

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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DATE: June 7, 2012
TO: Office of Commission Clerk (Cole)
FROM: Division of Economic Regulation (Daniel, McRoy, Mouring)
Office of the General Counsel (Bennett, Lawson)
RE: Docket No. 120030-WS – Notice of abandonment of water and wastewater systems in Polk County by Four Points Utility Corporation and Bimini Bay Utilities Corporation.
County: Polk

AGENDA: 06/19/12 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\120030.RCM.DOC

Case Background

Four Points Utility Corporation (Four Points or Utility) is a Class C water and wastewater utility in Davenport, located in northeast Polk County (County) in the Southwest Florida Water Management District. The Utility serves approximately 214 residential water and wastewater customers in the Island Club West Resort and Spa (Island Club West) townhome development. Four Point's 2010 annual report indicates that the Utility had combined gross operating revenues of \$127,975 and a net operating loss of \$104,080. The Utility's 2011 annual report has not yet been filed.

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In September 2005, Four Points filed an application for water and wastewater certificates. In that docket, Commission staff noted the Utility's slow responses or lack of responsiveness to staff's numerous notifications of deficiencies. In addition, 16 customers objected to the application, citing quality of service issues, while many others provided objections via email. Staff scheduled a hearing following a request for the same from the Chairman of the Island Club West Homeowners Association (HOA). Because Four Points had been in existence since 2001 but was not brought to the Commission's attention until 2005, the Commission ordered the Utility to show cause why it should not be fined \$5,000 for providing water and wastewater service to the public for compensation without first obtaining certificates and the Commission's approval to collect rates and charges, in apparent violation of Sections 367.045, 367.081(1), and 367.091(3), Florida Statutes (F.S.), and Rules 25-30.034(1)(g) and 25-30.135, Florida Administrative Code (F.A.C.).¹ In response, the Utility submitted payment of \$5,000 along with a list of steps it had taken to address customers' and staff's quality of service concerns.

Four Points pursued the mediation process and requested the Commission's approval of a November 2006 Settlement Agreement (Settlement Agreement) between the Utility and its customers. The Settlement Agreement required the Utility to, among other things, utilize meters that conform to Commission rules; read meters in accordance with the established protocol described in the Settlement Agreement; and perform meter testing in accordance with Commission rules. By Order issued in April 2007, the Commission approved the Settlement Agreement; granted Four Points Certificate Nos. 634-W and 544-S; declined to initiate show cause proceedings as a result of the Utility's unauthorized increase in rates; and temporarily authorized the Utility to charge rates, with revenues held subject to refund pending approval of final rates.²

Since certification, Four Points has experienced no territory amendments or transfers. Although the Utility applied for a staff-assisted rate case in 2009, the Commission denied the application for lack of remittance of the filing fee, in accordance with Rule 25-30.455(9), F.A.C.³

In November 2011, the Commission ordered Four Points to show cause why it should not be fined \$77,034 for violation of multiple Commission orders, rules, and statutes. Further, the Utility was ordered to submit a Compliance Plan to clearly address how it would remedy its regulatory compliance problems.⁴ Four Points was also ordered to submit payment in the amount of \$18,224 for delinquent regulatory assessment fees (RAFs), penalties, and interest by November 30, 2011. The Utility's subsequent response to the Order included a dispute of issues of material fact contained within the Order, a request for a formal evidentiary hearing, and a proposed Compliance Plan. Four Points stated in its response that it had implemented, or was in the process of implementing, as many of the corrective actions and compliance measures set

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

³ See Document No. 08359-09, issued August 12, 2009, in Docket No. 090213-WS, In re: Application for staff-assisted rate case in Polk County by Four Points Utility Corporation.

⁴ See Order No. PSC-11-0541-SC-WS, issued November 22, 2011, in 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.

forth in the Plan as possible, and that it would continue with such implementation during the pendency of the Commission's consideration of the proposed Compliance Plan.⁵

On January 25, 2012, Four Points filed notice of its intent to abandon the water and wastewater systems effective March 23, 2012, citing insufficient cash flows to cover its operating costs.⁶ Included in its filing was a notice of abandonment of Bimini Bay Utilities Corporation (Bimini Bay), a water and wastewater utility owned and operated by Four Points' now-former owner, David Meadows, and providing service to Bimini Bay Resort and Spa, a nearby townhome development. Bimini Bay has operated as a reseller since August 2005, but applied for water and wastewater certificates in August 2009. The Commission denied its application due to a finding that certification would not be in the public interest.⁷ As a result, Bimini Bay continues to operate as a reseller. Polk County filed a Petition for Appointment of Receiver with the Circuit Court of the Tenth Judicial Circuit in and for Polk County (Circuit Court) in order to ensure continued service to residents of both communities. By Order dated March 19, 2012, the Circuit Court appointed Michael Smallridge as receiver of Four Points and Bimini Bay effective March 23, 2012.

The purpose of this recommendation is to acknowledge Four Points' notice of abandonment and acknowledge the appointment of the Utility's receiver. The Commission has jurisdiction pursuant to Section 367.165, F.S., and Rule 25-30.090, F.A.C.

⁵ See Document No. 00327-12, issued January 17, 2012, in Docket No. 110254-WS.

⁶ See Document No. 00515-12, issued January 25, 2012, in Docket No. 120030-WS.

⁷ See Order No. PSC-11-0542-PAA-WS, issued November 22, 2012, in Docket No. 090424-WS, In re: Application for certificates to provide water and wastewater service in Polk County by Bimini Bay Utilities Corporation.

Discussion of Issues

Issue 1: Should the Commission acknowledge Four Points Utility Corporation's notice of abandonment, and the appointment of Michael Smallridge as receiver?

Recommendation: Yes. The Commission should acknowledge Four Points' notice of abandonment, pursuant to Section 367.165, F.S., and appointment of Michael Smallridge as receiver. (Daniel, McRoy, Bennett, Lawson)

Staff Analysis: Section 367.165(1), F.S., requires that a utility's owner or operator provide 60 days' notice to the county or counties in which the utility is located and to the Commission prior to abandonment of the utility. Failure to provide such notice constitutes a misdemeanor of the first degree, according to the statute.

By letter dated January 23, 2012, and filed with the Commission on January 25, 2012, David Meadows, Four Points' now-former owner and operator, provided the County and this Commission 60 days' notice of his intent to abandon the Utility's water and wastewater facilities as of March 23, 2012.

Polk County filed a Petition for Appointment of Receiver with the Circuit Court in February 2012, in conformance with Section 367.165(2), F.S. The statute allows such receiver to be the governing body of a political subdivision, such as a county (or counties if more than one is affected) or any other person deemed appropriate. The receiver is responsible for operating the utility from the date of abandonment until the receiver disposes of the property of the utility in a manner designed to continue the efficient and effective operation of utility service. By Order dated March 19, 2012, the Circuit Court acknowledged the County's petition and appointed Mr. Smallridge as receiver of Four Points and Bimini Bay effective March 23, 2012. Mr. Smallridge accepted that responsibility and began operating the water and wastewater systems on that date.

The Circuit Court's Order gave Mr. Smallridge responsibility and authority to operate, maintain, and improve the system; apply for permits and interact with state agencies involving system operation; collect charges for service; pay expenses; arrange for transfer of ownership, subject to court approval; dissolve or dispose of the assets of the system to the extent that the system is no longer physically or economically viable; do all things reasonably required to operate and maintain the system as a viable system; and file a semi-annual report regarding the financial and operating status of the system with the Circuit Court.

In accordance with Rule 25-30.090(3), F.A.C., within 10 days of the appointment of a receiver by the circuit court, the receiver shall request from the Commission a copy of the utility's tariff and most recent annual report. A copy of the Utility's tariff and 2010 annual report have been sent to Mr. Smallridge.

Pursuant to Rule 25-30.110, F.A.C., the filing of annual reports with the Commission is required. Any utility which fails to file an annual report within the specified timeframe, pursuant to Rule 25-30.110(7), F.A.C., shall be subject to a penalty of \$3.00 per day for Class C utilities. Four Points filed its 2010 annual report 288 days late on January 13, 2012, and has yet to file a

2011 annual report and has not filed for an extension. As of June 7, 2012, the 2011 annual report is 68 days late. Also, payment of RAFs, plus associated penalties and interest, is required by Sections 367.145(1), and 350.113(3) and (4), F.S. Therefore, the Commission does not have the power to waive the requirement for payment of RAFs, associated penalties and interest. 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 failure to pay RAFs in a timely manner. Four Points made a partial payment on August 13, 2011, for its 2009 and 2010 RAFs, and a partial payment on September 16, 2011, for the associated fees and penalties, but has not made any payments for the 2011 RAFs. The disposition of the outstanding RAFs, penalties, fees, and interest associated with Four Points Utility Corporation will be fully addressed in a future recommendation.⁸

In consideration of the foregoing, staff recommends that the Commission acknowledge Four Points' notice of abandonment, pursuant to Section 367.165, F.S., and acknowledge the appointment of Michael Smallridge as Four Points' receiver as of March 23, 2012.

⁸ The disposition of outstanding RAFs and Annual Report fees will be addressed in Docket No. 110254-WS.

Docket No. 120030-WS

Date: June 7, 2012

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed, as no further action is necessary. (Bennett, Lawson)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, there are no outstanding issues to be addressed, and the docket can be closed.