

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of abandonment of water and  
wastewater systems in Polk County by Four  
Points Utility Corporation and Bimini Bay  
Utilities Corporation.

DOCKET NO. 120030-WS  
ORDER NO. PSC-12-0347-FOF-WS  
ISSUED: July 5, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

ORDER ACKNOWLEDGING ABANDONMENT AND APPOINTMENT OF RECEIVER  
FOR FOUR POINTS UTILITY CORPORATION

BY THE COMMISSION:

This Commission Order acknowledges Four Points Utility Corporation's notice of abandonment and acknowledges the Polk County Circuit Court's Order appointing Michael Smallridge as receiver of Four Points Utility Corporation. We have jurisdiction pursuant to Section 367.165, Florida Statutes (F.S.), and Rule 25-30.090, Florida Administrative Code (F.A.C.).

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.

In September 2005, Four Points filed an application for water and wastewater certificates. In that docket, we noted the Utility's slow responses or lack of responsiveness to numerous notifications of deficiencies. In addition, 16 customers objected to the application, citing quality of service issues, while many others provided objections via email. We scheduled a hearing following a request for the same from the Chairman of the Island Club West Homeowners Association. Because Four Points had been in existence since 2001 but was not brought to our attention until 2005, we 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 our approval to collect rates and charges, in apparent violation of Sections

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367.045, 367.081(1), and 367.091(3), F.S., and Rules 25-30.034(1)(g) and 25-30.135, F.A.C.<sup>1</sup> In response, the Utility submitted payment of \$5,000 along with a list of steps it had taken to address customers' and our quality of service concerns.

Four Points pursued the mediation process and requested our 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 our rules; read meters in accordance with the established protocol described in the Settlement Agreement; and perform meter testing in accordance with our rules. By Order issued in April 2007, we 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.<sup>2</sup>

Since certification, Four Points has had no territory amendments or transfers. The Utility did apply for a staff-assisted rate case in 2009, but we denied the application for lack of remittance of the filing fee, in accordance with Rule 25-30.455(9), F.A.C.<sup>3</sup>

In November 2011, we 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.<sup>4</sup> Four Points was also ordered to submit payment in the amount of \$18,224 for delinquent regulatory assessment fees, 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 forth in the Plan as possible, and that it would continue with such implementation during the pendency of our consideration of the proposed Compliance Plan.<sup>5</sup>

By letter dated January 23, 2012, and filed with us on January 25, 2012, David Meadows, Four Points' now-former owner and operator, provided us and Polk County 60 days' notice of his intent to abandon Four Points' water and wastewater facilities as of March 23, 2012.<sup>6</sup> 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 us prior to abandonment of the utility.

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<sup>1</sup> 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.

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

<sup>3</sup> 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.

<sup>4</sup> 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.

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

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

Failure to provide such notice constitutes a misdemeanor of the first degree, according to the statute.

Included in its filing was a notice of abandonment of Bimini Bay Utilities Corporation (Bimini Bay), a water and wastewater utility also 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. We denied its application due to a finding that certification would not be in the public interest.<sup>7</sup> As a result, Bimini Bay continues to operate as a reseller.

In February 2012, Polk County, in conformance with Section 367.165(2), F.S., filed a Petition for Appointment of Receiver with the Circuit Court of the Tenth Judicial Circuit in and for Polk County. 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. Polk County's petition requested that Michael Smallridge be appointed receiver. The purpose of the appointment was to assure continued service to residents of both communities. 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 Judicial 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 us 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., annual reports must be filed with us. 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

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<sup>7</sup> 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.

report and has not filed for an extension. As of June 7, 2012, the 2011 annual report is 68 days late. Payment of regulatory assessment fees, plus associated penalties and interest, is required by Sections 367.145(1), and 350.113(3) and (4), F.S. Because this is a legislative requirement, we do not have the power to waive the requirement for payment of the regulatory assessment fees, 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., we may impose an additional penalty upon a utility for failure to pay regulatory assessment fees in a timely manner. Four Points made a partial payment on August 13, 2011, for its 2009 and 2010 regulatory assessment fees, and a partial payment on September 16, 2011, for the associated fees and penalties, but has not made any payments for the 2011 regulatory assessment fees. The disposition of the outstanding regulatory assessment fees, penalties, fees, and interest associated with Four Points Utility Corporation will be fully addressed in a future recommendation.<sup>8</sup>

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

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Four Points Utility Corporation's notice of abandonment is acknowledged. It is further

ORDERED that the appointment of Michael Smallridge as receiver for Four Points Utility Corporation is hereby acknowledged. It is further

ORDERED that no further action is necessary and this docket shall be closed.

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<sup>8</sup> The disposition of outstanding regulatory assessment fees and Annual Report fees will be addressed in Docket No. 110254-WS.

By ORDER of the Florida Public Service Commission this 5th day of July, 2012.



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HONG WANG  
Chief Deputy Commission Clerk  
Florida Public Service Commission  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

LCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.