four Points should be required to provide evidence that it has implemented stricter controls to ensure meter reading accuracy as set forth in staff's analysis. (Bennett, Jaeger, Golden)

Staff Analysis:

Rule Involved

25-30.261 Meter Readings.

- (1) The utility shall read its service meters at regular intervals and, insofar as practicable within regularly scheduled work days, on the corresponding day of each meter reading period.
- (2) The utility shall read the register of each meter in the same units that the utility uses for billing purposes, except that a water meter may register in gallons or in cubic feet.
- (3) The service meters shall be marked to indicate the units measured by that meter.
- (4) The meter shall be marked with any constant or multiplier that the utility uses to determine the amount of service used by a customer.

Factual Allegations

According to the Management Audit report, audit staff concluded that Four Points appears to have complied with the meter reading procedures required by Rule 25-30.261, F.A.C., by reading customers' meters on a monthly basis. However, Management Audit staff questioned the accuracy of the meter readings completed by Four Points personnel. In addition, Management Audit staff concluded that it appears that Four Points has not demonstrated compliance with the meter reading provision in the Settlement Agreement with the Island Club West HOA, as adopted in Commission Order No. PSC-07-0280-PAA-WS, issued on April 2, 2007, in Docket No. 050595-WS.

Management Audit staff determined that Four Points and Bimini Bay Utilities currently employ 2 meter readers who are responsible for conducting readings on the same day each month for approximately 467 water meters that serve residents of Island Club West and Bimini Bay. These employees also perform all connections and disconnections of service, as well as, the maintenance work for the property and grounds of Bimini Bay.

The meter readers manually record the current month's readings in a pre-printed log created by the accounting personnel which contains the townhome unit number and the previous

month's readings. If the meter reader records an entry that exceeds the prior month's usage by 10,000 gallons or more, the meter reader is instructed to complete the reading again in case of possible errors. The meter readers are also provided with a list of customers whose service is to be disconnected for non-payment while they are reading meters. According to the meter readers' job descriptions, they are given 2.5 hours to read meters at Island Club West and 1.5 hours at Bimini Bay Resort and Spa. This time allotment equates to completing an average of one meter reading approximately every 60 seconds. A former employee of the utilities also asserted that meter readers are given an impossible amount of time to read hundreds of meters. As a result, meter readers submit inaccurate readings. Management Audit staff believes the meter readers are rushed and are not re-reading meters in case of possible errors.

After the meter readers complete the monthly readings, the logs are provided to the accounting personnel, who manually input them into an Excel spreadsheet. The accounting personnel then follow a checklist of steps to create a file containing the data, which is uploaded to QuickBooks, the Utility's billing system, in order to generate customer bills. According to Four Points' Billing Audit report, audit staff discovered significant data integrity issues related to the accounting personnel's uploading of meter reading data files to QuickBooks. Audit staff was unable to reconcile the total monthly usage obtained from the meter reading logs to the total monthly usage generated by the billing system. Four Points informed audit staff that some of the meter reading data files were corrupt.

Management Audit staff examined Four Points' and Bimini Bay Utilities' meter reading logs and found several instances of abnormally high meter readings. Utility records indicate that Four Points' customers use an average of 3,630 gallons each month. Nevertheless, 6 Four Points customers were shown to have exceeded a monthly usage of 25,000 gallons from July 2010 to October 2010. The meter readers reported that 3 customers had used 136,000, 145,000, and 160,000 gallons of water. In addition, the Commission has received complaints from customers regarding huge spikes in water usage, which the customers believe arise from erroneous meter readings. These customers usually contend that their usage is consistent from one month to another and that there has been no increase to the number of occupants in the unit. In these cases, the utilities' normal practice is to assert that the bill amount is correct with no further investigation. Management Audit staff found no evidence that meter readers leave a notice at a customer's residence or that a notice is mailed to a customer when abnormally high usage is observed. Further, the Utility's Billing Audit revealed 26 instances of negative readings (i.e., a meter reading *lower than* the prior month's reading) that occurred during the period January 1, 2009, through June 30, 2010. Four Points deemed 25 of these readings to be meter reading errors.

The Utility's management asserts that QuickBooks has built-in parameters or checkpoints to detect possible erroneous meter readings. If a customer's usage exceeds 10,000 gallons in any given month, the billing system will flag the customer's account for investigation. Similarly, a customer's account is flagged if monthly usage is negative (i.e., the current reading is less than the previous month's reading). When an account is flagged for investigation, the utilities' operations manager is instructed to check the customer's account for any abnormalities. Nevertheless, it appears that the Utilities' operations manager is not adequately investigating accounts flagged for investigation when a customer's usage exceeds 10,000 gallons. From July

to October 2010, Bimini Bay Utilities and Four Points had 59 meter readings that showed customer usage between 15,000 and 20,000 gallons and 46 readings in excess of 20,000 gallons. None of these customers' bills were adjusted prior to being presented for payment. Many were subsequently challenged by customers as incorrect.

Meter reading is fairly simple, yet the quantity and type of customer complaints regarding meter readings indicated to audit staff that the utilities' meter reading operations are problematic. In addition to meter readings being recorded incorrectly, it appears that customers are sometimes billed for usage associated with the wrong meter. The Management Audit report included examples of specific customer complaints related to meter reading problems, including several in which the meter serial number for which customers were billed did not match the serial number on their water meter.

The Billing Audit report recommended that Four Points incorporate the following:

Stricter control procedures when posting its readings to its customer accounts, use more diligence when transferring and reporting actual meter readings from the prior month to QuickBooks, and maintain accurate supporting documentation for reports being prepared.

In response to this recommendation, the Utility stated that it had implemented processes to maintain original reports and electronic billing records that are imported into QuickBooks and that it is performing daily backups of the server to reduce risk of losing records. Although the Utility has addressed the issue of retaining supporting documentation, Management Audit staff believes that Four Points continues to fail to use due diligence when transferring meter readings data to QuickBooks. A sample review comparing Four Points' and Bimini Bay Utilities' July through September 2010 meter reading logs to the readings manually entered into QuickBooks revealed 12 instances in which the accounting personnel transposed digits. Management Audit staff requested from Four Points more recent meter reading logs in order to perform further analysis of the accuracy of meter reading entries into the billing system. However, the Utility failed to provide these logs (see Issue 1).

As discussed in the case background, by Order No. PSC-07-0280-PAA-WS, the Commission granted water and wastewater certificates to Four Points, and approved the Settlement Agreement between Four Points and the Island Club West HOA,¹⁶ with the understanding that the Utility would adhere to key conditions of the Settlement Agreement. Three of those conditions centered on meter reading accuracy. One such condition states:

The Utility's meter reader is trained and instructed to take into account historic usage patterns when reading a meter. Where a meter reading shows abnormally high usage levels, the Utility's meter reader will re-read the meter, and, if it is correct, a note will be left at the customer's residence and also mailed to the customer instructing the customer to check for possible leaks within the unit.

¹⁶ Issued April 2, 2007, in Docket No. 050595-WS.

As previously stated, Management Audit staff found no evidence that meter readers leave a notice at a customer's residence or that a notice is mailed to a customer when abnormally high usage is observed. Accordingly, Management Audit staff concluded that it appears that Four Points has not demonstrated compliance with the meter reading provision in the Settlement Agreement with the Island Club West HOA, as adopted in Commission Order No. PSC-07-0280-PAA-WS.¹⁷ Staff believes that accuracy in meter reading is a reasonable expectation for customers. Furthermore, the Utility's management has problems retaining and training quality meter readers and accounting personnel to complete, record, and process readings.

Staff Recommendation

Based upon Management Audit staff's findings, it does not appear that Four Points has violated Rule 25-30.261, F.A.C., regarding meter reading procedures; however, stricter controls need to be implemented. It does appear that Four Points has violated the meter reading requirements set forth in Order No. PSC-07-0280-PAA-WS. The Order, which granted Four Points' certificates and approved the Settlement Agreement, specifically addressed the Utility's meter reading problems. Four Points' customers protested the Utility's application for certificates in part because they had concerns about the Utility's meter reading procedures.¹⁸ The Settlement Agreement, which purported to resolve the customers' concerns contained three separate provisions regarding meter reading. As previously discussed, it appears that Four Points is not complying with the Settlement Agreement which was adopted by the Commission's Order. Therefore, it appears that Four Points is in violation of Commission Order No. PSC-07-0280-PAA-WS. The Settlement Agreement, ratified by the Order, represents, in part, concessions made by customers in lieu of pursuing a remedy at hearing. Staff believes that this is sufficient reason to charge a penalty of \$5,000 for each year that there is evidence of the Utility failed to comply with the Settlement Agreement. For the year 2010 audit staff has documented the Utility's failure to properly commit sufficiently trained personnel to the function of meter reading. Staff believes that the Utility knew or should have known that its actions violated the Commission's Order since the Utility was involved in the Settlement Agreement and agreed to very specific terms for reading meters.

Section 367.161(1), F.S., authorizes the Commission to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S. By failing to abide by the terms of the Settlement Agreement, Four Points' acts were "willful" in the sense intended by Section 367.161, F.S. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled, In Re: Investigation into the Proper Application of Rule 25-14.003, Florida Administrative Code, Relating to Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and that this is distinct from an intent to violate a statute or rule."

¹⁷ Issued April 2, 2007, in Docket No. 050595-WS.

¹⁸ See Document No. 06523-06, filed July 25, 2006, in Docket No. 050595-WS

Accordingly, staff believes it has sufficient evidence for the year 2010 to recommend that Four Points be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$5,000 for failure to comply with the meter reading requirements set forth in Order No. PSC-07-0280-PAA-WS. Staff recommends that the show cause order incorporate the following conditions:

1. This show cause order is an administrative complaint by the Florida Public Service Commission, as petitioner, against Four Points Utility Corporation, as respondent.
2. The Utility shall respond to the show cause order within 21 days of service on the Utility, and the response shall reference Docket No. 110254-WS, In re: Initiation of show cause proceedings against Four Points Utility Corporation in Polk County For violation of Commission rules and regulations as outlined in the Florida Public Service Commission's management audit for Four Points Utility Corporation and Bimini Bay Utilities Corporation issued June 2011.
3. The Utility has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, F.S., and to be represented by counsel or other qualified representative.
4. Requests for hearing shall comply with Rule 28-106.2015, F.A.C.
5. The Utility's response to the show cause order shall identify those material facts that are in dispute. If there are none, the petition must so indicate.
6. If Four Points files a timely written response and makes a request for a hearing pursuant to Sections 120.569 and 120.57, F.S., a further proceeding will be scheduled before a final determination of this matter is made.
7. A failure to file a timely written response to the show cause order will constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue.
8. In the event that Four Points fails to file a timely response to the show cause order, the fine will be deemed assessed and a final order will be issued.
9. If the Utility responds to the show cause order by remitting the fine, this show cause matter will be considered resolved, and the docket closed.

Furthermore, the Utility should be warned and put on notice that failure to comply with Commission orders, rules, or statutes will again subject the Utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues as set forth in Section 367.161, F.S., or revocation of its certificate as set forth in Section 367.161(2), F.S.

Issue 6: Should Four Points Utility Corporation be ordered to show cause, in writing within 21 days, why it should not be fined for apparent violations of Rules 25-30.335(7), and 25-30.335(4), F.A.C., regarding customer billing?

Recommendation: Yes. Four Points should be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$7,000 for

- failure to maintain reliable customer billing records, as required by Rule 25-30.335(7), F.A.C.;
- for failing to charge its tariffed rates, as required by Section 367.091(3), F.S.; and
- improperly deeming customer accounts delinquent, as prohibited by Rule 25-30.335(4), F.A.C.

The show cause should incorporate the conditions as set forth in staff's analysis. Further, the Utility should be warned of the importance of complying with all Commission rules, orders, and statutes. (Bennett, Jaeger, Jones-Alexis)

Staff Analysis:

Rule Involved

25-30.335 Customer Billing.

(1) Except as provided in this rule, a utility shall render bills to customers at regular intervals, and each bill shall indicate: the billing period covered; the applicable rate schedule; beginning and ending meter reading; the amount of the bill; the delinquent date or the date after which the bill becomes past due; and any authorized late payment charge.

(2) If the utility estimates the bill, the utility shall indicate on the bill that the amount owed is an estimated amount.

(3) When service is rendered for less than 50 percent of the normal billing cycle, the utility shall prorate the base facility charges as though the normal billing cycle were 30 days, except that the utility may elect not to issue an initial bill for service if the service is rendered during a time period which is less than 50 percent of the normal billing cycle. Instead, the utility may elect to combine the amount owed for the service rendered during the initial time period with the amount owed for the next billing cycle, and issue a single bill for the combined time period. For service taken under flat rate schedules, 50 percent of the normal charges may be applied.

(4) A utility may not consider a customer delinquent in paying his or her bill until the 21st day after the utility has mailed or presented the bill for payment.

(5) Each utility shall establish each point of delivery as an independent customer and shall calculate the amount of the bill accordingly, except where physical conditions make it necessary to use additional meters or points of delivery for one class of service to a single customer on the same premises, or where such multiple meters or delivery points are used for the convenience of the utility.

(6) A utility may not incorporate municipal or county franchise fees into the amount indicated as the cost for service on the customer's bill. Rather, the utility shall show any such franchise fee as a separate item.

(7) The utility shall maintain a record of each customer's account for the most current 2 years so as to permit reproduction of the customer's bills during the time that the utility provided service to that customer.

(8) In the event of unauthorized use of service by a customer, a utility may bill the customer on a reasonable estimate of the service taken. In addition, the utility may assess a fee to defray the cost of restoring service to such a customer provided that the fee is specified in the utility's tariff.

(9) If a utility utilizes the base facility and usage charge rate structure and does not have a Commission authorized vacation rate, the utility shall bill the customer the base facility charge regardless of whether there is any usage.

Factual Allegations

Maintaining Accurate Customer Bills

Pursuant to Rule 25-30.335(7), F.A.C., a utility shall maintain a record of each customer's account for the most current 2 years so as to permit reproduction of the customer's bills during the time that the utility provided service to that customer.

Management Audit staff requested copies of customer bills for each month from March 2010 through July 2010. For the months requested, Four Points was unable to accurately reproduce bills with the correct outstanding balances. The Utility's billing system automatically reflected customers' current outstanding balances on the older bills that the Utility tried to reproduce in response to audit staff's request. For example, audit staff reviewed eight past bills retained by customers and compared them to the bills reproduced for the corresponding billing periods. Six of the bills reproduced by the Utility were inaccurate and reflected the customer's current outstanding balance. Two of the bills could not be reproduced by the Utility at all.

Four Points has failed to demonstrate compliance with Rule 25-30.335(7), F.A.C. The Utility's failure to maintain accurate customer bills is particularly problematic given its problems with posting customer payments, as further discussed in this issue.

Charging Rates Not Authorized by Tariff

Customers expect their water and wastewater bills to accurately reflect their actual current charges and outstanding balances. Sections 367.081(1) and 367.091(3), F.S. only permit a utility to charge its authorized rates. By producing inaccurate bills, the utility is not charging its authorized rate, in violation of the statutes. While staff believes occasional mistakes may be made by any utility, staff believes that making excessive mistakes demonstrates a disregard for a utility's obligation to charge its tariffed rates. Staff believes that because of the number of errors observed by both Management and Billing Audit staff and the number of complaints received by the Commission regarding billing errors, Four Points mistakes are excessive and therefore violate Sections 367.081(1) and 367.091(3), F.S.

Management Audit staff observed several mathematical inaccuracies in Four Points' customer bills. Evidence of the Utility's erroneous billing problems can also be found in complaints against Four Points received by the Commission's Consumer Complaints division

and recorded in CATS. Specific instances of customer complaints regarding inaccurate billing are listed below under the subheading *Improperly Deeming Customer Accounts Delinquent*. Those complaints include inaccurate billed amounts, inaccurate posting of customer payments, and inaccurate customer information. It should be noted that those specific customer complaints are included in the discussion below because they involved the Utility's improper disconnection of the customers' service. However, more examples of customer complaints regarding improper billing can be found in Attachment A, which lists 51 complaints.

Both Management and Billing Audit staff discovered Utility procedures which led to improper billing. While this recommendation only addresses Four Points' violations of Commission rules and statutes, it is necessary in this issue to discuss the findings of the audit staff for both Bimini Bay Utilities and Four Points because the employees, procedures, computer software, and billing systems are the same and lead to the same billing problems for both utilities. A variety of issues combine to produce a high degree of errors in customer billing for both Four Points and Bimini Bay Utilities. The meter readers misread meters (see Issue 5). The accounting personnel's use of an Excel spreadsheet is problematic because they lack proper training and proper supervision, which results in erroneous billing. The Utility's high rate of employee turnover exacerbates its billing problems (see Issue 10).

The Utility's process of generating a customer bill begins with collecting usage data. As previously discussed, Four Points and Bimini Bay Utilities currently employ 2 meter readers responsible for conducting readings on the same day each month for approximately 467 water meters that serve residents of Island Club West and Bimini Bay. The meter readers have an average of 60 seconds to complete and record each reading on a pre-printed log provided by the accounting personnel; staff notes that usage recording errors may occur due to the fact that readings are manually recorded and that meter readers have approximately 60 seconds to complete and record each reading.

Once the meter reader has completed the log, the accounting personnel manually input the readings into an Excel spreadsheet, create a file containing the data, and upload the file to QuickBooks to generate customer bills. Utility management has estimated that the accounting personnel are able to dedicate only 20 minutes to inputting each month's meter readings. Furthermore, erroneous billing may occur as a result of data input errors by the accounting personnel. The Utility's failure to establish checks and balances, in which bills that are produced by one employee are reviewed by another employee before being presented to customers, may result in the Utility presenting erroneous bills to customers. For example, in September 2010, a meter reading provided to the accounting personnel for one of the Utility's customers was reflected on the customer's bill as 391,230. This reading should have been 301,230. As a result, the customer was incorrectly billed for 93,350 gallons rather than 3,350 gallons.

The Management Audit's review is consistent with that of the Billing Audit. The Billing Audit report recommended that the Utility incorporate stricter controls in posting meter readings to customers' accounts, use more diligence when transferring meter reading data to QuickBooks and reporting the same, and maintain accurate supporting documentation for reports.

Staff believes that the Utility's billing controls and procedures are inadequate to produce reliable bills, and this inadequacy contributes to the Utility's poor relationship with its

customers. If the Utility is unable to generate reliable bills, it cannot be certain that its rates are those authorized by the Commission. Accordingly, staff believes that Four Points is in violation of Sections 367.081(1) and 367.091(3), F.S.

Improperly Deeming Customer Accounts Delinquent

Pursuant to Rule 25-30.335(4), F.A.C., a utility may not consider a customer delinquent in paying his or her bill until the 21st day after the utility has mailed or presented the bill for payment. Both Management and Billing Audit staff observed instances in which the Utility improperly deemed a customer account delinquent. Moreover, the Commission's CATS lists numerous improper billing and improper disconnection complaints (see Attachment A).

Management Audit staff learned that all customer bill payments (for both Four Points and Bimini Bay Utilities) are to be presented to the Utility's receptionist/deposit clerk. Payments received are then recorded in QuickBooks. The deposit clerk prepares the deposit and posts the payments to the respective customer account. Appropriately, the deposit clerk's responsibilities do not include completing bank reconciliations or billing-related tasks; rather, these tasks are performed by other Utility personnel. Utility management stated that in addition to processing cash and checks, the deposit clerk is responsible for recording the Utility's receipt of credit card payments on a daily basis. Throughout each work day, the deposit clerk also performs various other tasks related to the Utility owner's non-utility businesses.

The Billing Audit discussed problems in the Utility's procedure for recording customers' payments. In their analysis of bank statements from January 2009 through June 2010, audit staff discovered three occasions on which the Utility processed bank deposits that included payments collected from a particular customer but did not post these payments to the customer's payment record. The Utility did provide audit staff with a Customer Balance Detail sheet which showed credits to customers' accounts for payments collected, even though these credits were not included in the customers' payment records. Audit staff also noted numerous instances in which the payment amount reflected in the customer's payment record was not included in the deposits reflected in the Utility's bank statements. The Utility explained that it was using another company to process credit card payments and, as a result, those payments were not posting to the Utility's account timely. Billing Audit staff recommended that the Utility make several corrections to its bill and account posting process, including incorporating stricter internal controls in its cash processing, expanding its monthly bank reconciliation process to allow more detailed reporting for credit card transactions, and immediately depositing into the Utility's bank account the monies collected by other entities upon processing by the respective credit card companies. Management Audit staff concurred with these recommendations.

In response to the Billing Audit, Utility management claims to have improved its controls in posting customers' payments. However, during on-site observations and interviews, Management Audit staff observed that customers' credit card payments were not being timely posted in QuickBooks. For example, a batch of credit card payments had been misplaced for several days. As a result, the Utility failed to properly and timely update the appropriate customers' accounts, and QuickBooks triggered "Notice of Disconnect" letters that were then erroneously presented to these customers. Had this error gone undetected, these customers may have had their services discontinued despite their accounts being current. Furthermore,

customers often experience difficulty in contacting Utility representatives, which has and may continue to result in an unreasonable and unjust delay in restoration of a customer's improperly discontinued service, as prohibited by Rule 25-30.320(3), F.A.C.

The Commission has also received numerous complaints regarding payments made by customers but not credited to their accounts. Nearly all of the 66 complaints received and recorded in CATS between 2007 and June 1, 2011, include reference to improper billing. Of the ten complaints received and recorded in CATS between June 2 and September 30, 2011, nine include reference to improper billing. Following are specific examples regarding inaccuracies and the Utility's failure to post bill payments:

- Complainant (Four Points customer) states that his account is constantly credited incorrectly (the Utility confuses his account with that of another customer who shares his last name), bills are difficult to read, and bills don't reflect credits for payments made and received by the Utility. Additionally, the complainant used the Utility's pay-by-phone credit card feature to pay his bill; however, the Utility denied receipt of his payment. The Utility has yet to respond to the complaint and has exceeded the 15-day period in which to reply to the Commission's inquiry, as required by Rule 25-30.355, F.A.C.
- Complainant (Four Point's customer) states that the Utility sent notices to customers regarding unpaid five- and six-year-old balances and threatened to disconnect utility services if they remained unpaid. Complainant spoke with Utility personnel, who claimed the notices were sent due to a computer error. According to the complainant, some customers paid the alleged unpaid balances for fear of disconnection. The Utility has yet to respond to the complaint and has exceeded the 15-day period in which to reply to the Commission's inquiry, as required by Rule 25-30.355, F.A.C. (see Issue 3)
- Complainant (Four Points customer) states that the initial utility bill was in excess of \$200. The Utility informed the complainant that the bill was for a prior tenant's usage and the amount would be credited to the complainant's account. The complainant was told by the Utility to delay payment until the account was corrected. The Utility failed to subsequently contact the complainant regarding the account correction. The complainant then received a bill in the amount of \$190 and submitted payment to the Utility; however, the complainant received a disconnection notice due to alleged nonpayment. In response to the complaint, the Utility indicated that it was unable to locate a bill for utility service exceeding \$200.

Staff believes that Four Points has not demonstrated compliance with Rule 25-30.335(4), F.A.C. The Utility does not have adequate controls to ensure that all payments received are promptly and accurately recorded. Staff believes that the Utility should have basic internal controls and procedures established for accounts receivable and related revenues. These procedures should ensure that all payments received – whether by cash, check, or credit card – are promptly and accurately recorded.

Staff Recommendation

As indicated above, staff recommends that the Commission find that Four Points is in apparent violation of the following Commission rules and statutes:

- Rule 25-30.335(7), F.A.C., for failure to maintain reliable customer billing records;
- Section 367.081, and 367.091(3), F.S., for not charging its tariffed rates; and
- Rule 25-30.335(4), F.A.C., for improperly deeming customer accounts delinquent.

Utilities are charged with the knowledge of the Commission's Rules and Statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), F.S., authorizes the Commission to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S. By failing to accurately and correctly handle customer billing as the rules require, Four Points' acts were "willful" in the sense intended by Section 367.161, F.S. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled, In Re: Investigation into the Proper Application of Rule 25-14.003, Florida Administrative Code, Relating to Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and that this is distinct from an intent to violate a statute or rule."

Maintaining Accurate Customer Bills

Staff believes that Four Points' failure to maintain customer records in accordance with Rule 25-30.335(7), F.A.C., is comparable to failure to maintain books and records in conformance with NARUC USOA. There are several Commission orders in which utilities are fined for failure to maintain books and records in conformance with NARUC USOA ranging from \$1,000 (Useppa Utility)¹⁹ to \$3,000 (Utilities, Inc.)²⁰ Staff believes that the fine in the Useppa Utility docket most closely aligns itself with the facts of this particular docket in that Four Points is also a Class C utility. Useppa Utility had been specifically warned previously that it must keep its books in accordance with NARUC USOA. Four Points notice includes a letter from staff, the Management Audit report, and Rule 25-30.335(7), F.A.C. According to prior orders, the existence of a rule is sufficient notice to charge the Utility with knowledge that it

¹⁹ See Order No. PSC-07-0385-SC-WS, issued May 1, 2007, in Docket No. 060575-WS, In re:Useppa Island Utility, Inc. (Class C Utility, circumstances mitigate reduction from \$3,000 fine imposed on other utilities.)

²⁰ See Order No. PSC-07-0505-SC-WS, issued June 13, 2007, in Docket No. 060253-WS (Class A Utility, numerous prior admonishments to keep books in accordance with NARUC standards); Order No. PSC-03-0647-PAA-WS, issued May 28, 2003 in Docket No. 020407 (Class B utility. By separate order, fine not imposed); and Order No. PSC-00-1528-PAA-WU, issued August 23, 2000, in Docket No. 991437-WU (Class B utility, Settlement Agreement subsequently removed fine.)

must keep its records as specified by that rule. In the Useppa Utility docket, prior to the date of the show cause order, Useppa Utility had begun keeping its books in accordance with NARUC USOA. Four Points has not corrected its recordkeeping. Accordingly, staff recommends that Four Points should be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$1,000 for its apparent violation of Rule 25-30.335(7), F.A.C., for failure to maintain reliable customer billing records.

Charging Rates Not Authorized by Tariff

Staff believes that Four Points' issuance of improper bills results in customers being charged rates which are not authorized by the Utility's tariff, in violation of Section 367.081(1) and 367.091(3), F.S. There are three prior show cause orders addressing similar factual circumstances. The fines approved by these orders range from \$300 to \$10,000.²¹ Staff believes the 2006 Four Points show cause order, in which the utility was fined \$5,000 for charging unauthorized rates and charges, is most applicable to the instant docket. Accordingly, staff recommends that Four Points should be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$5,000 for its apparent violation of Section 367.081(1) and (2), F.S., for charging unjust, unreasonable, and unfair rates.

Improperly Deeming Customer Accounts Delinquent

Staff believes that improperly deeming an account delinquent in violation of Rule 28-20.335(4), F.A.C., can lead to improper disconnections, as discussed in Issue 7. Staff believes this results from a failure in recordkeeping, as previously discussed. Staff recommends that the \$1,000 penalty applied by the Commission in the Useppa Island Utility, Inc. docket is comparable to Four Points' apparent violation of Rule 28-20.335(4), F.A.C. Accordingly, staff recommends that Four Points should be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$1,000 for its apparent violation of Rule 25-30.335(4), F.A.C., for improperly deeming customer bills delinquent.

In summation:

Staff recommends that Four Points should be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$1,000 for its apparent violation of Rule 25-30.335(7), F.A.C., for failure to maintain reliable customer billing records.

Staff recommends that Four Points should be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$5,000 for its apparent violation of Section 367.081(1) and 367.091(3), F.S., for charging unauthorized rates.

Staff recommends that Four Points should be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$1,000 for its apparent violation of Rule 25-30.335(4), F.A.C., for improperly deeming customer bills to be delinquent.

²¹ See Order No. PSC-03-0699-PAA-SU, issued June 9, 2003, in Docket No. 020439-SU, In re: Sanibel Bayous Utility; Order No. PSC-06-0753-SC-WS, issued September 6, 2006, in Docket No. 050595-WS, In re: Four Points Utilities; and Order No. PSC-02-1250-SC-SU, issued September 11, 2001, in Docket No. 020413-SU, In re: Aloha Utilities.

Staff recommends that the show cause order incorporate the following conditions:

1. This show cause order is an administrative complaint by the Florida Public Service Commission, as petitioner, against Four Points Utility Corporation, as respondent.
2. The Utility shall respond to the show cause order within 21 days of service on the Utility, and the response shall reference Docket No. 110254-WS, In re: Initiation of show cause proceedings against Four Points Utility Corporation in Polk County For violation of Commission rules and regulations as outlined in the Florida Public Service Commission's management audit for Four Points Utility Corporation and Bimini Bay Utilities Corporation issued June 2011.
3. The Utility has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, F.S., and to be represented by counsel or other qualified representative.
4. Requests for hearing shall comply with Rule 28-106.2015, F.A.C.
5. The Utility's response to the show cause order shall identify those material facts that are in dispute. If there are none, the petition must so indicate.
6. If Four Points files a timely written response and makes a request for a hearing pursuant to Sections 120.569 and 120.57, F.S., a further proceeding will be scheduled before a final determination of this matter is made.
7. A failure to file a timely written response to the show cause order will constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue.
8. In the event that Four Points fails to file a timely response to the show cause order, the fine will be deemed assessed and a final order will be issued.
9. If the Utility responds to the show cause order by remitting the fine, this show cause matter will be considered resolved, and the docket closed.

Furthermore, the Utility should be warned and put on notice that failure to comply with Commission orders, rules, or statutes will again subject the Utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues as set forth in Section 367.161, F.S., or revocation of its certificate as set forth in Section 367.161(2), F.S.

Issue 7: Should Four Points Utility Corporation be ordered to show cause in writing within 21 days of the order, why it should not be fined for failure to comply with Rule 25-30.320, F.A.C., regarding the refusal and discontinuance of service?

Recommendation: Yes. Four Points should be ordered to show cause, in writing within 21 days, why it should not be fined in the amount of \$5,000 for failure to comply with Rule 25-30.320, F.A.C., regarding refusal and discontinuance of service. The show cause order should incorporate the conditions as set forth in staff's analysis. (Bennett, Jaeger, Golden)

Staff Analysis:

Rule Involved

25-30.320 Refusal or Discontinuance of Service.

(1) Until adequate facilities can be provided, a utility may refuse to serve an applicant if, in the best judgment of the utility, it does not have adequate facilities, or supply to render the service applied for, or if the service is of character that is likely to affect unfavorably service to other customers.

(2) As applicable, the utility may refuse or discontinue service under the following conditions provided that, unless otherwise stated, the customer shall be given written notice and allowed a reasonable time to comply with any rule or remedy any deficiency:

(a) For noncompliance with or violation of any state or municipal law or regulation governing such utility service.

(b) For failure or refusal of the customer to correct any deficiencies or defects in his piping or equipment which are reported to him by the utility.

(c) For the use of utility service for any other property or purpose than that described in the application.

(d) For failure or refusal to provide adequate space for the meter or service equipment of the utility.

(e) For failure or refusal to provide the utility with a deposit to insure payment of bills in accordance with the utility's regulation.

(f) For neglect or refusal to provide reasonable access to the utility for the purpose of reading meters or inspection and maintenance of equipment owned by the utility.

(g) For nonpayment of bills, including nonpayment of municipal sewer service under circumstances specifically provided in Section 159.18(2), F.S., or noncompliance with the utility's rules and regulations in connection with the same or a different type or a different class of utility service furnished to the same customer at the same premises by the same or affiliated utility only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customers. Such notice shall be separate and apart from any bill for service. For purposes of this subsection, "working day" means any day on which the utility's office is open and the U.S. Mail is delivered. A utility shall not, however, refuse or discontinue service for nonpayment of a dishonored check service charge imposed by the utility.

(h) Without notice in the event of a condition known to the utility to be hazardous.

(i) Without notice in the event of tampering with regulators, valves, piping, meter or other facilities furnished and owned by the utility.

(j) Without notice in the event of unauthorized or fraudulent use of service. Whenever

service is discontinued for fraudulent use of such service, the utility, before restoring service, may require the customer to make at his own expense all changes in piping or equipment necessary to eliminate illegal use and to pay an amount reasonably estimated as the deficiency in revenue resulting from such fraudulent use. Service shall not be discontinued if, prior to the arrival of the utility to discontinue service, the customer has:

1. Paid for all fraudulent use of service;
2. Demonstrated the fraudulent use has ceased;
3. Paid all other applicable fees and charges; and
4. The service condition allowing fraudulent use of service has been corrected.

(3) Service shall be restored when cause for discontinuance has been satisfactorily adjusted.

(4) In case of refusal to establish service, or whenever service is discontinued, the utility shall notify the applicant or customer in writing of the reason for such refusal or discontinuance. In all instances involving refusal or discontinuance of service the utility shall advise in its notice that persons dissatisfied with the utility's decision to refuse or discontinue service may register their complaint with the utility's Customer Relations Personnel and to the Florida Public Service Commission at 1(800)342-3552, which is a toll free number.

(5) The following shall not constitute sufficient cause for refusal or discontinuance of service to an applicant or customer:

(a) Delinquency in payment for service by a previous occupant of the premises unless the current applicant or customer occupied the premises at the time the delinquency occurred and the previous customer continues to occupy the premises and such previous customer will receive benefit from such service.

(b) Failure to pay for appliances or equipment purchased from the utility.

(c) Failure to pay for a different class of service, except where two or more classes of service are rendered to the same customer at the same premises.

(d) Failure to pay the bill of another customer as guarantor thereof.

(e) Failure to pay a dishonored check service charge imposed by the utility.

(6) No utility shall discontinue service to any customer, between 12:00 noon on a Friday and 8:00 a.m. the following Monday or between 12:00 noon on the day preceding a public holiday and 8:00 a.m. the next working day; provided, however, that this prohibition shall not apply when:

(a) Discontinuance is requested by or agreed to by the customer; or

(b) A hazardous condition exists; or

(c) Meters or other utility-owned facilities have been tampered with; or

(d) Service is being obtained fraudulently or is being used for unlawful purposes.

Factual Allegations

According to the Management Audit report, it appears that Four Points has not demonstrated compliance with Rule 25-30.320, F.A.C., Refusal and Discontinuance of Service. Pursuant to Rule 30.320(2)(a) - (j), F.A.C., a utility has the right to refuse or discontinue a customer's service under very specific conditions enumerated in the rule. According to the rule, customers have a reasonable amount of time to resolve the issue at hand. The rule requires a utility to give written notice of five working days, separate and apart from any bill, to a delinquent customer prior to discontinuing the customer's service.

The Management Audit report states that, according to Four Points’ management, notices of disconnection for nonpayment are generated and presented to customers the day after the due date indicated on the customers’ bills. Customers are given five days from the date of the disconnection notice to pay their current charges in order to avoid disconnection of services. In accordance with Four Points’ tariff, customers who pay their bills late are assessed a \$5 late fee. Additionally, if service is disconnected, customers must pay a \$20 service reconnection fee. This policy, if implemented correctly, would comply with the Commission’s rule.

Despite the fact that the Utility’s tariff contains disconnection procedures that comply with Commission rules, audit staff believes that numerous customers are disconnected in error each month as a result of a variety of problems that occur in the Utility’s meter reading, billing, and payment processing operations. Specifically, meters are read incorrectly, incorrect readings are input into the Utility’s billing system, incorrect formulas are used to calculate bills, incorrect due dates are assigned on bills, and payments are either not timely posted or not posted at all. These problems inevitably result in the existing problems with the Utility’s service disconnection process. Disconnection notices are triggered by the billing system’s accounts receivable aging reports. If the accounts receivable data is unreliable, it cannot generate accurate disconnection notices.

The Four Points’ Billing Audit report noted a small number of customers who were disconnected for nonpayment from January 2009 through March 2010. No more than 28 customers were disconnected in any given month; however, beginning in April 2010, the number of monthly disconnections increased significantly. During the months of April, May, and June 2010, Four Points disconnected 76, 86, and 114 customers, respectively.

In addition, Management Audit staff requested copies of disconnection notices sent to Four Points customers and a list of actual disconnections for the period July 2010 through January 2011. The table below depicts the number of disconnection notices sent to customers and the subsequent number of disconnections that occurred. As shown, the Utility was unable to find records of disconnection notices and actual disconnections for several months.

Four Points Service Disconnection Notices and Actual Disconnections		
Month/Yr	Four Points (255 customers)	
	Disconnection Notices Sent	Actual Disconnections
Jul 2010	96	80
Aug 2010	105	47
Sep 2010	No Record Found	No Record Found
Oct 2010	104	108
Nov 2010	80	No Record Found
Dec 2010	121	No Record Found
Jan 2011	80	No Record Found

1. Excludes 39 units personally owned by Four Points/Bimini Bay owner. Water and wastewater utilities for these residents are included in monthly rent.

Source: Staff DR 1-4

The available data shows an extremely high delinquency rate among the residents of Island Club West. Four Points sent out an average of 98 disconnection notices to its customers during the period July 2010 through January 2011. This represents 38 percent of the 255 meters located in Island Club West. Four Points disconnected an average of 78 meters per month, or 31 percent of the total number of meters, during the 3 months for which the Utility provided records of actual disconnections. The month of October illustrates the flaws in the Utility's operations. Four Points sent 104 disconnection notices to customers, yet 108 customers (nearly half of its customer base) experienced service disconnections.

Furthermore, a review of the complaints recorded in CATS (see Attachment A) confirms both Billing and Management Audit staff's observations that Four Points has an unusually large number of disconnections. The following, from the Management Audit report, are examples of improper disconnections of service to Four Points customers:

- Complainant states that service was wrongly disconnected for nonpayment after customer attempted to resolve the situation with the Utility. The Utility provided the customer with three different amounts to pay. In a December 28, 2010, response to the complaint, the Utility alleged that the complainant, who is a property manager, must have the "property confused." On January 19, 2011, the Commission's Consumer Complaints division requested the Utility provide a supplemental response. To date, the Utility has not provided a supplemental response and has exceeded the 15-day period in which to reply to the Commission's inquiry, as required by Rule 25-30.355, F.A.C. (see Issue 3).
- Complainant states that service was wrongly disconnected because she was being billed for the wrong meter. The Utility has yet to respond to the complaint and has exceeded the 15-day period in which to reply to the Commission's inquiry, as required by Rule 25-30.355, F.A.C. (see Issue 3).
- Complainant states that service was disconnected despite the fact that bills are paid on time and the account has a credit balance. Four Points admitted to the improper disconnection due to an error on the customer's bill.
- Complainant states that service was disconnected for nonpayment of a prior tenant's bill. Four Points admitted to the improper disconnection due to an error on the customer's bill.
- Complainant states that service was disconnected in error as a result of the wrong meter being disconnected. The Utility has yet to respond to the complaint and has exceeded the 15-day period in which to reply to the Commission's inquiry, as required by Rule 25-30.355, F.A.C. (see Issue 3).
- Complainant states that service was repeatedly disconnected for nonpayment despite the Utility's failure to present a bill. The Utility has yet to respond to the complaint and has exceeded the 15-day period in which to reply to the Commission's inquiry, as required by Rule 25-30.355, F.A.C. (see Issue 3).

- Complainant states that service was disconnected without notice by mail or door posting. The Utility has yet to respond to the complaint and has exceeded the 15-day period in which to reply to the Commission's inquiry, as required by Rule 25-30.355, F.A.C. (see Issue 3).
- Complainant states that service was disconnected due to nonpayment of a bill still in dispute with Four Points. The Utility has yet to respond to the complaint and has exceeded the 15-day period in which to reply to the Commission's inquiry, as required by Rule 25-30.355, F.A.C. (see Issue 3).

Management Audit staff believes Four Points has inadequate internal controls to provide reasonable assurance that the Utility's disconnection procedures are effective and efficient. Customers are often not provided with the required notice of at least five working days, separate and apart from any bill for service. In addition, customers who do not have delinquent accounts have experienced service disconnections.

Staff Recommendation

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), F.S., authorizes the Commission to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S. By improperly disconnecting customers, Four Points' acts were "willful" in the sense intended by Section 367.161, F.S. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled, In Re: Investigation into the Proper Application of Rule 25-14.003, Florida Administrative Code, Relating to Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and that this is distinct from an intent to violate a statute or rule."

Staff believes it is clear that the Utility improperly discontinues service to customers in violation of Rule 25-30.320, F.A.C. It has admitted to doing so in response to at least two complaints filed with the Commission. Furthermore, the Utility failed to adequately respond to six customer complaints regarding improper disconnections. Equally troublesome are the high percentage of disconnections (31 percent) over a 6 month period as well as the Utility's lack of records regarding service disconnections for the period September 2010 through January 2011. Staff notes that the percentage of disconnections may be even higher than the Commission is aware due to the fact that the Utility was unable to find records of its disconnections for four of the months in question. Additionally, it is clear from the table above that the Utility, according to its own records, disconnected 4 more customers than it provided notices to in October 2010.

Based on the number of disconnection notices and actual disconnections (discussed in this issue and Issue 6) together with the meter reading errors and billing errors discussed in Issues 5 and 6, Commission staff believes that the Utility's failure to comply with Rule 25-30.320, F.A.C., poses a significant risk to the health, safety, and welfare of Four Points' customers. Compliance with the rule should not be taken lightly; yet the Utility repeatedly makes mistakes in discontinuing service to customers.

No prior order adequately reflects the problems posed by Four Points' apparent violation of Rule 25-30.320, F.A.C. By Order No. PSC-95-0510-FOF-WS, issued April 26, 1995, in Docket No. 940496-WS, the Commission imposed a fine of \$250 on Swiderski Utilities for improperly disconnecting a customer's water service. That docket is distinguishable from the instant docket in that Swiderski Utility had recently been purchased and the new owner mistakenly believed it had no authority to serve the customer, who was believed to be outside the certificated service area. Prior to disconnecting the customer's service, the utility sent several notices to the customer, to which the customer did not respond. In the instant docket, Four Points is clearly obligated to serve the residents of Island Club West. As discussed in Issues 5 and 6, Four Points incorrectly deems accounts delinquent and fails to adequately notify customers that their accounts are delinquent and subject to disconnection.

However, if the Commission were to follow the Swiderski Utilities show cause order, staff would recommend an increased penalty of a minimum of \$500 per improper disconnection. If the Commission elects to fine the Utility \$500 per improper disconnection, staff believes the Commission has evidence of 12 improper disconnections (8 customer complaints listed above and 4 disconnections in October 2010 for which the utility did not provide notice) for a total recommended penalty of \$6,000. Alternatively, staff could recommend that the Commission fine the Utility the maximum penalty of \$5,000 for a one-time violation of Rule 25-30.320, F.A.C. Because staff believes that the number of improper disconnections is more pervasive than represented by the 12 improper disconnections previously referenced, staff recommends the Commission not tie the penalty amount to specific instances of improper disconnections. Rather, staff recommends that Four Points be ordered to show cause, in writing within 21 days, why it should not be fined in the amount of \$5,000 for failure to comply with Rule 25-30.320, F.A.C., regarding refusal and discontinuance of service.

Staff recommends that the show cause order incorporate the following conditions:

1. This show cause order is an administrative complaint by the Florida Public Service Commission, as petitioner, against Four Points Utility Corporation, as respondent.
2. The Utility shall respond to the show cause order within 21 days of service on the Utility, and the response shall reference Docket No. 110254-WS, In re: Initiation of show cause proceedings against Four Points Utility Corporation in Polk County For violation of Commission rules and regulations as outlined in the Florida Public Service Commission's management audit for Four Points Utility Corporation and Bimini Bay Utilities Corporation issued June 2011.
3. The Utility has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, F.S., and to be represented by counsel or other qualified representative.

4. Requests for hearing shall comply with Rule 28-106.2015, F.A.C.
5. The Utility's response to the show cause order shall identify those material facts that are in dispute. If there are none, the petition must so indicate.
6. If Four Points files a timely written response and makes a request for a hearing pursuant to Sections 120.569 and 120.57, F.S., a further proceeding will be scheduled before a final determination of this matter is made.
7. A failure to file a timely written response to the show cause order will constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue.
8. In the event that Four Points fails to file a timely response to the show cause order, the fine will be deemed assessed and a final order will be issued.
9. If the Utility responds to the show cause order by remitting the fine, this show cause matter will be considered resolved, and the docket closed.

Furthermore, the Utility should be warned and put on notice that failure to comply with Commission orders, rules, or statutes will again subject the Utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues as set forth in Section 367.161, F.S., or revocation of its certificate as set forth in Section 367.161(2), F.S.

Issue 8: Should Four Points Utility Corporation be ordered to show cause in writing within 21 days, why it should not be fined \$1,651 plus interest of \$1,255 for 2009 and \$1,651 plus interest of \$462 for failure to comply with Rule 25-30.120, F.A.C., regarding the payment of regulatory assessment fees?

Recommendation: Yes. Four Points should be ordered to show cause, in writing within 21 days, as to why it should not be fined in the amount of \$1,651 plus interest of \$1,255 for 2009 and \$1,651 plus interest of \$462 for failure to comply with Rule 25-30.120, F.A.C., regarding the payment of RAFs. Staff recommends that the Utility be directed to pay estimated RAFs in the amount of \$6,603 for 2009 and \$6,603 for 2010. Staff recommends that Four Points be required to remit the RAFs, penalties and interest in the amount of \$18,224 owed pursuant to this Issue on or before November 30, 2011. (Bennett, Jaeger, Mouring)

Staff Analysis:

Rule Involved

25-30.120 Regulatory Assessment Fees; Water and Wastewater Utilities.

(1) As applicable and as provided in Section 350.113, F.S., each utility shall remit a fee based upon its gross operating revenue. This fee shall be referred to as a regulatory assessment fee. Each utility shall pay a regulatory assessment fee in the amount of 0.045 of its gross revenues derived from intrastate business. The gross revenues reported for regulatory assessment fee purposes must agree with the amount reported as operating revenue on Schedule F-3 of the Operating Statement in the company's Annual Report, filed in accordance with Rule 25-30.110, F.A.C. A minimum annual regulatory assessment fee of \$25 shall be imposed if there are no revenues or if revenues are insufficient to generate a minimum annual fee.

(2) The obligation to remit the regulatory assessment fees for any year shall apply to any utility that is subject to this Commission's jurisdiction on or before December 31 of that year or for any part of that year, whether or not the utility has actually applied for or been issued a certificate.

(a) For large utilities with annual revenues of \$200,000 or more based on the most recent prior calendar year, regulatory assessment fees shall be filed with the Commission on or before July 30 for the preceding period or any part of the period from January 1 until June 30, and on January 30 for the preceding period or any part of the period from July 1 until December 31. Commission Form PSC/ECR 10-WL (02/05) entitled "Large Water System Regulatory Assessment Fee Return" and Commission Form PSC/ECR 017-WL (02/05) entitled "Large Wastewater System Regulatory Assessment Fee Return" are incorporated into this rule by reference and may be obtained from the Division of Administrative Services. The failure of a utility to receive a return form shall not excuse the utility from its obligation to timely remit the regulatory assessment fees.

(b) For small utilities with annual revenues of less than \$200,000 based on the most recent prior calendar year, regulatory assessment fees shall be filed with the Commission on or before March 31 for the preceding year ended December 31. Commission Form PSC/ECR 010-WL (02/05) entitled "Small Water System Regulatory Assessment Fee Return" and Commission Form PSC/ECR 017-WL (02/05) entitled "Small Wastewater System Regulatory Assessment Fee Return" are incorporated into this rule by reference and may be obtained from the Commission's

Division of Administrative Services. The failure of a utility to receive a return form shall not excuse the utility from its obligation to timely remit the regulatory fees.

(c) For the purpose of this rule, a utility operating both a water system and a wastewater system shall consider each system separately in determining the revenue threshold for filing regulatory assessment fees on either an annual or semi-annual basis.

(d) Regulatory assessment fees are considered paid on the date they are postmarked by the United States Postal Service or received and logged in by the Commission's Division of Administrative Services in Tallahassee. Fees are considered timely paid if properly addressed, with sufficient postage and postmarked no later than the due date.

(3) If the due date falls on a Saturday, Sunday, or a legal holiday, the due date is extended to the next business day. If the fees are sent by registered mail, the date of the registration is the United States Postal Service's postmark date. If the fees are sent by certified mail and the receipt is postmarked by a postal employee, the date on the receipt is the United States Postal Service's postmark date. The postmarked certified mail receipt is evidence that the fees were delivered.

(4) Each utility shall have up to and including the due date in which to:

(a) Remit the total amount of its fee; or

(b) Remit an amount which the utility estimates is its full fee.

(5) Any utility that purchases water or wastewater treatment from another utility regulated by the Florida Public Service Commission is allowed to deduct the annual expense for purchased water or wastewater treatment from its gross operating revenues before calculating the amount of the regulatory assessment fees due.

(6) A utility may request from the Commission's Division of Administrative Services either a 15-day extension or a 30-day extension of its due date for payment of regulatory assessment fees or for filing its return. Commission Form PSC/ADM 124 (Rev. 01/01/05), entitled "Regulatory Assessment Fee Extension Request", is incorporated into this rule by reference and may be obtained from the Commission's Division of Administrative Services.

(a) The request for extension will be granted if the utility has applied for the extension within the time required in paragraph (b) below and the utility does not have any unpaid regulatory assessment fees, penalties or interest due from a prior period.

(b) The request for extension must be received by the Division of Administrative Services at least two weeks before the due date.

(c) Where a utility receives either a 15-day extension or a 30-day extension of its due date pursuant to this rule, the utility shall remit a charge in addition to the regulatory assessment fee set out in Section 350.113, F.S.

(7) The delinquency of any amount due to the Commission from the utility pursuant to the provisions of Section 350.113, F.S., and this rule, begins with the first calendar day after any date established as the due date either by operation of this rule or by an extension pursuant to this rule.

(a) Pursuant to Section 350.113, F.S., a penalty shall be assessed against any utility that fails to pay its regulatory assessment fee by March 31, in the following manner:

1. Five percent of the fee if the failure is for not more than 30 days, with an additional five 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.

2. The amount of interest to be charged is one percent for each thirty days or fraction thereof, not to exceed a total of 12 percent per annum.

(b) 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.

(8) Any utility that requests and receives an extension of not more than 30 days or remits, by the due date, an estimated fee payment of at least 90 percent of the actual fee due shall not be charged interest or penalty on the balance due if paid within the extension period.

(9) Any utility that fails to pay a penalty within 30 days after its assessment by the Commission shall be subject to interest applied to the penalty up to and including the date of payment of the penalty. Such interest shall be compounded monthly, based on the 30-day commercial paper rate for high-grade, unsecured notes sold through dealers by major corporations in multiples of \$1,000 as regularly published in the Wall Street Journal

Factual Allegations

Pursuant to Rule 25-30.120(1), F.A.C., each utility shall pay RAFs in the amount of 4.5 percent of its gross revenue derived from intrastate business. Subsection (2)(b) requires small utilities with annual revenues of less than \$200,000, such as Four Points, to file RAFs with the Commission on or before March 31 for the preceding calendar year. Subsection (7)(a) permits the Commission to assess a penalty against any utility that fails to pay its RAFs on time.

Pursuant to Section 350.113(4), F.S., and Rule 25-30.120(7)(a), F.A.C., a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, in the following manner:

1. Five percent of the fee if the failure is for not more than 30 days, with an additional five 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.
2. The amount of interest to be charged is one percent for each 30 days or fraction thereof, not to exceed a total of 12% per annum

In addition, pursuant to Sections 367.145(1)(b) and 367.161, F.S., and Rule 25-30.120(7)(b), F.A.C., the Commission may impose an additional penalty upon a utility for its failure to pay RAFs in a timely manner.

According to the Management Audit report, Four Points has not demonstrated compliance with Rule 25-30.120, F.A.C., Regulatory Assessment Fees. The Utility has failed to pay both its 2009 and 2010 RAFs, which were due on March 31, 2010, and March 31, 2011, respectively. The Utility has been provided notice that it is delinquent in paying its RAFs.

Four Points has developed a history of disregard for regulatory compliance by remitting its RAF payments late and paying incorrect RAFs. Prior to the Commission granting Four Points certificates in 2007, the Utility claimed to be exempt from Commission regulation because it operated as a reseller of water and wastewater services. However, in 2006, staff determined that Four Points was not operating as a reseller because the Utility was, in fact, charging above the actual purchase price for the water and wastewater service that it was reselling. Consequently,

Four Points was subjected to RAF payments beginning in 2005. The Utility remitted its 2005 RAFs late and was subjected to a penalty and interest for failure to pay on time.

Four Points' 2006 and 2007 RAFs were timely remitted. However, the Utility's 2008 RAFs were again remitted late, and the amount paid was based on incorrect operating revenues. The Utility paid the adjusted RAFs along with a penalty and interest for filing late. By letter dated April 21, 2010, the Commission notified Four Points of its failure to pay 2009 RAFs. Payment was due on March 31, 2010. The Utility has yet to remit payment and is more than 554 days late. The Utility's 2010 RAFs were due on March 31, 2011, and payment is 189 days late.

Section 350.113, F.S., and Rule 25-30.120, F.A.C., provide for penalties not to exceed 25 percent, with 5 percent of the fee if the failure to pay is for less than 30 days and an additional 5 percent for each additional 30 days, up to the maximum of 25 percent. Since Four Points' failure to pay 2009 RAFs exceeds five 30-day periods, the maximum of 25 percent penalty applies. Further, interest applies in the amount of 1 percent for each 30 days or fraction thereof, not to exceed a total of 12 percent per annum. Based on Four Points' 2009 Annual Report, the Utility had revenues of \$60,008 for water and \$86,724 for wastewater. Staff has used those amounts as an estimate of 2010 revenues, since no annual report or RAF returns were filed. As of October 6, 2011, the amounts owed for RAFs, penalties, and interest are as follows:

YEAR	2009		2010	
	WATER	WASTEWATER	WATER(EST)	WASTEWATER(EST)
REVENUES	\$60,008	\$86,724	\$60,008	\$86,724
RAF @ 4.5%	\$2,700	\$3,903	\$2,700	\$3,903
PENALTY @ 25%	\$675	\$976	\$675	\$976
INTEREST	\$513	\$741	\$189	\$273
TOTAL	\$3,889	\$5,620	\$3,564	\$5,151
GRAND TOTAL				\$18,224

In its May 31, 2011 audit response letter, the Utility's owner indicated that the Utility has not been able to pay the RAFs due to a cash flow problem that is just now starting to resolve itself. The letter further stated that "both companies [Four Points and Bimini Bay Utilities] are losing money and they have been borrowing money from ICRD [Island Club Resort Development]" and "ICRD is receiving money now that is owed to it and can start getting caught up on the payables." However, to date, the Utility has not contacted the Commission regarding payment of the delinquent RAFs.

Staff Recommendation

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Section 367.161(1), F.S., authorizes the Commission to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S. By failing to timely pay RAFs, Four Points' acts were "willful" in the sense intended by Section 367.161, F.S. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled, In Re: Investigation into the

Proper Application of Rule 25-14.003, Florida Administrative Code, Relating to Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and that this is distinct from an intent to violate a statute or rule."

Accordingly, staff concludes that Four Points has not demonstrated compliance with Rule 25-30.120, F.A.C., Regulatory Assessment Fees. Therefore, staff recommends that Four Points should be ordered to show cause, in writing within 21 days, why it should not be fined in the amount of \$1,651 plus interest of \$1,255 for 2009 and \$1,651 plus interest of \$462 for 2010, for failure to comply with Rule 25-30.120, F.A.C., regarding the payment of regulatory assessment fees. Staff recommends that the Utility be directed to pay estimated RAFs in the amount of \$6,603 for 2009 and \$6,603 for 2010.

Staff recommends that Four Points be required to remit the RAFs, penalties and interest in the amount of \$18,224 owed pursuant to this Issue on or before November 30, 2011. Staff recommends that the show cause order incorporate the following conditions:

1. This show cause order is an administrative complaint by the Florida Public Service Commission, as petitioner, against Four Points Utility Corporation, as respondent.
2. The Utility shall respond to the show cause order within 21 days of service on the Utility, and the response shall reference Docket No. 110254-WS, In re: Initiation of show cause proceedings against Four Points Utility Corporation in Polk County For violation of Commission rules and regulations as outlined in the Florida Public Service Commission's management audit for Four Points Utility Corporation and Bimini Bay Utilities Corporation issued June 2011.
3. The Utility has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, F.S., and to be represented by counsel or other qualified representative.
4. Requests for hearing shall comply with Rule 28-106.2015, F.A.C.
5. The Utility's response to the show cause order shall identify those material facts that are in dispute. If there are none, the petition must so indicate.
6. If Four Points files a timely written response and makes a request for a hearing pursuant to Sections 120.569 and 120.57, F.S., a further proceeding will be scheduled before a final determination of this matter is made.
7. A failure to file a timely written response to the show cause order will constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue.
8. In the event that Four Points fails to file a timely response to the show cause order, the fine will be deemed assessed and a final order will be issued.
9. If the Utility responds to the show cause order by remitting the fine, this show cause matter will be considered resolved, and the docket closed.

If Four Points fails to remit its RAFs, penalties and interest payment by November 30, 2011, Commission staff will bring another show cause recommendation.

Issue 9: Should Four Points Utility Corporation be ordered to show cause in writing within 21 days, why it should not be fined for violations of Section 367.111, F.S., requiring that customers are to be provided with safe, efficient, and sufficient service as is prescribed by part VI of chapter 403 and parts I and II of chapter 373?

Recommendation: No. While it appears Four Points Utility has violated the Department of Health's rules and regulations regarding reporting requirements adopted pursuant to part VI of chapter 403, staff believes the Commission should not at this time, direct the Utility to show cause why it should not be fined for any apparent violation of Section 367.111, F.S. Staff recommends that the Commission warn the Utility that it must provide safe, efficient, and sufficient service to its customers. The Commission should also warn the Utility that if the Commission finds the Utility has failed to provide its customers with water or wastewater service that meets the standards promulgated by the Department of Environmental Protection or the water management districts, the Commission may reduce the Utility's return on equity in a future rate proceeding. (Bennett, Walden)

Staff Analysis:

Factual Allegations

Four Points is a consecutive system that purchases bulk water and wastewater service from Polk County for resale to its customers. The Utility does not own or operate any treatment facilities, but does own and operate the water distribution and wastewater collection systems. The Utility is regulated by the Florida Department of Health through the Polk County Health Department (Health Department).

On December 6, 2010, the Health Department issued a Warning Letter (Warning Notice No. 10-653PW5704D) to Four Points regarding its failure to monitor for lead and copper from January through July 2009. On March 4, 2011, Health Department sent a letter to remind the Utility that it must submit Monthly Operating Reports (MOR) to the Health Department within ten days after the end of each month. Subsequently, on April 5, 2011, the Health Department sent a letter to the Utility regarding several errors on its February 2011 MOR.

The Health Department conducted a sanitary survey of the Four Points water system on April 7, 2011, during which it found two deficiencies. By letter dated April 12, 2011, the Health Department advised the Utility that its bacteriological sites were not chosen in accordance with the system's bacteriological sampling plan and that its MORs were incorrectly filled out. The letter also reminded the Utility that the results of its lead and copper monitoring for January 1 through June 30 would be due by July 10, and that the Utility must submit an asbestos waiver that was previously requested on November 23, 2010. The letter instructed the Utility to take the necessary steps to correct the deficiencies within 30 days. Further, the letter stated that if the deficiencies could not be corrected within 30 days, a written schedule stating when the deficiencies would be corrected must be submitted within the 30 day time frame. Lastly, the letter advised the Utility that failure to comply will result in referral to the enforcement section for further action and the possible imposition of a fine.

Subsequently, on April 29, 2011, the Health Department sent a Bacteriological Sampling Violation letter to Four Points because insufficient valid bacteriological samples were submitted for analysis during the March 2011 sampling period. The letter advised the Utility that it must provide public notification to the customers, and must provide a copy of the notification and completed certification of delivery of public notice form to the Health Department within ten days.

By letter dated July 27, 2011, the Health Department informed the Utility that as of July 10, 2011, the Four Points water system was in violation of the Lead and Copper Rule, having failed to provide any results for the second six month monitoring period from January 1 through June 30. The letter noted that a reminder letter had been sent on April 12, 2011, regarding this requirement, and the bacteriological and chemical monitoring requirements. The letter advised the Utility to contact the Health Department regarding all these issues by August 10 or be referred for enforcement.

On August 24, 2011, the Health Department issued a Warning Letter (Warning Notice No. 11-653PW5704A) to advise Four Points that it was in violation for failing to provide a Consumer Confidence Report to its customers and for failing to submit Form 62-555.900(19), Certification of Delivery of Consumer Confidence Report, to the Department of Health. The Warning Letter instructed the Utility's owner to contact the Health Department within ten days of receiving the letter to arrange a meeting to discuss this matter. Following subsequent e-mail reminders, the Utility contacted the Health Department on September 2, 2011, to arrange a meeting. The meeting was held on September 13, 2011. The Health Department advised staff on September 30, 2011, that problems with the lead and copper testing continue. The Utility has not conducted the required testing for 2011 and there continue to be issues with improper sampling technique. A Health Department representative suggested that the problem would likely be resolved if the company were to hire a certified operator to do the sampling. The Health Department is considering issuing a Consent Order.

Staff Recommendation

Section 367.111(2), F.S., requires a utility to provide each person safe, efficient, and sufficient service as prescribed by part VI of Chapter 403 and parts I and II of Chapter 373, or the rules adopted pursuant thereto. Section 367.161(2), F.S., recognizes that the Commission may penalize a utility for failure to provide safe, efficient, and sufficient service. However, Section 367.161(2), F.S., reduces any penalty the Commission imposes by the amount of penalty another agency imposes for the same violation. Currently, the Health Department is working through the reporting violations with the Utility, and no fine has yet been imposed. Staff recommends that the Commission staff continue to monitor the alleged Department of Health rule violations.

Section 367.111(2), F.S., also permits the Commission to reduce a utility's return on equity if the Commission finds that the utility has violated Department of Environmental Protection and water management rules. This is in addition to the penalties that the Commission may impose pursuant to Section 367.161, F.S.

It appears Four Points Utility has violated the Department of Health's rules and regulations regarding reporting water quality standards. Staff recommends that the Commission monitor the Health Department's enforcement efforts. In the event a Health Department report indicates that Four Points is in violation of Section 367.111, F.S., staff will bring enforcement action before the Commission. If additional enforcement action is necessary for violations of Section 367.111, F.S., the Commission may initiate a show cause proceeding or initiate a limited rate proceeding to reduce the Utility's return on equity.

Issue 10: Should the Commission direct staff to initiate proceedings to revoke Four Points Utility Corporation's water and wastewater certificates?

Recommendation:

Alternative 1 Recommendation: No. The Commission should direct Four Points to develop and submit a Compliance Plan in accordance with the Commission's direction. The Commission should direct staff to file any penalties imposed pursuant to Issues 1-9 as statutory liens. In the event of any future violation of Commission rule, statute, or order, the Commission should direct staff to notify Four Points and commence revocation proceedings. (Bennett, Jaeger, Jones-Alexis)

Alternative 2 Recommendation: Yes. The Commission should direct staff to initiate certificate revocation proceedings against Four Points consistent with Chapter 120 and Section 367.161, F.S. (Bennett, Jaeger, Jones-Alexis)

Staff Analysis:

Discussion of the Problem Presented by Four Points

The Management Audit report includes a discussion of various elements that are necessary to the successful operation of small utilities. Traditionally, the success and viability of small water companies has been seen to depend on a few key elements: (1) financial capacity, (2) managerial capacity, (3) technical proficiency, and (4) infrastructure adequacy. Small companies must be adequately capitalized and supported by appropriate rates. They must be run by experienced and knowledgeable managers with a focus on efficiently and effectively providing quality service. Customer problems must be dealt with promptly and courteously to maintain good public relations. Operating personnel must be technically proficient in system operation and maintenance as well as in maintaining water quality. Finally, the system components must provide adequate capacity, be properly constructed, and receive adequate inspection and maintenance.

According to a 2008 National Regulatory Research Institute (NRRI) study, effective management of small water companies requires the following:²²

- Compliance with regulatory requirements,
- Attracting and retaining quality personnel,
- Providing effective employee training and education,
- Providing excellent customer service,
- Displaying good public relations, and
- Employing a strategic business plan

The Management Audit report indicates that Management Audit staff has found sufficient cause to believe that Four Points lacks effective managerial controls. Just as significant, Four

²² The National Research Regulatory Institute identified the attributes and practices of successful small systems in a February 7, 2008, report titled "Small Water Systems: Challenges and Recommendations."

Points frequently disregards Commission rules in its current operations. Given Four Points management's disregard for regulatory compliance and failure to establish sufficient safeguards to protect customers from incurring inappropriate charges, it is apparent that maintaining good customer relations is not a priority. Four Points has issued customer bills that are fraught with errors. Customers' efforts to report these problems and seek resolution appear to go unanswered and unresolved.

Billing and payment processing problems and difficulty retaining quality personnel are the primary drivers of deficient customer service and poor public relations. Throughout the conduct of this audit, all stakeholders (customers, current Utility employees, former Utility employees, and Utility management) repeatedly referred to the issue and impact of employee turnover. Undeniably, this issue has a major role in billing errors, payment processing errors, billing dispute resolution, complaint resolution, erroneous disconnections of service, and meter reading errors. Multiple customers have mentioned that when a problem recurs, they must explain the process again to a new employee, who is then unable to take corrective action due to his or her unfamiliarity with utility practices.

Both current and former employees have recounted that Four Points management does not provide a supportive and positive work environment that is conducive to providing excellent customer service. From on-site observation, the audit team witnessed a tense and volatile atmosphere that is not conducive to either performing quality work or retaining quality personnel. The office staff appeared to be simply overwhelmed by a large workload caused by poor management practices and unrealistic productivity expectations. Audit staff believes that management's approach is unreasonably demanding and impatient. The lack of written procedures, proper training, and high rate of employee turnover eventually leads to poor customer service.

The Management Audit report further states that overall, audit staff believes that Four Points and Bimini Bay Utilities do not currently have the management capability to operate successfully as providers of water and wastewater services. It appears that Four Points is not in compliance with Rules 25-30.145, 25-30.110, 25-30.120, 25-30.130 25-30.355, 25-22.032, 25-30.311, 25-30.320, and 25-30.335, F.A.C. The rule violations pertain to audit access to records, filing of annual reports, payment of regulatory assessment fees, customer complaints, customer deposits, meter reading, customer billing, and discontinuance of service. Additionally, Four Points has not demonstrated compliance with the Order approving its Settlement Agreement with the Island Club West HOA. The following is staff's review of how Four Points compares to the NRRI study of effective small water company management.

Regulatory Compliance

Over time regulated utilities develop a history of compliance (or non-compliance) with regulatory rules and statutes. Water utilities as a normal business practice should also comply with deadline requirements for water quality monitoring and reporting and for distributing annual water quality (consumer confidence) reports to its customers. Staff believes that Four Points has a poor record of complying with applicable rules and statutes under Commission jurisdiction. Utility management has either been unaware of these rules and statutes or has chosen to ignore them completely. The number of customer complaints is extremely high, particularly in light of

the fact that the Utility serves fewer than 300 customers. Four Points poorly handles customer complaints, if responses are attempted at all. The Utility's owner appears to be unmotivated to take the actions necessary to make regulatory compliance a priority. Further, the impact of the Utility's actual and potential violations on its customers appears to be large. The Utility's questionable practices usually result in a financial benefit to Four Points at its customers' expense.

Over the years, Four Points has had serious compliance issues. While the Utility began operating in 2001, it did not apply for certificates until 2005, when the Commission was made aware in 2005 that the Utility was not passing through the cost of water and wastewater, as a reseller. The Commission contacted the Utility, which then applied for water and wastewater certificates. During the pendency of the certificate proceeding, Four Points was twice ordered to show cause why it should not be fined for various rule violations.

As noted previously, on April 2, 2007, the Commission approved a Settlement Agreement between Four Points and the Island Club West HOA, which set forth several key conditions related to meters, communication between the Utility and its customers, customer billing, and the Utility's financial stability. In spite of the April 2007 Order, the Commission continued to receive complaints from customers regarding the Utility's billing and meter reading practices. The Utility was also unresponsive to staff's May 28, 2009 letter requesting meter reading records and bills.

On April 20, 2009, Four Points requested a staff-assisted rate case (SARC); however, the Utility failed to pay its filing fee.²³ Subsequent to staff's May 14, 2009 letter informing the Utility of the deficiency, it failed to pay the filing fee by the requested date of June 17, 2009. As a result, the Commission denied its application for a SARC.

During 2010, numerous customer complaints led to the discovery of the Utility's non-compliance with key regulations. As aforementioned, Four Points appears to have made no attempt to comply with rules regarding the handling of customer complaints and customer deposits. Routinely the Utility fails to respond to the Commission's requests for information within the required 15-day period, and when responses are provided they are often incomplete. Also, a comparison of the five water and wastewater utilities for which the Commission received the most complaints during 2010 showed that Four Points had the highest percentage of complaints per 100 customers.

Strategic Business Planning

A utility's strategic business plan should assess its performance and make recommendations for improvement.²⁴ A strategic plan seeks to identify risks, challenges, and opportunities and develop appropriate plans for proactively dealing with them. Appropriate planning takes into account future needs for plant maintenance and expansion, maintains an

²³ Docket No. 090213-WS, In re: Application for staff-assisted rate case in Polk County by Four Points Utility Corporation.

²⁴ National Regulatory Research Institute, *Certification Requirements As a Path to Improve Small Water Utility Operations*, July 8, 2008.

awareness of changes in regulatory compliance, and maintains a focus on customer needs. The content of Four Points' strategic business plan, according to the Management Audit report, appears to reveal a lack of focus or concern by the Utility's owner in providing adequate water and wastewater service to the Utility's customers. The strategic plan also signals that the Utility's owner and Utility management are not proactively planning for the future of the Utility and the challenges it faces.

Though some strategic planning has been done, the design is not targeted specifically to the Utility's operations and service, but rather towards the overall management and expansion of the two subdivisions developed solely by the Utility owner. Even with the existence of a strategic development plan, it is not clear whether the Utility truly intends to ever take action on these expansion initiatives. As a real estate developer, the Utility owner's focus is not solely on the ownership and operations of the Utility.

Four Points' strategic plan focuses entirely upon the expansion of Island Club West and the enhancement of the desirability of the properties to potential buyers or renters. It focuses on construction of additional townhouse units or a water park for the development. No mention is made at all about planning for providing adequate water and wastewater service.

Quality Personnel and Training

According to a study conducted in July 2008 by the NRRI, a small water utility should be able to attract and retain well-qualified personnel.²⁵ It should provide competitive salary and benefits packages. Managers should create a productive, respectful work environment with effective communication throughout the organization. Staff believes that Four Points' management has not created a proper work atmosphere that promotes effective, efficient performance or employee satisfaction. Rather, staff believes that the current stressful work atmosphere contributes to a high rate of turnover.

During the Management Audit, five former employees of the Utility sought out opportunities to inform staff of concerns about their treatment or potentially improper practices by the Utility's owner and Utility management. Management Audit staff observed a tense and volatile work atmosphere that is not conducive to performance of quality work or to the Utility's retention of quality personnel. The Utility personnel appeared to be simply overwhelmed by a large workload resulting from poor management practices and unrealistic productivity expectations. Consequently, Four Points suffers from a high rate of turnover, which impedes the timely resolution of customers' disputes. In fact, during the few months of the Management Audit engagement, one employee was terminated and the remaining personnel, with the exception of the operations manager, left the company. In early 2011, The Utility's owner offered the position of Treasurer/Controller to a candidate who declined due to concerns over improper management practices, a poor work environment, and poor treatment of existing employees, all based upon observations made during a one-month consultation assignment with the Utility. This indicates management's inability to attract competent professionals to key positions.

²⁵ *Ibid.*

In addition, a utility should provide effective employee training and continuing education programs.²⁶ Personnel should be well trained for the skills they are asked to use in performing tasks. They should also have the opportunity to train for higher level positions in the organization to be qualified for advancement. All personnel must participate in frequent safety training relevant to the positions they hold. According to the Management Audit report, it appears that personnel training is inadequate, especially considering the small size of the Utility. Particularly in light of the Utility's high rate of turnover, additional attention to thorough training is all the more needed. Four Points' lack of training and written procedures appear to contribute significantly to errors in billing, payment processing, meter reading, and discontinuance of customers' utility services.

Four Points does not engage in a training program per se, which is somewhat reasonable for a small utility. Rather, the Utility relies upon on-the-job training; however, due to the high turnover rate, the personnel members providing the training may be new themselves. According to the Management Audit report, Utility personnel described their training experiences as brief, and they felt largely unprepared as they began working. Management Audit staff noted that the Utility's procedures largely consist of to-do lists, or work aids, and, in most cases, do not provide the guidance that detailed procedures should.

Quality of Service and Public Relations

A utility should have a reputation of providing excellent customer service²⁷ as well as a history of satisfied customers, as determined by small numbers of customer complaints and prompt attention to those complaints. Additionally, a utility should have a reputation of working cooperatively with the community it serves. The utility should provide timely, accurate information about service outages, water quality issues, watering restrictions, and other matters that affect the community. It also must maintain good working relationships and frequent communications with local media and local government.²⁸

According to the Management Audit report, it appears that customer service is not a priority for the Utility's owner and Utility management. This is evidenced by the inadequate allocation of time for Utility personnel to complete utility-related duties. Haste is encouraged. Personnel are pressured to hastily complete their tasks. Further, based upon the manner in which the Utility handles customer complaints, it appears that little value is placed on public relations; the Utility's record in this area is extremely poor. Management Audit staff observed a high degree of animosity toward the Utility during staff's conversations with customers and review of past complaints. This results, in part, from the lack of prompt attention, if any at all, that the Utility gives to both complaints and inquiries.

The Utility's owner and Utility management have been aware of many of the Utility's issues, such as billing system deficiencies and improper handling of deposits, for some time, and have failed to take appropriate action to resolve them. The Billing Audit report included recommendations for improvement which the Utility has not yet implemented. Four Points'

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

discontinuance of service to customers with current accounts, failure to refund deposits, inadequate attention to billing error inquiries, and restriction of access to Utility personnel for resolution of customers' disputes all indicate a disregard for excellent customer service.

Although the Utility's operations manager frequently does attend to customers' problems in an attempt to resolve them, he is ultimately hampered from properly correcting these problems by the instructions and priorities of the Utility's owner, as evidenced by the multitude of informal and formal customer complaints received by the Commission. Further, as evidenced by the November 2010 customer meetings, many customers openly question the honesty and integrity of the Utility's owner and Utility management.

Solutions Available to the Commission

Section 367.161, F.S., authorizes the Commission to assess penalties against a utility. The penalty is a statutory lien against the utility's property. Issues 1-9 address whether or not there are particular rule, order, or statute violations and a recommended penalty amount if the Commission finds there to be a violation. The purpose of the penalty is to obtain the attention of the utility and emphasize the importance of compliance with Commission rules, especially as it relates to customer relationships. Commission staff is concerned that Four Points' management may need both the penalties and additional oversight. Accordingly, staff recommends that the Commission consider one of two alternatives.

Alternative 1 recommends that in addition to assessing penalties for any rule, statute, or order violation, the Commission require the Utility to submit a Compliance Plan, pursuant to its authority granted in Section 367.121(1)(c),(d),(g), and (i), F.S. Alternative 1 also recommends that the Commission direct staff to file any penalties as statutory liens against the Utility's property pursuant to the authority granted in Section 367.161, F.S. Alternative 1 is discussed more thoroughly below. Alternative 2 recommends revocation of the water and wastewater certificates.

Alternative 1 Recommendation

If the Commission selects Alternative 1, staff recommends that Four Points prepare a Compliance Plan. The Compliance Plan must clearly address how the Utility will remedy the regulatory compliance problems addressed in Issues 1-9 of this recommendation. In addition, and perhaps more importantly, the Compliance Plan should address each of the six topics listed in the 2008 NRRI study, as discussed above.

Staff recommends that the Compliance Plan demonstrate that Four Points' management has turned its focus away from the non-utility operations and is focused on providing water and wastewater services to its customer. Staff recommends that the Compliance Plan include benchmarks demonstrating that the Utility is fulfilling its responsibilities as a utility. Staff suggests that the Utility be required to report frequently to the Commission regarding how it measures in comparison to the established benchmarks. Staff recommends that for the first year, the required filings be monthly and include verification from sources outside of the Utility's management and staff.

Staff recommends that the Utility be directed to prepare the Compliance Plan and file it with the Commission on or before November 30, 2011. Additionally, staff suggests that the Utility be required to keep a copy of the Compliance Plan at the Utility's office and make it available to all customers to review. Staff recommends that the Utility be required to notify its customers of the existence of the Compliance Plan and its location and availability for viewing.

Staff recognizes that this alternative will require significant additional Commission time and expense. Commission staff expects that it will necessitate future audits and reviews of the Utility. Because staff is concerned that Four Points' management is not committed to operating as a utility, staff recommends that in addition to the Compliance Plan, the Commission assess the penalties from Issues 1-8 and require Commission staff to enforce the penalties as statutory liens.

Alternative 2 Recommendation

In the alternative, Commission staff should be directed to send a letter to the Utility, giving the Utility 30 days notice that it intends to commence revocation proceedings if the Commission finds that the Utility is in violation of the rules, statutes, and orders as set forth in Issues 1-8. Revocation is in lieu of the penalties set forth in Issues 1-8.

Commission staff is concerned that Four Points' management does not understand how to and is not willing to commit the time to operate a utility within the meaning of Chapter 367, F.S. The operation of a utility under Chapter 367, F.S., if successful, allows a utility the opportunity to earn a return on its investment. If management is not willing to operate as a utility, the Utility's certificate should be revoked, removing any opportunity the owner has to earn a return on its investment. If the certificate is revoked, the owner of Four Points will continue to own the water distribution and wastewater collection systems within Island Club West. However, the Utility would be permitted to operate as an exempt reseller pursuant to Section 367.022(8), F.S. Pursuant to that statute, Four Points would not be allowed to charge its customers any more than the cost of the water and wastewater service purchased from Polk County.

In evaluating this option, it would be important for the Commission to consider Four Point management's history, specifically, the fact that Four Points was previously show caused for charging residents for water and wastewater services without a certificate. In other words, the Utility was not operating as a reseller because the Utility was charging more than what it was paying.

Issue 11: Should this docket be closed?

Recommendation: No. If Four Points Utility Corporation pays the \$77,034 in fines and interest, pays the \$13,206 in RAFs; submits the Compliance Plan, the docket should remain open for the Commission to review and approve the Compliance Plan and subsequently monitor the Utility's efforts to follow the Compliance Plan. If the Utility timely responds in writing to the show cause order, the docket should remain open to allow for the appropriate processing of the response. (Bennett, Jaeger)

Staff Analysis: If Four Points Utility Corporation pays the \$77,034 in fines and interest, pays the \$13,206 in RAFs; submits the Compliance Plan, the docket should remain open for the Commission to review and approve the Compliance Plan and subsequently monitor the Utility's efforts to follow the Compliance Plan. If the Utility timely responds in writing to the show cause order, the docket should remain open to allow for the appropriate processing of the response. (Bennett, Jaeger)

**FOUR POINTS COMPLAINTS RECEIVED BY FPSC
 2007 -JUNE 1, 2011**

Date Received	Company	Case No.	Type	Description of Complaint	Company Response	Next Action	Close Out Type	Date Closed
2/20/07	FPU	0727537 W	B	Improper Billing	Bill corrected.	Closed	WB-49	3/29/07
2/28/07	FPU	0728484 W	B	Improper Billing	Company explained reading error had occurred and was corrected.	Closed	GI-05	4/23/07
6/14/07	FPU	0739451 W	B	Improper Billing	Bill corrected.	Closed	WB-49	8/23/07
6/20/07	FPU	0740144 W	S	Improper Disconnect	Service restored.	Closed	GI-28	7/27/07
6/20/07	FPU	0740161 W	S	Improper Disconnect	Service restored.	Closed	WS-49	8/23/07
6/21/07	FPU	0740355 W	S&B	Improper disconnect and improper billing.	Bill corrected	Closed	WS-49	10/4/07
6/21/07	FPU	0740322 W	B&S	Improper billing and a water leak reported to company, but never taken care of.	No response from company or customer in over 30 days .	Closed	GI-05	8/23/07
6/22/07	FPU	0740417 W	S&B	Improper disconnect and improper billing.	Service restored and bills corrected.	Closed	WS-49	8/23/07
7/16/07	FPU	0742995 W	B	Improper Billing	Bills corrected.	Closed	GI-25	8/20/07
8/1/07	FPU	0744997 W	B	Improper Billing	Bill corrected.	Closed	GI-05	9/18/07
8/3/07	FPU	0745417 W	B	Improper Billing	Bill corrected.	Closed	WB-51	11/20/07
8/22/07	FPU	0747701 W	B	Improper Billing	Bill corrected.	Closed	GI-05	5/15/08
9/14/07	FPU	0750846 W	B	Improper Disconnect	Service restored.	Closed	WS-49	11/16/07
9/25/07	FPU	0752307 W	B	Improper Billing	Bill corrected.	Closed	GI-25	2/11/08
9/26/07	FPU	0752434 W	B	Improper Billing	Bill corrected.	Closed	WB-50	11/14/07
10/3/07	FPU	0753316 W	B	Improper Billing	Bill corrected.	Closed	WB-49	12/4/07
1/7/08	FPU	0764038 W	B	Improper Billing	Bill corrected.	Closed	WB-49	3/21/08
4/21/08	FPU	0775796 W	B	Improper Billing	Bills corrected and meter replaced.	Closed	WB-49	9/19/08
5/5/08	FPU	0777330 W	B	Improper billing and 38% rate increase outage.	Bill corrected.	Closed	GI-25	6/26/08
5/8/08	FPU	0777813 W	B	Improper billing and 38% Rate increase outage.	Bills Corrected	Closed	GI-25	6/23/08
6/19/08	FPU	0782823 W	B	Improper Billing	No fault by company leak was customers fault.	Closed	GI-25	9/19/08
10/29/08	FPU	0805074 W	B	Improper Billing	Bill corrected.	Closed	WB-50	12/3/08
10/29/08	FPU	0805089 W	B	Improper Billing	Bill corrected.	Closed	GI-25	12/3/08
10/30/08	FPU	0805357 W	S & B	Improper Billing	Bill corrected.	Closed	GI-25	4/9/09
11/3/08	FPU	0805774 W	B	Improper Billing	Bill corrected.	Closed	GI-25	12/8/08
10/29/08	FPU	0805092 W	B	Improper Billing	Bill corrected	Closed	GI-25	12/3/08

Date Received	Company	Case No.	Type	Description of Complaint	Company Response	Next Action	Close Out Type	Date Closed
3/26/09	FPU	0846316 W	S	Improper Disconnect	Service restored.	Closed	GI-30	4/30/09
8/31/09	FPU	0883748 W	B	Improper billing of late fee.	Fee waived.	Closed	GI-25	10/6/09
1/12/10	FPU	0916819 W	S & B	Improper billing and sand in water.	Have not had an opportunity to look into it.	ECR		
1/25/10	FPU	0919708 W	B	Improper billing of late fee.	Waved the charges	Closed	GI-25	3/3/10
2/19/10	FPU	0926058 W	B	Quality of service no bills received in two months.	Have not had an opportunity to look into it.	ECR		
2/23/10	FPU	0926738 W	B	Additional deposit request.	Have not had an opportunity to look into it.	ECR		
2/26/10	FPU	0927647 W	B	Additional deposit request.	Have not had an opportunity to look into it.	ECR		
3/23/10	FPU	0932946 W	B	Additional deposit request.	Case closed per Commission staff.	Closed	WB-49	11/15/10
4/30/10	FPU	0940598 W	B	Improper Billing	Bill corrected.	Closed	GI-25	6/8/10
7/19/10	FPU	0955586 W	B	Improper Billing	Failure to respond. Closed per Commission staff.	Closed	WB-49	11/15/10
7/27/10	FPU	0957294 W	S	Improper Disconnect	Service restored.	Closed	WS-49	9/8/10
8/27/10	FPU	0964144 W	B	Payments not being credited to account.	Failure to respond.	GCL		
10/20/10	FPU	0975085 W	B	Improper billing and improper late fee.	Waived the charges.	Closed	WB-49	11/15/10
10/21/10	FPU	0975567 W	S	Improper disconnect and improper billing.	Failure to respond.	GCL		
11/1/10	FPU	0981878 W	B	Improper Billing	Combined with 0975567W same customer.	Closed	GI-25	12/22/10
11/4/10	FPU	0978380 W	B	Improper billing and wrong meter serial number on bill.	None to date/due on 11/30/10	GCL		
12/3/10	FPU	0983141 W	B	Improper Billing	Company response due 12/27/10.			
12/3/10	FPU	0983144 W	S	Construction Quality	E-mailed a response facility passed inspection. If there is a problem, it is on customer side of meter.		NJ-99	1/19/11
12/3/10	FPU	0983172 W	B & S	Improper billing wrong meter serial number on bills. Improper disconnect and dirt in water and poor customer service.	None to date/due on 12/27/10		WB-49	5/31/11
12/3/10	FPU	0983198 W	S & B	Sand in water and feels like poor construction and pipes crossed.	Company response received via e-mail.	1/28/11 Company response due	WS-51	5/16/11
12/3/10	FPU	0983155 W	B&S	Poor customer service and improper billing.	E-mailed a response that allegations were incorrect about poor customer service and would send separate response on billing issues.	1/14/11 Supplemental response required.		

Date Received	Company	Case No.	Type	Description of Complaint	Company Response	Next Action	Close Out Type	Date Closed
12/3/10	FPU	0983158 W	B	Improper Bills	Past Due 12/27/10. Company response on 1/21/11, via email will look into the issue as soon as they have time.		WB-49	5/31/11
12/3/10	FPU	0983177 W	B	Improper attempt by meter readers to disconnect, unprofessionalism of meter readers drinking on the job.	Response via e-mail denying any drinking by employees or incorrect disconnects. Asked for customer to contact if this is seen again.		PR-68	1/19/11
12/3/10	FPU	0983192 W	B & S	Improper bills, poor customer service and improper disconnect.	Company reviewed bills, contacted customer waived \$5 late fee if bill would be brought current.		WB-49	1/21/11
12/3/10	FPU	0983174 W	S	Grit in the water.	Response due on 12/27/10. Company emailed on 1/20/11 will respond as soon as they can.		WS-49	5/31/11
12/3/10	FPU	0983204 W	S&B	Sand in the water and water bacteria test failed. Improper Billing	Company responded they have proof of passing water sample testing. Customer may have a crack under their slab. Company has until 1/28/11 to show proof of contacting the customer	1/28/11 Company response due.	WB-51	5/16/11
12/3/10	FPU	0983197 W	S & B	Sand in water, improper bills, poor customer service, improper meter readings, failure to refund deposits on time, and water supply connected improperly to neighbors unit.	Past due 12/27/10 company response. On 1/20/11 company response; purchased water from Polk County; other issues will be investigated.	1/20/11 Company response due.	WS-49	5/16/11
12/3/10	FPU	0983132 W	S	Quality of service and concerns of crossed lines because of improper disconnect.	E-mailed a statement that allegations were incorrect. Went to units and found no problems and renters did not remember improper disconnect.		GI-30	1/19/11
12/3/10	FPU	0983193 W	S	Leak in yard, could not get help from the office, called PSC problem handled immediately.	E-mailed a statement the leak was on the customers side of the meter, but they fixed it anyway and within 48 hours of first call and not because of PSC involvement.		GI-11	1/19/11
12/3/10	FPU	0983196 W	S	Poor customer service and poor construction. Improper bills.	Waiting on past due 12/27/10 company response.		PR-68	1/19/11
12/3/10	FPU	0983190 W	B	Improper billing and bills confusing.	E-mailed a statement that customer needed to contact the office. In review of their account the company saw no billing errors.	Supplemental response due 1/28/11.	WB-51	5/16/11

Date Received	Company	Case No.	Type	Description of Complaint	Company Response	Next Action	Close Out Type	Date Closed
12/3/10	FPU	0983138 W	B	Improper billing, meter at home is buried. How can they read meter? Consumption to high for 3 people in home.	E-mailed a statement that allegations were incorrect. Have proof of reading meters each month. If contacted by customer will run test on meter.	Supplemental response due 1/28/11.	WB-51	5/16/11
12/3/10	FPU	0983146 W	B&S	Improper billing, poor water quality, poor customer service and improper disconnect.	Past due 12/27/10. Company e-mailed 1/20/11 they would respond as soon as they have time.			
12/3/10	FPU	0983140 W	B	Improper billing customer in NY turned water off himself. Still receiving bills.	Emailed a statement that meter was read incorrectly and would be crediting customer.		GI-25	1/19/11
12/3/10	FPU	0983201 W	S	Improper disconnect and customer service.	Responded via email that the customer must have properties confused. They did not disconnect improperly.	Supplemental response due 1/28/11.	WS-51	5/16/11
12/17/10	FPU	0985658 W	B	Improper Billing	Response past due on 1/11/11.			
12/22/10	FPU	0986218 W	B	Improper Billing, lien against unit, dirt in meter box and therefore feels no way they could read it. Letter from company that dirt in meter was customer's fault and would be billed if not cleaned up.	Company emailed PSC will handle as soon as they can 1/20/11.			
1/5/11	FPU	0987876 W	B	Improper billing the customer does not live there and still being billed. Deposit not refunded after several attempts to resolve with company.	2/10/11 Company stated refund of deposit on the way to customer. Case still open; customer has not received deposit.		WB-49	3/30/11
1/31/11	FPU	0992379 W	B & S	Improper billing and poor customer service.	Response due 2/21/11			
5/9/11	FPU	1007727 W	B	Improper Billing	Response due 5/31/11			

Show Cause Fines

Issue	Rule/Statute Violation	Fine
1	Rule 25-30.145, F.A.C., Audit Access to Records	\$ 1,000
2	Rule 25-30.110(3), F.A.C., Annual Reports; Filing Extensions	\$ 1,890
3	Rule 25-30.130, F.A.C., Record of Complaints	\$ 5,000
	Rule 25-30.355, F.A.C., Complaints	\$ 1,750
	Rule 25-30.032(3), F.A.C., Customer Complaints	\$15,000
4	Rule 25-30.311(1), F.A.C., Customer Deposits Sections 367.081(2) and 367.091(3), F.S.	\$ 5,000
	Rules 25-30.311(4)(a) and (b), F.A.C., and 25-30.311(5) and (6), F.A.C., Customer Deposits	\$25,000
	Rule 25-30.311(7), F.A.C., Customer Deposits	\$ 375
5	Order No. PSC-07-0280-PAA-WS	\$ 5,000
6	Rule 25-30.335(7), F.A.C., Customer Billing	\$ 1,000
	Section 367.081(1) and (2), F.S.	\$ 5,000
	Rule 25-30.335(4), F.A.C., Customer Billing	\$ 1,000
7	Rule 25-30.320, F.A.C., Refusal or Discontinuance of Service	\$ 5,000
8	Rule 25-30.120, F.A.C., Regulatory Assessment Fees – Penalties	\$ 3,302
	Interest	\$ 1,717
SHOW CAUSE FINES TOTAL		\$ 77,034